

# FTA

FEDERAL TRANSIT ADMINISTRATION

**San Francisco Municipal Transportation  
Agency (SFMTA)**  
Unified Certification Program (UCP) Compliance Review

Final Report  
April 2021



U.S. Department of Transportation  
Federal Transit Administration

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## 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 San Francisco Municipal Transportation Agency and Organizational Structure..... | 9  |
| 4.2 California Unified Certification Program .....  | 9  |
| 5. Scope and Methodology .....  | 11 |
| 5.1 Scope .....   | 11 |
| 5.2 Methodology.....  | 12 |
| 6. Findings and Advisory Comments.....  | 15 |
| 6.1 Group Membership.....   | 15 |
| 6.2 Business Size .....   | 16 |
| 6.3 Social and Economic Disadvantage.....   | 17 |
| 6.4 Ownership.....  | 19 |
| 6.5 Control .....   | 20 |
| 6.6 Interstate Certification .....  | 21 |
| 6.7 Other Rules Affecting Certification.....  | 22 |
| 6.8 UCP Requirements .....  | 23 |
| 6.9 Entering Information into USDOT’s Ineligibility Database .....                                  | 24 |
| 6.10 UCP Procedures.....  | 24 |
| 6.11 Denials of Applications for Certification.....   | 28 |
| 6.12 Compliance and Enforcement.....  | 30 |
| 6.13 Record Keeping .....   | 31 |
| 6.14 Submitting Reports to USDOT .....  | 32 |
| 6.15 Training of Certification Application Review Staff.....  | 32 |
| 7. Summary of Files Review and Findings.....  | 35 |
| Attachment A – FTA Notification Letter to SFMTA.....  | 41 |
| Attachment B – SFMTA’s Response to the Draft Report.....  | 45 |

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## Executive Summary

**Objective and Methodology:** This report details the results of a compliance review of San Francisco Municipal Transportation Agency (SFMTA) Disadvantaged Business Enterprise (DBE) certification practices and procedures. The compliance review examined SFMTA's DBE certification procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA) and SFMTA. In addition, the following entities were interviewed as part of this review: SFMTA officials and SFMTA certification staff. The review included interviews, assessments of data collection systems, and review of program and relevant documents.

### **SFMTA's Certification Program has the following positive program elements:**

#### **Positive Program Elements**

- SFMTA conducted and documented the performance of on-site visits during the application process.

### **SFMTA's Certification Program had the following administrative deficiencies:**

#### **Administrative Deficiencies**

- SFMTA did not provide 30-day notification letters.
- SFMTA did not enter decertified firms in the USDOT Ineligibility Database.
- SFMTA requires certified firms to submit license and permit information during its annual update.

### **SFMTA's Certification Program has the following substantive deficiencies:**

#### **Substantive Deficiencies**

- All certification decisions were not made within 90 days of a completed application.
- SFMTA's final decision of removal letters does not include USDOT appeal information.
- SFMTA internal files did not detail that it fully examined potentially missing information on personal net worth forms.

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## I. General Information

This chapter provides basic information concerning this compliance review of San Francisco Municipal Transportation Agency. Information on SFMTA, the review team, and the dates of the review are presented below.

|                                |  |
|--------------------------------|--|
| <b>Recipient:</b>              | San Francisco Municipal Transportation Agency  |
| <b>City/State:</b>             | San Francisco, CA  |
| <b>Recipient ID:</b>           | 1697   |
| <b>Executive Official:</b>     | Jeffrey Tumlin, Director of Transportation   |
| <b>On-site Liaison:</b>        | Kathleen Sakelaris, Regulatory Affairs Manager   |
| <b>Report Prepared By:</b>     | Milligan & Company, LLC<br>105 N. 22nd Street, 2nd Floor<br>Philadelphia, PA 19103<br>(215) 496-9100 |
| <b>Dates of On-site Visit:</b> | April 21-23, 2020*   |
| <b>Review Team Members:</b>    | Denise Bailey, Lead Reviewer<br>Sandra Swiacki, Reviewer<br>Kristin Tighe, Reviewer                  |

\*The on-site portion of the review was conducted virtually due to the COVID-19 Public Health Emergency.

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## 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 compliance reviews. The reviews are undertaken to ensure compliance by applicants, recipients, and subrecipients with 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 compliance review; those regulations define the certification eligibility requirements that must be addressed and incorporated in SFMTA's agreement.

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

This compliance 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 compliance review are to:

- Determine whether SFMTA is honoring the UCP agreement submitted to the Secretary of Transportation.
- Examine whether SFMTA 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 SFMTA through interviews and certification file review.

## 4. Background Information

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

### 4.1 Introduction to San Francisco Municipal Transportation Agency and Organizational Structure

Established by voter proposition in 1999, the San Francisco Municipal Transportation Agency (SFMTA), a department of the City and County of San Francisco, operates the Municipal Railway (Muni) and manages parking, traffic, bicycling, walking, and paratransit. SFMTA also regulates taxis and emerging mobility programs within the City and County of San Francisco. Across five modes of transit, Muni has approximately 725,000 weekday passenger boardings. Founded in 1912, Muni is one of the oldest transit systems in the world. Muni is the largest transit system in the Bay Area and serves more than 220 million customers each year.

Governed by a seven-member Board of Directors appointed by the Mayor and confirmed by the San Francisco Board of Supervisors, the department is administered by the Director of Transportation. The SFMTA Board of Directors provides policy oversight for the safe and efficient movement of people and goods in San Francisco in accordance with the San Francisco Charter and the Transit First Policy. The SFMTA directly operates Muni bus and rail service and contracts with Transdev to administer the brokerage and ADA Paratransit service operations. The population of the service area is approximately 884,000 persons.

The Contract Compliance Office is responsible for oversight of SFMTA's contract compliance program including DBE certifications. There are two staff members that have certification responsibilities, one on a full-time basis and the other part-time as needed. Both report to the Manager, Contract Compliance.

