

# FTA

FEDERAL TRANSIT ADMINISTRATION

## City of Kansas City, Missouri Disadvantaged Business Enterprise Unified Certification Program (UCP) Review

Final Report  
March 2021



U.S. Department of Transportation  
Federal Transit Administration

*This page intentionally left blank to facilitate duplex printing.*

## Table of Contents

Executive Summary.....	1
1. General Information .....	3
2. Jurisdiction and Authorities .....	5
3. Purpose and Objectives .....	7
3.1 Purpose.....	7
3.2 Objectives.....	7
4. Background Information .....	9
4.1 Introduction to KCMO and Organizational Structure .....	9
4.2 Budget and FTA-Assisted Projects.....	10
5. Scope and Methodology.....	11
5.1 Scope .....	11
5.2 Methodology.....	12
5.3 Stakeholder Interviews.....	14
6. Findings and Advisory Comments .....	17
6.1 Group Membership.....	17
6.2 Business Size.....	19
6.3 Social and Economic Disadvantage .....	19
6.4 Ownership.....	22
6.5 Control.....	23
6.6 Interstate Certification .....	25
6.7 Other Rules Affecting Certification .....	26
6.8 UCP Requirements.....	27
6.9 Entering Information into USDOT’s Ineligibility Database.....	30
6.10 UCP Procedures.....	31
6.11 Denials of Applications for Certification.....	35
6.12 Compliance and Enforcement.....	39
6.13 Record Keeping.....	41
6.14 Submitting Reports to USDOT.....	42
6.15 Training of Certification Application Review Staff.....	42
7. Summary of Files Review and Findings.....	45
ATTACHMENT A – FTA NOTIFICATION LETTER TO KCMO .....	53
ATTACHMENT B – KCMO’S RESPONSE TO DRAFT REPORT .....	59

*This page intentionally left blank to facilitate duplex printing.*

## Executive Summary

**Objective and Methodology:** This report details the results of a specialized review of the City of Kansas City, Missouri (KCMO) Disadvantaged Business Enterprise (DBE) certification practices and procedures. The specialized review examined KCMO's DBE certification procedures, management structures, actions, and documentation as a certifying member in the Missouri Unified Certification Program (UCP), known as the Missouri Regional Certification Committee (MRCC). Documents and information were collected from the Federal Transit Administration (FTA) and KCMO. In addition, the following entities were interviewed as part of this review: KCMO officials, DBE applicants, DBE certified firms, firms that were denied DBE certification, and other stakeholders. The review included interviews, assessments of data collection systems, and an evaluation of program and relevant documents.

**KCMO's Certification Program includes the following positive program elements:**

### Positive Program Elements

- **Program Leadership** – KCMO has an experienced DBELO who has been in place for more than a decade and is knowledgeable about USDOT regulations and the DBE certification process.
- **Certification Assistance** – KCMO offers a monthly online training session for first-time applicants, offering guidance on how to apply.
- **Annual No Change Affidavits** – KCMO documented that it ensured DBE compliance with annual update requirements.
- **Individual Determinations of Social/Economic Disadvantage** – When an applicant does not meet the criteria for presumptive social and economic disadvantage, KCMO effectively evaluates the applicant and determines whether the applicant is eligible per DBE program regulations.
- **Ownership and Control** – KCMO was thorough in evaluating firm ownership and control. KCMO implemented procedures that include an exhaustive evaluation of company formation documents, on-site visit results, and owner credentials.

**The Program has the following administrative deficiencies:**

### Administrative Deficiencies

- **DBE Program Plan/Procedures** – KCMO's certification procedures in its DBE Program Plan did not address all required areas, did not include enough detail, and did not reflect actual practice. KCMO must update its DBE Program Plan and other procedural documents (e.g., "desk procedures") to include detailed procedures on how it satisfies all required program elements.
- **DBE Certification Training** – KCMO's certification staff had not completed the USDOT certification training offered by FHWA's National Highway Institute.

**The Program has the following substantive deficiencies:****Substantive Deficiencies**

- **90-Day Determinations** – KCMO was not meeting the deadline for making DBE determinations, nor was it sending out letters informing applicants of a 60-day one-time extension.
- **DBE Directory** – KCMO's DBE Directory was not consistent with the information in the MRCC DBE Directory for the DBEs that KCMO certified.
- **Entering Information into USDOT's Ineligibility Determination Online Database** – KCMO was not entering KCMO's denials and decertifications into the database, as required. KCMO was not checking the database prior to certifying DBEs.

During the period from January 1, 2017 to January 1, 2021, KCMO processed more than 150 new or renewal DBE certification actions. KCMO has an internal process to screen all new applications for completeness within 48 hours of receipt and notify applicants of the status of the applications within 30 days.

## I. General Information

This chapter provides basic information concerning this specialized review of KCMO. Information on KCMO, the review team, and the dates of the review are presented below.

<b>Recipient:</b>	City of Kansas City
<b>City/State:</b>	Kansas City, Missouri
<b>Recipient ID:</b>	7207
<b>Executive Official:</b>	Brian Platt City Manager
<b>On-site Liaison:</b>	Phillip Yelder Director, Human Relations
<b>Report Prepared By:</b>	The DMP Group, LLC
<b>Dates of Virtual Review:</b>	February 2–4, 2021
<b>Review Team Members:</b>	John Potts, Lead Reviewer Donald Lucas, Reviewer Khalique Davis, Reviewer Maxine Marshall, Reviewer Melanie Potts, Reviewer

*This page intentionally left blank to facilitate duplex printing.*



## 2. Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of the U.S. Department of Transportation (USDOT) to conduct Civil Rights specialized reviews. The reviews are undertaken to ensure compliance by applicants, recipients, and subrecipients with (a) FTA's Master Agreement and (b) 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs."

As direct or indirect recipients of FTA funding assistance, the UCP and its members (i.e., USDOT recipients within the state) must comply with the DBE regulations at 49 CFR Part 26 as a condition associated with the use of these funds. The DBE regulations formed the basis for this specialized review; those regulations define the certification eligibility requirements that must be addressed and incorporated in the UCP agreement.

*This page intentionally left blank to facilitate duplex printing.*

## 3. Purpose and Objectives

### 3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26. FTA has determined that a specialized review of KCMO's involvement as a certifying member in MRCC is necessary.

The DBE regulations require USDOT recipients to participate in a Unified Certification Program—as evidenced by a signed UCP agreement. The UCP provides “one-stop shopping” to applicants for DBE certification. An applicant is required to apply once for DBE certification, which will be honored by all recipients in the State.

The primary purpose of the specialized review is to determine the extent KCMO has met its goal and objectives as represented to USDOT in its UCP agreement. This specialized review is intended to be a fact-finding process to (1) examine KCMO's UCP and its certification practices and procedures, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

This specialized review is not to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its subrecipients, nor to adjudicate these issues on behalf of any party.

### 3.2 Objectives

The objectives of Unified Certification Programs, as specified in 49 CFR Part 26, are to:

- Adhere to the certification procedures and standards and the nondiscrimination requirements of 49 CFR Part 26.
- Cooperate fully with all oversight, review, and monitoring activities of USDOT and its operating administrations.
- Implement USDOT directives and guidance on DBE certification matters.
- Make all certification and decertification decisions on behalf of all UCP members with respect to participation in the USDOT DBE Program. Certification decisions by the UCP must be binding on all UCP members.
- Provide a single DBE certification that will be honored by all UCP members.
- Maintain a unified and current DBE directory containing at least the following information for each firm listed: address, phone number, and the types of work the firm has been certified to perform.
- Ensure the UCP agreement commits recipients to verify that the UCP has sufficient resources and expertise to carry out the requirements of 49 CFR Parts 26 and 23.

The objectives of this specialized review are to:

- Determine whether KCMO is honoring the MRCC UCP Agreement submitted to the Secretary of Transportation.
- Examine whether KCMO is implementing the required certification procedures and standards of the regulations and official USDOT guidance, and to document the compliance status of each component.
- Gather information and data regarding the operation of KCMO's DBE certification program through interviews and certification file review.

## 4. Background Information

The purpose of this section is to provide an understanding of KCMO's operations and scale. This section highlights KCMO's services, budget, and the history of its DBE program.

### 4.1 Introduction to KCMO and Organizational Structure

Effective October 4, 2004, the Missouri Department of Transportation (MoDOT) signed a memorandum of understanding (MOU) with six partnering DBE-certifying agencies in the State of Missouri pursuant to the 1999 DBE regulatory mandate requiring all U.S. Department of Transportation (USDOT) recipients in each state to establish a single uniform process for certifying DBEs and to establish and maintain a centralized DBE directory for use by all DBE program participants in each state. In addition to MoDOT, the original certifying partners were the City of St. Louis/Lambert Airport Authority, Bi-State Development/METRO, Kansas City Area Transportation Authority, City of Kansas City (KCMO), Mid-America Regional Council, and the East-West Gateway Council of Governments. These original partnering agencies formed the Missouri Regional Certification Committee (MRCC), the State of Missouri's Unified Certification Program (UCP). After signing the original MOU, the Missouri UCP was fully implemented in January 2005, and KCMO signed the MRCC Unified Certification Program Agreement, Policies and Procedures on March 25, 2005.

The MRCC currently comprises MoDOT and four certifying agency partners: the City of St. Louis, Bi-State Development, the Kansas City Area Transportation Authority, and KCMO. MoDOT functions as the lead certifying agency responsible for maintaining the MRCC DBE Directory in coordination with the four certifying agency partners. The MRCC Directory is used by 228 non-certifying agency partners throughout the State of Missouri.

As a certifying partner, KCMO regularly attends meetings of the MRCC to discuss UCP matters. KCMO was unaware of any organizing document (e.g., bylaws) that described how the MRCC was governed. A description of MRCC governance was limited to a description in the UCP Agreement of the involvement of MRCC certifying partners in hearing and deciding eligibility determination appeals. The UCP Agreement mostly identified the certifying and noncertifying agency partners and the certification standards and procedures that partners were required to implement.

KCMO's DBE liaison officer (DBELO) manages and administers KCMO's DBE program, including DBE certification. KCMO Human Relations Department (HRD) staff, including a minority- and woman-owned business enterprise and DBE division manager, an administrative assistant, a DBE coordinator, and four certification officers support the DBELO in certifying DBEs. DBE certification staff use B2GNow, a third-party online diversity program management application, to process, record, and track DBE firm applications and ongoing firm eligibility in the DBE program. KCMO also uses B2GNow to manage applications for its nonfederal minority- and woman-owned business enterprise programs. Approximately every two weeks, KCMO staff export DBE firm information from its B2GNow system to a Microsoft Excel spreadsheet and transmit this information to MRCC for inclusion in the MRCC DBE Directory. The MRCC DBE Directory lists 1,113 DBE firms, of which 475 (or 43 percent) were certified by KCMO. KCMO certification staff process approximately 40–50 applications per year. In 2018 and 2019, KCMO

experienced an increase in applications due to a large construction project at the Kansas City International Airport.

KCMO's annual training budget for its DBE certification staff is approximately \$8,000. HRD staff attend annual state and national training workshops on DBE certification, compliance, reporting, and monitoring. On an ongoing basis, certification staff attend training offered by MoDOT, the American Contract Compliance Association, the National Transit Institute, and other local and regional entities when available.

## 4.2 Budget and FTA-Assisted Projects

KCMO's FY 2020 DBE program management budget, which included funding for DBE certification operations, is as follows:

<b>Funding Source Funding Amount</b>		
Federal – FTA	<b>Total:</b>	\$ 0
Federal – FHWA		\$ 0
State:		\$ 0
Local:	<b>\$722,300</b>	<b>\$722,300</b>
	<b>Grand Total:</b>	<b>\$722,300</b>

## 5. Scope and Methodology

### 5.1 Scope

The overall scope of this review is to determine whether KCMO is (1) ensuring that only firms certified as eligible DBEs under 49 CFR §26.83 participate as DBEs on federally assisted projects, (2) implementing DBE certification standards and procedures, and (3) maintaining proper certification records and reporting as required to FTA and USDOT in accordance with the DBE program regulations. Specific program elements reviewed include:

#### DBE Eligibility (Certification Standards):

1. The rebuttable presumption that members of the designated groups identified in §§26.5 and 26.67 are socially and economically disadvantaged (49 CFR §26.61).
2. Collecting additional evidence of group membership when there is a well-founded reason to question the individual's claim of membership in a group (49 CFR §26.63).
3. Determining whether the applicant firm and existing DBEs are considered "small businesses" as defined by (a) current Small Business Administration (SBA) business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in USDOT-assisted contracts, and (b) the Department's statutory gross receipts cap of \$23.98 million. All size determinations are made by assessing firms' gross receipts averaged over a 3-year period (49 CFR §26.65).
4. Requiring applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged (49 CFR §26.67).
5. Excluding commercially useful function issues from certification decisions unless the firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program (49 CFR §26.73).
6. Evaluating the eligibility of a firm on the basis of present circumstances, assessing a firm's ownership and control (49 CFR §26.73, all sections of §§26.69 and 26.71).

#### Certification Procedures

Before a firm is initially certified, the UCP must conduct an on-site visit to the firm's principal place of business and to job sites if there are any sites at which the firm is currently working at the time of the eligibility investigation [49 CFR §26.83(c)(1)]. The on-site interview must include an interview of the firm's principal officers and a review of their resumes and/or work histories.

1. Properly applying interstate certification requirements, timelines, and denial procedures (including stating good cause reason(s) and offering an opportunity for the firm to respond) (49 CFR §26.85).

2. Issuing denial letters, notices of intent to decertify, and final decisions that clearly explain the reasons for the action, including specific references to evidence in the record that supports each reason for the decision. In denial and decertification actions, the correspondence must inform the firm of the consequences of the decision and the availability of an appeal to USDOT (49 CFR §§26.86–26.89).
3. Maintaining proper records (i.e., application package for each certified firm; signed, notarized certification of social and economic disadvantage (49 CFR §26.67); affidavits of no change and documentation supporting firm size and gross receipts (e.g., submission of Federal tax returns); change notices; and on-site reviews) according to the recipient's financial assistance agreement (49 CFR §§26.11, 26.83(j)).

### **General Reporting Requirements**

1. Participation as a certifying or noncertifying UCP member—as evidenced by signing the UCP agreement (49 CFR 26.81 and 26.31). Agreements reflect and reference current certification practices and procedures, and amendments were approved by USDOT.
2. Maintaining a DBE directory of firms eligible to participate as DBEs in the UCP program. In the listing of each firm, the directory must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. The UCP must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work (49 CFR 26.31).
3. Submitting to USDOT's Departmental Office of Civil Rights the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following: (1) women; (2) socially and economically disadvantaged individuals (other than women); and (3) individuals who are women and are otherwise socially and economically disadvantaged individuals (49 CFR §26.11).
4. Entering certification denials and decertification data in USDOT's Departmental Office of Civil Rights ineligibility database (49 CFR §26.85(f)(1)).

## **5.2 Methodology**

The initial step of this specialized review consisted of consultation with the FTA Office of Civil Rights and a review of available information from KCMO and MoDOT websites and other sources. After reviewing this information, potential dates for the site visit were coordinated.

The FTA Office of Civil Rights sent a notification letter to KCMO that informed it of the upcoming visit, requested necessary review documents, and explained the areas that would be covered during the on-site visit. The letter also informed KCMO of staff and other parties who would potentially be interviewed.

Before conducting the compliance review, KCMO was asked to provide the following documents:



- Current Unified Certification Program Agreement.
- Current memorandum of understanding or similar documents forming the Missouri Regional Certification Committee Unified Certification Program (signed by all members of the UCP).
- Documentation of meetings, correspondence, and other communications between the UCP certifying partners in the implementation of the program during the past three years.
- A narrative describing the KCMO individuals and resources dedicated to implementing the DBE UCP requirements, handling DBE UCP inquiries, and educating KCMO staff on DBE UCP. The narrative should include an organization chart showing KCMO's DBE UCP staff and a budget showing funds allocated to the DBE UCP.
- The certification criteria/guidelines used in determining DBE eligibility.
- Standard operating procedures or similar documents that explain the DBE certification process, including copies of the application used during certification, personal net worth statement, annual affidavits/updates, etc.
- KCMO-specific certification procedures (sometimes called desk procedures) consistent with and supplemental to the State's UCP procedures, if applicable.
- Documents or forms used during DBE certification site visits.
- Written procedures for updating the MRCC DBE Directory.
- A list of all firms certified, denied, and decertified or removed by the UCP in FYs 2017–2020. The list must include the firms' city, state, ethnicity, gender, date of site visit, reasons for denial and/or decertification (e.g., size, PNW, control, etc.), whether the denial decision was appealed to the UCP or USDOT, and a copy of USDOT's final agency decision.
- A description of KCMO's UCP appeals processes. List the individuals involved in the appeals process, their reporting structure, and how they are selected.
- A narrative describing how KCMO satisfies DBE certification staff training requirements.
- Documentation confirming DBE certification staff have met DBE certification training requirements (i.e., training certifications and/or certificates).
- Any third-party complaints regarding DBE firms certified by the UCP and actions taken to resolve the matter.
- Any Freedom of Information Act or similar requests for certification information, and responses.
- Any enforcement action against a DBE firm (e.g., suspension, debarment, etc.) regarding certification in the past three years.
- Other pertinent information determined by KCMO's staff to illustrate its UCP operations and procedures.

Due to the travel restrictions resulting from the COVID-19 virus, a decision was made to conduct the review virtually. The review team used Zoom to interview staff and review certification files. An opening conference was conducted at the beginning of the compliance review with KCMO staff and the DMP review team. FTA representatives also participated in the opening conference via Zoom. The following people attended the opening conference:

**Kansas City Human Relations Department**  
Philip Yelder, Director

**Federal Transit Administration**

John Day, FTA Headquarters Office of Civil Rights Officer  
Morgan Hecht, Regional Civil Rights Officer, FTA Region 7

**The DMP Group**

John Potts, Lead Reviewer  
Donald Lucas, Reviewer  
Maxine Marshall, Reviewer  
Khalique Davis, Reviewer  
Melanie Potts, Reviewer

The review team examined the certification reports and other documents that KCMO submitted and conducted interviews with KCMO's staff regarding UCP administration, organizational structure, certification procedures, record keeping, monitoring, and enforcement. A sample of DBE applications and certification decisions was selected and reviewed. Telephone interviews with DBE firms, applicant firms, decertified firms, and firms that were denied DBE certification were also conducted.

At the end of the review, FTA representatives, KCMO staff, and the review team convened virtually for the final exit conference to review initial observations. KCMO and the review team acknowledged that additional certification file review would be completed during the following week.

Following the virtual meetings, a draft report was compiled and transmitted to KCMO for comments on February 25, 2021. KCMO responded on March 4, 2021 that it did not identify any factual corrections.

### 5.3 Stakeholder Interviews

Prior to the virtual meetings with KCMO, the review team attempted to contact DBE firms and stakeholder organizations regarding their experience with KCMO's certification process.

**DBE Firms**

Attempts were made to interview nine certified DBE firms listed in the MRCC DBE Directory that had been certified by KCMO concerning their experiences with the certification process. Seven of the nine firms were interviewed.

The interview questions included:

1. *Is your firm currently certified in the state UCP?*
2. *How did you learn about the UCP?*
3. *To which UCP certifying entity was your firm's certification application submitted?*
4. *Did the UCP acknowledge receipt of your application?*
5. *Did the UCP communicate the status of your firm's certification application review?*
6. *Was an on-site visit conducted with your firm?*
7. *Approximately how long did your firm's certification review and approval process take?*

8. *Have you visited the UCP DBE Directory website to verify the accuracy of your firm's profile and the types of work your firm has been certified to perform?*
9. *Are you familiar with the requirements for continued certification eligibility (such as annual updates, notification of change, personal net worth statement, current tax returns, etc.)?*
10. *(IF Denied) Did you receive a denial letter indicating the reason for denial?*
11. *Where you made aware of your right to appeal your denial?*
12. *Do you have any concern(s) about the UCP or the certification process?*

Five of the seven firms interviewed had similar experiences. Their applications were not processed within 90 days, but they had been made aware of the status of their application throughout the application review process either informally or formally. The firms reported receiving official notification of their application via an email, phone call, or a request for additional documents. The two remaining firms' applications and/or renewals were processed within 60 to 90 days. All seven firms reported that KCMO conducted a thorough on-site visit.

Three firms had reviewed their listings in the directory. One firm noted that its listing in the directory was incorrect and was in communication with KCMO to fix it. All the firms were aware of the requirement to provide an annual update, and some of them had recently completed their annual update. One firm was unsure of its recertification status.

Most of the firms spoke critically of the timeliness of their certification experience. Some individuals expressed a need for better communication throughout the application process. All of the firms were ultimately grateful to be certified for the program and the economic opportunity it created for them.

### **Stakeholder Groups**

Attempts were made to interview seven stakeholder organizations to gain insight into how KCMO works with external organizations that advocate on behalf of minority- and woman-owned small businesses.

Three of the organizations contacted responded to the interview request. The interview questions included:

1. *Is your organization and membership familiar with the state Unified Certification Program (UCP) and the certifying authorities?*
2. *Are any of your members currently certified in the UCP?*
3. *Are any of your members currently applying for DBE or ACDBE certification with the UCP?*
4. *Has your organization ever contacted the state certifying authorities regarding DBE / ACDBE certification requirements?*
5. *Has your organization referred firms interested in DBE certification to the state UCP?*
6. *Does your organization include UCP information in its membership outreach literature?*
7. *Has your organization participated in any outreach activities organized by the state UCP?*

8. *Has the state UCP participated in any outreach activities organized by your organization?*
9. *What is your organization members' view of the state UCP?*
10. *Have members of your organization seen an increase in work as a result of becoming certified?*
11. *What is your agency's view of the effectiveness of the UCP?*
12. *Do you have any concern(s) about the UCP or the certification process?*

The stakeholder organizations were familiar with the federal requirements for certification of DBEs as well as the certification process managed by KCMO's Human Relations Department (HRD). The organizations had members who obtained their DBE certification from KCMO. None of the organizations reported being aware of any associated member currently applying for certification. All of the organizations reported having an ongoing working relationship with KCMO. Interactions with KCMO included referring members interested in certification to KCMO, inclusion of information about KCMO and DBE certification in their outreach literature, and participating in or hosting outreach activities and events with KCMO. Although the organizations expressed a need for additional services from KCMO to support the development of the DBE firms, they found KCMO staff to be knowledgeable and helpful. It was noted that KCMO had recently experienced turnover of its personnel, but there was confidence in the HRD leadership and the ability of the staff. It was suggested that additional staff was needed, given the lengthy wait times experienced by applicants awaiting certification. The organizations reported an increase in contracting opportunities for its certified members. The DBE program was overall viewed as effective across the Kansas City region.

## 6. Findings and Advisory Comments

This chapter details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to KCMO's UCP are provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and subrequirements are also presented below.

For the purposes of this section, the term "UCP" refers to the certifying members and/or other certification committees/entities associated with MRCC.

Findings are expressed in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review.
- A statement concerning the DBE requirements being violated or potentially being violated.
- A statement concerning the required corrective action to resolve the issue.

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

### 6.1 Group Membership

#### (A) Burden of Proof

##### **Basic Requirement** (49 CFR §26.61(b))

The applicant firm bears the burden of proving, by a preponderance of the evidence, i.e., more likely than not, that it meets all DBE program certification requirements including group membership, disadvantage, ownership, control, and business size. A certifier is not required to prove that a firm is ineligible. A certifier can properly deny certification on the basis that an applicant did not submit sufficient evidence that it meets eligibility criteria.

The more stringent evidentiary standard of clear and convincing evidence applies in situations addressed by §26.69(h) (transfer of ownership from non-SED individual to SED individual) and §26.71(l) (transfer of control from non-SED individual to SED individual).

## Discussion

During this review, no deficiencies were found with this requirement.

The Missouri Regional Certification Committee (MRCC) Agreement, entered by KCMO on March 12, 2005, states:

*Disadvantaged Business Enterprise (DBE) Certification is the process by which all firms seeking to participate in the Missouri Regional Certification Committee's (MRCC) DBE Program are determined to have met the requirements set forth in 49 CFR Part 26. This guidance provides the policies and procedures of the MRCC for certifying firms as DBE's. These policies and/or procedures are not all inclusive, and therefore, reference to 49 CFR Part 26 is required. The provisions of 49 CFR Part 26, or as amended, will control to the extent of any inconsistencies with these policies and/or procedures.*

KCMO's most recent DBE Program Plan, dated January 30, 2019, states:

*The City of Kansas City will follow the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of MRCC certification procedures and/or UCP program is included in Attachment , and/or is available at: [www.kcmo.mrcc.org](http://www.kcmo.mrcc.org)*

This reference to the certification standards is adequate to meet FTA requirements.

All files examined during the compliance review confirmed that KCMO was following the burden of proof standards.

## (B) Additional Evidence of Group Membership

### Basic Requirement (49 CFR §26.63)

If a UCP has a "well-founded reason" to question the individual's claim of membership in that group, it must require the individual to present additional evidence that he or she is a member of the group. The UCP must provide the individual with a *written explanation* of its reasons for questioning his or her group membership. The UCP must take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group.

## Discussion

During this review, no deficiencies were found with this requirement.

As stated above, KCMO followed the certification standards described in the MRCC Policies and Procedures, which are consistent with 49 CFR Part 26. Although the MRCC Policies do not specifically describe the requirement to provide the applicant with a written explanation of the certifying agency's reasons for questioning the applicant's group membership, KCMO did follow this requirement, as applicable. KCMO cited an example of sending a written notice to an applicant that additional evidence of Tribal membership was required beyond that submitted with the original application.

## 6.2 Business Size

### **Basic Requirement** (49 CFR §26.65)

A UCP must apply current SBA business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in USDOT-assisted contracts. In addition, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years in excess of \$23.98 million. (*Dollar amount subject to change.*)

### **Discussion**

During this review, no deficiencies were found with this requirement.

As stated above, KCMO followed the certification standards described in the MRCC Policies and Procedures, which are consistent with 49 CFR Part 26.

During the review, KCMO explained that it confirmed that Small Business Administration (SBA) business size standards (by North American Industry Classification System [NAICS] code) for all applicants were met by checking the size of the applicant firm against the size standards published by SBA. KCMO described the resource it used to make its determinations. In addition, KCMO explained how it evaluated applicant firms' financial statements and tax return information to determine whether applicant firms exceeded the average three-year limit of \$23.98 million. MRCC included these details in its Certification Policies and Procedures. KCMO stated that it was aware of the memo dated June 16, 2020, titled "Changes to the Gross Receipts Calculation in the SBA Program Regulation." KCMO was working to adjust the calculator in its B2GNow software to accommodate this change, which was optional at the time of the virtual visit and will become mandatory on January 2, 2022.

A review of KCMO's certification files confirmed it only certified firms that met the business size standards described in 49 CFR §26.65.

## 6.3 Social and Economic Disadvantage

### **(A) Presumption of Disadvantage**

#### **Basic Requirements** (49 CFR §§26.5, 26.61, and 26.67(a)(1))

There is a rebuttable presumption that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged (SED) individuals. The UCP must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, SED. Individuals who are not presumed to be a member of these groups, and individuals for whom the presumption has been rebutted, have the burden of proving by a preponderance of the evidence that they are SED. The UCP must ensure that its review process comports with this standard.

**Discussion**

During this review, no deficiencies were found with this requirement.

As stated above, KCMO followed the certification standards described in the MRCC Policies and Procedures, which are consistent with 49 CFR Part 26.

KCMO required firm owners to apply for certification by using the model certification application provided by USDOT, which includes an Affidavit of Certification that the presumptively disadvantaged owner is socially and economically disadvantaged. In accordance with the requirements of 26.67(a)(1), all certification files examined by the review team included the signed and notarized certification that the presumptively disadvantaged owner was, in fact, socially and economically disadvantaged.

**(B) Personal Net Worth****Basic Requirement (49 CFR §26.67(a)(2))**

A UCP must require each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth (PNW) that does not exceed \$1.32 million. All applicants must use the USDOT PNW form in Appendix G without change or revision. In determining an individual's net worth, a UCP must observe the following requirements:

1. Exclude the individual's ownership interest in the applicant firm.
2. Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's PNW form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.
3. Do not use a contingent liability to reduce an individual's net worth.
4. With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

**Discussion**

During this review, no deficiencies were found with this requirement.



As stated above, KCMO followed the MRCC Policies and Procedures, which reflect the regulations and require certifying partners to use the USDOT personal net worth (PNW) form provided in Appendix G of 49 CFR Part 26.

During the review, KCMO documented that it used the correct form and required applicants to submit personal tax returns prior to certification. KCMO also required verification of the value of assets, such as recent appraisals or tax statements confirming the stated value of real property. During the file review, it was discovered that one of the firms selected was owned by an individual who owned multiple DBE certified businesses. KCMO had properly calculated the PNW by including the disadvantaged owner's share of the other businesses in the PNW statement.

### **(C) Rebutting the Presumption of Economic Disadvantage**

#### **Basic Requirement (49 CFR §26.67(b))**

A UCP may rebut the presumption of economic disadvantage in two ways:

1. If the applicant's PNW exceeds \$1.32 million. In this instance, the UCP is not required to conduct a proceeding to rebut the presumption.
2. If the applicant's PNW statement and supporting documentation demonstrate that the applicant is able to accumulate substantial wealth. In this instance, the UCP must conduct a proceeding under §26.67(b)(2). In making this determination, the UCP may consider factors that include, but are not limited to, the following: (1) whether the annual average adjusted gross income of the owner over the most recent three year period exceeds \$350,000; (2) whether the income was unusual and not likely to occur in the future; (3) whether the earnings were offset by losses; (4) whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm; (5) other evidence that income is not indicative of lack of economic disadvantage; and (6) whether the total fair market value of the owner's assets exceed \$6 million.

### **Discussion**

During this review, no deficiencies were found with this requirement.

As stated above, KCMO followed the MRCC Policies and Procedures, which reflect the regulations and allow for the rebuttal of Presumption of Economic Disadvantage. KCMO's DBELO was aware of the requirement but had not processed an application for a firm owner who demonstrated an ability to accumulate substantial wealth.

A review of selected certification files confirmed there was no evidence that any of the applicants' PNW was above \$1.32 million or that they were able to accumulate substantial wealth, as described in 49 CFR Part 26.67(b)(i) and (ii).

### **(D) Individual Determinations of Social and Economic Disadvantage**

**Basic Requirement** (49 CFR §26.67(d) and Appendix E)

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for DBE certification. UCPs must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is SED based on the requirements set forth in Appendix E.

**Discussion**

During this review, no deficiencies were found with this requirement.

As stated above, KCMO followed the MRCC Policies and Procedures, which reflect the regulations and provide for Individual Determinations of Social and Economic Disadvantage.

KCMO provided an example of its handling of a recent application submitted by an owner of a firm who was not in one of the groups rebuttably presumed to be socially and economically disadvantaged, but who claimed disadvantage. KCMO provided the individual an opportunity to present evidence of his social and economic disadvantage; however, the evidence was not adequate, and the individual's firm was denied DBE certification.

This example demonstrated that KCMO processed applications from firms owned by individuals who were not members of groups rebuttably presumed to be socially and economically disadvantaged in accordance with 49 CFR §§26.5, 26.61, and 26.67(a)(1) requirements.

## 6.4 Ownership

**Basic Requirement** (49 CFR §26.69(a-j))

To be an eligible DBE, a firm must demonstrate, by a preponderance of the evidence, that it is at least 51 percent owned by SED individuals. Section 26.69(h) describes when the higher evidentiary standard of clear and convincing evidence applies.

(A) The owners upon whom the firm relies for DBE certification must have made a real, substantial, and continuing contribution of capital or expertise to acquire their ownership; the ownership must not be pro forma in nature. The applicant firm should submit proof of a capital contribution at the time it submits its DBE application; however, the firm is permitted to submit it any time before the UCP makes a final eligibility decision.

(B) When marital assets are used to acquire ownership, the nondisadvantaged spouse must irrevocably transfer and renounce his ownership rights in the firm.

Indicators of compliance: The applicant firm materials should include proof of the transfer and renunciation before the UCP makes a final eligibility decision. UCPs are encouraged to notify the applicant firm that proof of renunciation is missing from the DBE application and allow the firm to provide it within a reasonable timeframe.

## Discussion

During this review, no deficiencies were found with this requirement.

As stated above, KCMO followed the MRCC Policies and Procedures, which reflect the regulations and allow for Ownership determinations.

All certification files examined during the review contained documentation confirming KCMO made ownership determinations in accordance with the requirements described in 49 CFR §26.69(a-j). The applicant files reviewed contained documentation that the applicant firm was independent and controlled by socially and economically disadvantaged owner(s). The files included such documents as the firm's bylaws, articles of incorporation, board minutes, resumes, salaries, certifications and licenses, and a completed On-Site Review form.

## 6.5 Control

### Basic Requirement (49 CFR §26.71(a-q))

(A) *Independence*: A DBE firm's viability must not depend on a relationship(s) with another firm(s); to make the determination, the UCP should consider the four factors in §26.71(b).

(B) *Restrictions*: Formal or informal restrictions, such as a quorum provision in the firm's bylaws, must not limit the customary discretion of the SED owners (§26.71(c)). A SED owner must hold the highest officer position in the company. In a corporation, SED owners must control the board of directors. In a partnership, one or more SED owners must serve as general partners, with control over all partnership decisions (§26.71(d)).

(C) *Involvement by non-SED individuals and Delegations*: Individuals who are not SED or immediate family members may be involved in a DBE firm; however, they must not possess or exercise the power to control the firm or be disproportionately responsible for the operation of the firm. [§26.71(e)]. The SED owners may delegate authority as long as such delegations are revocable, and the SED owners retain the power to hire and fire any person to whom such authority is delegated. UCPs must be able to reasonably conclude that the SED owners actually control all aspects of the firm (§26.71(f)).

(D) *Overall Understanding, Technical, and Managerial Competence*: SED owners must have an overall understanding of the firm's principal business activities. They are *not* required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees (§26.71(g)).

(E) *Licensure*: If State or local law does not require owners to have a license or credential to own and/or control a firm, UCPs must not deny certification solely on the ground that the person lacks the license or credential. However, the UCP may consider the absence of the license or credential as *one factor* in determining whether the SED owners actually control the firm (§26.71(h)).

(F) *Remuneration*: Differences in remuneration do not necessarily indicate that SED owners do not control the firm. UCPs should consider the differences in remuneration in the context of the

duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. Remuneration differences between a former non-SED owner and current SED owner is a factor in determining who controls the firm, particularly when the non-SED individual remains involved with the firm and continues to receive greater compensation than the SED individual (§26.71(i)).

(G) *Outside Employment or Business Interests (Time and Attention)*: Having outside employment does not automatically mean that the SED owners do not control the firm. UCPs should consider whether the outside employment or other business interest conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. An individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating (§26.71(j)).

(H) *Involvement of Immediate Family Members*: A SED individual may control a firm even though one or more of the individual's immediate family members, even if they are not SED, participate in the firm. If a UCP cannot determine that the SED owners—as distinct from the family as a whole—control the firm, then the SED owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities (§26.71(k)).

(I) *The Higher Burden of Proof Standard*: Where a firm was formerly owned and/or controlled by a nondisadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to an SED individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the nondisadvantaged individual unless the SED individual now owning the firm demonstrates, by clear and convincing evidence, that (1) the transfer of ownership and/or control to the SED individual was made for reasons other than obtaining certification as a DBE; and (2) the SED individual controls the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm (§26.71(l)).

(J) *Equipment*: A UCP must not determine that a firm is not controlled by SED individuals solely because the firm leases, rather than owns, equipment, where leasing equipment is a normal industry practice, and the lease does not involve a relationship with a prime contractor or other party that compromises the firm's independence (§26.71(m)). To become certified in an additional type of work, the firm need demonstrate only that its SED owners are able to control the firm with respect to that type of work (§26.71(n)).

## **Discussion**

During this review, no deficiencies were found with this requirement.

During the review, KCMO stated that it conducts interviews with applicant firm staff to better ascertain the owners' control over and involvement with the management of the firm. Additionally, KCMO reviews bank documentation to confirm whether the owners of the firm are named as responsible parties on the firm's bank account(s) and whether the owners have check-signing authority.

A review of selected certification files confirmed KCMO implemented procedures to confirm owners' control. KCMO's certification files contained site visit checklists and notes documenting its evaluation of firm ownership and control. Other information included in the certification files were organization documents, owners' resumes, staff interview notes, and lists of equipment owned by the applicant firms (if any).

## 6.6 Interstate Certification

### Basic Requirement (49 CFR §26.85)

The interstate certification rule applies when any firm that is currently certified in its home State ("State A") seeks DBE certification in another State ("State B"). The DBE regulations do not permit State B to require the certified DBE to submit a new uniform certification application as if it were seeking certification for the first time. State B should process each application for interstate certification, on a case-by-case basis, using the two options described in §§26.85(b) or 26.85(c):

Option 1: Proceed under §26.85(b) to confirm current home-state certification and certify the firm. State B may verify by checking State A's directory (preferable) or obtaining State A's written confirmation.

Option 2: Proceed under §26.85(c) and notify the Applicant-DBE that it must provide all the information required by §26.85(c)(1)-(4). State B may require the applicant-DBE to submit *only* the information described in section §26.85(c). The regulations require the applicant to submit an affidavit that all the information it submitted to State B is a complete and identical copy of the information submitted to State A. If the on-site report from State A is more than three years old, as of the date of its application to State B, the regulations permit State B to require that the firm's affidavit to affirm that the facts in the on-site report remain true and correct.

Common indicators of noncompliance\*:

- State B asked the DBE for information not listed in §26.85(c).
- State B denied the interstate certification application without giving the DBE written notification identifying and describing at least one of the five "good cause" reasons for the denial.
- State B denied the interstate certification application based on a mere interpretive disagreement with State A about a regulatory provision or factual conclusion.
- State B denied the interstate certification application because it thinks State A did not adequately evaluate the DBE's eligibility.
- State B asked the DBE for an updated PNW statement even though the DBE timely submitted to State A an annual affidavit(s) of no-change.
- State B, without new information previously unavailable to State A, re-evaluated a DBE owner's economic disadvantage based on a belief that the owner has the ability to accumulate substantial wealth.
- State B decertified a DBE solely because State A decertified it.

- State B received an interstate certification application from a Native American-owned firm and certified the firm without verifying whether the Federal government or State B recognize the tribe.

*\*This is not an exhaustive list of indicators of noncompliance. UCPs and reviewers should apply the subsections of §26.85 and also refer to USDOT's official guidance on interstate certification.*

## **Discussion**

During this review, no deficiencies were found with this requirement.

In the MRCC Policies and Procedures, certifying partners are given both options cited in 49 CFR §26.85 for making interstate certification decisions. During the online review, the review team discussed the different options in 49 CFR §26.85 available to KCMO when processing interstate applications. For example, the regulations allow UCPs at their discretion to (1) accept the applicant firm's home state certification and certify the firm or (2) require the applicant firm to provide a complete copy of the applicant firm's home state certification file and other information described in 49 CFR §26.85(C)(1-4). KCMO confirmed during the review that it processed interstate applications in accordance with option 2.

The certification files for three of the interstate applications received by KCMO during the review period were reviewed. All certification files reviewed contained a copy of the applicant's most recent home state recertification documentation. In addition, all interstate applicants were listed in their home state DBE directories. KCMO certified all the applicants within 60 days.

## **6.7 Other Rules Affecting Certification**

### **Basic Requirement (49 CFR §26.73)**

UCPs must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. However, the UCP may consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. DBE firms and firms seeking DBE certification must cooperate fully with UCP requests for information relevant to the certification process.

## **Discussion**

During this review, no deficiencies were found with this requirement.

As stated above, KCMO followed the MRCC Policies and Procedures, which reflect the regulations regarding Other Rules Affecting Certification.

During the review, KCMO confirmed it did not consider commercially useful function when certifying DBEs. A review of selected certification files confirmed there was no documentation relating to commercially useful function. KCMO stated that, if applicable, it would consider a firm's pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements.

## 6.8 UCP Requirements

### (A) UCP Agreement

#### Basic Requirement (49 CFR §26.81)

All USDOT recipients in a state must participate in a UCP. Recipients must sign an agreement establishing the UCP for the state and submit the agreement to the Secretary for approval.

#### Discussion

During this review, no deficiencies were found with this requirement. An advisory comment, however, was made regarding the requirement.

As stated above, KCMO is a certifying partner of MRCC, of which MoDOT is the responsible agency. The UCP Agreement was executed on March 12, 2005, by KCMO. The Agreement included Attachment A – *UCP Policies and Procedures*, which included general certification procedures all MRCC certifying partners were to follow.

At the time of the review, KCMO had not implemented all of the provisions required of certifying partners in the UCP Agreement; those issues are addressed in the sections of this report dealing with UCP Directory and DBE Certification Procedures.

The review team noted what appeared to be inaccuracies in the MRCC Agreement and recommends that MRCC consider updates to the Agreement to reflect actual practice:

1. The MRCC Agreement states the following under the section titled “Data Requirements”:

*MoDOT agreed to place the tracking and reporting DBE certification requests database outside of its external firewall on a separate server. The Direct Partners will then be responsible for maintaining the data related to the firms they certify and maintain. Those agencies will be granted database access through the Internet to make updates, revisions and additions. It is agreed that the database will also generate notices to each agency, create the DBE Directory, include a discussion database and notify the agencies of upcoming action needed.*

KCMO reported that it does not have access to the directory database and that MoDOT must export updates to the directory, using an Excel spreadsheet. These issues result in KCMO’s not meeting the two-working-days update timeframe, as required in the UCP Agreement, and errors in the transfers that lead to duplicate entries and other discrepancies that are described in the next section of this report, (B) *UCP Directory*.

2. The MRCC Agreement states that a meeting shall be held each month. However, the Agreement further states that

*Frequency of the MRCC meetings is subject to change upon action by the committee. Notification of such change will be made in advance.*

KCMO was able to document that it participated in meetings, but that the meetings were not held monthly.

3. The MRCC Agreement defined the boundaries for reviewing applicant firms for certifying partners in the Kansas City area as follows:

*[F]irms that are located in the Kansas City MSO, with includes Kansas City, Jackson County, Cass County, Clay County, Platte County, and Ray County.*

On its website, KCMO did not notify applicants that it conducted DBE certifications for firms located in Ray County, as described in the MRCC Policies and Procedures. KCMO's website also notified recipients that KCMO certified firms based in Johnson, Wyandotte, and Leavenworth Counties in the State of Kansas. KCMO explained that these were MBE/WBE certifications, but this distinction was not clear to the review team. The UCP does not provide for KCMO to certify DBEs outside of the State of Missouri.

### **Advisory Comment**

It is an effective practice to eliminate language in the MRCC Agreement that does not reflect actual practice and limits the ability of the certifying partners to comply.

### **(B) UCP Directory**

#### **Basic Requirement (49 CFR §§23.31, 26.31, and 26.81(g))**

UCPs must maintain a unified DBE directory containing, for all firms certified by the UCP, the information required by §26.31. The directory must include if the firm is an ACDBE, a DBE, or both. The listing must include for each firm its address, phone number, and types of work the firm has been certified to perform as a DBE. The UCP must update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

### **Discussion**

During this review, a deficiency was found with this requirement. An advisory comment was also made regarding the requirement.

The MRCC Unified Certification Agreement, Policies and Procedures stated:

*One of the major issues for detailing the certification status, DBE Directory development and maintaining communication between the Partners is the data requirements and facilities. MoDOT agreed to place the tracking and reporting DBE certification requests database outside of its external firewall on a separate server. The Direct Partners will then be responsible for maintaining the data related to the firms they certify and*



*maintain. Those agencies will be granted database access through the Internet to make updates, revisions and additions.*

*MoDOT will be the database manager and continue to work to develop the common database, including agency specific reporting needs and download capabilities. The MRCC Partners agree that all changes, updates, additions or deletions to a specific firm's record would be made in a timely manner. Specifically all changes will be made within two working days of the action.*

*The DBE Directory will be available in real time online through this system, as well as available for printing, as necessary, by each agency.*

At the time of the review, MoDOT had not made its DBE Directory database available through the Internet to certifying partners, including KCMO, for the purposes of allowing the certifying partners to update the directory as described in the UCP Agreement. Instead, KCMO described a process that required KCMO to export current DBE information from its B2GNow DBE database to a Microsoft Excel spreadsheet, which KCMO then transmitted to MoDOT for its staff to enter in the MRCC DBE Directory.

A comparison of the KCMO DBE information in the KCMO DBE Directory and the MRCC Directory revealed several discrepancies, as follows:

1. KCMO's directory showed that KCMO certified 470 DBEs, and the MRCC Directory showed KCMO certified 475 DBEs.
2. KCMO's directory showed one duplicate entry, and the MRCC Directory showed three different duplicate entries.
3. KCMO's directory contained 18 DBEs that did not appear in the MRCC Directory. The MRCC Directory contained 29 DBEs that did not appear in the KCMO Directory.
4. Although the NAICS codes entered for each firm in the directories were consistent, the work type descriptions associated with each NAICS code were inconsistent. Each code in the NAICS code system has an associated primary work type descriptor and one or more secondary work type descriptors called "Index Entries." In all cases, the KCMO Directory contained the primary work type descriptor along with applicable secondary descriptors; however, the MRCC Directory only included the primary work type descriptors. The KCMO Directory thus provided more information on the type of work each firm could perform than did the MRCC Directory. For example, the work type descriptors in the KCMO Directory for the DBE firm E & S Excavating, LLC were "238910 - Backfilling, construction; 238910 - Excavating, earthmoving, or land clearing contractors; 238910 - Grading construction sites; 238910 - Site preparation contractors." The work type descriptor for the same firm in the MRCC Directory was "Site preparation contractors."
5. The KCMO and MRCC online DBE search utilities functioned differently. For example, both databases contained entries for E & S Excavating, LLC and Audrie Seeley & Co., LLC. Both firms were owned by Audrie Seeley. Searching the KCMO Directory for "Audrie," "Seeley," or "Audrie Seeley" returned both firms. However, when searching the MRCC Directory, only one of the two firms, E & S Excavating, was returned.

Although most, if not all, of the discrepancies appeared to be the result of the use of disparate data management systems by MoDOT and KCMO, during the review KCMO confirmed that some of the discrepancies with firms showing in one database and not the other were due to recent certifications that KCMO had not yet reported to MoDOT, or certifications that were reported but not entered into the MRCC Directory at the time of the review. KCMO confirmed that it reported changes to MRCC for inclusion in its DBE Directory approximately every two weeks, rather than within two days of a change, as required in the UCP Agreement.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, KCMO must submit to FTA confirmation that it has updated its procedures to transmit DBE certification changes to MoDOT for inclusion in the MRCC Directory within two days of a change occurring, per the MRCC UCP Agreement.

### **Advisory Comment**

Because MoDOT is the lead agency in the UCP and, according to the UCP Agreement, is responsible for providing certifying partners with access to the MRCC Directory to make direct updates, but has not done so, KCMO should make MoDOT aware of the noncompliance with the UCP Agreement and the discrepancies identified in this report.

## **6.9 Entering Information into USDOT's Ineligibility Database**

### **Basic Requirement (49 CFR §26.85(f))**

If the UCP denies a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, or decertify a firm, in whole or in part, you must make an entry in USDOT's Ineligibility Determination Online Database. The UCP must enter the following information:

- The name of the firm.
- The name(s) of the firm's owner(s).
- The type and date of the action.
- The reason for the action.

UCPs must check the DOCR website at least once every month to determine whether any firm that is applying to the UCP for certification, or that the UCP has already certified, is on the list.

For any such firm that is on the list, the UCP must promptly request a copy of the listed decision from the UCP that made it. The UCP receiving such a request must provide a copy of the decision to the requesting UCP within seven days of receiving the request. The UCP receiving the decision must then consider the information in the decision in determining what, if any, action to take with respect to the certified or applicant firm.

### **Discussion**

During this review, deficiencies were found with this requirement.

KCMO did not update the USDOT Department of Civil Rights (DOCR) Ineligibility Determination Online Database, as set forth in the MRCC Agreement. The review team examined files for three denials and four decertifications. None of the denials or decertifications of those firms were found in the DOCR Ineligibility Determination Online Database when searched by the review team. KCMO also reported that it was not checking the DOCR Ineligibility Determination Online Database as a part of its application review and certification process, as required.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, KCMO must submit the following to FTA:

- Documentation confirming all firms it has denied or decertified have been entered into the DOCR Ineligibility Determination Online Database.
- An updated DBE Program Plan that includes procedures for (1) updating the DOCR Ineligibility Determination Online Database, as required, and (2) checking the DOCR Ineligibility Determination Online Database before making certification decisions.

## **6.10 UCP Procedures**

### **(A) Uniform Certification Application**

#### **Basic Requirement (49 CFR §26.83(c)(2))**

UCPs must use the Uniform Certification Application (UCA) in Appendix F of 49 CFR Part 26 without change or revision. However, a UCP may, *with the approval of the concerned operating administration*, supplement the form by requesting additional information not inconsistent with the DBE regulations.

#### **Discussion**

During this review, no deficiencies were found with this requirement.

KCMO required all firms to apply for DBE certification by using the USDOT Uniform Certification Application. The current application (OMB Approval No: 2105-0510, expiration date: 10/31/2021) was made available for download from the KCMO website. Per the certification file review, the required application was used in all cases.

### **(B) On-Site Visits**

#### **Basic Requirement (49 CFR §26.83(c)(1))**

UCPs must perform an on-site visit to the principal office location of the applicant firm. The UCP must interview the principal officers of the firm and review their résumés and/or work histories. The UCP must also visit a job site, if there is one, at which the firm is working at the time of the eligibility evaluation in the UCP's jurisdiction or local area.

## Discussion

During this review, no deficiencies were found with this requirement.

KCMO performs on-site visits to every applicant firm's primary place of business and to applicant firm job sites, as applicable. During the visits, KCMO interviews all firm owners and select staff. During the review, KCMO provided a sample of the Certification On-Site and Owner Interview Report used by compliance officers when conducting on-site visits. KCMO's compliance officers complete the report by summarizing the results of the on-site visit. The completed reports are shared with the owners interviewed, who are asked to concur with the results of the on-site visit by signing the interview forms.

Certification On-Site and Owner Interview Reports were requested for seven of the 15 certification files reviewed for firms that recently had a site visit. All seven reports were completed in accordance with KCMO's procedures, and all the required signatures were noted. The on-site visits were conducted in accordance with 49 CFR §26.83.

Interviews with selected DBE firm owners confirmed that KCMO conducted thorough on-site visits both prior to initial certification and during recertification every three years. Most recently, KCMO conducted some of these visits via Zoom due to the pandemic.

### (C) 30-Day Notification

#### Basic Requirement (49 CFR §26.83(l))

The UCP must advise each applicant firm within 30 days of receiving the UCA and accompanying documents whether the application package is complete and suitable for evaluation and, if not, what additional information or action is required.

## Discussion

During this review, no deficiencies were found with this requirement.

KCMO provided a "New MWDBE Certification Process Flow Chart" describing how KCMO processes new applications, including the following specifications:

- *Screener contacts applicants within 48 hours to confirm receipt of application documents.*
- *Screener reviews application to confirm all documents are included within five days*
  - *If yes, notice is sent to applicant confirming receipt of complete application and the application is assigned to a Compliance Officer*
  - *If no, screener sends applicant letter identifying all missing documents, letter allows applicant 15 days to provide additional documents*
- *All applications are opened or closed within 30 days from receipt.*

The review team examined nine application files processed by KCMO during the period of review. Multiple notification letters were provided for each file. KCMO's intake officer issued letters to applicants advising the firm that its application was received and had been assigned to

a compliance officer. An additional letter from the compliance officer notified the firm of any additional items required.

During the review, the review team provided technical assistance on USDOT DBE Guidance posted on February 25, 2018, titled *Compliance with Requirement for Timely Processing of Certification Applications*.

*A recipient or UCP must advise each applicant within 30 days from receipt of the application whether the application is complete and suitable for evaluation, and if not, what additional information or action is required. See 49 C.F.R. § 26.83(1). The date of receipt triggering the 30-day review period should be recorded as the date the UCP physically or electronically receives the certification application, not the date the UCP first reviews the application.*

KCMO's flow chart process was consistent with this guidance.

### **(D) 90-Day Determinations**

#### **Basic Requirement (49 CFR §26.83(k))**

The UCP must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under the DBE regulations. The UCP may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

#### **Discussion**

During this review, deficiencies were found with this requirement.

The MRCC Policies and Procedures state the following:

*The Certifying Partner will make decisions on applications for DBE certification within 90 days of receiving all required information from the applicant. The Certifying Partner may extend this time period once, for no more than an additional 60 days, upon written notice to the firm explaining the reasons for the extension.*

KCMO did not meet the requirement to process certifications within 90 days, nor did it provide a written notice to applicants informing them of an extension to the review period, as provided for in the regulations.

KCMO provided a list of all the firms it certified during the period of review. According to the application and certification dates reported for each firm listed, over 23 percent of the 472 applications took over 90 days to approve. Of the 15 certification files reviewed, nine showed KCMO took over 90 days to review and approve or deny certification requests. KCMO advised it did not send extension letters notifying firms of the reason for the extension. KCMO allowed applicants to request extensions to provide additional documentation. The allowance of these time extensions often resulted in KCMO's exceeding 90 days for making a determination. Further, KCMO noted that it had been hampered in its efforts to meet the 90-day determination

requirement because of staff turnover and an increase in applicants for its WBE/MBE certification program due to a \$1.5 billion construction project for a new terminal at the Kansas City International Airport. The groundbreaking for the terminal took place in 2019, and it is anticipated to open in 2023.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, KCMO must upload in TrAMS, an updated DBE Program Plan with detailed written certification procedures, to include the requirement to process certifications within 90 days or for notifying applicants of the need to extend the review period for an additional 60 days via written notice to the firms explaining the reasons for the extension.

### **(E) Annual Updates**

#### **Basic Requirement (49 CFR §26.83(h-j))**

Once the UCP has certified a DBE, it must remain certified until and unless the UCP removes its certification. The UCP may not require DBEs to reapply for certification or undergo a recertification process. The certified DBE must provide to the UCP, every year on the anniversary of the date of its certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths. If the certified firm fails to comply with the annual submission requirement, it will be deemed to have failed to cooperate under §26.109(c). Failure or refusal to cooperate is grounds for removing a firm's certification under §26.87.

### **Discussion**

During this review, deficiencies were found with this requirement.

KCMO did not have written procedures, as required in its agreement with MRCC, pertaining to Annual Updates. The MRCC Policies and Procedures state the following:

*On the anniversary date of DBE certification, every firm must provide the Certifying Partner an affidavit sworn to by the firm's socially and economically disadvantaged owner(s) before a person who is authorized by state law to administer oaths or a declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26 or any material changes to the information provided in its original application, except for changes about which it has notified the Certifying Partner. The affidavit will specifically affirm that the DBE continues to meet SBA business size criteria and the overall gross receipts cap set forth in 49 CFR Part 26. This affirmation must include supporting documentation of the DBEs size and gross receipts. In addition, the owner(s) whose interest is relied upon for DBE certification must affirm that their personal net worth has not exceeded \$1.32 million.*

KCMO notified firms their Annual Update was coming due prior to their anniversary date via an automatic notification from its B2GNow system. Eight of the 15 certification files reviewed had an anniversary date for which an Annual No Change Affidavit was due. Most firms received multiple notification letters. An Annual No Change Affidavit was provided by six of the firms in accordance with 49 CFR 26.83. Two firms were decertified for failure to cooperate under 49 CFR 26.109 for not submitting their Annual No Change Affidavit.

Although KCMO was implementing the requirement for the Annual No Change Affidavit, it did not have written procedures in its January 2019 DBE Program Plan describing either of the following:

- A notice to DBEs that they do not need to reapply for certification or undergo a recertification process
- A statement that DBE owners are required to complete a written “no change” affidavit on an annual basis.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, KCMO must upload in TrAMS an updated DBE Program Plan that includes the following:

- A notice to DBEs that they do not need to reapply for certification or undergo a recertification process
- A notice with detailed written procedures for ensuring DBE compliance with Annual No Change Affidavit requirements. These procedures must describe how KCMO notifies DBEs in advance that Annual No Change Affidavits are due, explain how it tracks DBE Annual No Change Affidavit compliance, and describe the enforcement actions it takes to correct noncompliance.

## **6.11 Denials of Applications for Certification**

### **(A) Initial Request Denials**

#### **Basic Requirement (49 CFR §26.86(a))**

When a UCP denies a request by a firm that is not currently certified with it, to be certified as a DBE, the UCP must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. When a firm is denied certification, the UCP must establish a timeframe of no more than 12 months before the firm may reapply for certification.

#### **Discussion**

During this review, a deficiency was found with this requirement.

KCMO did not have written procedures, as required in its agreement with MRCC, to provide a formal written notice to applicants denied certification outlining the reasons for the denial,

referencing evidence from the applicant file supporting each reason for the denial, and referencing the specific applicable regulations for the denial. The MRCC Policies and Procedures did describe this process, including a notice that the denial could be appealed by the applicant firm within 90 days of the date of the decision and that when a firm is denied certification or a NAICS code, it is required to wait 12 months before it may reapply with the MRCC Certifying Partner of record.

Two of the 15 KCMO certification files reviewed were denials. Notice of denial letters were included in each file. The letters specified the reason for the denial, referenced the applicable regulation, and referenced evidence from the application submitted or the on-site visit conducted. The denial letters also included directions for filing an appeal and specified when the firm could reapply. The letters complied with MRCC requirements and 49 CFR §26.86(a).

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, KCMO must upload in TrAMS an updated DBE Program Plan, to include the following:

- A statement that a DBE firm would receive a written explanation if certification was denied
- A statement that if a DBE's certification application is denied, whether a waiting period is applied before the firm may reapply.

### **(B) Removing Existing Certification (Decertification)**

#### **Basic Requirement (49 CFR §26.87)**

If a UCP determines that there is reasonable cause to believe that the firm is ineligible, the UCP must provide written notice to the firm that the UCP proposes to find the firm ineligible, setting forth the reasons for the proposed determination. When the UCP notifies the firm that there is reasonable cause to remove its certification, the UCP must offer the firm an opportunity for an informal hearing or to submit additional information to rebut the UCP's findings. In a proceeding to remove a firm's certification under §26.87, the UCP must prove, by a preponderance of the evidence, that the firm no longer meets certification standards. Following the final decision, the UCP must provide written notice of the final decision and a rationale for that decision and reference specific evidence in the record to support each reason for the decision.

### **Discussion**

During this review, deficiencies were found with this requirement.

KCMO did not have written procedures, as required in its agreement with MRCC, pertaining to removing a DBE. The MRCC Policies and Procedures state the following:

*Pursuant to 49 CFR Part 26, when a Certifying Partner makes a preliminary determination to remove the eligibility of a firm currently certified, the Certifying Partner will provide the firm a written explanation of the reasons for the preliminary decision specifically referencing the evidence in the record that supports the decision. The*



*denying Certifying Partner has the burden to show, by a preponderance of the evidence, that the firm does not meet the eligibility requirements set forth in 49 CFR Part 26. These procedures for removal of eligibility also apply to a firm which exceeds business size standards, as determined by the Certifying Partner.*

*The Certifying Partner will provide the firm written notice of the decision and the reasons, including specific references to the evidence in the record that supports the decision. The notice will be sent through mail, email with a return receipt, and inform the firm of the consequences of the Certifying Partner's decision and of the availability of an appeal to the MRCC. The firm must exhaust all administrative avenues at the local level prior to appeal to the USDOT. Therefore, if the firm chooses to appeal to the MRCC it maintains the right to appeal to the USDOT; however, if the firm chooses not to appeal to the MRCC, it cannot appeal to the USDOT.*

KCMO documented that it followed this procedure. Prior to the opening conference, KCMO provided a list of DBE firms decertified and removed from the directory during the period of review. KCMO was asked to provide three files to be reviewed. All of the files contained a letter sent to the firms notifying them of KCMO's intention to decertify the firms. All of the letters included the reason the firm was being removed, including references to the specific evidence that supported the decision, in accordance with MRCC's procedures and as required by 49 CFR §26.87. The letters also included notification of the firms' right to appeal the decision.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, KCMO must upload in TrAMS an updated DBE Program Plan that includes detailed procedures for ensuring decertification requirements are met and reflect actual practice. Updated procedures must require that all written communication between KCMO and DBEs regarding decertification are documented in the certification file.

### **(C) Mandatory Summary Suspension**

#### **Basic Requirement (49 CFR §26.88(a))**

The UCP must immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

#### **Discussion**

During this review, no deficiencies were found with this requirement.

KCMO followed MRCC's procedures for Summary Suspension of Certification as described in the MRCC Policies and Procedures, which are consistent with the requirements in 49 CFR §26.88(a) and §26.87(d). KCMO did not have a circumstance for which mandatory summary suspension was required during the review period. During the review, KCMO explained that if it became aware an owner whose ownership and control of the firm were necessary to a firm's

certification had died or was incarcerated, then KCMO would immediately suspend the DBE's certification per the provision described in 49 CFR §26.88(a) and in accordance with §26.87(d).

#### **(D) Optional Summary Suspension**

##### **Basic Requirement (49 CFR §26.88(b))**

The UCP may immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances that may affect the eligibility of the DBE firm to remain certified as required by §26.83(i) or fails to timely file an affidavit of no change under §26.83(j).

##### **Discussion**

During this review, no deficiencies were found with this requirement. Advisory comments, however, were made regarding the requirement.

KCMO did not address the optional summary suspension provision in its 2019 DBE Program Plan or in any other written procedures. KCMO did not use this optional enforcement action during the review period. Per the discussion in Section 6.10(E) of this report regarding DBE noncompliance with Annual No Change Affidavit requirements, the review team discussed the use of the optional summary suspension with KCMO as an enforcement action to facilitate compliance. KCMO had not previously employed summary suspension provisions with firms that did not comply with Annual No Change Affidavit requirements.

##### **Advisory Comments**

It is an effective practice to use the optional summary suspension provision in 49 CFR §26.88(b) to correct issues of DBE firm noncompliance. It is also an effective practice to have detailed written procedures for optional summary suspension.

#### **(E) Appeals to USDOT**

##### **Basic Requirement (49 CFR §26.89)**

When DOCR receives an appeal and requests a copy of the administrative record, the UCP must provide the administrative record, including a hearing transcript, within 20 days of the request.

##### **Discussion**

During this review, no deficiencies were found with this requirement.

MRCC included detailed procedures for complying with the appeals process requirements described in 49 CFR §26.89 in its UCP Policies and Procedures. During the review, the review

team discussed two applications that were initially denied by KCMO. Neither applicant opted to file an appeal.

## 6.12 Compliance and Enforcement

### (A) DBE Enforcement Actions

#### Basic Requirement (49 CFR §26.107)

If a firm does not meet the eligibility criteria of subpart D and attempts to participate in a USDOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations, or under circumstances indicating a serious lack of business integrity or honesty, USDOT may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.

#### Discussion

During this review, no deficiencies were found with this requirement.

In its 2019 DBE Program Plan, KCMO listed the following enforcement actions:

*The City of Kansas City will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.*

- 1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.*
- 2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 8 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.*
- 3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished identifying contract values and DBE subcontracting percentages prior to award of the contract and subsequently verifying payments and performing onsite inspections of construction site to ensure DBE firms are performing a commercially useful function. In addition, throughout the contract Human Relations Department will send monthly verification reports to both prime and subcontractors to verify work performed and payments received by DBE firms. At completion, HRD will process close-out documents for all DBE contracts for comparison to the original contract values and seek remedies in the event a prime contractor falls short.*
- 4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.*
- 5. KCMO will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the program. And KCMO will take steps to limit future contracting*

*opportunities for firms found guilty by the DOT Inspector General as well as punitive actions as identified in Part 26 109 including suspension and debarment of contractor. 6. KCMO has added the following or similar language to its DBE assisted contracts: The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

During the review, KCMO confirmed that it had no circumstances during the review period that required the use of any of the enforcement actions listed above.

## **(B) Confidentiality**

### **Basic Requirement (49 CFR §§26.83(g) and 26.109(a))**

Notwithstanding any provision of Federal or State law, UCPs must not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes DBE certification and supporting documentation.

### **Discussion**

During this review, no deficiencies were found with this requirement.

KCMO included the following in its 2019 DBE Program Plan:

*We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.*

*Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.*

During the review, KCMO confirmed that it did not receive any third-party requests for DBE information during the review period.

## **(C) Cooperation**

### **Basic Requirement (49 CFR §26.109(c))**

All participants in the DBE program are required to cooperate fully and promptly with USDOT and recipient specialized reviews, certification reviews, investigations, and other requests for information. (49 CFR §26.73(c) DBE firms and firms seeking DBE certification must cooperate fully with the UCP's requests (and USDOT requests) for information relevant to the certification

process. Failure or refusal to provide such information is grounds for a denial or removal of certification.

### **Discussion**

During this review, no deficiencies were found with this requirement.

The MRCC Policies and Procedures noted the following:

*The MRCC expects all participants in the MRCC's DBE Program, including DBE firms and firms seeking DBE certification, to cooperate fully with requests for information relevant to the certification process, as well as any other requests for information from the USDOT. Failure or refusal to provide such information is grounds for denial, removal of certification or any other remedies as may be provided by 49 CFR 26.109 (c).*

Per Section 6.11(D) *Optional Summary Suspension* of this report, KCMO was advised to take appropriate enforcement action against DBEs that do not cooperate fully with Annual No Change Affidavit requirements and related requests by KCMO.

## **6.13 Record Keeping**

### **Basic Requirement (49 CFR §26.11(d))**

The UCP must maintain records documenting a firm's compliance with the DBE requirements. At a minimum, the UCP must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. Other certification or compliance related records must be retained for a minimum of 3 years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

### **Discussion**

During this review, no deficiencies were found with this requirement.

KCMO created and used a *Documents Organization Sheet for Certification Files* to ensure that all required documents were submitted by the applicant and retained in the certification file. Fifteen certification files were examined virtually, through screen sharing. For each of the 15 files, as documented in the summary chart of the file review, KCMO maintained records documenting a firm's compliance with DBE requirements, including a complete application package for each certified firm and all Affidavits of No Change, change notices, and on-site reviews.

During the review, KCMO confirmed all certification files were retained for a minimum of three years.

## 6.14 Submitting Reports to USDOT

### **Basic Requirement** (49 CFR §26.11(e))

Each year, the State department of transportation in each UCP must report to DOCR the number of certified DBEs its DBE Directory that are (1) Women; (2) Socially and economically disadvantaged individuals (other than women); and (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals (49 CFR §26.11).

### **Discussion**

As the lead agency in MRCC, MoDOT was responsible for submitting the reports described in 49 CFR §26.11(e). Therefore, this requirement does not apply to KCMO.

## 6.15 Training of Certification Application Review Staff

### **Basic Requirement**

On August 22, 2018, USDOT issued official guidance titled: “What steps should a UCP take to ensure that its DBE/ACDBE certification application-review staff are properly trained?” A UCP is responsible for ensuring and documenting the following:

1. The current certification application-review staff successfully complete all nine of the certification training modules provided by DOCR before they begin to review certification applications.
2. The current certification application-review staff view DOCR’s “Recorded Presentation of the Rule,” which describes changes to the DBE rules instituted through the DOT final rule issued October 2, 2014 (found at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-final-rule-and-program-activities>) before they begin to review certification applications.
3. The current certification application-review staff complete all new, revised, or updated training modules or materials when DOCR makes them available through its website.
4. Keeping accurate training records for all certification application-review staff.

UCP Staff who have not documented their completion of the mandatory training and viewing of the “Recorded Presentation of the Rule,” should not be permitted to review certification applications.

### **Discussion**

During this review, a deficiency was found with this requirement.

KCMO did not address the certification training requirements and related procedures in its 2019 DBE Program Plan. Prior to the opening conference, KCMO reported:

*HRD staff attends annual state and national training workshops geared towards, DBE certification, compliance, reporting and monitoring. As mentioned, a few of the types of workshops and/or training seminars includes our annual UCP/MODOT Training; American Contract Compliance Association (ACCA); NTI; and regional workshops as they appear.*

At the time of the review, KCMO reported that its certification staff had not completed the required National Highway Institute training.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, KCMO must submit to FTA documentation that its certification staff has completed the required National Highway Institute training.

*This page intentionally left blank to facilitate duplex printing.*



## 7. Summary of Files Review and Findings

During the virtual review, the review team requested and reviewed the records for at least three firms certified for less than one year, three firms certified for more than one year, three firms certified on appeal, and three interstate firms. The results of the file review are reported in the following table.

File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	NEER Technologies	X	X	X	N/A	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Thorne and Son Asphalt Paving Co.	X	X	X	X	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal/Decertification	JC Arandas, Inc.	N/A	N/A	N/A	O	N/A/	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N/A	N/A	N/A	N/A	N/A	X	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	JusPatTon Construction, Inc.	X	X	X	N/A	X/X	X	X	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate Certification	Union Temporary Services, Inc.	N/A	N/A	N/A	X	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N/A	N/A	X	N/A	N/A	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Carnival Times	X	X	X	N/A	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision

		X	X	N/A	X	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	M & D Enterprise, Inc.	X	X	n/a	X	X/X	n/a	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	N/A	N/A	N/A	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal/Decertification	Nia's Property Holdings, LLC	N/A	N/A	N/A	O	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N/A	N/A	N/A	N/A	N/A	X	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Abraham Mechanical	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate Certification	MDT Strategic Ventures, Inc.	N/A	N/A	N/A	X	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	N/A	X	N/A	N/A	N/A	N/A	X
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Blue Chip Roofing and Waterproofing, LLC	X	X	X	N/A	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Audrie Seeley Co., LLC	N/A	X	X/X	X	X/X	n/a	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal/	DowCon, LLC	X	N/A	X	N/A	X/X	X	X	X

Decertification		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
Removal/Decertification	Infinity Services	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
N/A	N/A	N/A	N/A	N/A	N/A	X	N/A	N/A	
Interstate Certification	4N Consulting	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
X	N/A	N/A	N/A	N/A	N/A	N/A	N/A	X	

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days
1. Group Membership (A) Burden of Proof	26.61	ND			
(B) Additional Evidence of Group Membership	26.63	ND			
2. Business Size	26.65	ND			
3. Social/Economic Disadvantage (A) Presumption of Disadvantage	26.67(a)	ND			
(B) Personal Net Worth	26.67(a)	ND			
(C) Rebutting the Presumption of Economic Disadvantage	26.67(b)	ND			
(D) Individual Determinations of Social/Economic Disadvantage	26.67(d)	ND			
4. Ownership	26.69	ND			
5. Control	26.71	ND			
6. Interstate Certification	26.85	ND			

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days
7. Other Rules Affecting Certification	26.73	ND			
8. UCP Requirements (A) UCP Agreement	26.81	AC	It is an effective practice to eliminate language in the MRCC Agreement that does not reflect actual practice and limits the ability of the certifying partners to comply.		
(B) UCP Directory	26.31	D	KCMO did not comply with the requirements of the MRCC Agreement to update certification changes within two days.	KCMO must submit to FTA confirmation that it has updated its procedures to transmit DBE certification changes to MoDOT for inclusion in the MRCC Directory within two days of a change occurring, per the MRCC UCP Agreement.	60 Days
		AC	Because MoDOT is the lead agency in the UCP and, according to the UCP Agreement, is responsible for providing certifying partners with access to the MRCC Directory to make direct updates, but has not done so, KCMO is advised to make MoDOT aware of the noncompliance with the UCP Agreement and the discrepancies identified in this report.		
9. Entering Information into USDOT's Ineligibility Database	26.85(f)	D	KCMO was not entering denials and decertifications in the USDOT DOCR Ineligibility Determination Online Database, as required.	KCMO must submit the following to FTA:  • Documentation confirming all firms it has denied or decertified have been entered into the	60 Days

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days
			KCMO was not checking the DOCR Ineligibility Determination Online Database before making certification decisions.	DOCR Ineligibility Determination Online Database. <ul style="list-style-type: none"> <li>An updated DBE Program Plan that includes procedures for (1) updating the DOCR Ineligibility Determination Online Database, as required, and (2) checking the DOCR Ineligibility Determination Online Database before making certification decisions.</li> </ul>	
10. UCP Procedures (A) Uniform Certification Application	26.83	ND			
(B) On-Site Visits	26.83	ND			
(C) 30-Day Notification	26.83	ND			
(D) 90-Day Determinations	26.83	D	KCMO did not meet the requirement to process certifications within 90 days, nor did it provide a written notice to applicants informing them of an extension to the review period, as provided for in the regulations.	KCMO must upload in TrAMS an updated DBE Program Plan with detailed written certification procedures, to include the requirement to process certifications within 90 days or for notifying applicants of the need to extend the review period for an additional 60 days via written notice to the firms explaining the reasons for the extension.	60 days
(E) Annual Updates	26.83	D	KCMO did not have written procedures, as required in its agreement with MRCC, pertaining to notifying DBEs that they do not need to reapply for	KCMO must upload in TrAMS an updated DBE Program Plan that includes the following: <ul style="list-style-type: none"> <li>A notice to DBEs that they do not need to reapply for</li> </ul>	60 days

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days
			certifications or that DBEs would have to submit Annual Updates.	certification or undergo a recertification process <ul style="list-style-type: none"> <li>• A notice with detailed written procedures for ensuring compliance with Annual No Change Affidavit requirements. These procedures must describe how KCMO notifies DBEs in advance that Annual No Change Affidavits are due, explain how it tracks DBE Annual No Change Affidavit compliance, and describe the enforcement actions it takes to correct noncompliance.</li> </ul>	
11. Denials of Applications for Certification (A) Initial Request Denials	26.86	D	KCMO did not have written procedures, as required in its agreement with MRCC, to provide a formal written notice to applicants denied certification outlining the reasons for the denial, referencing evidence from the applicant file supporting each reason for the denial, and referencing the specific applicable regulations for the denial.	KCMO must submit to FTA an updated DBE Program Plan, to include the following: <ul style="list-style-type: none"> <li>• A statement that a DBE firm would receive a written explanation if certification was denied.</li> <li>• A statement that if a DBE's certification application is denied, whether a waiting period is applied before the firm may reapply.</li> </ul>	60 days
(B) Removing Existing Certification (Decertification)	26.87	D	KCMO did not have written procedures, as required in its agreement with MRCC, pertaining to removing a DBE.	KCMO must submit to FTA an updated DBE Program Plan that includes detailed procedures for ensuring decertification requirements are met	60 Days

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days
				and reflect actual practice. Updated procedures must require that all written communication between KCMO and DBEs regarding decertification are documented in the certification file.	
(C) Mandatory Summary Suspension	26.88(a)	ND			
(D) Optional Summary Suspension	26.88(b)	AC	It is an effective practice to use the optional summary suspension provision in 49 CFR §26.88(b) to correct issues of DBE firm noncompliance and to have detailed written procedures for optional summary suspension.		
(E) Appeals to USDOT	26.89	ND			
12. Compliance and Enforcement (A) DBE Enforcement Actions	26.107	ND			
(B) Confidentiality	26.109	ND			
(C) Cooperation	26.109	ND			
13. Record Keeping	26.11(d)	ND			
14. Submitting Reports to USDOT	26.11(e)	NA			
15. Training of Certification Application Review Staff	2018 USDOT Guidance	D	KCMO's certification staff had not completed the required National Highway Institute training.	KCMO must submit to FTA documentation that its certification staff has completed the required National Highway Institute training.	60 Days

Findings at the time of the review: ND = no deficiencies found; D = deficiency; NA = not applicable; AC = advisory comment.

*This page intentionally left blank to facilitate duplex printing.*



## **ATTACHMENT A – FTA NOTIFICATION LETTER TO KCMO**



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

Headquarters

East Building, 5th Floor, TCR  
1200 New Jersey Avenue, SE  
Washington, DC 20590

January 27, 2020

Earnest Rouse  
Acting City Manager  
City of Kansas City, Missouri  
City Hall, 29th Floor  
414 E. 12th Street  
Kansas City, MO 64106

Dear Mr. Rouse:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs” by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE compliance reviews of these grant recipients. For this reason, the City of Kansas City, Missouri (KCMO) has been selected for a review of its Unified Certification Program (UCP) to take place March 24–26, 2020.

The purpose of this review will be to determine whether KCMO is honoring its commitment, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE certification procedures (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with UCP certifying and non-certifying members, DBE applicants, DBE certified firms, firms that were denied DBE certification, and other stakeholders, possible work-site visits, and an exit conference. The reviewers will complete the on-site portion of the review within a three-day period. FTA has engaged the services of The DMP Group, LLC (DMP) of Washington, D.C. to conduct this compliance review. Representatives of DMP and FTA will participate in the opening and exit conferences, with FTA participating by telephone.

We request an opening conference at 9 a.m. CDT on Tuesday, March 24, 2020 to introduce the DMP team and FTA representatives to KCMO. Attendees should include you and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. The review team will need adequate working space and the use of privately controlled offices with internet access to conduct interviews and review documents. Please let us know if you will designate a member of your staff to serve as KCMO’s liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in the enclosure, which consists of items that KCMO must submit to the review team within 30 calendar days of the date of this letter. Please forward these materials to the following contact person:

Donald G. Lucas  
The DMP Group, LLC  
2233 Wisconsin Avenue NW, Suite 228  
(202) 726-2630 Office  
(202) 297-2942 Mobile  
*donald.lucas@thedmpgroup.com*

FTA requests your attendance at an exit conference scheduled for 1 p.m. CDT on Thursday, March 26, 2020. The exit conference will afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to KCMO, will be considered public documents subject to release under the Freedom of Information Act, upon request.

KCMO representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact me at 202-366-1671, or via e-mail at *john.day@dot.gov*.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day  
Program Manager  
FTA Office of Civil Rights

Enclosure

cc: Mokhtee Ahmad, Regional Administrator, FTA Region 7  
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights

## Enclosure

**The following information must be submitted to DMP within 30 calendar days from the date of this letter:**

1. Current Unified Certification Program Agreement.
2. Current Memorandum of Understanding or similar documents forming the Missouri Regional Certification Committee Unified Certification Program (which should be signed by all members of the UCP).
3. Documentation of meetings, correspondence, and other communications between the UCP certifying partners in the implementation of the program during the past three years.
4. A narrative that describes the KCMO individuals and resources dedicated to implementing the DBE UCP requirements, handling DBE UCP inquiries, and educating KCMO staff on DBE UCP. The narrative should include an organization chart showing KCMO's DBE UCP staff and a budget showing funds allocated to the DBE UCP.
5. The certification criteria/guidelines used in determining DBE eligibility.
6. Standard Operating Procedures or similar documents that explain the DBE certification process, including copies of the application used during certification, annual affidavits/updates, and personal net worth (PNW), etc.
7. KCMO-specific certification procedures (sometimes called desk procedures) consistent with and supplemental to the State's UCP procedures, if applicable.
8. Documents or forms used during DBE certification site visits.
9. Written procedures for updating the UCP DBE Directory.
10. List of all firms certified, denied, and decertified or removed by KCMO in FYs 2017 - 2020. The list must include:
  - a) the firm's city and state
  - b) the firm's ethnicity
  - c) the firm's gender
  - d) the date the application was received
  - e) the date of site visit
  - f) the date the application was determined to be complete
  - g) eligibility determination date
  - h) the reasons for denial and/or decertification (e.g., size, PNW, control, etc.)
  - i) whether the denial decision was appealed to the UCP or USDOT
  - j) The result of the appeal.
11. A description of KCMO's UCP appeals process(es). List the individuals involved in the appeals process and how they are selected.

12. A narrative that describes how KCMO satisfies DBE certification staff training requirements.
13. Documentation confirming DBE certification staff have met DBE certification training requirements (i.e., training certifications and/or certificates).
14. Any third-party complaints or lawsuits regarding DBE firms certified by KCMO and actions taken to resolve the matter in the past three (3) years.
15. Any Freedom of Information or similar request for certification information in the past three (3) years.
16. Any enforcement action against a DBE firm (e.g., suspension, debarment, etc.) regarding certification in the past three (3) years.
17. Other pertinent information determined by KCMO's staff to illustrate its UCP operations and procedures.

*This page intentionally left blank to facilitate duplex printing.*

## ATTACHMENT B – KCMO’S RESPONSE TO DRAFT REPORT

In an email dated March 4, 2021, KCMO responded to the draft report, as follows:

Hello Mr. Day,

The City’s HRD has reviewed the draft report and do not have any factual corrections. We look forward to your final report.

Thank You.



Phillip Yelder, Director  
**Human Relations**  
City of Kansas City, Mo.  
414 E. 12<sup>th</sup> St., 4<sup>th</sup> Flr  
Kansas City, MO 64106  
Phone: 816-513-9982  
Fax: 816-513-1852

Please click here to see [Human Relations Department's Customer Bill of Rights](http://kcmo.gov/humanrelations/customer-bill-of-rights)  
<http://kcmo.gov/humanrelations/performance-measurement-reports/>

Please take a moment to tell us about the quality of our service by completing the survey link below.  
Thank you. [http://www.surveymonkey.com/s.aspx?sm=16DjgnVjsOHBN07Xf6wUIw\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=16DjgnVjsOHBN07Xf6wUIw_3d_3d)



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

Headquarters

East Building, 5th Floor, TCR  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

March 9, 2021

Brian Platt  
City Manager  
City of Kansas City, Missouri  
City Hall, 29th Floor 414 E. 12th Street  
Kansas City, MO 64106

RE: Unified Certification Program (UCP) Specialized Review Final Report

Dear Mr. Platt:

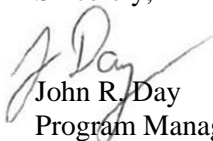
This letter concerns the Federal Transit Administration's (FTA) Disadvantaged Business Enterprise (DBE) Specialized Review of the City of Kansas City's (KCMO) role as a certifying partner in the Missouri Unified Certification Program conducted virtually on February 2–5, 2020. Enclosed is a copy of the Final Report, which will be posted on FTA's website on our DBE page.

The FTA Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of our ongoing oversight efforts, FTA conducts a number of onsite reviews to ensure compliance with the applicable provisions of 49 CFR Part 26. FTA uses the findings from these reviews to provide direction and technical assistance to transit agencies in order to achieve compliance with 49 CFR Part 26.

Unless otherwise noted, all corrective actions identified in the Final Report must be undertaken within 60 days of the date of this letter. Once we have reviewed your submissions, we will request either clarification or additional corrective action, or will close out the finding if your response sufficiently addresses the DBE requirements. Please email your responses to me at [john.day@dot.gov](mailto:john.day@dot.gov).

We appreciate the cooperation and assistance that you and your staff have provided us during this review, and we are confident RTA will take steps to correct the deficiencies. If you have any questions about this matter, please contact Ed Birce at 202-366-1943, or via email at [guljed.birce@dot.gov](mailto:guljed.birce@dot.gov).

Sincerely,



John R. Day  
Program Manager  
FTA Office of Civil Rights

Enclosure

cc: Mokhtee Ahmad, Regional Administrator, FTA Region 7  
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights