



F E D E R A L   T R A N S I T   A D M I N I S T R A T I O N

# Georgia Unified Certification Program (UCP) Final Report

February 2013

Federal Transit Administration

CONDUCTED BY  
Milligan & Company, LLC



U.S. Department of Transportation  
Federal Transit Administration

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## **Section 1 - General Information**

|                                    |  |
|------------------------------------|--|
| Hosting Grant Recipient:           | Georgia Department of Transportation<br>600 West Peachtree NW  |
| City/State:                        | Atlanta, GA  |
| Executive Official:                | Keith Golden, P.E.<br>Commissioner   |
| On Site Liaison:                   | Michael G. Cooper<br>Director of Equal Employment Opportunity Office<br>404-631-1972                                       |
| Report Prepared by:                | MILLIGAN AND CO., LLC<br>105 N. 22 <sup>nd</sup> Street, 2 <sup>nd</sup> Floor<br>Philadelphia, PA 19103<br>(215) 496-9100 |
| Site visit Dates:                  | March 13 – 15, 2012  |
| Compliance Review Team<br>Members: | Benjamin Sumpter, Lead Reviewer<br>Habibatu Atta   |

## **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., (18), October 1, 2011 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 (USDOT or 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 Georgia Unified Certification Program (GUCP) members, which are direct or indirect recipients of USDOT funding assistance, are subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of these funds pursuant to 49 CFR Parts 23 and 26. These regulations define the components that must be addressed and incorporated in GUCP'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 USDOT, to comply with their responsibilities under 49 CFR Parts 23 and 26. In keeping with its regulations and guidelines, FTA has determined that a compliance review of the Georgia Unified Certification Program (GUCP) is necessary.

The primary purpose of the compliance review is to determine the extent to which the Georgia Unified Certification Program (GUCP) 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 Georgia 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 23 and 26;
- 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 decisions 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 23 and 26.

The objectives of this compliance review are to:

- determine whether the GUCP is honoring the Unified Certification Program agreement submitted to the Secretary of Transportation;
- examine the required certification procedures and standards of the GUCP 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 GUCP 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 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 that the UCP will follow all certification procedures and standards of Part 26. The UCP is also required to cooperate fully with oversight, review, and monitoring activities of DOT and its operating administration.

### *Establishment of Georgia Unified Certification (GUCP) Program*

The Georgia Federal Transportation Aid recipients discussed the requirements for developing a unified certification process. There were two meetings held to assist in the facilitation of the process. The first meeting was hosted by FHWA/Southern Resource Center on March 21-22, 2001; all Southern States were invited to attend. The second meeting was held on October 24, 2001. Each agency discussed their perceptions, minimum requirements, limitations, and the process for eventual program approval. All participants were encouraged to bring ideas, input, and cooperation to the discussion.

During the development of the UCP process, there were many issues identified that had to be discussed in order to provide enough information to create the agreement, while meeting the legal and Federal requirements of individual agencies.

Subject to the approval by the Secretary, the UCP in the State of Georgia implemented the *single agency approach*. It was agreed that the single agency approach would work best for the State of Georgia. It was discussed, decided, and accepted that the Georgia Department of Transportation would become the lead agency for the Unified Certification Program, with assistance from the Metropolitan Atlanta Rapid Transit Authority (MARTA). All applicants applying for DBE Certification forward their application to the Georgia Unified Certification Program, 600 West Peachtree Street, N.W., 7<sup>th</sup> Floor, Atlanta, Georgia 30308.

The final decision on certifications for the State of Georgia is the responsibility of the Georgia Department of Transportation (GDOT). Once MARTA determines that a company is eligible for the DBE program, MARTA forwards their recommendation to GUCP for consideration. Upon review of all documents submitted by MARTA, GDOT will either approve or deny the firm's certification application.

If the firm is approved for certification, the firm is sent a letter of certification, and that firm is integrated into the Georgia Department of Transportation's DBE Directory. If the firm is denied certification, the firm is sent a denial letter with the reason or reasons for denial, and a copy of the appeal instructions.



### *Funding of the Unified Certification Program in Georgia*

During the development stages in 2002, it was anticipated that the initial start-up cost of the UCP would be estimated at one hundred thousand dollars (\$100,000). Recommendation for funding of the GUCP was to proceed in two manners:

- 1) Submit official request to USDOT for assistance in funding the UCP (letter sent to Robert Ashby 1/7/2002)
- 2) Charge Federal Recipients

Further analysis of the usage of federal recipient programming dollars for transportation and DBE utilization was highest by GDOT, MARTA, and Metro Atlanta Counties (75-80%). Therefore, the cost for the UCP would be carried by the Georgia Department of Transportation (as the lead agency), Metropolitan Atlanta Rapid Transit Authority (for personnel for site visits and certification in lieu of financial contribution), and \$10,000 contributions from Fulton County, City of Atlanta, Dekalb County, Cobb County, Clayton County, Gwinnett County, Georgia Regional Transportation Authority, and Georgia Department of Administrative Service/Governors Small Business Center. Current contributions have decreased from \$10,000 annually to \$2,000 in annual UCP supportive costs.

### *Unified Certification Program Participants*

Interagency agreements were garnered to support the UCP from the main usage recipients and approximately seventy-four other jurisdictions. The UCP participants are listed below:

ALBANY TRANSIT  
ALMA-BACON COUNTY AIRPORT  
AMERICUS AIRPORT  
ATHENS/BEN EPPS AIRPORT  
ATHENS-CLARKE COUNTY-  
PUBLIC TRANSIT SYSTEM  
ATLANTA PUB SCH OFFICE OF CONTRACT COMP  
ATLANTA REGIONAL COMMISSION  
AUGUSTA PUBLIC TRANSIT  
AUGUSTA REGIONAL AIRPORT-  
(BUSH FIELD AIRPORT)  
BARWICK-LAFAYETTE AIRPORT  
BERRIEN COUNTY AIRPORT  
BLAIRSVILLE AIRPORT  
BRANTLEY COUNTY AIRPORT  
BROOKS COUNTY AIRPORT  
BURKE COUNTY AIRPORT  
BUTLER MUNICIPAL AIRPORT  
C.P. SAVAGE AIRPORT  
CAIRO-GRADY COUNTY AIRPORT  
CALLAWAY AIRPORT  
CALLAWAY GARDENS-HARRIS COUNTY AIRPORT  
CAMILLA AIRPORT  
CARTERSVILLE AIRPORT  
CHATHAM AREA TRANSIT AUTHORITY  
CHATHAM-SAVANNAH MPC  
CHEROKEE COUNTY AIRPORT  
CITY OF ATLANTA  
CLAXTON-EVANS COUNTY AIRPORT  
CLAYTON COUNTY AIRPORT – TARA FIELD

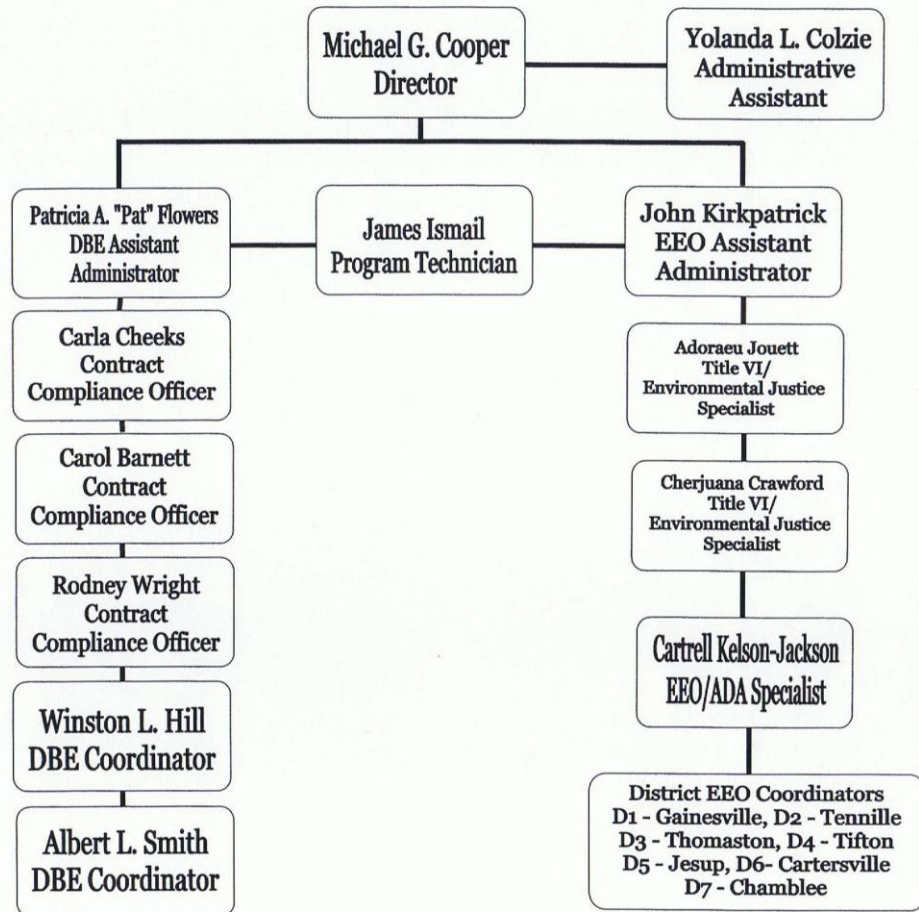
CLAYTON COUNTY GOVERNMENT  
COBB COUNTY GOVERNMENT  
COCHRAN MUNICIPAL AIRPORT  
COLUMBUS CONSOLIDATED GOVERNMENT  
COLUMBUS METROPOLITAN AIRPORT  
COOK COUNTY AIRPORT  
CORDELE FLYING SERVICE  
COVINGTON AIRPORT  
DALTON AIRPORT  
DANIEL FIELD  
DAVIS FIELD AIRPORT  
DAWSON MUNICIPAL AIRPORT  
DECATUR COUNTY INDUSTRIAL AIRPARK  
DEKALB COUNTY GOVERNMENT  
DEKALB PEACHTREE AIRPORT  
DONALDSONVILLE MUNICIPAL AIRPORT  
DOUGLAS COUNTY RIDESHARE  
DOUGLAS MUNICIPAL AIRPORT  
EARLY COUNTY AIRPORT  
ELBERT COUNTY - PATZ FIELD  
ENVIRONMENTAL PROTECTION AGENCY  
REGION VI  
FEDERAL AVIATION ADMINISTRATION  
FITZGERALD MUNICIPAL AIRPORT  
FRANKLIN COUNTY AIRPORT  
FULTON COUNTY GOVERNMENT  
GAINESVILLE MUNICIPAL AIRPORT  
GEORGIA DEPARTMENT OF ADMINISTRATIVE-  
SERVICES/ GOVERNORS SMALL BUSINESS CENTER  
GEORGIA REGIONAL TRANSPORTATION AUTHORITY

GILMER COUNTY AIRPORT  
GLYNCO JETPORT  
GREENE COUNTY REGIONAL AIRPORT  
GRIFFIN-SPALDING COUNTY AIRPORT  
GWINNETT COUNTY AIRPORT - BRISCOE FIELD  
GWINNETT COUNTY GOVERNMENT  
HABERSHAM COUNTY AIRPORT  
HAWKINSVILLE-PULASKI COUNTY AIRPORT  
HAZELHURST AIRPORT  
HEART OF GEORGIA REGIONAL AIRPORT  
HOMERVILLE AIRPORT  
JACKSON COUNTY AIRPORT  
JEKYLL ISLAND AIRPORT  
JENKINS COUNTY AIRPORT  
LAURENS COUNTY AIRPORT  
LIBERTY COUNTY AIRPORT  
LOUISVILLE AIRPORT  
LUMPKIN COUNTY - WIMPY'S AIRPORT  
MADISON MUNICIPAL AIRPORT  
MARION COUNTY AIRPPORT  
MATHIS AIRPORT  
MERIWETHER COUNTY AIRPORT  
METRA TRANSIT SYSTEM  
METROPOLITAN ATLANTA RAPID-  
TRANSIT AUTHORITY  
METROPOLITAN PLANNING COMMISSION  
METTER AIRPORT  
MIDDLE GEORGIA REGIONAL AIRPORT  
MOULTRIE AIRPORT  
NEWNAN-COWETA COUNTY AIRPORT

PEACH STATE AIRPORT  
PEACHTREE CITY AIRPORT  
PERRY-HOUSTON COUNTY AIRPORT  
PICKENS COUNTY AIRPORT  
PLANTATION AIRPORT  
POLK COUNTY AIRPORT  
RANDOLPH COUNTY AIRPORT  
REIDSVILLE AIRPORT  
RICHARD B. RUSSELL AIRPORT  
SAVANNAH AIRPORT COMMISSION  
SAVANNAH INTERNATIONAL AIRPORT  
SOUTH FULTON AIRPORT  
SOUTHWEST GEORGIA REGIONAL AIRPORT  
ST. MARY'S AIRPORT  
STATESBORO MUNICIPAL AIRPORT  
TELFAIR-WHEELER COUNTY AIRPORT  
THOMASTON-UPSON COUNTY AIRPORT  
THOMASVILLE MINICIPAL AIRPORT  
TIFT COUNTY AIRPORT  
TOCCOA-STEPHENS COUNTY AIRPORT  
TRUETLEN COUNTY AIRPORT6  
TURNER COUNTY AIRPORT  
VALDOSTA REGIONAL AIRPORT  
VIDALIA MUNICIPAL AIRPORT  
WARE COUNTY AIRPORT  
WASHINGTON COUNTY AIRPORT  
WAYNE COUNTY AIRPORT  
WEST GEORGIA AIRPORT  
WRENS MEMORIAL AIRPORT

GDOT

# EQUAL OPPORTUNITY OFFICE ORGANIZATIONAL CHART



3/13/2012

| <b>MARTA's DBE STAFF</b>                          |                                     |                     |  |
|---|-------------------------------------|---------------------|--|
| <b>2424 PIEDMONT ROAD, ATLANTA, GA 30324-3330</b> |                                     |                     |  |
| <b>MAIN LINE: 404-848-5240 FAX: 404-848-4302</b>  |                                     |                     |  |
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| <b>Darlene Williams</b>                           | <b>DBE Coordinator</b>              | <b>404-848-4656</b> | <a href="mailto:dwillie@marta.com">dwillie@marta.com</a>               |
| <b>Sharon Shuttlesworth</b>                       | <b>DBE Analyst</b>                  | <b>404-848-5259</b> | <a href="mailto:sshuttlesworth@marta.com">sshuttlesworth@marta.com</a> |
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**GUCP NEW APPLICATION RECEIVED ON MONTHLY BASIS:**

**CALENDAR YEAR 2011 & 2012**

**GEORGIA DEPARTMENT OF TRANSPORTATION**

| <b><u>MONTH</u></b> | <b><u>TOTAL NUMBER OF NEW FILES RECEIVED:</u></b> |
|---------------------|---|
| JAN 2011            | 16  |
| FEB 2011            | 64  |
| MARCH 2011          | 37  |
| APRIL 2011          | 57  |
| MAY 2011            | 29  |
| JUNE 2011           | 57  |
| JULY 2011           | 41  |
| AUG 2011            | 42  |
| SEPT 2011           | 48  |
| OCT 2011            | 45  |
| NOV 2011            | 46  |
| DEC 2011            | 29  |

**TOTAL FOR FISCAL YEAR 2011: 511 NEW APPLICATIONS**

**FISCAL YEAR 2012:**

|              |    |
|--------------|----|
| JAN 2012     | 41 |
| FEB 2012     | 35 |
| MAR 13, 2012 | 10 |

## **Section 5 – Scope and Methodology**

### **Scope**

Implementation of the following eleven required DBE UCP program components specified by the US DOT 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] or the size standards of the ACDBE program [49 CFR 23.33].
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 a firm currently certified in its home State ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. In any situation in which State B chooses not to accept State A's certification of a firm, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of Part 26.85 to State B [49 CFR 26.85].

11. 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].
12. 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 the Georgia UCP by FTA's Office of Civil Rights. The agenda letter notified the Georgia UCP of the planned site visit, requested preliminary documents, and informed the Georgia 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.

An entrance conference was conducted at the beginning of the Compliance Review with the GUCP Certifying Members and the review team. Subsequent to the entrance conference, a review was conducted of the GUCP agreement and other documents submitted to the review team by the GUCP representative. Interviews were also conducted with GUCP Certifying Member representatives regarding DBE program certification standards and certification procedures. A sample of certification files was then selected and reviewed for the DBE required elements.

The Federal Aviation Administration conducted a review of the certification process and files from the GUCP prior to this UCP compliance review. Some of the findings in this report may be included in the FAA compliance report. In the event of any duplicate findings concerning the ACDBE program, FAA corrective actions will take precedence.

At the end of the review, an exit conference was held with the GUCP Certifying Member representatives 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 representatives.

Following the site visit, a draft report was compiled.

This final report incorporates the responses to the draft report and identifies the remaining corrective actions.

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

Carlos A. Gonzalez  
Civil Rights Officer, FTA Region IV  
230 Peachtree Street, NW, Suite 800  
Atlanta, GA 30303  
Phone: (404) 865-5471  
[Carlos.Gonzalez3@dot.gov](mailto:Carlos.Gonzalez3@dot.gov)

## Georgia Department of Transportation

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

|                              |                                 | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax      | Streamline Application   | Denial Letter     | Appeal Letter      |
|------------------------------|---------------------------------|----------------|------------|--------------|----------------|------------------|--------------------------|-------------------|--------------------|
| Initial Certification Denial | AJ Anderson, LLC                | Y              | Y          | Y            | N/A            | Y/Y              | N/A                      | Y                 | N/A                |
|                              |                                 | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                              |                                 | N              | 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 Denial | Murphy Clearing & Grading, Inc. | Y              | Y          | Y            | N/A            | N/Y              | N/A                      | Y                 | N/A                |
|                              |                                 | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                              |                                 | N              | Y          | N/A          | Y              | Y                | N/A                      | N/A               | N/A                |

### ACDBEs

|                       |                                      | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax         | Streamline Application   | Denial Letter     | Appeal Letter      |
|-----------------------|--------------------------------------|----------------|------------|--------------|----------------|---------------------|--------------------------|-------------------|--------------------|
| Initial Certification | Five Brothers and Sisters (Munchy's) | Y              | Y          | N            | N/A            | Y/Y                 | N                        | N/A               | N/A                |
|                       |                                      | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review    | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                       |                                      | Y              | Y          | N            | Y              | Y                   | N/A                      | N/A               | N/A                |
|                       |                                      |                |            |              |                | Concession Business | ACDBE Size Standards     | PNW Exclus.       | ACDBE Dir.         |
|                       |                                      |                |            |              |                | Y                   | Y                        | N/A               | Y                  |

|                       |                      | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax         | Streamline Application   | Denial Letter     | Appeal Letter      |
|-----------------------|----------------------|----------------|------------|--------------|----------------|---------------------|--------------------------|-------------------|--------------------|
| Initial Certification | Take Off Concessions | Y              | Y          | Y            | N/A            | Y/Y                 | N/A                      | N/A               | N/A                |
|                       |                      | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review    | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                       |                      | Y              | Y          | N/A          | N              | N                   | N/A                      | N/A               | N/A                |
|                       |                      |                |            |              |                | Concession Business | ACDBE Size Standards     | PNW Exclus.       | ACDBE Dir.         |
|                       |                      |                |            |              |                | Y                   | Y                        | N/A               | Y                  |



|                       |           | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax         | Streamline Application   | Denial Letter     | Appeal Letter      |
|-----------------------|-----------|----------------|------------|--------------|----------------|---------------------|--------------------------|-------------------|--------------------|
| Initial Certification | The Pecan | Y              | Y          | Y            | N/A            | Y/Y                 | N/A                      | N/A               | N/A                |
|                       |           | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review    | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                       |           | Y              | Y          | N/A          | Y              | Y                   | N/A                      | N/A               | N/A                |
|                       |           |                |            |              |                | Concession Business | ACDBE Size Standards     | PNW Exclus.       | ACDBE Dir.         |
|                       |           |                |            |              |                | Y                   | Y                        | N/A               | Y                  |

|                       |                       | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax         | Streamline Application   | Denial Letter     | Appeal Letter      |
|-----------------------|-----------------------|----------------|------------|--------------|----------------|---------------------|--------------------------|-------------------|--------------------|
| Initial Certification | Three One Corporation | Y              | Y          | Y            | N/A            | Y/Y                 | N/A                      | N/A               | N/A                |
|                       |                       | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review    | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                       |                       | Y              | Y          | N/A          | Y              | Y                   | N/A                      | N/A               | N/A                |
|                       |                       |                |            |              |                | Concession Business | ACDBE Size Standards     | PNW Exclus.       | ACDBE Dir.         |
|                       |                       |                |            |              |                | Y                   | Y                        | Y                 | Y                  |

### Metropolitan Atlanta Rapid Transit Authority (MARTA):

|                               |                              | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax      | Streamline Application   | Denial Letter     | Appeal Letter      |
|-------------------------------|------------------------------|----------------|------------|--------------|----------------|------------------|--------------------------|-------------------|--------------------|
| Initial Certification <1 year | The Chester Group, Inc.      | Y              | Y          | Y            | N/A            | Y/Y              | N/A                      | N/A               | N/A                |
|                               |                              | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                               |                              | N              | 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 | Norton Concrete Construction | Y              | Y          | Y            | N/A            | Y/Y              | N/A                      | N/A               | N/A                |
|                               |                              | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                               |                              | 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 Denial  | Velazquez Group, LLC         | Y              | Y          | Y            | N/A            | Y/Y              | N/A                      | Y                 | N/A                |
|                               |                              | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                               |                              | N              | 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** | Detroit Finest Mobil Detailing Services, LLC | Y              | Y          | Y            | Y              |                  | N/A                      | N/A               | N/A                |
|           |  | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
|           |  |                |            | N/A          |                |                  | N                        | N                 | N/A                |
|           |  | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax      | Streamline Application   | Denial Letter     | Appeal Letter      |
| Removal** | Dew Electric                                 | Y              | Y          | Y            | Y              | Y/Y              | N/A                      | N/A               | N/A                |
|           |  | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
|           |  |                | Y          | N/A          |                | Y                | N                        | N                 | N/A                |
|           |  | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax      | Streamline Application   | Denial Letter     | Appeal Letter      |
| Removal** | Integrated Strategic Resources, LLC          | Y              | Y          |              |                |                  | N/A                      | N/A               | N/A                |
|           |  | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
|           |  |                |            | N/A          |                | Y                | N                        | N                 | N/A                |
|           |  | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax      | Streamline Application   | Denial Letter     | Appeal Letter      |
| Removal** | Skyline Trucking, Inc.                       | Y              | Y          | Y            |                |                  | N/A                      | N/A               | N/A                |
|           |  | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
|           |  |                |            | N/A          |                | Y                | N                        | N                 | N/A                |

|                              |                         | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax      | Streamline Application   | Denial Letter     | Appeal Letter      |
|------------------------------|-------------------------|----------------|------------|--------------|----------------|------------------|--------------------------|-------------------|--------------------|
| Initial Certification Denial | International Marketing | Y              | Y          | Y            | N/A            | Y/Y              | N/A                      | Y                 | N/A                |
|                              |                         | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                              |                         | Y              | N          | N/A          | Y              | Y                | N/A                      | N/A               | N/A                |

\*\* Denotes file was archived off site and only minimal information was available

## ACDBE

|                              |                              | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax         | Streamline Application   | Denial Letter     | Appeal Letter      |
|------------------------------|------------------------------|----------------|------------|--------------|----------------|---------------------|--------------------------|-------------------|--------------------|
| Initial Certification Denial | ATL Concessionaires Co., LLC | Y              | Y          | Y            | N/A            | Y/Y                 | N/A                      | Y                 | N/A                |
|                              |                              | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review    | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                              |                              | N              | Y          | N/A          | Y              | Y                   | N/A                      | N/A               | N/A                |
|                              |                              |                |            |              |                | Concession Business | ACDBE Size Standards     | PNW Excl.         | ACDBE Dir.         |
|                              |                              |                |            |              |                | Y                   | N/A                      | N/A               | Y                  |
|                              |                              | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax         | Streamline Application   | Denial Letter     | Appeal Letter      |
| Initial Certification        | 4701 Restaurant Corp         | Y              | Y          | Y            | N/A            | N/Y                 | N/A                      | N/A               | N/A                |
|                              |                              | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review    | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                              |                              | Y              | Y          | N/A          | Y              | Y                   | N/A                      | N/A               | N/A                |
|                              |                              |                |            |              |                | Concession Business | ACDBE Size Standards     | PNW Excl.         | ACDBE Dir.         |
|                              |                              |                |            |              |                | Y                   | Y                        | N/A               | Y                  |
|                              |                              | USDOT Form     | Site Visit | PNW          | No Change      | Per/Bus Tax         | Streamline Application   | Denial Letter     | Appeal Letter      |
| Initial Certification Denial | Concession Management        | Y              | Y          | N            | N/A            | Y/Y                 | N                        | Y                 | N/A                |
|                              |                              | Cert. Decision | SBA Size   | Inter. Cert. | Control Review | Ownership Review    | Removal Process Followed | Notice of Hearing | Notice of Decision |
|                              |                              | Y              | Y          | N            | Y              | Y                   | N/A                      | N/A               | N/A                |
|                              |                              |                |            |              |                | Concession Business | ACDBE Size Standards     | PNW Excl.         | ACDBE Dir.         |
|                              |                              |                |            |              |                | Y                   | Y                        | 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. 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 GUCP DBE Certification Procedures (the Procedures) updated February 21, 2012, indicate that the Georgia Department of Transportation (GDOT) signed an assurance that it will comply with 49 CFR Part 26. Additionally the Procedures state GUCP will comply with 49 CFR Part 26, Subpart D, Section 26.61. The DBE Certification 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.

The GUCP describes the membership determination process in the Certification Standards section in their Procedures. The Procedures state as in Part 26.63 (a) (1) that, *"If a UCP recipient has reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, GUCP will require the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group."* The procedures excluded Part 26.63 (a)(2) from the DBE regulations that, *"The UCP must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section."* Paragraph (b) from the DBE regulations was included in the Procedures. However; GUCP must follow the entire process for making group membership determinations.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the FTA's Office of Civil Rights a plan to include the appropriate procedures for group membership determinations.

**GDOT Response:** GUCP will follow the entire process for making group membership determinations. More specifically, GUCP will provide the individual a written explanation of the reasons for questioning an applicant's group membership and request additional information in writing. The GUCP Program Plan has been updated to include 26.63(a)(2). The updated GUCP Program Plan will be finalized and submitted for approval to the Washington, D.C. Office for concurrence of revisions.

- Estimated Completion Date: Completed
- Status of Corrective Action: Completed

**FTA Response:** FTA partially agrees with GUCP's response to the noted deficiency. The findings issued in the draft report were based on the GUCP program plan updated on February 12, 2012. To close this deficiency, submit to FTA within 60 days from issuance of this final report an updated GUCP program plan that reflects the changes discussed in GDOT's response.

### **3. Business Size**

**Basic Requirement:** (49 CFR Part 26.65 and Part 23.33) 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 the firm's previous three fiscal years, in excess of \$22.41 million or \$52.47 million for ACDBEs.

**Discussion:** During this UCP Compliance Review, no deficiencies were found with the requirement for business size.

The GUCP Procedures outline the appropriate Small Business Administration (SBA) business size standards in 13 CFR Part 121 and DBE size standards of \$22.41 million for evaluating eligibility of this part.

No issues were discovered from the staff interviews or certification files reviewed that were contrary to the SBA and DOT size standards. The GDOT and MARTA websites also listed the appropriate size standards for certification determinations.

### **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. 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 or \$750,000 for ACDBEs (49 CFR Part 23.35).

Discussion: During this UCP Compliance Review, deficiencies were found with the requirement for Personal Net Worth (PNW) statements.

There were inconsistencies noted in the memorandums regarding certification determinations from MARTA to GDOT. The June/August 2011 memo MARTA sent to GDOT recommended certification of 4701 Restaurant Corporation as an ACDBE and stated that all owners' PNW was under the \$1.32 million cap. Another memo MARTA sent to GDOT in September 2011 recommended denial of Concession Management as an ACDBE because the owner exceeded the \$1.32 million cap. However, the actual denial letter referenced that the owner exceeded the \$750,000 PNW cap. As of the date of the draft report, ACDBE PNW requirements were at \$750,000 rather than the \$1.32 million as in Part 26 of the DBE program.

The review team found issues with the personal net worth statements with respect to the following companies:

- Sal's Services, Inc., (reviewed by GDOT);
- Six Star Trucking, Inc., (reviewed by GDOT); and
- Detroit Finest Mobile Detailing Services, LLC (reviewed by MARTA).

### *Sal's Services, Inc.*

Carolyn Phillips, owner of Sal's Services, Inc. submitted a PNW statement in August 2009. The PNW was completely blank except for the Total Assets and the Total Net Worth lines. There appeared to be no follow up documentation in the file that showed that GDOT asked Ms. Phillips to complete the PNW correctly in order to remain in the program.

In March 2010, Ms. Phillips submitted another PNW statement. The assets and liabilities on the cover page were filled in, however the additional details for stocks and bonds and personal property were not included. In the section describing the "Notes Payable to Banks and others," Ms. Phillips filled in her own name and address. The other requested information, including the original and current balance, the payment amount, and

frequency, was not completed. Again, no documentation was found in the file requesting additional information, clarification, or correction of the PNW statement.

*Six Star Trucking, Inc.*

Six Star Trucking, Inc. is a trucking company owned equally by six disadvantaged individuals. The certification file included the PNW statements for all six of the owners for each of the years that they were requested. A few of the PNW statements had math errors. It was also found that some of the owners did not describe any of the entries from the summary page of the statement. There was no documentation found in the file that GDOT requested that the errors be corrected or that clarification be provided for the omissions.

The reviewers noted that one of the owners, Eyasu Fasil, submitted almost identical PNW statements in October of 2007 and May of 2010. The value of the owner's savings and retirement accounts, stocks and bonds, present market value of property, and the present value of his vehicle, did not change in nearly three years. The review team advised GDOT that they should keep a worksheet in the files, similar to the one used by MARTA, to double check applicants' PNW statements and to make corrections as a result of correspondence with the applicant firm or further financial research. This would also help GDOT staff to recognize duplicate information such as the example provided above.

*Detroit Finest Mobile Detailing Services, LLC*

On the summary page of the January of 2009 PNW statement submitted by Debra Yarger, president and co-owner, there is no value listed for "Other Personal Property," however, in the detailed section, she wrote, "no personal property has lien holder. Own boats, car, motorcycles owe no one." The reviewers found an attached receipt tally completed by MARTA, which was used to check the applicant's submission, however they did not see an updated number for the value of Ms. Yarger's personal property to reflect her statement, nor was there any documentation in the file which asked for clarification regarding the statement.

There were similar errors and omissions found with respect to the PNW statements that were submitted in February of 2010 and January of 2011. In the February 2010 statement, Ms. Yarger included a substantial value under "Other Assets," however it does not appear that further clarification was requested regarding the figure. In the January 2011 statement, Ms. Yarger listed a truck, tractors, pressure washers, generators, and other property as being valued at less than \$7,000. As the applicant firm is a mobile auto detailing service company, the items listed may be associated with the applicant company, and would therefore not be included in the Total Net Worth determination. However there was no documentation in the file that questioned whether or not these items were associated with the business or if the number was valid.

It is also noted that during the FAA review of certification files, instances were found where GDOT and MARTA had certified ACDBE firms with owners' PNW were in excess of \$750,000.

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

- clarify PNW cap requirements for ACDBEs certified from Part 23;
- incorporate procedures for analysis of the PNW form for errors and omissions; and
- document calculation analysis and exclusions of the PNW form.

**GDOT Response:** On June 26, 2012, GDOT was notified of the ACDBE - Part 23 Final Rule Announcement which states, *"The final rule for the Airport Concessions Disadvantaged Business Enterprise (ACDBE) program (49 CFR Part 23) was just published in the Federal Register on June 20, 2012, and is now available to you for review and implementation (see enclosed). The main purpose of this rule is to conform key changes that were made to the Disadvantaged Business Enterprise (DBE) 49 CFR Part 26 Program in January 2011 to the ACDBE program. ACDBE personal net worth (PNW) cap is adjusted for inflation from \$750,000 to \$1.32 million, for ACDBE certification eligibility."* GUCP will revise procedures to use excel spreadsheet to calculate Personal Net Worth for ACDBE firms in accordance with new guidance issued in the Part 23 Final Rule Change. GDOT will continue to review the Personal Net Worth (PNW) based on documents submitted in conjunction with personal tax returns, schedules, and supporting documents.

- Estimated Completion Date: Completed
- Status of Corrective Action: Completed

**FTA Response:** FTA agrees with GUCP's response to the noted deficiency. To close this deficiency, submit to FTA within 60 days from issuance of this final report a copy of the excel spreadsheet and any accompanying procedures used to calculate the Personal Net Worth of ACDBE firms; and an updated GUCP program plan that reflects these changes discussed in GDOT's response.

### **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 GUCP Procedures state that individual determinations of social and economic disadvantage are made on a case-by-case basis. Applicants under this provision are required to provide sufficient information regarding their social and economic disadvantage. No certification files were from individuals not presumed to be socially and economically disadvantaged.



## 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, deficiencies were found with the requirement of ownership.

### *Six Star Trucking, Inc.*

During the review of the certification file for Six Star Trucking, Inc., the reviewers found that the president of the firm also owns another trucking company. On the submitted UCP application, the president answered that he did not own or work for any other firm, however he submitted a resume which lists that he is the owner / operator of T and M Trucking since March of 2006. He also submitted a Schedule C for T and M Trucking with his 2006 and 2009 taxes.

In the 49 CFR Part 26.69(h), it states that “*You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is— (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm; (ii) Involved in the same or a similar line of business; or (iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.*” In this case, the disadvantaged president of the firm owns a similar business as the applicant firm. There was no evidence in the files that GDOT examined the affiliation between these firms and whether any of the property belonging to the other firm is also being used by the applicant firm.

### *Detroit Finest Mobile Detailing Service, LLC*

With respect to Detroit Finest Mobile Detailing Service, LLC, the reviewers determined that MARTA did not perform an adequate review of ownership. Ms. Yarger owns 51 percent of the firm and her husband, a disadvantaged male, owns the remaining 49%. In the Ownership section of the UCP application, Ms. Yarger did complete the Ownership section with the details of her husband’s involvement with the company. In reviewing the file, it was discovered that Mr. Yarger, Vice President, owned a similar company, Couzin’s Car Wash and Pressure Washing Service, for two years prior to becoming manager and co-owner of the applicant firm. Ms. Yarger worked as a manager in her husband’s firm since its inception.

The reviewers found correspondence in the file, dated October 3, 2007, which asked Ms. Yarger to provide additional information including resumes for her and her husband, as well as proof of her husband’s contribution to acquire ownership. Mr. Yarger provided a checking / savings withdrawal slip from his company’s, (Couzin’s), bank account in the amount of \$490. The date on the withdraw slip was October 17, 2007, the deadline that MARTA gave for receiving a response and three months after the start of the company.

During the on-site interview, dated November 16, 2007, Ms. Yarger said that her company was a successor to her husband's company, which had been dissolved during the same month that her company opened in July 2007, however undated documents on Couzin's letterhead stated that the Yargers decided to continue operating their company under the Couzin's imprint until after the applicant firm was certified as a DBE. They would submit formal documents to the State to dissolve the company after such time.

Ms. Yarger also provided clarification on her company's relation to Couzin's in an undated letter stating that, "Detroit's Finest Mobile Detailing and Pressure Washing Services has received sweat equity for Couzin's Car and Pressure equipment in exchange for 49% stocks valued at \$1 per stocks in the name of Anthony Yarger. Mr. Yarger will serve as Vice President of Detroit's Finest Mobile Detailing and pressure washing company."

Based on the documentation found in the file, the reviewers found it difficult to determine whether or not Ms. Yarger truly owned and operated her company. Although it is clear that MARTA asked for additional documentation and clarification for some of the issues that came up during their review of the files, a clear conclusion could not be determined.

#### *Take-Off Concession*

The review team cited questions concerning the certification determination of Take-Off Concession as an ACDBE. In a May 31, 2011 letter addressed to GDOT, Take-Off Concessions requested that their enclosed certification application be expedited for an upcoming concession space opportunity at Hartsfield-Atlanta International Airport in June 2011. The firm was started by Perry Seabrooks (black male) and Edward Matthews (white male) on May 2, 2011. Mr. Seabrooks contributed \$510 for 510 shares and Mr. Matthews contributed \$490 for 490 shares. Section 26.69 (c) of the DBE regulations state, 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. The firm's certification application included a letter of conditional commitment for \$750,000 of mezzanine debt from Peach Equity Partners. There was no documentation from the GDOT certification specialist questioning the ratio of initial capital contribution in relation to the conditional debt commitment for the firm or how this debt instrument was secured. The review team questioned the initial contribution as going beyond pro forma ownership since the firm has secured funding with such little start up investment.

**Corrective Action and Schedule:** Within 30 days of receipt of the draft report, submit to FTA Office of Civil Rights a plan to thoroughly review ownership requirements for certification.

**GDOT Response:** GUCP will revise procedures to utilize a newly developed "Ownership Checklist" to ensure compliance ownership requirements. GUCP will discuss this new checklist to UCP Partner and DBE Certification personnel. GUCP will disseminate ownership checklist to UCP Partner and DBE Certification personnel. A copy of completed ownership checklist will be placed in applicant's file.

- Estimated Completion Date: September 30, 2012

- Status of Corrective Action: In Progress

**FTA Response:** FTA agrees with GUCP's response to the noted deficiency. To close this deficiency, submit to FTA within 60 days from issuance of this final report an updated GUCP program plan that reflects the changes discussed in GDOT's response and provide a copy of the ownership checklist and procedures to be included in an applicant's certification file. Also provide documentation that the UCP Partners and DBE certification personnel have been apprised and have implemented these changes (e.g. a sample completed checklist).

## 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, deficiencies were found with determining control.

### *Six Star Trucking, Inc.*

The finding that the president of Six Star Trucking, Inc. owns another trucking company creates an issue with control. According to 49 CFR Part 26.71 (3)(j), "*In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that 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.*" There was no documentation in the file that GDOT questioned neither the president's ownership nor the time that he is able to devote to doing work for the applicant firm.

### *Detroit Finest Mobile Detailing Service, LLC*

With respect to Detroit Finest Mobile Detailing Service, LLC, the reviewers determined that MARTA did not perform an adequate review of control. In an undated document on the applicant firm's letterhead, Ms. Yarger stated that, "I, Debra Yarger" President of Detroit's Finest Mobile Detailing and Pressure Washing Services, would like to inform you in the event that I am unable to assume full responsibility of my business, my husband Anthony Yarger, President will take over. She later inserted in pen "Vice" in front of "President." Ms. Yarger sent a follow up memo to a MARTA specialist dated January 16, 2008 to retract the prior communication. She also stated that "Mr. Anthony Yarger is currently employed with Detroit's Finest Mobile Detailing and Pressure Washing Service only. He does not hold any other position with any other employer or organization."

As mentioned under the *Ownership* section of this report, based on the documentation found in the file, the reviewers found it difficult to determine whether or not Ms. Yarger truly operated and controlled her company. Although it is clear that MARTA asked for additional documentation and clarification for some of the issues that came up during their review of the files, a clear conclusion could not be determined.

### *Take-Off Concessions*

Control issues were also identified in the certification record for ACDBE certified firm, Take-Off Concessions. The socially disadvantaged owner, Mr. Seabrooks, is currently a General Manager of a Domino's Pizza at the Hartsfield-Atlanta Airport. The non-disadvantaged owner, Mr. Matthews, is President/Founder of Air Pizza based in Atlanta, GA that operate multiple brands throughout the United States to include Domino's Pizza and Johnny Rockets in Atlanta and Destin, Florida. Air Pizza currently operates two Domino's Pizza restaurants in Hartsfield Atlanta Airport. There was no documentation as to the previous or current relationship between Mr. Seabrooks and Mr. Matthews. The review team questioned if Mr. Seabrooks was an employee at one of the Domino's Pizza restaurants owned by Mr. Matthews in the Hartsfield-Atlanta Airport. There also was no documentation on the relationship of Take-Off Concessions with Air Pizza. The DBE regulations state, *"In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm."*

**Corrective Action and Schedule:** Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan to ensure that control determinations are appropriately addressed.

**GDOT Response:** GUCP will revise procedures to utilize a newly developed "Control Checklist" to ensure compliance ownership requirements. GUCP will discuss this new checklist with UCP Partner and DBE Certification personnel. GUCP will disseminate control checklist to UCP Partner and DBE Certification personnel. A copy of the completed Control Checklist will be placed in applicant's file. (See copy of the Control Checklist attached.)

- Estimated Completion Date: September 30, 2012
- Status of Corrective Action: In Progress

**FTA Response:** FTA agrees with GUCP's response to the noted deficiency. GUCP referenced an attachment in their response, however, a copy of the control checklist was not found. To close this deficiency, submit to FTA within 60 days from issuance of this final report a copy of the control checklist and procedures to be included in an applicant's certification file. Also provide documentation that the UCP Partners and DBE certification personnel have been apprised and have implemented these changes.

## **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. You may consider, in making certification decisions, 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 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.

The GUCP Procedures do not discuss certification of ANC or Native Hawaiian organizations as described in Part 26.73 of the DBE regulations. The Procedures do include definitions for ANCs and Native Hawaiian organizations to include the ethnic descriptions. No certification files of firms owned by ANCs or Native Hawaiian organizations were reviewed.

## **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, deficiencies were found regarding the GUCP Agreement.

The review team noted several UCP administration issues that will need to be addressed. The GDOT website has a Questions & Answers section pertaining to the DBE program. Several responses will need to be updated for compliance with DBE regulations. One of the responses indicates that the Personal Net Worth limit is \$750,000 in one section and \$1.30 million further down the page, rather than the correct size standard for Part 26 of \$1.32 million.

Another response says that an application would take 120 days to process after receipt of all the required information. GDOT advised the reviewers that this would be changed to 90-day processing time immediately. Subsequent to the review, this section was updated to reflect current DBE regulations.

The section concerning “how long certification lasts” indicates three years. GDOT will need to update this section to reflect current requirements that certification is valid until removed through Part 26.87 proceedings.

The DBE website section has a resource link to the DBE regulation 49 CFR Part 26. The link goes to the 1999 DBE federal register which contains outdated regulations. The review team advised GDOT to update the link to current (eCFR) version of the regulations.

The GUCP provided copies of the signed MOUs from the DOT recipients (listed in the background section of this report). While a majority of the MOUs were signed and secured by GDOT, several MOUs were still outstanding. The review team advised GDOT and the UCP to collect the remaining MOUs from the recipients.

**Corrective Action and Schedule:** Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan to ensure that website content reflects procedures in accordance to DBE regulation and all MOUs are signed and collected from all DOT recipients.

**GDOT Response:** GUCP will ensure the web content is in accordance with DBE Regulations and obtain MOU signed agreements.

- Estimated Completion Date: September 30, 2012
- Status of Corrective Action: In Progress

**FTA Response:** FTA agrees with GUCP's response to the noted deficiency. To close this deficiency, submit to FTA within 60 days from issuance of this final report, confirmation that the DBE web content has been updated and provide documentation that signed MOUs have been collected from all DOT recipients in the state.

## **B) UCP Directory**

**Basic Requirements:** (49 CFR Parts 23.31(b), 26.31 and 26.81(g)) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both. 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, deficiencies were found with the requirements for the UCP directory.

The GDOT website includes a bid letting directory and a biznet directory. The letting directory is a date-specific portable document file (pdf) according to contracts to be let. The biznet directory is an online searchable database. Both directories include DBEs and ACDBEs certified by the UCP. However, the letting directory is updated as bids are advertised and the Biznet is updated on a weekly basis. The review team advised the UCP representatives that the directory should be updated as changes occur. The letting directory does not include the specific NAICS code for each firm. The Biznet directory includes the NAICS code but does not specify if the firm is an ACDBE. There is a field in the system for ACDBE designation but it says "no" for ACDBE. The letting directory does categorize firms as DBE or ACDBE. The review team advised GDOT/GUCP to ensure at least one of the directories is compliant with DBE requirements.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan to update the directory in accordance to regulations and repair functions in the directory.

- Update the directory as soon as changes are made
- Repair functions in the directory

**FTA Response:** GUCP did not provide a corrective action plan for this deficiency. To close this deficiency, submit to FTA within 60 days from issuance of this final report, documentation that the GUCP directory includes all the requirements of 26.31 and 26.81 of the DBE regulations.

## **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, no deficiencies were found with the requirements for on-site visits. However, an advisory comment was provided regarding jobsite visits.

The GUCP procedures state that an on-site visit to the offices of the firm must be completed. GUCP will interview the principal officers of the firm and review their resumes and/or work histories. The procedures further state that GUCP may 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. The review team advised UCP representatives that jobsite visits must be performed when applicable and recommended that procedures to be revised to reflect this requirement.

### **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, no deficiencies were found with the requirements for using the Uniform Certification Application Form in Appendix F. An advisory comment was made regarding the ACDBE requirements.

The GUCP uses the required form for DBE and ACDBE certification as required by the regulations. The application and instructions are included on the GDOT and MARTA websites. The GUCP Procedures discuss the application review procedures; however,

there was no discussion about the ACDBE process. The review team advised GDOT to update their UCP Procedures to include ACDBE standards and procedures.

### **C) 30-day Notification**

**Basic Requirements:** (49CFR Part 26.83(l)) As a recipient of 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.

**Discussion:** During the review, deficiencies were found with the requirement to notify the applicant within 30 days of receipt whether application is complete.

The GUCP did not have mechanisms in place to notify applicants within the 30-day requirement on a consistent basis. The review team advised the certification members to include this new requirement in their GUCP Procedures.

**Corrective Action and Schedule:** Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan to ensure that the 30 day notification is performed.

**GDOT Response:** (a) GUCP has initiated a 30 day letter and will revise program to show the attached 30-day letter to applicants in accordance with Regulations. (b) GDOT is currently implementing a new software system known as Civil Rights Labor Management System (CRLMS) to use as a mechanism to track DBE file status. During the interim, GUCP will initiate a log sheet to manually record pertinent information related to DBE file status. GUCP will disseminate this information to UCP Partners and DBE Staff for immediate tracking purposes.

- Estimated Completion Date: September 30, 2012
- Status of Corrective Action: In Progress

**FTA Response:** FTA agrees with GUCP's response to the noted deficiency. GUCP referenced an attachment in their response, however, no 30-day letter attachment was found. To close this deficiency, submit to FTA within 60 days from issuance of this final report the following:

- an updated GUCP program plan reflecting the 30-day provision discussed in GDOT's response
- a copy of the 30-day letter initiated by GUCP;
- a copy of the current process used to track the 30-day notification requirement and implementation schedule for the CRLMS; and
- evidence this process was disseminated to UCP partners and DBE staff.

### **D) 90-day Determinations**

**Basic Requirements:** (49CFR Part 26.83 (k)) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You 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 DBE Compliance Review, deficiencies were found with the requirement for annual updates.

Several certification files from both GDOT and MARTA exceeded the 90-day determination requirements. Below is a table of all of the findings.

| <b>Firm</b>                       | <b>Timeframe</b> | <b>Certifying Agency</b> |
|-----------------------------------|------------------|--------------------------|
| AJ Anderson, LLC                  | 9 months         | GDOT                     |
| Murphy Clearing & Grading, Inc.   | 7 months         | GDOT                     |
| The Chester Group, Inc.           | 7 months         | MARTA                    |
| ATL Concessionaires Company, LLC. | 6 months         | MARTA                    |
| Velazquez Group, LLC.             | 7 months         | MARTA                    |

The review team also noted that the GDOT website says that a certification determination will be made in 120 days. GDOT was advised that they must change their website guidelines to be in compliance with the regulations. The review team also advised that GDOT should have a better tracking system in place to monitor and adhere to the 30- and 90-day requirements.

**Corrective Action and Schedule:** Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan to ensure that completed certification packages have determination within 90 days.

**GDOT Response:** GUCP is considering offering opportunities to MOU members to become certifying (Case File work) members. GDOT is currently implementing a new software system known as Civil Rights Labor Management System (CRLMS) to use as a mechanism to track DBE file status. Implementation of CRLMS will improve overall recordkeeping; tracking, status, and DBE file locations for all files older than 90 days. GUCP shall revise the Program Plan notice to advise applicant that no action will be taken on his or her file until the requested information has been received. In the interim, a contact log will be utilized to tract all electronic notices and communications with the applicant. All Electronic notices and communications will be maintained in the DBE file.

- Estimated Completion Date: December 31, 2012
- Status of Corrective Action: In Progress

**FTA Response:** FTA agrees with GUCP's response to the noted deficiency. To close this deficiency, submit to FTA within 60 days from issuance of this final report an updated Program Plan that reflects the process adopted by the GUCP to track and complete certification determinations within 90 days of receiving all the information required. Additionally, provide a copy of the contact log and documentation on the status of CRLMS software (specifically a schedule noting the anticipated effective date GUCP

will begin utilizing the software) and inclusion of additional MOU members assisting in certification case file work.

### **E) 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, deficiencies were found with the requirement for annual updates.

During the review, it was found that the certification file for Sal's Services, Inc. did not include the Annual No Change Affidavit for 2007 and 2010. Six Star Trucking, Inc. was missing their 2008 Annual No Change Affidavit.

The review team also noted that GDOT should review their certification approval letter. The certification letter indicated that the firm must renew their certification three years from the certification anniversary date and an expiration date is also included.

**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 ensure that annual updates are collected from DBEs and maintained in the certification files.

**GDOT Response:** GUCP shall revise the Program Plan to remove language and references to renewal/re-certifications of DBE files. GUCP revised certification letter to applicants and removed expiration dates (see letter attached). GUCP will closely monitor files to ensure annual updates are filed in applicant's files. GUCP reviews DBE certification letters to ensure the appropriate designations (DBE or ACDBE) is shown on certification letter.

- Estimated Completion Date: Completed
- Status of Corrective Action: Completed

**DOT Response:** FTA agrees with GUCP's response to the noted deficiency. GDOT referenced an attachment in their response, however, no revised certification letter was provided. To close this deficiency, submit to FTA within 60 days from issuance of this final report a revised certification letter and an updated GUCP program plan that reflects the changes discussed in GDOT's response.

## **10. Interstate Certification**

**Basic Requirements:** (49 CFR Part 26.85). This section applies with respect to any firm that is currently certified in its home state. When a firm currently certified in its home State ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. In any situation in which State B chooses not to accept State A's certification

of a firm, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of Part 26.85 to State B.

Discussion: During this UCP Compliance Review, deficiencies were found concerning the interstate certification process.

The regulations require that UCPs implement this section by January 1, 2012. The GUCP Procedures did not address this section. The UCP representatives indicated during the review that their interstate certification process is not yet operational.

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

**GDOT Response:** GUCP shall revise Program Plan to institute the interstate certification process and add Language for the Interstate Certification to GUCP Program. GDOT's DBE Certification Coordinators and GUCP Partners have been invited to attend a 1-day Forum on July 11, 2012 at Georgia Department of Transportation. After the forum, GUCP will meet with partners to fully implement a strategic plan for compliance of the Interstate Certification Program, update the GUCP procedures related to Interstate Certification and disseminate to GUCP Partners and Certification staff pertinent information related to Interstate certification.

- Estimated Completion Date: December 31, 2012
- Status of Corrective Action: In Progress

**FTA Response:** GDOT submitted an updated DBE program plan entitled *Final Revision 5-16-12* on FTA's TEAM system that included an interstate certification section. However, the GUCP program plan was not provided to address this requirement. Additionally, the interstate certification process in GDOT's DBE program plan requires a revision in Section 7.05 (4) (c) regarding placing an erroneously certified firm on the GUCP directory.

FTA agrees with GUCP's response to the noted deficiency. To close this deficiency, submit to FTA within 60 days from issuance of this final report the GUCP updated program plan reflecting the interstate certification process reflected in GDOT's DBE program with applicable corrections.

## **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 GUCP Procedures outline the process for denials of initial request for certification. The firm is provided a written explanation of the reasons for the denial that specifically references the regulation and evidence in the certification record. The GUCP has a twelve (12) month waiting period that must lapse before the applicant is eligible to re-apply. Applicants can appeal the GUCP's decision to the US Department of Transportation.

## **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.

The GUCP Procedures included a section entitled *Administrative Removal of Eligibility*.

The section stated, *"In circumstances where a certified firm, or a new applicant firm, has failed to submit required documentation or exceeded Personal Financial Statement thresholds, there will be no administrative re-consideration. Those circumstances include:*

- *Any certified firm that does not submit the annual update required in 49 CFR Part 26 will have certification removed for failure to comply after 60 days from the date the update was due. Failure to submit the update is not a basis for an appeal.*
- *Any firm not previously certified and that was denied certification due to exceeding the Personal Financial Statement cap by the Disadvantaged Owner does not have a basis for an appeal.*
- *A firm is not eligible in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts as defined by SBA regulation 13 CFR Part 121.402 over the firm's previous three fiscal years, in excess of \$22.4 million.*
- *Regardless of race, gender, or size of the business, any individual whose Personal Financial Statement exceeds \$1.32 Million is not considered economically disadvantaged and is not eligible for the DBE program."*

The administrative removal process described above is not congruent with language in Part 26.87 concerning removal of eligibility. Additionally, not allowing a firm that had their certification removed to appeal the decision is not in accordance with the DBE regulations.

Four removal files were requested during the compliance review. The results were inconclusive because of incomplete and misplaced files. Only mock files were available for review with intent to remove letters included in the files. All of the firms were still listed in directory, except for Detroit Finest. GDOT found the certification file for Detroit Finest. A proposal to remove letter was sent to Detroit Finest on January 20, 2011 without providing an opportunity for an informal hearing. A notice of decertification was sent on January 31, 2012 in which a hearing was offered until

February 14, 2012. The letter also included USDOT appeal information. The reviewers advised the UCP that the opportunity for an informal hearing must be awarded prior to decertification.

**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 follow the removal process outlined in 26.87.

**GDOT Response:** GUCP shall revise removal letter to ensure compliance with §26.87. Review GUCP Program Plan the section entitled "*Administrative Removal of Eligibility*" and revise language in this section to ensure compliance with 26.87 concerning removal of eligibility. GUCP shall ensure that firms are afforded the opportunity for an informal hearing prior to decertification. GDOT's Legal Department is revising this section of the GUCP Program Plan and will submit template letters to follow.

- Estimated Completion Date: September 30, 2012
- Status of Corrective Action: In Progress

**FTA Response:** FTA agrees with GUCP's response to the noted deficiency. GUCP should note that the only exception for not following the 26.87 removal process involves a situation in which there is no dispute that the firm's owners have exceeded the personal net worth limit. To close this deficiency, submit to FTA within 60 days from issuance of this final report, the revised removal letter and an updated Program Plan that reflects the GUCP removal process that is in accordance with section 26.87 of the DBE regulations.

### **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 UCP Compliance Review, no deficiencies were made with the Appeals to the USDOT. However, an advisory comment was made concerning appeal information.

Appeals should be sent to the following address: Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE, Washington, DC 20590. The GUCP Procedures updated on February 21, 2012 included the old appeals address as: 400 7<sup>th</sup> Street SW, Room 5414, Washington, DC 20590.

## **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.

The review team found no issues with enforcement actions. The GUCP utilizes the USDOT Uniform Certification Application which includes the penalties for fraudulent or deceitful statements.

## **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, deficiencies were found with the confidentiality issues in the Georgia UCP.

The GUCP certification application includes a confidentiality statement. The applicant must sign the statement, understanding that the information contained in the application for certification will remain confidential and shall only be released to Federal and State agencies, including, but not limited to, the United States Department of Transportation and GDOT in order to determine eligibility. It is further stated that the document may be subject to disclosure pursuant to the Georgia Open Records Act.

A list of all freedom of information requests was requested and provided to the review team. There were five requests for certification file information in 2009, one in 2010, and one in 2011. The list included the date of request, requester, information requested, and the outcome of request. The outcome specified the response date but did not include what was release to the requesting party.

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 use the confidentiality language of the DBE regulations and provide detailed information concerning documents released for Freedom of Information requests.

**GDOT Response:** GDOT's Legal Department is currently reviewing this section of the GUCP Program Plan and will incorporate the language used in the DBE regulations concerning confidentiality. During the FTA Compliance Review, a list of all freedom of information requests was requested and provided to the review team. There were five requests for certification file information in 2009, one in 2010, and one in 2011. The list included the date of request, requester, information requested, and the out of request. The outcome specified the response date but did not include what was released to the requesting party. GUCP will provide detailed information concerning documents released for Freedom of Information Requests and report information to the review team in reference to the files identified above.

- Estimated Completion Date: September 30, 2012
- Status of Corrective Action: In Progress

**FTA Response:** FTA agrees with GUCP's response to the noted deficiency. To close this deficiency, submit the following to FTA within 60 days of the issuance of this final report :

- detailed information concerning documents released for Freedom of Information Requests in the past three years and program procedures regarding responding to requests for information in the certification files;
- copy of any confidentiality statement in the GUCP certification application; and
- an updated GUCP program plan consistent with DBE confidentiality rules.

### **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. (49 CFR Part 26.73 (c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide requested information is grounds for a denial or removal of certification.

**Discussion:** During this DBE Compliance Review, deficiencies were made with cooperation.

The GUCP Procedures state that in circumstances where a certified firm, or new applicant firm, has failed to submit required documentation, there will be no administrative reconsideration. This section of the DBE regulations states that failure or refusal to provide requested information relevant to the certification process is grounds for a denial or removal of certification. The denial process outlined in Part 26.86 and removal process of Part 26.87 must still be followed and the firm must be given an opportunity to appeal the decision.

**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 follow the denial process outlined in 26.86 and removal process outlined in 26.87.

**GDOT Response:** The GUCP Program plan states that in circumstances where a certified firm or new applicant firm, fails to submit the required documentation, there will be no administrative reconsideration. Subsequently, the DBE regulations state that failure or refusal to provide requested information relevant to the certification process is grounds for a denial or removal of certification. GUCP shall adhere to the denial process outlined in Part 26.86 and removal process of Part 26.87 and provide the firm an opportunity to appeal the decision. GDOT's Legal staff is reviewing the current GUCP Program Plan to ensure compliance with PART §26.109.

- Estimated Completion Date: September 30, 2012
- Status of Corrective Action: In Progress

**FTA Response:** FTA agrees with GUCP's response to the noted deficiency. To close this deficiency, submit to FTA within 60 days from issuance of this final report an

updated program plan that reflects failure to cooperate language consistent with section 26.109 of the DBE regulations.



## Section 7 – Summary of Findings

| Requirement of<br>49 CFR Part 26    | Ref.           | Site visit<br>Finding | Description of<br>Deficiencies  | Corrective Action:   | Response<br>Days/Date |
|-------------------------------------|----------------|-----------------------|---|--|-----------------------|
| 1. Burden of Proof                  | 26.61          | ND                    |   |  |                       |
| 2. Group Membership                 | 26.63          | D                     | Language in plan doesn't discuss written explanation when membership is questioned.   | Provide updated GUCP program plan that reflects changes discussed in GDOT's response.  | April 22, 2013        |
| 3. Business Size                    | 23.33<br>26.65 | ND                    |   |  |                       |
| 4. Social and Economic Disadvantage |                |                       |   |  |                       |
| a) Presumption of Disadvantage      | 26.67          | ND                    |   |  |                       |
| b) Personal Net Worth               | 23.35<br>26.67 | D                     | <ul style="list-style-type: none"> <li>PNW forms incomplete / limited analysis of PNWs</li> <li>Incomplete PNW form</li> <li>Inconsistent ACDBE PNW cap language in docs</li> </ul> | Provide copy of spreadsheet and any procedures used to calculate the PNW of ACDBE firms. Provide updated GUCP program plan reflecting changes. | April 22, 2013        |
| c) Individual determination         | 26.67          | ND                    |   |  |                       |
| 5. Ownership                        | 26.69          | D                     | Questions concerning firms meeting ownership requirements   | Provide copy of ownership checklist and procedures. Provide updated GUCP program plan reflecting changes.                                      | April 22, 2013        |
| 6. Control                          | 26.71          | D                     | Limited analysis and requests for clarification for apparent control issues in some files   | Provide copy of control checklist and procedures. Provide updated GUCP program plan reflecting changes.  | April 22, 2013        |
| 7. Other Certification Rules        | 26.73          | ND                    |   |  |                       |
| 8. UCP Requirements                 |                |                       |   |  |                       |
| a) UCP agreement                    | 26.81          | D                     | <ul style="list-style-type: none"> <li>Website correction needed</li> <li>Unsigned MOUs</li> </ul>  | Provide documentation that DBE web content is updated and all signed MOUs are collected.   | April 22, 2013        |

| Requirement of<br>49 CFR Part 26 | Ref.           | Site visit<br>Finding | Description of<br>Deficiencies   | Corrective Action:  | Response<br>Days/Date |
|----------------------------------|----------------|-----------------------|--|---|-----------------------|
| b) UCP directory                 | 23.31<br>26.31 | D                     | <ul style="list-style-type: none"> <li>Update directory as soon as changes are made</li> <li>Features not working in database</li> </ul>   | GDOT did not provide a corrective action plan for this deficiency. Provide confirmation of UCP directory compliance with DBE regulations  | April 22, 2013        |
| 9. UCP Procedures                |                |                       |  |   |                       |
| a) On-site visits                | 26.83          | AC                    | Change “may” perform to “must” in UCP Plan regarding jobsite visits  |   |                       |
| b) Uniform Application           | 26.83          | AC                    | <ul style="list-style-type: none"> <li>Include ACDBE procedures in plan</li> </ul>   |   |                       |
| c) 30 Day Notification           | 26.83          | D                     | <ul style="list-style-type: none"> <li>30-day-inconsistent/limited documentation to meet requirement</li> <li>Need improved status tracking for 30 requirements</li> </ul>                                     | Provide 30-day notice letter, updated GUCP program plan reflecting 30-day provision, current manual tracking process and implementation schedule for CRLMS software, and evidence process was disseminated to UCP partners and DBE staff  | April 22, 2013        |
| d) 90 Day Processing             | 26.83          | D                     | <ul style="list-style-type: none"> <li>Several files took longer than 90 days to process</li> </ul>  | Provide GUCP program plan that reflects process adopted by UCP to track and complete certification determinations within 90 days. Provided copy of contact log and documentation on the status of CRLMS software and inclusions of additional MOU members assisting with certification case file work | April 22, 2013        |
| e) Annual Updates                | 26.83          | D                     | <ul style="list-style-type: none"> <li>Annual updates missing in some files</li> <li>Expiration dates on certification letters</li> <li>Three One Corp. cert letter didn't state ACDBE designation.</li> </ul> | Provided updated GUCP program plan removing references to renewal/re-certifications in all materials. Provide copy of revised certification letter.   | April 22, 2013        |
| 10. Interstate Certification     | 26.85          | D                     | <ul style="list-style-type: none"> <li>Need Out of State language to be consistent with</li> </ul>   | Provide updated GUCP program plan to reflect the GUCP interstate certification process as   | April 22, 2013        |

| Requirement of<br>49 CFR Part 26 | Ref.   | Site visit<br>Finding | Description of<br>Deficiencies   | Corrective Action:  | Response<br>Days/Date |
|----------------------------------|--------|-----------------------|--|---|-----------------------|
|                                  |        |                       | Interstate language. <ul style="list-style-type: none"> <li>No program implemented by 1-1-12.</li> </ul> | reflected in GDOT's DBE program plan with applicable corrections.   |                       |
| 11. Denials                      |        |                       |  |   |                       |
| a) Initial Request               | 26.86  | ND                    |  |   |                       |
| b) Remove Existing               | 26.87  | D                     | Removal letter and procedures do not follow 26.87  | Provide copy of revised removal letter and GUCP program plan that reflect GUCP removal process in accordance with 26.87   | April 22, 2013        |
| c) Appeals                       | 26.89  | AC                    | Incorrect appeal contact information   |   |                       |
| 12. Compliance and Enforcement   |        |                       |  |   |                       |
| a) DBE Enforcement Actions       | 26.107 | ND                    |  |   |                       |
| b) Confidentiality               | 26.109 | D                     | Follow state procedures without mention of language used in DBE regs.                                    | Provide detailed information concerning FOI request in past three years and procedures for releasing information. Submit a copy of any confidentiality statement in the GUCP certification application and an updated GUCP program plan consistent with DBE confidentiality rules | April 22, 2013        |
| c) Cooperation                   | 26.109 | D                     | No appeal rights given for firms that fail to cooperate  | Provide GUCP program plan that reflects failure to cooperate language consistent with DBE regulations.  | April 22, 2013        |

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

| <b>Name</b>                   | <b>Organization</b>                                    | <b>Title</b>                     | <b>Phone</b>     | <b>Email</b>              |
|-------------------------------|--|----------------------------------|------------------|---------------------------|
| <b>Georgia UCP Members:</b>   |  |                                  |                  |                           |
| Michael Cooper                | Georgia DOT-<br>Equal Employment<br>Opportunity Office | Director                         | 360-507-<br>0869 | mcooper@dot.ga.gov        |
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