

COMPLIANCE REVIEW REPORT
OF THE
FLORIDA
UNIFIED CERTIFICATION PROGRAM

Final Report

September 2011

**Prepared for the
Federal Transit Administration
Office of Civil Rights**

by

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SECTION 1 - GENERAL INFORMATION

Hosting Grant Recipient:	Florida Department of Transportation 605 Suwannee St.
City/State:	Tallahassee, FL 32399-0450
Executive Official:	Stephanie Kopelousos Secretary of Transportation
On Site Liaison:	Art Wright Manager, Equal Opportunity Office 850-414-4749
Report Prepared by:	MILLIGAN AND CO., LLC 105 N. 22 nd Street, 2 nd Floor Philadelphia, PA 19103 (215) 496-9100
Site visit Dates:	January 20, 2011 (Jacksonville, FL) January 25 – 27, 2011 (Tallahassee, FL)
Compliance Review Team Members:	Benjamin Sumpter, Lead Reviewer Habibatu Atta Ketnah Parchment

SECTION 2 - JURISDICTION AND AUTHORITIES

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct civil rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and subrecipients with Section 12 of the Master Agreement, Federal Transit Administration M.A., (17), October 1, 2010 and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

The Federal Transit Administration (FTA) of the U.S. Department of Transportation (DOT) provides financial assistance to transit agencies, Metropolitan Planning Organizations (MPOs) and State Departments of Transportation (State DOTs). These recipients are required to comply with Federal civil rights provisions. The FTA Office of Civil Rights (TCR) oversees grantee compliance with these provisions through compliance reviews, which are conducted at TCR’s discretion.

The Florida Unified Certification Program (FL UCP) members, which are direct or indirect recipients of FTA funding assistance, are subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of these funds pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in FL UCP’s agreement and were the basis for the selection of compliance elements that were reviewed.

SECTION 3 – PURPOSE AND OBJECTIVES

PURPOSE

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with their responsibilities under 49 CFR Part 26. In keeping with its regulations and guidelines, FTA has determined that a compliance review of the Florida Unified Certification Program (FL UCP) is necessary.

The primary purpose of the compliance review is to determine the extent to which the Florida Unified Certification Program (FL UCP) has met its DBE certification program goals and objectives, as represented to DOT in its Unified Certification Program agreement. This compliance review is intended to be a fact-finding process to: (1) examine the Florida Unified Certification Program and its implementation, (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 in behalf of any party.

OBJECTIVES

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

- follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Parts 26 and 23;
- cooperate fully with all oversight, review and monitoring activities of the United States Department of Transportation (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 shall be binding on all UCP members. Certification decision must be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE;
- provide a single DBE certification that will be honored by all UCP members;
- maintain a unified 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. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made; and
- ensure the UCP agreement shall commit recipients to ensuring 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 the FL UCP is honoring the Unified Certification Program agreement submitted to the Secretary of Transportation;
- examine the required certification procedures and standards of the FL UCP against the Disadvantaged Business Enterprise program compliance standards set forth in the regulations and to document the compliance status of each component; and
- gather information and data regarding the operation of the FL UCP from certifying members through interviews and certification file review.

SECTION 4 – BACKGROUND INFORMATION

Prior to the 1999 DBE Final Rule 49 CFR Part 26, applicants seeking participation on DOT assisted projects as a Disadvantaged Business Enterprise (DBE) could be required to be certified by multiple DOT recipients in a state. Subpart E, of 49 CFR Part 26.81 now requires DOT recipients to participate in a Unified Certification Program (UCP) that shall provide one-stop shopping to applicants for DBE certification. An applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

An agreement establishing the UCP for the state was to be submitted to the Secretary of Transportation within three years of March 4, 1999. The agreement was to provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify the UCP will follow all certification procedures and standards of part 26, on the same basis as recipients. The UCP is also required to cooperate fully with oversight, review, and monitoring activities of DOT and its operating administration.

Florida Unified Certification Program

The vision for the Florida Unified Certification Program (FL UCP) is to allow DBE firms to compete fairly for and participate easily in USDOT assisted contract awards. With the establishment of a “one stop shop” for DBE certification, DBE firms from different areas within the state can become certified through the UCP program and participate throughout the state, as well as other such programs around the country. This program also allows for the UCP members to exchange information and coordinate efforts while reviewing firms during the certification process and all throughout their involvement and participation in projects.

The UCP Executive Committee (UCPEX) is tasked with providing oversight, guidance, and with ensuring that the UCP members are compliant with the provisions made in the UCP agreement. They can call meetings with UCP members and establish special committees by majority vote. They are also responsible for making sure that UCP members have adequate resources to perform their duties.

It is Florida Department of Transportation’s (FLDOT) task as the Responsible Certifying Member (RCM) to certify firms that primarily perform the delivery of highway, road, and bridge related goods and services. FLDOT keeps, updates, and maintains the DBE Directory. It is also their responsibility to provide DBE certification training to other UCP members upon their request or direct members to attend such trainings.

Below are recipients or government entities and primary contact persons represented on the signed documents on file with FLDOT for the FL UCP. The list is updated upon request from the members.