### 4.2 California Unified Certification Program

#### **Establishment of the California Unified Certification Program (CUCP)**

The U.S. Department of Transportation approved California's Unified Certification Program on March 13, 2002. The CUCP has subsequently revised its Memorandum of Agreement (MOA) over the years on March 24, 2003, November 16, 2004, March 21, 2006, and February 12, 2020. The vision for the CUCP is to share the common goal of creating a level playing field on which DBE firms can compete fairly for USDOT-assisted contracts awarded by the respective agencies, while enhancing the administration of the DBE Programs through the exchange of information and coordination of activities.

In February 2016, there were 154 USDOT recipients participating in the CUCP. Currently, the 10 certifying agencies are: California Department of Transportation, City of Los Angeles, City of Fresno, Los Angeles County Metropolitan Transit Authority, San Diego County Regional Airport Authority, San Francisco Bay Area Rapid Transit District, San Francisco International Airport, San Francisco Municipal Transportation Agency, San Mateo County Transit District, and Santa Clara Valley Transportation Authority.

According to the Memorandum of Agreement, the Executive Committee will adopt a comprehensive budget if required which will be consistent with available funding, including revenues and fees from the UCP members, any additional financial assistance, and proceeds from the sale of directories and or other materials. The Executive Committee may request that UCP agencies provide additional financial assistance to the Committee's budget.

## 5. Scope and Methodology

### 5.1 Scope

The overall scope of this review is to determine whether SFMTA 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 regulation. 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 DOT-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 on 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 non-certifying 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 compliance review consisted of consultation with the FTA Office of Civil Rights and a review of available information from the SFMTA website 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 dated December 10, 2019 (See Attachment A) to SFMTA 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 SFMTA of staff and other parties that would potentially be interviewed.

In preparation for the on-site visit, SFMTA was asked to provide the following documents:

1. Current Unified Certification Program Agreement.
2. Current Memorandum of Understanding or similar documents forming the SFMTA's Unified Certification Program, signed by all members of the UCP.
3. The certification criteria/guidelines used in determining DBE eligibility.
4. 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.
5. A list of all firms certified, denied, and decertified or removed by the UCP from federal fiscal year 2017 to present. The list must include:
  - a. the firm's city and state



- b. the firm's ethnicity
  - c. the firm's gender
  - d. the date of site visit
  - e. the reason for denial and/or decertification (e.g., size, PNW, control, etc.)
  - f. whether the denial decision was appealed to the UCP or USDOT
  - g. the result of the appeal
6. A description of SFMTA UCP appeals process(es). List the individuals involved in the appeals process and how they are selected.
  7. Any third-party complaints regarding DBE firms certified by the SFMTA and actions taken to resolve the matter in the past three (3) years.
  8. Any Freedom of Information or similar request for certification information in the past three (3) years.
  9. Any enforcement action against a DBE firm (e.g., suspension, debarment, etc.) regarding certification in the past three (3) years.
  10. Other pertinent information determined by SFMTA's staff to illustrate its UCP operations and procedures.

In addition to the above information, SFMTA also provided the review team with DBE applications and other related certification documents for the following firms:

| Status             | Firm Name                         |
|--------------------|-----------------------------------|
| New Certifications |                                   |
|                    | Diamond Technology                |
|                    | Bradac Co*                        |
| Annual Updates     |                                   |
|                    | Lee L. Davis and Associates       |
|                    | Saylor Consulting Group           |
| Suspensions        |                                   |
|                    | Southeast Electrical Contractors  |
|                    | P H Adams and Associates          |
| Removals           |                                   |
|                    | Capers Services                   |
|                    | Ansari Structural Engineers, Inc. |
| Withdrawals        |                                   |
|                    | Thomas C. Jee & Associates        |
|                    | Energy Design Consultants         |

\* Certification determination pending

The on-site portion of the UCP review, originally scheduled for April 21-23, 2020, was postponed due to the health pandemic. The FTA authorized re-engagement with SFMTA to restart the review in February 2021. The review team examined SFMTA certification documentation that was provided in preparation for the on-site visit. Because SFMTA uses primarily a hard-copy paper certification process, and its certification staff has not returned to their offices, a limited number of certification files were available to review. After consultation with the review team, in March 2021, FTA authorized completing the review based on sampling the electronic files that were available. These were primarily files that were received in electronic formats starting in March 2020.

Based on the results of the review, a follow-up request for additional information and or clarification from SFMTA staff was also conducted. On March 12, 2021, preliminary observations were shared with SFMTA staff.

FTA provided SFMTA with a draft copy of the report for review and response. SFMTA's response is incorporated as Attachment B. Factual errors noted by SFMTA were included in the final report.

## 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 SFMTA is provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub-requirements 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 the California Unified Certification Program.

Findings are expressed in terms of “deficiency” or “no deficiency.” Findings of deficiency denote policies or practices that are contrary to the 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-socially and economically (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 California Unified Certification Program (CUCP) Memorandum of Agreement (MOA), approved by the U.S. Department of Transportation on March 13, 2002, and Amended February 12, 2020, indicates the CUCP and its members will follow all certification procedures and standards of 49 CFR Part 26, Subparts D and E to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts.

The certification files examined during the compliance review confirmed that the DBE certification application contains a signed, notarized statement that the presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

## **(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 part of the application process, applicants are required to submit a signed, notarized statement that the applicant is a member of a presumptively socially and economically disadvantaged group. The certification files reviewed for the new applicants, Diamond Technology and Bradac Co, both included the requirement to submit either a birth certificate or passport, which is an allowed option in the application form to validate citizenship.

## **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.

According to SFMTA’s DBE Program Plan, *“To be an eligible DBE, a firm (including its affiliates) must be an existing small business as defined by SBA standards. Even if the firm meets the SBA requirements, a firm is not an eligible DBE in any federal fiscal year if the firm (including its affiliates) had average annual gross receipts over the firm’s previous three fiscal years in excess of \$23.98 million, as adjusted for inflation from time to time.”*

A review of the certification files demonstrated that SFMTA collects the relevant business tax information from applicant firms and certification files reviewed demonstrated that the firms met the requirements under 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.

All certification files reviewed include a signed and notarized statement that each presumptively disadvantaged owner is, 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, a deficiency was found with this requirement.

The PNW for Diamond Technology did not include a total for Net Worth. Each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, must complete this form. Certifying agencies should not assume or accept what appears to be apparent. The certifying agency has the responsibility to verify the accuracy of the statements made.

Although Bradac Co was not the basis of the deficiency, it is noted for the record that the PNW statement included the primary residence as an asset and the related mortgage as a liability. SFMTA has questioned the applicant on this issue, as the "Name on Deed" for the primary residence is noted as a Trust. Additionally, there was no personal property noted on the PNW which is also being questioned by the certifier. While the eligibility determination for this file has not been completed, these issues need to be addressed by SFMTA.

## Corrective Actions and Schedule

Within 60 days of the issuance of the final report, SFMTA must submit to the FTA Office of Civil Rights procedures to ensure that additional investigation is conducted into pertinent PNW omissions, and revisions are made, as necessary, and documented.

## (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.

None of the certification files reviewed demonstrated that the SFMTA rebutted the PNW of any of the applicants reviewed.

**(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 SED 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.

None of the certification files reviewed involved firms owned and controlled by individuals who were not presumed to be socially and economically disadvantaged.

**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 non-disadvantaged 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 deficiency was found with this requirement.

SFMTA has issued a final determination of certification for Diamond Technology. A review of the on-site visit report demonstrates, along with review of the application, that SFMTA examined issues commonly associated with ownership and found no deficiencies with the applicant's ownership of the firm.

Bradac Co.'s application notes that the company was started with \$1,000. This is supported in the firm's bank statement which shows an opening deposit of \$1,000 on October 8, 2013. There was no documentation in the submission demonstrating that these funds were the owner's independently; however it is among the items that SFMTA is currently awaiting information on prior to completing their determination of eligibility.

## 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 non-SED individual (whether or not an immediate family member), ownership and/or control were transferred to an SED individual, and the non-SED individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-SED 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 non-SED 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 these requirements.

SFMTA has only completed one new initial certification since March 2020, Diamond Technology Services. A review of that firm's information on file with SFMTA demonstrates that, along with information provided in the application, SFMTA examined issues concerning control during its site visit and found no deficiencies with the applicant's control of the firm.

## 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 of 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 of 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.

SFMTA’s DBE Program Plan states:

*“Out-of-state firms must be certified by a California UCP member agency prior to being included in the California UCP database. Out-of-state firms will be certified in accordance with the procedures for interstate certification established in 49 CFR Section 26.85 and in compliance with the rules of the California UCP.”*

There is no evidence that SFMTA conducted an interstate certification during the subject period of this review. It is understood that CALTRANS is the lead agency in the CAUCP to process the majority of interstate certifications.

## 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.

In the files reviewed, there was no documentation relating to commercially useful function issues, or a firm exhibiting a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. In addition, it was found that the DBE applicants cooperated fully with the SFMTA’s request for additional information relevant to the certification process.

## 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, deficiencies were found with this requirement.

The USDOT approved the CUCP MOA on March 13, 2002. Subsequent to the approval, the CUCP revised the Agreement March 24, 2003, November 16, 2004, and March 21, 2006. During the UCP review of Caltrans in 2019, reviewers noted that the amended MOU did not reflect the current list of participating USDOT recipients with signatures or the current list of certifying agencies for the state and issued a deficiency as a result. To address the corrective action, the MOA was amended on February 12, 2020. However, it does not appear that the amended MOU includes the signatures of the non-certifying members.

#### Corrective Actions and Schedule

Within 60 days of the issuance of the final report, SFMTA must submit a letter to the CUCP alerting them to this issue and requesting correction.

### (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, no deficiencies were found with this requirement.

The CUCP Memorandum of Agreement states that certifying members are responsible for maintaining the UCP DBE directory. Each certifying member is given a unique code that allows them to input certification information for newly certified DBEs and update profiles of DBEs that they have certified as soon as they occur.

The directory identifies all firms eligible to participate as DBEs. The directory lists the firm's name, contact person, address, phone number, fax number, email, certification type (DBE/ACDBE), NAICS code, and description of work the firm is certified to perform. The directory is available electronically to the public, and searchable in HTML, PDF, and Excel report formats at: <http://www.dot.ca.gov/hq/bep>. (Click on Programs/Civil Rights/DBE Search).

## 6.9 Entering Information into USDOT's Ineligibility Database

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

If the UCP denies a firm's application, rejects the application of a firm certified in State A or any other State in which the firm is certified, or decertifies 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 7 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.

The following firms were not entered in the USDOT's Ineligibility Database at the time of the file review:

- Ansari Structural Engineers, Inc.: Decertified on January 17, 2020
- Capers Services: Decertified on January 27, 2020
- Thomas C. Jee & Associates: Decertified on January 15, 2021
- Energy Design Consultants: Decertified on January 15, 2021

### Corrective Actions and Schedule

Within 60 days of the issuance of the final report, SFMTA must submit to the FTA Office of Civil Rights a plan to ensure that decertified firms are entered in the USDOT's Ineligibility Determination Online Database.

## 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 the requirement for Uniform Certification Application.

SFMTA's DBE Program Plan includes the Uniform Certification Application (UCA) in Appendix F of 49 CFR §26 as an attachment. A review of the certification files demonstrated that SFMTA has implemented the use of the required UCA.

## **(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 resumes 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.

SFMTA's DBE Program Plan states that an on-site visit to the offices of the firm will be performed in accordance with 49 CFR 26.83. The DBE Program Plan defines the purpose of the on-site review as an opportunity to verify the firm's office location, operations, staff, and information contained in the certification file and review business and financial records.

A review of the certification files contained evidence of the required on-site visit, including the completion of the Site Visit Questionnaire form, for the one firm certified since March 2020. The site visit for that firm, Diamond Technology, was conducted on February 9, 2021.

## **(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, deficiencies were found with this requirement.

A review of the certification files demonstrated that SFMTA did not meet and/or document the 30-day notification requirement for the following files:

Diamond Technology: The certification file did not contain evidence of a 30-day letter acknowledging the receipt of a complete application. According to correspondence in the certification file, SFMTA received the original application on April 10, 2020. At the request of SFMTA, the firm resubmitted their application and supporting documents in an electronic format on

May 29, 2020 to facilitate its processing at a remote location. However, there is no correspondence after that date noting if the file is complete and ready for review.

Bradac Co: SFMTA issued a letter dated March 1, 2021 to Bradac Co indicating that their application was received on October 23, 2020 and their application was suitable for evaluation of DBE eligibility. This notification is beyond the 30-day requirement.

The SFMTA DBE Program Plan does not indicate that SFMTA will send a letter to acknowledge receipt of the application package and whether it is complete within 30 days of receipt.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, SFMTA must submit to the FTA Office of Civil Rights a plan to ensure that firms are notified of their application status within 30 days of receipt.

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

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

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 the requirement for 90-Day Determinations.

According to SFMTA DBE Program, all applications are to be processed within 90 days of receipt of a complete application.

A review of the certification files demonstrated that SFMTA did not meet the 90-day determination requirement for the following file:

Diamond Technology: According to correspondence in the certification file, SFMTA received the original application on April 10, 2020. At the request of SFMTA, the firm resubmitted their application and supporting documents on May 29, 2020 to facilitate its processing at a remote location. A site visit was conducted on February 9, 2021. It is not clear from the file when the application was considered complete. The certification decision was made by SFMTA on February 28, 2021.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, SFMTA must submit to the FTA Office of Civil Rights a plan to ensure that certification decisions are made within 90 days of receiving all required information from the applicant firm or within no more than 60 additional days if an extension is granted.

## **(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 the requirement for Annual Updates.

SFMTA's DBE Program Plan states, *"Annually, the DBE must submit an affidavit to the SFMTA that shall specifically affirms that the DBE continues to meet SBA business size criteria and the overall gross receipts cap, with supporting documentation of the DBE's size and gross receipts."*

A review of the certification files found the following:

Saylor Consulting Group, Inc.: SFMTA requested the firm by letter dated October 29, 2020 to submit an Annual Update Declaration. SFMTA requested the firm to provide copies of their current U.S. Income Tax Returns including all forms, schedules and worksheets and current relevant licenses, license renewal forms, permits, and haul authority forms if applicable.

Lee L. Davis and Associates: SFMTA requested the firm by letter dated December 30, 2020 to submit an Annual Update Declaration. SFMTA requested the firm to provide copies of their current U.S. Income Tax Returns including all forms, schedules and worksheets and current relevant licenses, license renewal forms, permits, and haul authority forms if applicable.

The standard request for license and permit documentation to be provided during an annual update goes beyond the requirements of 49 CFR §26.83(h)-(j). SFMTA indicated that the additional documents requested with the Annual Update are a CUCP requirement. However, the review team found no evidence to support that statement. The link noted in SFMTA's letter requesting the Annual Update is not operable.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, SFMTA must submit to the FTA Office of Civil Rights a procedure to ensure that:

- Current relevant licenses, license renewal forms, permits and haul authority forms are longer required with submission of the annual updates.

## 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, no deficiencies were found with this requirement.

SFMTA's DBE Program Plan states that when a firm is denied, it will provide the firm a written notice of the decision and reasons including specific references to the evidence in the record that supports such reasons and the availability of an appeal to DOT.

SFMTA indicated that there was only one firm denied certification during the review period specified in the Notification Letter.

### (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 the reasons for that decision and reference specific evidence in the record to support each reason.

#### Discussion

During this review, deficiencies were found with the requirement for Removing Existing Certification.

SFMTA's DBE Program Plan states, "If DOT or the SFMTA determines that information in the certification records or other information available provides reasonable cause to believe that a firm certified by the SFMTA does not meet eligibility criteria, the SFMTA may initiate a proceeding to remove the firm's certification. If such a proceeding is initiated by any of the above-mentioned methods, SFMTA will give the firm an opportunity for an informal hearing at which the firm may respond to the reasons presented and provide information and arguments concerning why it should remain certified."

The following decertification files were reviewed for compliance:



Ansari Structural Engineers, Inc.: SFMTA notified the firm that there was reasonable cause to believe that the firm was no longer eligible to participate in the CUCP as a DBE. The intent to remove letter dated November 14, 2019 provided the reasons for the decision and offered an opportunity for a hearing. The final determination letter, dated January 17, 2020, included the reasons for removal but did not provide USDOT appeal information.

Capers Services: SFMTA notified the firm that there was reasonable cause to believe that the firm was no longer eligible to participate in the CUCP as a DBE. The intent to remove letter dated September 12, 2019 provided the reasons for the decision and offered an opportunity for a hearing. The final determination letter, dated January 27, 2020, included the reasons for removal but did not provide USDOT appeal information.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, SFMTA must submit to the Office of Civil Rights a procedure to ensure that final determination letters for removals include the right to an appeal to USDOT.

### **(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.

SFMTA's DBE Program Plan indicates that it will immediately suspend a DBE's certification without adhering to the requirements in Section 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.

SFMTA indicated that there was only one firm removed due to incarceration during the review period specified in the Notification Letter.

### **(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.

SFMTA provided evidence of two firms suspended for failing to timely file an affidavit of no change.

Southeast Electrical Contractors: SFMTA notified the firm by correspondence dated February 25, 2021 that its DBE certification was suspended for failing to provide the Annual Update Declaration with supporting documentation.

P H Adams and Associates: SFMTA notified the firm by correspondence dated January 27, 2021 that its DBE certification was suspended for failing to provide the Annual Update Declaration with supporting documentation.

## **(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.

An appeal was not filed with the DOCR against SFMTA.

## **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 parts 180 and 1200.

#### **Discussion**

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

The reviewers observed that all certification files reviewed utilized the Uniform DBE Certification Application, which includes penalties for fraudulent or false statements.

### **(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.

SFMTA's DBE Program Plan states: *"The SFMTA will safeguard from disclose from unauthorized persons all information gathered as part pf the certification process that may be regarded as proprietary or other confidential business information, consistent with Federal, state and local law."* Furthermore, it stipulates that SFMTA will not release personal financial information submitted in response to a third party without the written consent of the person submitting the information.

SFMTA provided evidence that it had several public records or freedom of information requests. One such request was for the certification information by all companies purported to be owned by Native Americans. Another request was for DBE applications and supporting documents submitted by Inspection Services, Inc., Ed King, or Leslie Sakai.

SFMTA noted that, in accordance with their policy, the information requested was not released. SFMTA provides the following response to these requests, "The federal rules governing the DBE Program prohibit the release of any information that may reasonably be construed as confidential business information, including applications for DBE certification and supporting information. 49 CFR Section 26.109(a)(2)."

### **(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 compliance reviews, certification reviews, investigations, and other requests for information. Pursuant to 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.

SFMTA's DBE Program Plan requires, *"DBE firms and firms seeking DBE certification to cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is grounds for denial or removal of certification."*

Through the review of the certification files, reviewers found the DBE firms to be fully cooperative with all certification requirements and requests for information. In cases where a firm was not cooperative and did not respond to requests for information, SFMTA initiated proceedings to either administratively close the firm's file or remove the firm from the DBE program.

### **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.

The certification files examined were maintained and complete with all required documentation for each firm applying for DBE certification.

### 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

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

It is the responsibility of the California Department of Transportation to submit this report to the USDOT due annually on January 1. SFMTA provided evidence that the 2020 report was submitted on January 5, 2021, in compliance with the USDOT requirements.

### 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 is 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, no deficiencies were found with this requirement.

There are two staff members who are directly responsible for conducting certifications for SFMTA. Both completed certification training. The training certificates from the National Highway Institute and the Federal Aviation Administration for both certifiers were provided to the review team.

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## 7. Summary of Files Review and Findings

| File Type                     | Firm Name                        | USDOT Form      | Site Visit | PNW   | No Change      | Per/Bus Tax      | Interstate Certification | Denial Letter     | DOCR Listing       |
|-------------------------------|----------------------------------|-----------------|------------|-------|----------------|------------------|--------------------------|-------------------|--------------------|
| Initial Certification <1 year | Diamond Technology               | Y               | Y          | Y     | N/A            | Y/Y              | N/A                      | N/A               | N/A                |
| -                             | -                                | 30 Day / 90 Day | SBA Size   | NAICS | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
| -                             | -                                | N/N             | Y          | Y     | Y              | Y                | N/A                      | N/A               | N/A                |
| -                             | -                                | USDOT Form      | Site Visit | PNW   | No Change      | Per/Bus Tax      | Interstate Certification | Denial Letter     | DOCR Listing       |
|                               | Bradac Co                        | Y               | Y          | Y     | N/A            | Y/Y              | N/A                      | N/A               | N/A                |
| -                             | -                                | 30 Day / 90 Day | SBA Size   | NAICS | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
| -                             | -                                | N               | Y          | Y     | Y              | Y                | N/A                      | N/A               | N/A                |
| -                             | -                                | USDOT Form      | Site Visit | PNW   | No Change      | Per/Bus Tax      | Interstate Certification | Denial Letter     | DOCR Listing       |
| Annual Updates                | Lee L. Davis and Associates      | N/A             | N/A        | N     | Y              | N/Y              | N/A                      | N/A               | N/A                |
| -                             | -                                | 30 Day / 90 Day | SBA Size   | NAICS | 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      | Interstate Certification | Denial Letter     | DOCR Listing       |
| -                             | Saylor Consulting Group          | N/A             | N/A        | N     | Y              | N/Y              | N/A                      | N/A               | N/A                |
| -                             | -                                | 30 Day / 90 Day | SBA Size   | NAICS | 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                |
| Suspensions                   | Southeast Electrical Contractors | N/A             | N/A        | N/A   | N/A            | N/A              | N/A                      | N/A               | N/A                |
| -                             | -                                | 30 Day / 90 Day | SBA Size   | NAICS | 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      | Interstate Certification | Denial Letter     | DOCR Listing       |
|-------------|-----------------------------------|-----------------|------------|-------|----------------|------------------|--------------------------|-------------------|--------------------|
| -           | P H Adams and Associates          | N/A             | N/A        | N/A   | N/A            | N/A              | N/A                      | N/A               | Y                  |
| -           | -                                 | 30 Day / 90 Day | SBA Size   | NAICS | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
| -           | -                                 | N/A             | N/A        | N/A   | N/A            | N/A              | Y                        | N/A               | N/A                |
|             |                                   | USDOT Form      | Site Visit | PNW   | No Change      | Per/Bus Tax      | Interstate Certification | Denial Letter     | DOCR Listing       |
| Removals    | Capers Services                   | N/A             | N/A        | N/A   | N/A            | N/A              | N/A                      | N/A               | N                  |
| -           | -                                 | 30 Day / 90 Day | SBA Size   | NAICS | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
| -           | -                                 | N/A             | N/A        | N/A   | N/A            | N/A              | N                        | Y                 | Y                  |
|             |                                   | USDOT Form      | Site Visit | PNW   | No Change      | Per/Bus Tax      | Interstate Certification | Denial Letter     | DOCR Listing       |
|             | Ansari Structural Engineers, Inc. | USDOT Form      | Site Visit | PNW   | No Change      | Per/Bus Tax      | Interstate Certification | Denial Letter     | DOCR Listing       |
| -           | -                                 | N/A             | N/A        | N/A   | N/A            | N/A              | N/A                      | N/A               | N                  |
| -           | -                                 | 30 Day / 90 Day | SBA Size   | NAICS | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
| -           | -                                 | N/A             | N/A        | N/A   | N/A            | N/A              | N                        | N/A               | N/A                |
|             |                                   | USDOT Form      | Site Visit | PNW   | No Change      | Per/Bus Tax      | Interstate Certification | Denial Letter     | DOCR Listing       |
| Withdrawals | Thomas C. Jee & Associates        | N/A             | N/A        | N/A   | N/A            | N/A              | N/A                      | N/A               | N                  |
| -           | -                                 | 30 Day / 90 Day | SBA Size   | NAICS | 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               | Y                  |
| -           | -                                 | USDOT Form      | Site Visit | PNW   | No Change      | Per/Bus Tax      | Interstate Certification | Denial Letter     | DOCR Listing       |
| -           | Energy Design Consultants         | N/A             | N/A        | N/A   | N/A            | N/A              | N/A                      | N/A               | N                  |
| -           | -                                 | 30 Day / 90 Day | SBA Size   | NAICS | 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               | Y                  |



| Requirement of 49 CFR Part 26   | Ref.  | Site Visit Finding | Deficiencies  | Corrective Action(s)   | Response Days/Date |
|---|-------|--------------------|---|--|--------------------|
| 1. Group Membership<br>A) Burden of Proof                             | 26.61 | ND                 | -   | -  | -                  |
| B) Additional Evidence of Group Membership                            | 26.63 | ND                 | -   | -  | -                  |
| 2. Business Size  | 26.65 | ND                 | -   | -  | -                  |
| 3. Social and Economic Disadvantage<br>A) Presumption of Disadvantage | 26.67 | ND                 | -   | -  | -                  |
| B) Personal Net Worth   | 26.67 | D                  | PNWs not adequately analyzed for omissions              | Submit to the FTA Office of Civil Rights procedures to ensure that additional investigation is conducted into pertinent PNW omissions, and revisions are made, as necessary, and documented. | 60 Days            |
| C) Rebutting the Presumption of Economic Disadvantage                 | 26.67 | ND                 | -   | -  | -                  |
| D) Individual Determinations of Social and Economic Disadvantage      | 26.67 | ND                 | -   | -  | -                  |
| 4. Ownership  | 26.69 | ND                 | -   | -  | -                  |
| 5. Control  | 26.71 | ND                 | -   | -  | -                  |
| 6. Interstate Certification   | 26.85 | ND                 | -   | -  | -                  |
| 7. Other Rules Affecting Certification                                | 26.73 | ND                 | -   | -  | -                  |
| 8. UCP Requirements<br>A) UCP Agreement                               | 26.81 | D                  | Non-certifying members of the CUCP did not sign the MOU | Submit a letter to the CUCP alerting them to this issue and requesting correction.   | 60 Days            |
| B) UCP Directory  | 26.31 | ND                 | -   | -  | -                  |
| 9. Entering Information Into USDOT's Ineligibility Database           | 26.85 | D                  | Database not updated                                    | Submit to the FTA Office of Civil Rights a plan to ensure that decertified firms are entered in the USDOT's Ineligibility Determination Online Database.                                     | 60 Days            |
| 10. UCP Procedures<br>A) Uniform Certification Application            | 26.83 | ND                 | -   | -  | -                  |

| Requirement of 49 CFR Part 26                 | Ref.   | Site Visit Finding | Deficiencies  | Corrective Action(s)   | Response Days/Date |
|---|--------|--------------------|---|--|--------------------|
| B) On-Site Visits                             | 26.83  | ND                 | -   | -  | -                  |
| C) 30-Day Notification                        | 26.83  | D                  | 30-day notification requirement not followed            | Submit to the FTA Office of Civil Rights a procedure to ensure that firms are notified of their application status within 30 days of receipt.  | 60 Days            |
| D) 90-Day Determinations                      | 26.83  | D                  | 90-day determination requirement not followed           | Submit to the FTA Office of Civil Rights a plan to ensure that certification decisions are made within 90 days of receiving all required information from the applicant firm or within no more than 60 additional days if an extension is granted.                   | 60 Days            |
| E) Annual Updates                             | 26.83  | D                  | Additional information requested with the update        | Submit to the FTA Office of Civil Rights a procedure to ensure that: <ul style="list-style-type: none"> <li>Current relevant licenses, license renewal forms, permits and haul authority forms are longer required with submission of the annual updates.</li> </ul> | 60 Days            |
| 11. Denials of Applications for Certification |        |                    | -   | -  | -                  |
| A) Initial Request Denials                    | 26.86  | ND                 |   |  |                    |
| B) Removing Existing Certification            | 26.87  | D                  | Removal letters do not include USDOT appeal information | Submit to the Office of Civil Rights a procedure to ensure that final determination letters for removals include the right to an appeal to USDOT.  | 60 Days            |
| C) Mandatory Summary Suspension               | 26.88  | ND                 | -   | -  | -                  |
| D) Optional Summary Suspension                | 26.88  | ND                 | -   | -  | -                  |
| E) Appeals to USDOT                           | 26.89  | ND                 | -   | -  | -                  |
| 12. Compliance and Enforcement                |        |                    | -   | -  | -                  |
| A) DBE Enforcement Actions                    | 26.107 | ND                 |   |  |                    |

| <b>Requirement of<br/>49 CFR Part 26</b>                        | <b>Ref.</b> | <b>Site<br/>Visit<br/>Finding</b> | <b>Deficiencies</b> | <b>Corrective Action(s)</b> | <b>Response<br/>Days/Date</b> |
|---|-------------|-----------------------------------|---------------------|-----------------------------|-------------------------------|
| B) Confidentiality  | 26.109      | ND                                | -                   | -                           | -                             |
| C) Cooperation  | 26.109      | ND                                | -                   | -                           | -                             |
| 13. Record Keeping  | 26.11       | ND                                | -                   | -                           | -                             |
| 14. Submitting Reports<br>to USDOT                              | 26.11       | ND                                | -                   | -                           | -                             |
| 15. Training of<br>Certification<br>Application Review<br>Staff | USDOT       | ND                                | -                   | -                           | -                             |

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable;  
AC = Advisory Comment

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## Attachment A – FTA Notification Letter to SFMTA



U.S. Department  
of Transportation  
Federal Transit  
Administration

Headquarters

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

December 10, 2019

Tom Maguire  
Interim Director of Transportation  
San Francisco Municipal Transportation Agency  
1 S Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Mr. Maguire:

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 Financial Assistance 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 specialized reviews of grant recipients. San Francisco Municipal Transportation Agency (SFMTA) has been selected for a review of its Unified Certification Program (UCP) to take place April 21–23, 2020.

The purpose of this review will be to determine whether SFMTA is meeting its obligations, as represented by certification to FTA, to comply with 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 Milligan & Company LLC of Philadelphia, PA to conduct this specialized review. Representatives of Milligan and FTA will participate in the opening and exit conferences, with FTA participating by telephone.

We request an opening conference at 9 a.m. PDT, on Tuesday, April 21, 2020, to introduce the Milligan team and FTA representatives to SFMTA. 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 SFMTA’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 the review team must receive within 30 calendar days of the date of this letter. Please forward these materials to the following contact person:

Sandra Swiacki  
Milligan & Company LLC  
105 N. 22<sup>nd</sup> Street  
Philadelphia, PA 19103  
215-496-9100 x5120  
[sswiacki@milligancpa.com](mailto:sswiacki@milligancpa.com)

You also have the option of sending the documents via Milligan's secure file transfer protocol (FTP) site. Your reviewer will reach out to you concerning the use of the FTP site. Please be prepared to designate a point of contact for your agency, for which user access should be provided.

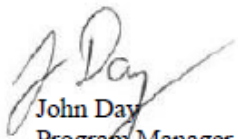
FTA requests your attendance at an exit conference scheduled for 1 p.m. PDT, on Thursday, April 23, 2020. The exit conference will afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you and other key staff attend the exit conference.

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 SFMTA, will be considered public documents subject to release under the Freedom of Information Act, upon request.

SFMTA 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 Scott Pichon at 202-366-8939 or via email at [scott.pichon@dot.gov](mailto:scott.pichon@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: Ray Tellis, Regional Administrator, FTA Region 9  
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights

**Enclosure**

**The following information must be submitted to Milligan 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 SFMTA's Unified Certification Program (which should be signed by all members of the UCP).
3. The certification criteria/guidelines used in determining DBE eligibility.
4. 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.
5. A list of all firms certified, denied, and decertified or removed by the UCP from federal fiscal year 2017 to present. The list must include:
  - a) the firm's city and state
  - b) the firm's ethnicity
  - c) the firm's gender
  - d) the date of site visit
  - e) the reasons for denial and/or decertification (e.g., size, PNW, control, etc.)
  - f) whether the denial decision was appealed to the UCP or USDOT
  - g) The result of the appeal
6. A description of SFMTA UCP appeals process(es). List the individuals involved in the appeals process and how they are selected.
7. Any third-party complaints regarding DBE firms certified by the SFMTA and actions taken to resolve the matter in the past three (3) years.
8. Any Freedom of Information or similar request for certification information in the past three (3) years.
9. Any enforcement action against a DBE firm (e.g., suspension, debarment, etc.) regarding certification in the past three (3) years.
10. Other pertinent information determined by SFMTA's staff to illustrate its UCP operations and procedures.

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## Attachment B – SFMTA’s Response to the Draft Report

| Requirement of 49 CFR Part 26   | Ref.  | Site Visit Finding | Deficiencies                               | Corrective Action(s)   | Response Days/Date | Factual Error Noted   |
|---|-------|--------------------|--|--|--------------------|---|
| 1. Group Membership<br>A) Burden of Proof                             | 26.61 | ND                 | -  | -  | -                  | -   |
| B) Additional Evidence of Group Membership                            | 26.63 | ND                 | -  | -  | -                  | -   |
| 2. Business Size  | 26.65 | ND                 | -  | -  | -                  | -   |
| 3. Social and Economic Disadvantage<br>A) Presumption of Disadvantage | 26.67 | ND                 | -  | -  | -                  | -   |
| B) Personal Net Worth   | 26.67 | D                  | PNWs not adequately analyzed for omissions | Submit to the FTA Office of Civil Rights procedures to ensure that additional investigation is conducted into pertinent PNW omissions, and revisions are made, as necessary, and documented. | 60 Days            | Yes.<br><br>An analysis of PNW statement for Diamond Technology was conducted to determine if PNW was within DOT PNW size standard. Omission of dollar amount on PNW line does not constitute a deficiency by SFMTA. It is apparent that the sum of the asset and liability values falls below the PNW size standard.<br><br>An analysis of PNW statement for Bradac was in process at time of FTA review. FTA reviewer advised this item would not be considered a deficiency, because the analysis of the PNW statement was incomplete. |
| C) Rebutting the Presumption of Economic Disadvantage                 | 26.67 | ND                 | -  | -  | -                  | -   |