Recipients with “(C)” following their telephone number are Certifying UCP Members.
Executive Committee Member *

USDOT Florida Recipient

Contact Individual

- | | | |
|-----|--|--|
| 1. | Florida Department of Transportation
(850) 414-4747 (C) 1162 DBEs | Arthur Wright* ^{FHWA}
arthur.wright@dot.state.fl.us |
| 2. | Melbourne Airport Authority (There is no current information on this member) | |
| 3. | Hillsborough County Aviation Authority
(813) 870-8738 (C) 123 DBEs | Cheryl Hawkins* ^{FAA}
chawkins@tampairport.com |
| 4. | Sarasota Manatee Airport Authority
(941) 359-5200 (x. 4230) | John Schussler
john.schussler@srq-airport.com |
| 5. | Panama City-Bay County Airport & Industrial District
(850) 763-6751 (x 202) | Pam Henderson
phenderson@pcairport.com |
| 6. | Council on Aging of St. Lucie, Inc.
(772) 879-1287 | Marianne Arbore
marbore@coasl.com |
| 7. | St. Lucie County
(772) 462-1772 | Beth Ryder
beth@co.st-lucie.fl.us |
| 8. | City of Ocala | No Information |
| 9. | Broward County
(954) 357-6134 (C) 194 DBEs | Lorraine Gasset
lgasset@broward.org |
| 10. | Panama City MPO
(850) 595-8910 | Mary Bo Robinson
robinsonm@wfrpc.dst.fl.us |
| 11. | Pinellas Suncoast Transit Authority
(727) 540-1840 | Shirley J. Thornton
sthornton@psta.net |
| 12. | Miami-Dade County (NEW)
(305) 375-3116 (C) 901 DBEs | Jeanise Cummings-Labossiere
cumming@miamidade.gov |
| 13. | LYNX/Central FL Regional Trans. Auth.
(407) 254-6117 (NEW) | Desna Hunte
dhunte@golynx.com |
| 14. | City of Tallahassee
(850) 891-6458 (C) 12 DBEs | Ben Harris
benjamin.harris@talgov.com |
| 15. | Lee County Port Authority
(239) 590-4625 (C) 69 DBEs | Julio Rodriguez
jarodriguez@flylcpa.com |
| 16. | Jacksonville Aviation Authority
(904) 741-2043 (C) 46 DBEs | Candace Boykin
cboykin@jaa.aero |

17. Volusia County (NEW)
(FAA) (Daytona Beach International Airport) VACANT

(FTA) (Votran) JWH Consulting Services, Inc. - Julio Holness
(386) 756-7496, (Ext 4128) (C) 18 DBEs jubet@bellsouth.net
18. Escambia County Area Transit
(850) 595-3228 (x 12) [Ramona Cavasos
ramoona_cavazos@co.escambia.fl.us](mailto:ramoona_cavazos@co.escambia.fl.us)
19. Jacksonville Transportation Authority
(904) 598-8728 (C) 225 DBEs [Ken Middleton*FTA
kmiddleton@jtafla.com](mailto:kmiddleton@jtafla.com)
20. Sarasota County Transportation Authority
(941) 861-1018 [Dominick Locascio
dlocasci@co.sarasota.fl.us](mailto:dlocasci@co.sarasota.fl.us)
21. South FL Regional Trans. Authority
(954) 788-7944 [Marie Jarman
jarmanm@sfrta.fl.gov](mailto:jarmanm@sfrta.fl.gov)
22. City of St. Petersburg
(727) 892-5180 [Shrimatee Ojah-Maharaj
shrimatee.ojah-maharaj@stpete.org](mailto:shrimatee.ojah-maharaj@stpete.org)
23. St. Petersburg/Clearwater Intl. Airport
(727) 453-7805 [Lynn Marschang
gmarscha@co.pinellas.fl.us](mailto:gmarscha@co.pinellas.fl.us)
24. Greater Orlando Aviation Authority
(407) 825-7171 (C) 142 DBEs [Michelle Tatom
mtatom@goaa.org](mailto:mtatom@goaa.org)
25. Lee County Transit
(239) 533-0331 [Susan Riley
rileysp@leegov.com](mailto:rileysp@leegov.com)
26. Okaloosa County (There is no current information on this member)
27. Indian River County Council on Aging (There is no current information on this member)
28. Key West International & Florida
Keys Marathon Airports [Monty Gettys
Monty.Gettys@mcgi-us.com](mailto:Monty.Gettys@mcgi-us.com)
(407) 539-7030, Ext 15(C) 9 DBEs
29. City of Umatilla (There is no current information on this member)
30. City of Leesburg
(352) 728-9704 [Ron Stock
citymanager@ci.leesburg.fl.us](mailto:citymanager@ci.leesburg.fl.us)
31. Manatee County Area Transit
(941) 747-8621 [Rodney Beggs
rodney.beggs@co.manatee.fl.us](mailto:rodney.beggs@co.manatee.fl.us)
32. Lee County
(239) 335-2178 [Jack Barden
bardenjm@leegov.com](mailto:bardenjm@leegov.com)

- | | | |
|-----|---|---|
| 33. | Space Coast Area Transit
(321) 635-7815 | Bob Roberson
bob@ridescat.com |
| 34. | Palm Beach International Airport (NEW)
(561) 471-7403 (C) 82 | Laura Beebe
laura.beebe@pbia.org |
| 35. | Palm Tran (NEW)
(561) 471-7403 (C) | Laura Beebe
laura.beebe@pbia.org |
| 36. | City of Key West, DOT
(305) 292-8285 | Myra Hernandez
mhernan@keywestcity.com |
| 37. | Hillsborough Transit Authority
(813) 449-4660 | Janice Cook
cookj@gohart.org |
| 38. | Collier Area Transit
(239) 596-7777 (ext. 12) | Jonee' Miller
joneemiller@collier.net.gov |
| 39. | Charlotte County Transit
(941) 975-4000 | Jan Parham
E-mail Not Provided |
| 40. | City of Gainesville
(352) 334-2621 | Doug Robinson
robinsondk@cityofgainesville.org |
| 41. | City of Naples Airport Authority
(239) 643-0733 | Sheila Dugan
adminiatration@flynaples.com |
| 42. | Boca Raton Airport Authority
(561) 391-2238 | Ken A. Day
ken@bocairport.com |
| 43. | St. Johns County, FL
(904) 209-0630 | Gary Mackey
gmackey@co.st-johns.fl.us |
| 44. | Lake County FL | (There is no current information on this member) |
| 45. | City of Miramar
(954) 602-3125 | Hector A. Vazquez
havazquez@ci.miramar.fl.us |
| 46. | Lakeland Area Mass Transit District
(863) 699-7433, Ext. 144 | Adam Goldman
agoldman@ridecitrus.com |

SECTION 5 – SCOPE AND METHODOLOGY

Scope

Implementation of the following twelve required DBE UCP program components specified by the FTA are reviewed in this report.

1. You must rebuttably presume that members of the designated groups identified in 26.67 are socially and economically disadvantaged [49 CFR 26.61].
2. If you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group [49 CFR 26.63].
3. You must apply 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 [49 CFR 26.65].
4. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged [49 CFR 26.67].
5. In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole [49 CFR 26.69].
6. In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole [49 CFR 26.71].
7. Other rules affecting certification include not considering commercially useful function issues, evaluating the eligibility of a firm on the basis of present circumstances, and making sure only firms organized for profit may be eligible DBEs [49 CFR 26.73].
8. You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP). You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program [49 CFR 26.81 and 26.31].
9. You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program [49 CFR 26.83].
10. When you deny a request by a firm to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial [49 CFR 26.86 – 26.89].
11. If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied [49 CFR 26.101 – 26.109].

Methodology

The initial step in the scope of this Compliance Review consisted of consultation with the FTA Office of Civil Rights and a review of available information from the Unified Certification Program websites and other sources. Subsequent to this review, potential dates for the site visit were coordinated.

An agenda letter was then compiled and sent to Florida UCP by FTA's Office of Civil Rights. The agenda letter notified Florida UCP of the planned site visit, requested preliminary documents, and informed the Florida UCP of additional documents needed and areas that would be covered during the on-site portion of the review.

The documents received prior to the on-site portion of the review were examined and an itinerary for the site visit was developed. Due to the high number of certifying members in the Florida UCP, a preliminary site visit and phone interviews were conducted with a majority of the certifying members.

An entrance conference was conducted at the beginning of the Compliance Review with the FL UCP Certifying Members and the review team. Subsequent to the entrance conference, a review was conducted of the FL UCP agreement and other documents submitted to the review team by the FL UCP representative. Interviews were then conducted with selected FL UCP Certifying Members regarding DBE program certification standards and certification procedures. These interviews included members with the responsibility of certifying on behalf of all the members. The following members' certification process was reviewed:

Agency	City	Interviewed	Files Reviewed
Greater Orlando Aviation Authority	Orlando	January 13, 2011	N/A
Broward County	Ft. Lauderdale	January 13, 2011	N/A
Miami-Dade County	Miami	January 14, 2011	N/A
Hillsborough County Aviation Authority	Tampa	January 14, 2011	N/A
Jacksonville Aviation Authority	Jacksonville	January 20, 2011	January 20, 2011
Jacksonville Transportation Authority	Jacksonville	January 20, 2011	January 20, 2011
Florida Department of Transportation	Tallahassee	January 25, 2011	January 25, 2011
City of Tallahassee	Tallahassee	January 26, 2011	January 26, 2011

A sample of certification files (see table on next page) were then selected and reviewed for the DBE required elements.

At the end of the review, an exit conference was held with the FL UCP Certifying Member and the review team. A list of participants is included at the end of this report. At the exit

conference, initial findings and corrective actions were discussed with the FL UCP Certifying Members.

Following the site visit, a draft report was compiled. FL UCP's responses to that draft report have been incorporated into this final report.

NOTE: Materials and information to address the findings and corrective actions in the report should be sent to the attention of:

Randelle Ripton
FTA Office of Civil Rights
1200 New Jersey Ave., S.E.
E54-443
Washington, DC 20590
202-366-5086
Randelle.Ripton@dot.gov

Florida Department of Transportation:

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	N	Y	N	Y	N
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial		Y	Y	Y	N/A	Y/Y	N/A	Y	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N	Y	N
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A

Jacksonville Transit Authority:

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial		Y	Y	Y	N/A	Y/Y	N/A	Y	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	N/A	N/A	Y	Y	N/A	N/A	N/A
File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial		Y	Y	Y	N/A	Y/Y	N/A	N	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	N/A	Y	N/A	N/A	N/A
File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal		Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	Y	Y	Y
File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	Y	Y	Y
File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year		Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A

Jacksonville Aviation Authority:

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	Y	Y	Y	Y	Y
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial		Y	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification >1 year		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N	N	Y
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing		Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N	Y	Y
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Denial		Y	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	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

City of Tallahassee

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year		Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A

SECTION 6 – ISSUES AND RECOMMENDATIONS

1. **Burden of Proof**

Basic Requirement: (49 CFR Part 26.61) UCPs must rebuttably presume that members of the designated groups identified in 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. Individuals must submit a signed, notarized statement that they are a member of one of the groups in 26.67.

Discussion: During this UCP Compliance review, no deficiencies were found with requirements for burden of proof. The Florida Unified Certification Program (FL UCP) Plan, signed in 2004, indicates that the UCP will follow all certification procedures and standards of 49 CFR Parts 26 and Part 23. The files reviewed during the compliance review supported that FL UCP followed 49 CFR Part 26.61 regarding burden of proof allocation. The application contained a signed, notarized statement from individuals presumed to be socially and economically disadvantaged.

2. **Group Membership**

Basic Requirement: (49 CFR Part 26.63) If a UCP has a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group. You must provide the individual a written explanation of your reasons for questioning his or her group membership. You must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group.

Discussion: During this UCP Compliance Review, deficiencies were found with the requirement for Group Membership. Neither the Florida UCP plan nor Procedure Memorandums address how group membership will be determined. The Florida UCP application supporting document list requires applicants to submit two documents that support the ethnicity of individuals claiming disadvantaged. Some certifying members interviewed by the review team used supporting document lists that did not require the applicant to provide documentation to support ethnicity claims. Broward County informed the review team that they do not ask for proof of ethnicity initially. The certification application on Broward County's website does not require applicants to submit proof of ethnicity; however, applicants are required to provide proof of citizenship. Miami-Dade County links to the certification application on the US DOT Office of Small Disadvantaged Business Utilization website. The USDOT required Uniform Certification Application Form and supporting document list does not require proof of ethnicity or citizenship. (See supporting document list comments in *Section 9 - Uniform Application* of this report).

The regulation, as amended in 2003, in Part 26.63(a)(1)-(3) requires that you must provide the individual a written explanation of your reason for questioning his or her group membership. The Florida UCP requires documentation in addition to the signed and notarized statement of social and economic disadvantaged for proof of group membership. Due to the variations of implementing group membership verification and

the absence of written procedures in their UCP program plan, Florida UCP certifying members may not be operating in accordance to 26.63 (a).

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan on how the UCP will evaluate group membership.

FL UCP Response: The Florida UCP Certifying Members are scheduled to have a teleconference on June 29, 2011. At this meeting the Certifying Members will discuss and approve a Procedure Memorandum addressing the evaluation of group membership.

FTA Response: To close this finding, within 30 days of receiving this letter, submit to FTA's Office of Civil Rights the revised Procedure Memorandum for uniformly evaluating group membership.

3. Business Size

Basic Requirement: (49 CFR Part 26.65) A UCP must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts. 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 \$22.41 million.

Discussion: During this UCP Compliance Review, no deficiencies were found with the requirement of business size. The FL UCP Plan indicates that they utilize the North American Industry Classification System (NAICS) codes to determine if an applicant firm meets the requirements of 13 CFR part 121 for the appropriate type(s) of work the firm seeks to perform in DOT-assisted contracts. The FL UCP certifying members interviewed were also aware of the adjustment to the DOT DBE business size standard from \$20.41 million to \$22.41 million.

4. Social and Economic Disadvantage

A) Presumption of Disadvantage

Basic Requirement: (49 CFR Part 26.67 (a)(1)) You must rebuttably presume 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 individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

Discussion: During this UCP Compliance Review, no deficiencies were found with the requirement for presumption of disadvantage. Part 26.61 (c) states you must presume members of groups identified in Part 26.67(a) are socially disadvantaged. This means they do not have the burden of proving to you (UCPs) that they are socially and

economically disadvantaged. Part 26.67 (a)(1) requires the applicant to submit a signed, notarized certification that the disadvantaged owner is socially and economically disadvantaged. This notarized Affidavit of Certification is part of the Uniform Certification Application found in Appendix F of the DBE regulations. The certification files reviewed by the review team included the statement of disadvantage.

B) Personal Net Worth

Basic Requirement: (49 CFR Part 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 that does not exceed \$1.32 million.

Discussion: During this UCP Compliance Review, deficiencies were found with the requirement for Personal Net Worth (PNW) statements. In the 2003 DBE Program Rulemaking, the USDOT removed the provision in appendix E section B(2), “Economic Disadvantaged” for individual determinations which required spouses to submit a PNW statement. The rulemaking preamble notes, “The primary result of this change is that the Department no longer requires spouses to complete PNW forms in addition to the applicant, even in cases of individual requests to be considered as disadvantaged (the Department never has permitted the routine collection of spousal information in other contexts). We are preserving, however, the ability for recipients to request relevant information from spouses on a case-by-case basis when the recipient has a specific reason to look into the spouse’s finances.”

Broward County representatives indicated during the interview with the review team that they require spouses to submit PNW statements, even if not claiming disadvantaged status, because Florida is a community property state. Florida DOT representatives also indicated that Florida was a community property state. The review team sought clarification from Broward County regarding their statement. The Broward County representative provided the following email response subsequent to the review, “*In our original answer to you pertaining to PNW, we stated that Florida is a community property state. To my surprise, it is not, but it is called an equitable distribution, which states that the court does start with the presumption that assets and liabilities should be split equally. I have attached a page from The Law Offices of Michael D. Stewart,.....that explains “equitable distribution”. Yes, we collect PNW statements from all applicants and their spouse, merely because in the onsite review questionnaire there is a question that asks if PNW statements were provided by owner and spouse and we try to be consistent, especially since they all answer “ yes”.*”

The review team collected on-site forms from members interviewed. The Florida UCP on-site visit form has a question, in the Economic Disadvantaged section, asking if personal net worth statements for each of the owners (claiming disadvantage) and their spouses were submitted with the firm’s DBE application. The form further asks if the statement was properly completed, signed and notarized by the owner and his or her spouse. Lastly, the form requests if personal net worth statements for owners and their spouses were not submitted, to obtain copies. This finding is UCP-wide and not

exclusive to Broward County since certifying members use the standard Florida UCP on-site visit form.

See UCP Procedures in *Section 9* in this report regarding on-site visits for more comments on forms.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights Officer a plan to:

- Remove requirement for spouses to submit PNW statements, except on case-by-case basis; and
- Review all denials for exceeding personal net worth requirements in past 12 months and take appropriate action in accordance with the January 2011 DBE Program Rulemaking.

FL UCP Response: The Florida UCP Certifying Members are scheduled to have a teleconference on June 29, 2011. At this meeting the Certifying Members will discuss and approve a Procedure Memorandum that will replace the on-site review form included in the March 5, 2004 USDOT approved Florida Unified Certification Program. The Memorandum will remove the requirement for spouses to submit PNW statements, except on a case-by-case basis. The UCP members will also agree on a time frame to review and take necessary action on those DBEs that exceeded the personal net worth and that now may be qualified.

FTA Response: To close this finding, within 30 days of receiving this letter, submit to FTA's Office of Civil Rights the revised Procedure Memorandum replacing the on-site form and revising procedures for collecting PNW forms. Additionally, within 30 days of receiving this letter provide the time frame for re-evaluating DBEs whose eligibilities were removed due to exceeding the PNW threshold.

C) Individual determinations of social and economic disadvantage

Basic Requirement: (49 CFR Part 26.67 (d)) Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for DBE certification. UCPs must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged.

Discussion: During the UCP Compliance Review, no deficiencies were found with the requirement of individual determinations. The Florida UCP certifying members interviewed understood requirements of Appendix E in the DBE regulations. Several certifying members had experience processing applications from individuals seeking social and economic disadvantaged determinations on an individual basis. Some members indicated that most applicants would withdraw from the certification process after the individual determination requirements were provided to the applicant.

5. Ownership

Basic Requirement: (49 CFR Part 26.69) In determining whether the socially and economically disadvantaged participants in a firm own the firm, UCPs must consider all the facts in the record, viewed as a whole. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

Discussion: During this UCP Compliance Review, no deficiencies were found with the requirement of ownership. UCPs must evaluate if applicant firms are at least 51 percent owned by socially and economically disadvantaged individuals. The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Based on the certification files reviewed, it appears that these FL UCP certifying members are appropriately allocating ownership percentages of socially and economically disadvantaged owners for certification.

6. Control

Basic Requirement: (49 CFR Part 26.71) In determining whether socially and economically disadvantaged owners control a firm, UCPs must consider all the facts in the record, viewed as a whole.

Discussion: During this UCP Compliance Review, advisory comments were made with determining control. The certification file for [REDACTED] (FLDOT file) was examined by the review team for compliance with certification standards. The firm sought certification in architectural engineering design services. The review team noted that non-minority owner, [REDACTED] attained 25% ownership interest of the corporation in January 2006. The disadvantaged owner, [REDACTED], owned 75% ownership interest in the applicant firm. [REDACTED] was listed in the application as Chairman and [REDACTED] as President. The certification file summary prepared by the certification staff indicated that [REDACTED] was President/CEO and [REDACTED] was Principal/Director. Documents in the certification file showed [REDACTED] endorsing agreements as President. Although [REDACTED], the socially and economically disadvantaged owner and majority owner, appeared to possess the power to direct functions and makes decisions, it was unclear whether he held the highest officer position in the company. The firm's certification was subsequently removed in October 2009 for failure to provide information for continued participation in the program.

In response to questions raised by the review team on this file, Florida DOT representatives advised that their management requests that they "work with" applicant firms as much as possible. It is recommended that Florida UCP certifying members require applicants to meet burden of proof requirements and not coach applicants through the certification process.

The DBE Rule states, you must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm needs to

demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work. The certifying members interviewed described conformance with this requirement. Miami-Dade County provided the review team a "Status Change Request" form for adding types of work. It is recommended that Florida UCP adopt a uniform process for adding types of work to a firm's certification.

7. Other rules affecting certification

Basic Requirement: (49 CFR Part 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. DBE firms and firms seeking DBE certification shall cooperate fully with UCP requests for information relevant to the certification process.

Discussion: During this UCP Compliance Review, no deficiencies were found with other rules affecting certification. The DBE regulations in Part 26.73 initially included provisions for evaluating eligibility of Indian tribes, Alaska Native Corporations and Native Hawaiian organizations in the 1999 issuance. The 2003 amended DBE regulations included a separate evaluation process for Alaska Native Corporations (ANCs) seeking DBE certification. None of the certifying members expressed experience with processing ANC certification determinations.

8. UCP Requirements

A) UCP Agreement

Basic Requirements: (49 CFR Part 26.81) All DOT recipients in a state must participate in a Unified Certification Program. Recipients must sign an agreement establishing the UCP for the state and submit the agreement to the Secretary for approval.

Discussion: During this UCP Compliance Review, no deficiencies were found regarding the FL UCP Agreement. The Florida UCP plan was prepared on January 16, 2004 and was approved by the Secretary of Transportation on March 25, 2004. Amendments to the program plan are voted on by the certification member committee. The review team was provided Procedure Memoranda from 2005, 2007 and 2009 committee meetings.

B) UCP Directory

Basic Requirements: (49 CFR Part 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 listing shall include for each firm, its address, phone number, and the types of work the firm has been certified to perform as a DBE. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

Discussion: During this DBE compliance review, no deficiencies were found with the requirements for the UCP directory. The Florida UCP directory is maintained by Florida DOT and the program plan describes the following information in the directory:

- a) Firm Name, Street Address, P.O. Box, Telephone and Facsimile Numbers, and e-mail address;
- b) Name of Majority Owner, Gender, and Minority Code;
- c) Type(s) of work performed by the DBE using North American Industry Classification system (NAICS) adopted by the SBA on October 1, 2000, and other work specialty codes as needed;
- d) Name of Certifying Member;
- e) Expiration Date of DBE Certification; and
- f) Any other appropriate information, as agreed upon by UCP Members.

The current directory no longer lists the expiration date for certification and includes DBE preferred work locations by county.

January 2011 DBE Program Rulemaking

Requires that directories include by August 26, 2011, the most specific NAICS that describes the type of work for which DBE are certified. Florida UCP is in compliance with the NAICS designation requirement.

9. UCP Procedures

A) On-site Visits

Basic Requirements: (49 CFR Part 26.83(c)) UCPs must perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their resumes and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area.

Discussion: During this DBE Compliance Review, an advisory comment was made with the requirements for on-site visits. Most of the certifying members interviewed indicated that they did not visit active job sites in addition to conducting the on-site visit at the offices of the firm. Several members also indicated that many applicants firms were start-ups with home based businesses and no active contracts. Florida DOT indicated that their process includes visual inspections of job sites and observing equipment. The Florida draft on-site visit form discussed visiting a jobsite if one is reasonably close at hand. UCP representatives were advised that part 26.83 requires performing an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area.

The FL UCP has a standardized on-site form (Florida UCP OSR checklist 011002 fdot/eo) that is to be used by certifying members. The review team verified that these forms were used by the certifying members interviewed. Florida DOT provided a draft 3/2/09 and 9/24/10 on-site review form, but were unsure if it had been circulated for use

to certifying members. This draft form did not require disadvantaged owners to also submit spousal personal net worth statements.

See Social and Economic Disadvantaged, *Section 4* in this report regarding Economic Disadvantaged information collected in on-site forms.

B) Uniform Application

Basic Requirements: (49 CFR Part 26.83 (i)) UCPs must use the application form provided in Appendix F of the regulations without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for using the Uniform Certification Application Form in Appendix F. The requirements to use the Uniform Certification Application Form were in the 2003 amendment to 49 CFR Part 26. Florida UCP utilizes the appropriate certification application form for determining eligibility in the DBE program; however, there were variations of supporting documentation requests from the UCP certifying members interviewed by the review team. The supporting document checklist adopted by the FL UCP added a requirement to provide two documents that will support citizenship, ethnicity and sex of the applicant. Applicants are given a choice of the documents that would best describe their membership of a presumed disadvantaged group.

The 2003 DBE File Rulemaking provided recipients, with the written consent of the cognizant operating administration, to (1) supplement the uniform application form with a one to two page attachment containing the additional information collection requirements, and (2) require applicants to submit additional supporting documents not already listed in or required by the uniform application. No written consent from the operating administration was provided to the review team that granted the FL UCP to modify the supporting documents list in the Uniform Certification Application Form.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan for Florida UCP modified application approval from the operating administration.

Closed Finding: Subsequent to the on-site review, Florida DOT forwarded an email approval of the Florida UCP application supporting documentation list by the Federal Highway Administration.

The January 2011 DBE Program Rulemaking

If an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. Florida DOT sends a withdrawal form with request for additional information to applicant firms. The inclusion of the withdrawal form with the information request is viewed as coaching applicant firms through the certification process.

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 information or action is required. Several Florida UCP members mentioned during the interview with the review team that they archive or close certification applications that do not submit requested information. Discussions should occur on how Florida UCP will comply with the new 30 day requirement and existing 90 day certification determination requirement on all files received by the UCP.

C) Annual Updates

Basic Requirements: (49CFR Part 26.83) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification. If you are a DBE, you must provide to the UCP, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirement for annual updates. The Florida UCP Procedure Memorandum 2005-004 states all notices of continuing eligibility are sent via certified mail, return receipt requested, no less than ninety (90) days prior to the DBE's anniversary date.

The January 2011 DBE Program Rulemaking:

Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. You may not require DBEs to reapply for certification or require "recertification" of currently certified firms. Florida UCP Procedure Memorandum 2005-003, states that certifying members shall not require that a firm certified as a Disadvantaged Business Enterprise [DBE] by the UCP continue its eligibility by submitting a UCP DBE Certification Application once every three (3) years. DBE firms will continue DBE eligibility annually through submission of the Affidavit for Continuing Eligibility on or before the Anniversary Date. Florida UCP will need to ensure that all members are following this process.

10. DOT / SBA MOU

Basic Requirements: (49 CFR Part 26.84 – 26.85) UCPs must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages.

Discussion: During this UCP Compliance Review, an advisory comment was made with processing SBA certified firms. The Florida UCP certifying members did not have a formal process for streamlining SBA certified applicants. Members would require a completed application and conduct on-site visits for applicant firms certified in SBA 8(a) program. The review team recommended that Florida UCP certifying members discuss

how to comply with 49 CFR Part 26.84 and 26.85 concerning the DOT/SBA Memorandum of Understanding.

The January 2011 DBE Program Rulemaking

49 CFR Part 26.84 has been removed. The above section and advisory comment is no longer applicable to this compliance review report.

49 CFR Part 26.85 was replaced with Interstate certification requirements. Florida UCP Section 5.01 Processing Out-of-State Applications, states the *UCP will not process a new application for DBE certification from a firm having its principal place of business in another state unless the firm has already been certified in that state. When a Certifying Member processes an out-of-state application, a full certification application file with all supporting documentation will be compiled by the Certifying Member, including a copy of the Site Visit Report obtained from the applicant's home state or from the state's UCP if it is in place, before the firm is included in the DBE Directory.* Florida UCP will need to revise current program policies to implement interstate certification procedures in the new DBE rulemaking by January 1, 2012.

11. Denials of Certification

A) Initial Request Denials

Basic Requirement: (49 CFR Part 26.86) When a UCP deny a request by a firm, which is not currently certified with them, 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 support each reason for the denial.

Discussion: During this UCP Compliance Review, no deficiencies were found with the requirement for denial of initial certification request. The Florida UCP denial letters in the files reviewed clearly outlined the reasons for denial based on the DBE regulations.

B) Removing Existing Certification

Basic Requirement: (49 CFR Part 26.87) If a UCP determines that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination.

Discussion: During this UCP Compliance Review, deficiencies were found with the requirements for removing existing certification. Florida UCP Procedure Memorandum 2005-05 explains their process for removal of certification for failure to submit the Affidavit for Continued Eligibility. *Certifying members shall take the following action if a DBE firm's "Affidavit for Continuing Eligibility" is not received on or before the Anniversary Date, ensuring that due process is provided to the DBE firm:*

1. *The RCM shall immediately prepare a "Notice of Intent to Remove Certification", in the format adopted by the UCP.*
2. *The RCM shall immediately mail the Notice to the DBE firm via Certified Mail-Return Receipt Requested.*

3. *The RCM shall allow the DBE firm at least fifteen (15) days from the date that the Notice is received by the DBE firm to either provide the “Affidavit for Continuing Eligibility” and supporting documentation or request a hearing in accordance with the instructions provided by the RCM.*
4. *If the DBE neither provides the “Affidavit for Continuing Eligibility” and supporting documentation nor requests a local hearing on or before the day following the DBE firm’s receipt of the Notice, the RCM shall immediately prepare a “Notice of Certification Removal”, in the format adopted by the UCP.*
5. *The “Notice of Certification Removal” will be dated the day following the deadline established pursuant to #4 above and will be delivered to the DBE firm via Certified Mail, Return Receipt Requested.*
6. *Unless the DBE firm has provided the “Affidavit for Continuing Eligibility” and all supporting documentation or requested a hearing, the RCM shall remove the firm’s DBE designation from the UCP’s DBE Directory.*

This UCP process is consistent with removal of certification requirements in Part 26.87 of the DBE regulations. However, the review team found that firms were removed without following the prescribed process of Florida UCP procedures and 49 CFR Part 26.87. These included removals of [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] by Florida DOT and [REDACTED] by Jacksonville Aviation Authority.

Florida DOT included references to Chapter 120, Florida Statutes in regards to requesting an administrative hearing in removal letters. The Florida DOT Manager of Equal Opportunity Office and Legal Counsel described the hearing process consisting of determining if a protest was based on the facts in the record or not based on facts in the record. Based on the type of protest, the DBE will either be provided an informal hearing with the Director of Administration or Administrative Judge. The DBE rule requires that the UCP informal hearing official maintain a verbatim record of the hearing. The Florida DOT representatives indicated there is no verbatim record kept of the informal hearing process with the Director of Administration. The Administrative Judge does maintain a court reporter but the hearing process can be extended, appealed and delayed by attorneys familiar with the state hearing procedures. Florida DOT representatives advised the review team that hearings of this sort can sometimes take up to a year for a determination. This process is not in the spirit of 49 CFR Part 26.87 regarding giving the DBE an opportunity for an informal hearing that must include a verbatim record of proceeding.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA’s Office of Civil Rights a plan and schedule for:

- Ensuring compliance with notices removing certification of firms in accordance with 49 CFR Part 26.87 and
- Providing a documented informal hearing process that is not in conflict with 49 CFR Part 26.87.

Finding Partially Closed: Subsequent to the on-site review, Florida DOT sent two draft letters identifying their process for removing firms. Florida DOT stated, “The first letter will tell the DBE that we intend to remove their status as a DBE and give them the

reasons and their appeal rights for a hearing. The second letter will tell them that they have been removed and will provide the reason as well as their appeal rights to the USDOT.” The information provided by Florida DOT addresses intent and notice of determination letters but does not address the two hearings provided to DBEs based on the type of request.

FL UCP Response: Pursuant to state law, the Florida DOT attaches a Notice of Administrative Hearings Rights (see attached) to its intent to remove letters which provide that:

- If there are disputed issues of material fact a formal hearing will be held, where the firm may present evidence and argument on all issues involved and conduct cross-examination.
- If there are no disputed issues of material fact an informal hearing will be held, where the firm may present evidence or a written statement for consideration by the Department.
- If the firm wishes to present evidence at an informal hearing, the Florida DOT will ensure a verbatim record of the hearing is kept.

FTA Response: This finding is now closed.

C) Appeals to the DOT

Basic Requirement: (49 CFR Part 26.89) When the Department receives an appeal and requests a copy of the recipient’s administrative record, the UCP must provide the administrative record, including a hearing transcript, within 20 days of the Department’s request.

Discussion: During this DBE Compliance Review, no deficiencies were found with the Appeals to the USDOT. Miami-Dade County, Hillsborough Aviation, and Florida DOT had internal appeal procedures for initial denials of certification. Applicants are not required to exhaust internal processes prior to appealing the USDOT. Denial letters examined by the review team included information for USDOT appeals. Most determination notices for removed firms contained USDOT appeal information. Those final removal determination letters missing USDOT appeal information are included in section 11(b) above.

12. Compliance and Enforcement

A) DBE Enforcement Actions

Basic Requirement: (49 CFR Part 26.107) If a firm does not meet the eligibility criteria of subpart D and attempts to participate in a DOT-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, the Department may initiate suspension or debarment proceeding against you under 49 CFR part 29.

Discussion: During this DBE Compliance Review, no deficiencies were found with DBE Enforcement Actions. Florida UCP certifying members indicated that there had been no suspension or debarment actions regarding certification of any DBE firms.

B) Confidentiality

Basic Requirement: (49 CFR Part 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 for DBE certification and supporting documentation.

Discussion: During this DBE Compliance Review, an advisory comment was made with the confidentiality issues in the FL UCP. The Department issued additional guidance concerning confidentiality in the Official Questions & Answers. Under the DOT DBE regulation, a recipient or UCP is prohibited from disclosing to any third party, without the submitter's written consent, a personal net worth statement or supporting documentation. UCPs are likewise prohibited from disclosing confidential business information, including applications for DBE certification and supporting information. These prohibitions apply even in the face of a request under a state freedom of information or open records law.

Florida DOT DBE program plan states, "We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Pursuant to ' 339.0805, Florida Statutes, all information submitted by applicant firms with their applications for certification and affidavits of continued eligibility, including their personal net worth statements, are confidential and exempt from the requirements of Florida's public records laws." The UCP also made references to the Florida Statutes in several documents examined by the review team. The review team recommends that the UCP reference the DBE federal program in documents in lieu of Florida state confidentiality requirements.

C) Cooperation

Basic Requirement: (49 CFR Part 26.109 (c)) All participants in the Department's DBE program are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information.

Discussion: During this DBE Compliance Review, no deficiencies were made with cooperation. The Department's guidance in the 2008 updated Questions & Answers was the emphasis of UCP members working together to make certification decisions. The guidance instructed UCP members to work through their differences. UCP agreements should always include a dispute-resolution mechanism. The Florida UCP plan established an Executive Committee to address issues pertaining to the administration and disputes within the UCP.

SECTION 7 – SUMMARY OF FINDINGS

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action(s)	Response Days/Date
1. Burden of Proof	26.61	ND			
2. Group Membership	26.63	D	Not providing written explanations for questioning group membership	Submit to FTA's Office of Civil Rights the revised Procedure Memorandum for uniformly evaluating group membership	30 days
3. Business Size	26.65	ND			
4. Social and Economic Disadvantage	26.67				
a) Presumption of Disadvantage		ND			
b) Personal Net Worth		D	Require spouses to provide PNW	Submit to FTA's Office of Civil Rights the revised Procedure Memorandum replacing the on-site form and revising procedures for collecting PNW forms. Additionally, within 30 days of receiving this letter provide the time frame for re-evaluating DBEs whose eligibilities were removed due to exceeding the PNW threshold.	30 days
c) Individual Determination		ND			
5. Ownership	26.69	ND			
6. Control	26.71	AC	Provide better documentation for discrepancies in application		
7. Other Certification Rules	26.73	ND			
8. UCP Requirements					
a) UCP Agreement	26.81	ND			
b) UCP Directory	26.31	ND			
9. UCP Procedures					
a) On-site Visits	26.83	AC	Not routinely visiting job sites when applicable		

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action(s)	Response Days/Date
b) Uniform Application		D	No OA consent to modify checklist	Submit plan to get approval of modified Florida UCP application	Finding closed
c) Annual Updates		ND			
10. DOT/SBA MOU	26.84 – 26.85	AC	No process is evident. It should be streamlined.		Section removed
11. Denials					
a) Initial Request	26.86	ND			
b) Remove Existing	26.87	D	No due process given to firms prior to removal and hearing process conflicts with regulations	Submit plan for compliance with notice for removal and informal hearings in accordance to regulations	Finding closed
c) Appeals	26.89	ND			
12. Compliance and Enforcement					
a) DBE Enforcement Actions	26.107	ND			
b) Confidentiality	26.109	AC	References in documents to state policy. Reference Federal DBE program in regards to confidentiality of records		
c) Cooperation	26.109	ND			

Findings at the time of the site visit: ND = No deficiencies found; D = Deficiency; NA = Not Applicable; NR = Not Reviewed

SECTION 8 - LIST OF ATTENDEES

*denotes participation by conference call

Name	Organization	Title	Phone	Email
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Jacque Gibbs	Jacksonville Transportation Authority	Chief Administrative Officer	904-630-3130	Jgibbs@jtafla.com
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	Civil Rights (via teleconference)	Technical Lead		
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