| Requirement of 49 CFR Part 26                                    | Ref.  | Site Visit Finding | Deficiencies  | Corrective Action(s)   | Response Days/Date | Factual Error Noted   |
|--|-------|--------------------|---|--|--------------------|---|
| D) Individual Determinations of Social and Economic Disadvantage | 26.67 | ND                 | -   | -  | -                  | -   |
| 4. Ownership   | 26.69 | ND                 | -   | -  | -                  | -   |
| 5. Control   | 26.71 | ND                 | -   | -  | -                  | -   |
| 6. Interstate Certification                                      | 26.85 | ND                 | -   | -  | -                  | -   |
| 7. Other Rules Affecting Certification                           | 26.73 | ND                 | -   | -  | -                  | -   |
| 8. UCP Requirements<br>A) UCP Agreement                          | 26.81 | D                  | Non-certifying members of the CUCP did not sign the MOU | Submit to the FTA Office of Civil Rights a MOU with signatures from the non-certifying members of the CUCP.  | 60 Days            | Yes. This is not a finding for the SFMTA.<br><br>It is the CUCP's responsibility to obtain signatures of CUCP non-certifying agencies, not individual certifying agencies.<br><br>This deficiency should be addressed by the CUCP.          |
| B) UCP Directory   | 26.31 | ND                 | -   | -  | -                  | -   |
| 9. Entering Information Into USDOT's Ineligibility Database      | 26.85 | D                  | Database not updated                                    | Submit to the FTA Office of Civil Rights a plan to ensure that decertified firms are entered in the USDOT's Ineligibility Determination Online Database. | 60 Days            | No.   |
| 10. UCP Procedures<br>A) Uniform Certification Application       | 26.83 | ND                 | -   | -  | -                  | -   |
| B) On-Site Visits  | 26.83 | ND                 | -   | -  | -                  | -   |
| C) 30-Day Notification   | 26.83 | D                  | 30-day notification requirement not followed            | Submit to the FTA Office of Civil Rights a procedure to ensure that firms are notified of their application status within 30 days of receipt.            | 60 Days            | Yes.<br><br><b>26.83</b> (l) states "As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional |

| Requirement of 49 CFR Part 26   | Ref.  | Site Visit Finding | Deficiencies  | Corrective Action(s)   | Response Days/Date | Factual Error Noted   |
|---|-------|--------------------|---|--|--------------------|---|
|   |       |                    |   |  |                    | information or action is required.”<br><br>Bradac Co. submitted their application documentation virtually on 10/21/20. Within 30 days, on 11/20/20, they were notified that tax returns were missing via email. A copy of the email was provided to the reviewer. |
| D) 90-Day Determinations  | 26.83 | D                  | 90-day determination requirement not followed           | Submit to the FTA Office of Civil Rights a plan to ensure that certification decisions are made within 90 days of receiving all required information from the applicant firm or within no more than 60 additional days if an extension is granted.                   | 60 Days            | No.   |
| E) Annual Updates   | 26.83 | D                  | Additional information requested with the update        | Submit to the FTA Office of Civil Rights a procedure to ensure that: <ul style="list-style-type: none"> <li>Current relevant licenses, license renewal forms, permits and haul authority forms are longer required with submission of the annual updates.</li> </ul> | 60 Days            | Yes. This is not a finding for the SFMTA.<br><br>Additional documents requested with Annual Update are a CUCP requirement. CUCP certifying agencies must adhere to this requirement.<br><br>This deficiency should be addressed by the CUCP.                      |
| 11. Denials of Applications for Certification<br>A) Initial Request Denials | 26.86 | ND                 | -   | -  | -                  | -   |
| B) Removing Existing Certification  | 26.87 | D                  | Removal letters do not include USDOT appeal information | Submit to the Office of Civil Rights a procedure to ensure that final determination letters for removals include the right to an appeal to USDOT.  | 60 Days            | No.   |

| Requirement of 49 CFR Part 26                                | Ref.   | Site Visit Finding | Deficiencies | Corrective Action(s) | Response Days/Date | Factual Error Noted |
|--|--------|--------------------|--------------|----------------------|--------------------|---------------------|
| C) Mandatory Summary Suspension                              | 26.88  | ND                 | -            | -                    | -                  | -                   |
| D) Optional Summary Suspension                               | 26.88  | ND                 | -            | -                    | -                  | -                   |
| E) Appeals to USDOT  | 26.89  | ND                 | -            | -                    | -                  | -                   |
| 12. Compliance and Enforcement<br>A) DBE Enforcement Actions | 26.107 | ND                 | -            | -                    | -                  | -                   |
| B) Confidentiality   | 26.109 | ND                 | -            | -                    | -                  | -                   |
| C) Cooperation   | 26.109 | ND                 | -            | -                    | -                  | -                   |
| 13. Record Keeping   | 26.11  | ND                 | -            | -                    | -                  | -                   |
| 14. Submitting Reports to USDOT                              | 26.11  | ND                 | -            | -                    | -                  | -                   |
| 15. Training of Certification Application Review Staff       | USDOT  | ND                 | -            | -                    | -                  | -                   |



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

Headquarters

5<sup>th</sup> Floor – East Bldg., TCR  
1200 New Jersey Avenue, SE  
Washington, DC 20590

April 13, 2021

Jeffrey Tumlin  
Director of Transportation  
San Francisco Municipal Transportation Agency  
1 S Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103

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

Dear Mr. Tumlin:

This letter concerns the Federal Transit Administration's (FTA) Disadvantaged Business Enterprise (DBE) Review of the San Francisco Municipal Transportation Agency's (SFMTA) Unified Certification Program (UCP) scheduled for April 21-23, 2020 and completed virtually. 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 submit 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 SFMTA 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: Ray Tellis, Regional Administrator, FTA Region 9  
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights