



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

Washington Unified Certification Program Final Report

February 2013

Federal Transit Administration

PREPARED BY
Milligan & Company, LLC



U.S. Department of Transportation
Federal Transit Administration

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Section 1 – General Information

Hosting Grant Recipient: Washington State Department of Transportation
355 Capitol Street, NE

City/State: Olympia, WA

Executive Official: Paula J. Hammond
CEO and Secretary of Transportation

On Site Liaison: Brenda Nnambi
Director, Office of Equal Opportunity
(360) 507-0869

Report Prepared by: MILLIGAN AND CO., LLC
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Site Visit Dates: September 20–22, 2011

Compliance Review Team
Members: Benjamin Sumpter, Lead Reviewer
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 sub-recipients with Section 12 of the Master Agreement, Federal Transit Administration M.A. (17), October 1, 2010 and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

The federal Transit Administration (FTA) of the U.S. Department of Transportation (DOT) provides financial assistance to transit agencies, metropolitan planning organizations (MPOs) and State Departments of Transportation. 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 Washington State Unified Certification Program (WA UCP) members, which are direct or indirect recipients of FTA funding assistance, are subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of these funds pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in WA UCP’s agreement and were the basis for the selection of compliance elements that were reviewed.

Section 3 – Purpose and Objectives

Purpose

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

The primary purpose of the compliance review is to determine the extent to which WA UCP has met its DBE certification program goals and objectives, as represented to DOT in its UCP agreement. This compliance review is intended to be a fact-finding process to (1) examine the WA UCP 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 UCPs, as specified in 49 CFR Part 26, are to:

- follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Parts 26 and 23
- cooperate fully with all oversight, review, and monitoring activities of USDOT and its operating administrations
- implement USDOT directives and guidance on DBE certification matters
- make all certification and decertification decisions on behalf of all UCP members with respect to participation in the USDOT DBE Program; certification decisions by the UCP shall be binding on all UCP members; certification decision must be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE
- provide a single DBE certification that will be honored by all UCP members
- maintain a unified DBE directory containing at least the following information for each firm listed: address, phone number, and the types of work the firm has been certified to perform; the UCP shall make the directory available to the public electronically, on the Internet, and 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
- ensure that the UCP agreement shall commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of 49 CFR Part 26 and 23

The objectives of this compliance review are to:

- determine whether the WA UCP is honoring the UCP agreement submitted to the Secretary of Transportation
- examine the required certification procedures and standards of the WA UCP against the DBE program compliance standards set forth in the regulations and to document the compliance status of each component
- gather information and data regarding the operation of the WA UCP from certifying members through interviews and certification file review

Section 4 – Background Information

Prior to the 1999 DBE Final Rule 49 CFR Part 26, applicants seeking participation on DOT-assisted projects as a DBE could be required to be certified by multiple DOT recipients in a state. Subpart E of 49 CFR Part 26.81 now requires DOT recipients to participate in a 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 Washington 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, on the same basis as recipients. The UCP is also required to cooperate fully with oversight, review, and monitoring activities of DOT and its operating administration.

Washington State Unified Certification Program

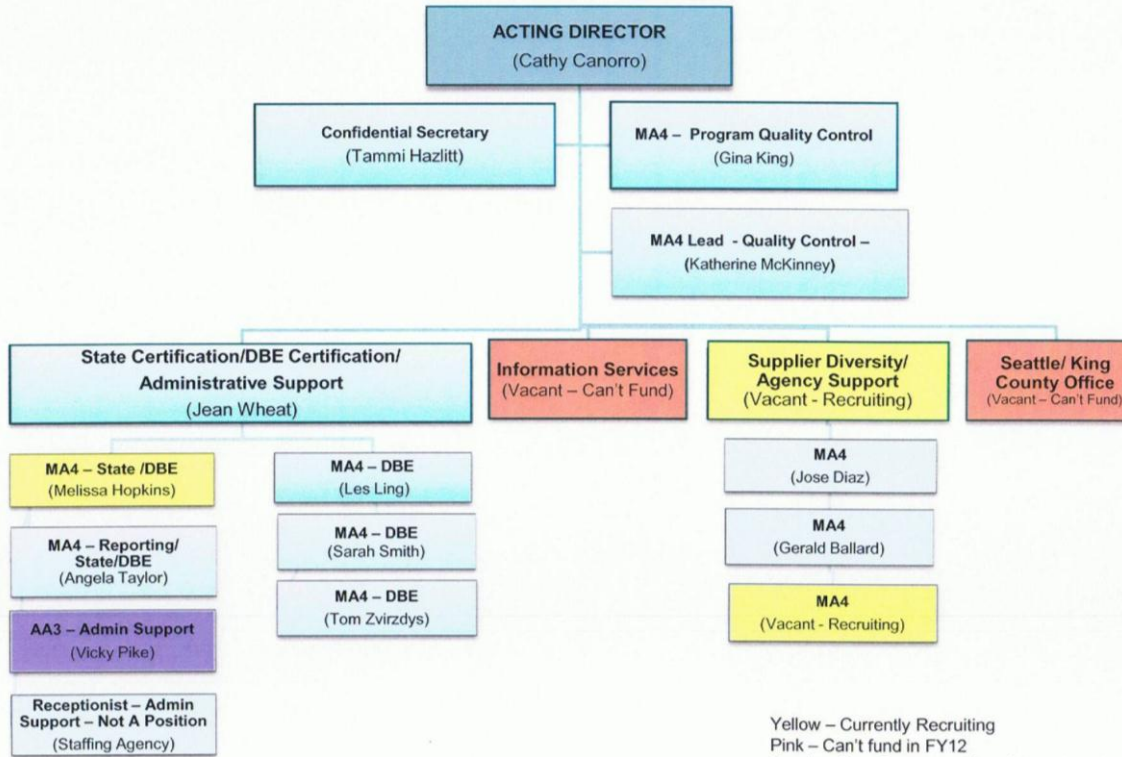
The Washington Office of Minority and Women Business Enterprises (OMWBE) opened its doors in 1983 to offer certification for the state's small businesses that meet the criteria for minority and women-owned business enterprises (M/WBE). The purpose of the certification was to help these historically under-used businesses to get contracts with state and local agencies and schools. Before OMWBE was created, local jurisdictions and the Washington State Department of Transportation (WSDOT) each certified the firms they used for meeting their minority, women, and disadvantaged business enterprises participation goals.

In January 1984, WSDOT transferred its federal DBE certification activities to OMWBE. Small businesses certified as DBEs count toward participation goals set on federal highway, transit, and aviation projects administered by state, local, and other jurisdictions in Washington.

In 1987, the Washington State Legislature adopted statewide one-stop certification, establishing OMWBE as the only agency responsible for processing applications for certification. OMWBE's certification is used by all state and local agencies, offices, and schools that have M/WBE and DBE programs.

Under an Interagency agreement, OMWBE is responsible for the certification, recertification, and removal of firms wishing to participate or continue to participate in USDOT-related activities identified in 49 CFR Parts 23 and Part 26. OMWBE also must designate four full-time equivalent persons (FTEs), three of whom shall work exclusively on USDOT transportation-related DBE requirements (see organizational chart on next page). This agreement between WSDOT and OMWBE is updated every year. The most current agreement provided during the review was executed by all parties in January 2011. The agreement period of performance states, "This agreement shall be effective July 1, 2010, regardless of the date of execution of this agreement, and terminate on June 30, 2011." The OMWBE representative indicated that it is in the process of finalizing the current agreement.

**Office of Minority and Women's Business Enterprises
Organizational Chart - September 2011**



Listing of Signed MOUs

UNIFIED CERTIFICATION PROGRAM MOUs

AIRPORT AUTHORITIES	DATE SIGNED
City of Davenport Airport	6/4/2003
Arlington Airport	11/4/2002
Auburn Municipal Airport	11/5/2002
Colville Municipal Airport	10/23/2002
Deer Park Airport	11/4/2002
Lake Chelan Airport	11/7/2002
Omak Airport	10/25/2002
Orcas Island Airport	10/22/2002
Pearson Airport Park	11/19/2002
Pierce County Airport/Thun Field	11/2/2002
Port of Anacortes	4/10/2003
Port of Bellingham	10/24/2002
Port of Ephrata	10/24/2002
Port of Friday Harbor	11/22/2002
Port of Grays Harbor/Bowman Field	10/27/2002
Port of Lopez	11/22/2002
Port of Pasco	11/14/2002
Port of Skagit County	12/12/2002
Prosser Port of Benton	Not Dated
Quillayute Airport	10/28/2002
Sanderson Park/Port of Shelton	11/25/2002
Spokane International Airport	11/25/2002
Yakima Air Terminal - McAllister Field	11/4/2002

TRANSIT AUTHORITIES	DATE SIGNED
Asotin County Public Transportation Benefit Area	8/20/2010
Ben Franklin Transit	3/23/2010
Central Puget Sound Regional Transit Authority (Sound Transit)	2/5/2008
Skagit County Public Transportation Benefit Area Corporation	11/16/2009
Snohomish County Public Transportation Benefit Area Corporation	6/22/2009

CITIES	DATE SIGNED
City of Seattle	5/9/2008
City of Pullman	11/9/2010
City of University Place	4/14/2010
City of Yakima	12/19/2008

Section 5 – Scope and Methodology

Scope

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

1. You must rebuttably presume that members of the designated groups identified in 26.67 are socially and economically disadvantaged [49 CFR 26.61].
2. If you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group [49 CFR 26.63].
3. You must apply current Small Business Administration (SBA) business size standards found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts [49 CFR 26.65].
4. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged [49 CFR 26.67].
5. In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole [49 CFR 26.69].
6. In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole [49 CFR 26.71].
7. Other rules affecting certification include not considering commercially useful function issues, evaluating the eligibility of a firm on the basis of present circumstances, and making sure only firms organized for profit may be eligible DBEs [49 CFR 26.73].
8. You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP). You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program [49 CFR 26.81 and 26.31].
9. You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program [49 CFR 26.83].
10. When you deny a request by a firm to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial [49 CFR 26.86 – 26.89].
11. If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under program sanctions by the concerned operating administration, such as the suspension or termination of federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied [49 CFR 26.101 – 26.109].

Methodology

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

An agenda letter was then compiled and sent to the WA UCP by FTA's Office of Civil Rights. The agenda letter notified WA UCP of the planned site visit, requested preliminary documents, and informed WA 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 WA UCP Certifying Members and the review team. Subsequent to the entrance conference, a review was conducted of the WA UCP agreement and other documents submitted to the review team by the WA UCP representative. Interviews were then conducted with selected WA UCP 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.

At the end of the review, an exit conference was held with the WA UCP 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, the review team prepared the draft report based on the desk review and site visit. Subsequently, the recipient's responses to the draft report were incorporated into this final compliance review report.

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

Christopher Mac Neith
Regional Civil Rights Officer, FTA Region X
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Seattle, WA 98174
Christopher.MacNeith@dot.gov

Office of Minority and Women Business Enterprise

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Bioresources, LLC	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	Y	N	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Alpha 1 Construction	Y	Y	Y	N/A	Y/N	N/A	Y	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	AP DesignWorks, LLC	Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		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	J & B Architectural Signs	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N	N	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification >1 year	Doris Lock & Associates, Inc.	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Elite Construction Company	Y	Y	Y	N/A	Y/Y	N/A	Y	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	N/A	Y	N/A	N/A	N/A

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Maben Trucking & Excavating	Y	Y	Y	N	N/N	N/A	Y	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Write of Way Technical Consultants, Inc.	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N	N	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification >1 year		Y	Y	Y	N	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	DOT/ SBA MOU	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	N	N	N/A	N/A	N/A
						Concession Business	ACDBE Size Standards	PNW	ACDBE Dir.
						Y	Y	N/A	Y

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 OMWBE DBE Certification Procedures Manual indicates that it follows the certification procedures and standards of 49 CFR Part 26 and Part 23. 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 certification file for Alpha Construction, an initial certification denial, was reviewed during the onsite visit. The firm was denied for a number of reasons, one of them being the owner's Group Membership. In the denial letter dated May 4, 2011, OMWBE wrote, "Applicant did not provide proof of Minority origin. The birth certificate provided does not specify the applicant is Hispanic as described in the application. The birth certificate is from the State of New Mexico and while it includes gender information, it does not include race or ethnic information concerning Mr. Martinez's parents. In addition, the birth certificate did not include the origin of either parent."

Mr. Donald Martinez provided a New Mexico certificate of birth indicating his father and mother as Tony J. Martinez and Mary L. Chavez. The applicant firm was also home-state certified as a DBE by the California UCP, which included an onsite visit that should have brought up any issues regarding group membership. According to 49 CFR Part 26.63, if you have a well-founded reason to question an individual's membership claim, then the individual is required to present additional evidence. The applicant must be provided with a written explanation for the UCP questioning his or her group membership.

The review team did not find any OMWBE documentation to support “a well-founded reason” to question Mr. Martinez’s Group Membership in the certification record. There was no evidence in the file that additional information was requested regarding this issue or that the applicant was given the opportunity to rebut the claims prior to the denial letter. When OMWBE’s staff were asked about this matter, they replied that due process is given through the denial letter.

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 appropriately evaluate Group Membership determinations.

OMWBE response: OMWBE’s DBE Certification Manual has been revised to instruct the management analysts to ask for additional information/documentation concerning Group Membership only when there is a well-founded reason for inquiring when indicated by the certification record. Further, the management analysts will inform the applicant in writing of the reason(s) the Group Membership is being questioned. OMWBE’s form letters have also been revised to correspond to this direction.

FTA Response: FTA agrees with OMWBE’s response to the noted deficiency. To close this deficiency by March 4, 2013, OMWBE must submit the revised DBE Certification Manual reflecting the new procedures.

3. Business Size

Basic Requirement (49 CFR Part 26.65): A UCP must apply current SBA business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts. A firm is not an eligible DBE in any federal fiscal year if the firm (including its affiliates) has had average annual gross receipts during the firm’s previous three fiscal years in excess of \$22.41 million.

Discussion: During this UCP Compliance Review, no deficiencies were found with the requirement of business size. However, an advisory comment was made.

The [REDACTED], was initially certified as an ACDBE. Upon receipt of the No Change Affidavit in 2011, the certification specialist drafted a file summary on August 11, 2011, incorrectly concluding that the firm was close to graduating from NAICS code 424490, Coffee Merchant Wholesalers–100 employees, if it hired more employees.

The OMWBE ACDBE No Change Affidavit requires the firm to swear that it continues to meet SBA business size criteria and the overall gross receipts cap of 49 CFR Part 26 and 49 CFR Part 23. The affidavit further requires the firm to write-in a response affirming that the average annual gross receipts/highest number of employee during the previous three fiscal years do not “exceed \$___dollar amount / ___ number of employees.” The firm inserted \$47,780,000 and 100 employees in the blanks on the 2011 affidavit in what appeared to be its attempt to include the size standards for the ACDBE program and its work codes. On the 2010 affidavit, the firm wrote in a dollar amount of \$5,000 and 8 employees. A file summary from 2008 completed by a different specialist

noted that the firm's W-2's indicated that the firm had 32 employees in 2007 and 24 in 2006, and the annual update indicated only 8 full-time and 2 part-time staff. The specialist noted that this difference between the W-2 and annual update amounts could have been from turnover.

The certification record indicated that the firm never had 100 employees or \$47 million in gross receipts. The review team advised the certification staff to accurately review business size requirements for eligibility purposes.

OMWBE response: Additional training for management analysts has been conducted to ensure that the appropriate size standards for ACDBEs and DBEs are used when reviewing files. Also, OMWBE's Quality Control (Certification-Lead) must review all status determinations (annual updates, certification reviews, certifications, denials, intents for removal) and add NAICS codes and other written determinations prior to issuance. If Quality Control identifies incorrect application of size standards, these are pointed out to management analysts and the Certification Division Manager and the file is returned for revision.

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 that 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.

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

The introductory page of the OMWBE federal application that was provided to the review team states that applicants who are applying for federal certification as a DBE airport concessionaire must complete all sections of the application except the PNW statements. As of 2005, when 49 CFR Part 23 was issued for airport concessionaires, applicants seeking certification as an airport concessionaire must also complete the PNW statement. The OMWBE Director advised the review team that this statement should not have been included in the application and would be removed.

There were certification files that included PNW statements from non-disadvantaged owners or from individuals beyond the 51% owners in the applicant firm whose ownership and control were not relied upon. In the Elite Construction Company certification file, the PNW statement of the non-disadvantaged participants had been collected. It was not clear if the PNW statement of the non-disadvantaged participant was requested or voluntarily submitted; however, the non-disadvantaged participant's PNW was received after receipt of the application and PNW statement of the disadvantaged owner.

Additionally, the OMWBE application includes a State supplement that requires spouses to submit PNW statements for transfers of ownership without adequate consideration. The review team discussed with OMWBE staff that determining adequate consideration for transfers of ownership would most likely be best decided by the certification agency and not the applicant. This requirement could also give the appearance that all spouses must submit PNW statements as part of the submittal package rather than on a case-by-case basis.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan to revise the federal application to require PNW statements for ACDBE applicants and collect PNWs from individuals whose certification status is relied upon and from spouses on a case-by-case basis.

OMWBE Response: The DBE Application Instructions, Section 3. Ownership C. Disadvantaged Status states that only owners claiming disadvantaged status counting toward the 51% ownership must complete that section of the application and submit a PNW statement. However, the DBE Uniform Certification Application Supporting Documents Checklist lists the Personal Financial Statement as a document to be provided by "all applicants." This creates an ambiguity and may explain why some OMWBE files may contain PNW statements from non-disadvantaged owners and applicant spouses as they may have been received with the submittal of the initial application. On advice of OMWBE's assistant attorney general, OMWBE cannot return these or any other documents submitted by an applicant once received. OMWBE has revised its UCP Application Supplemental Document Checklist to inform applicants that spouses of owners upon whom certification status is counted toward the 51% ownership may be asked to provide a PNW only on a case-by-case basis. (See Exhibit 1 FTA Plan, UCP Application Supporting Documents Document Checklist Washington State Supplement.) OMWBE uses the UCP application for ACDBE applicants. OMWBE's DBE Manual has been updated to clearly reflect this.

FTA Response: FTA partially agrees with the response to the noted deficiency. Personal Financial Statements should be submitted by all parties involved whose ownership

interests are being used to validate certification. FTA's instruction on this issue is not intended to stop OMWBE from collecting financial statements from non-disadvantaged owners; rather, OMWBE is instructed to create policies and procedures to request this information in a uniform manner. This new policy should include procedures for fully documenting the reasons for these requests. By March 4, 2013, OMWBE must update the DBE Certification Manual to include a policy for requesting additional Personal Financial Statements and procedures for documenting the reasons for the request. By March 4, 2013, OMWBE must revise its UCP Application Supplemental Checklist to be inclusive of other parties whose financial statements may impact ownership as it relates to the certification of the firm. Also, by March 4, 2013, OMWBE must submit an updated application containing the ACDBE PNW statement revision.

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 OMWBE DBE Certification Procedures Manual indicates that it follows the requirements of Appendix E in the DBE regulations. OMWBE staff mentioned that, at one point, there were six firms in the program that sought social and economic disadvantaged determinations on an individual basis and were accepted. Therefore, staff had some experience in processing these types of applications. There are currently only one or two such firms remaining in the program.

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% owned by socially and economically disadvantaged individuals.

Discussion: During this UCP Compliance Review, deficiencies were found with the requirement of ownership.

When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the ownership interest in the firm must be deemed to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. A greater portion of joint or community property assets cannot be counted toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification. Since Washington is a community property state, this provision would be applicable in regards to assets and ownership interests. The review team did not find documents in the certification files from spouses legally transferring and renouncing the other spouse's right in community assets to acquire ownership interest in the firm.

There was also a statement in the OMWBE certification manual that community property was irrevocable. This statement was subsequently removed during the onsite review by the OMWBE director.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA Office of Civil Rights a plan to collect appropriate documents for spouse's transferring community property rights.

OMWBE Response: Prior to the FTA audit, OMWBE had already identified certain DBE applications processed prior to 2011 that did not contain adequate documentation establishing that the disadvantaged owner's interest in the applicant (for purposes of establishing 51% ownership and control) derived from an independent source.

These circumstances occurred in certain DBE applications when the ownership interest was community property and the disadvantaged owner's spouse was not also disadvantaged. OMWBE had already been contacting the disadvantaged owner(s) of these firms to inform them of these deficiencies and to remediate, if possible, by providing appropriate documentation, including documentation that establishes that the spouse of the disadvantaged owner has irrevocably renounced his or her ownership interest in the applicant firm and/or assets used to capitalize the applicant firm. OMWBE will continue this process until all the issues in the identified DBE files have been satisfactorily addressed. Additionally, more specific guidance will be inserted into OMWBE's Certification Manual to ensure no analyst overlooks this document in his/her review.

FTA Response: FTA agrees with OMWBE's response to the noted deficiency. To close this deficiency, by March 4, 2013, OMWBE must submit the updated Certification Manual containing the additional guidance pertaining to the transference of assets and property rights. Also by March 4, 2013, OMWBE must submit a status update on the reconciliation process that includes a timeline for completion.

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.

Alpha Construction

The certification file for Alpha Construction was examined by the review team for compliance with certification standards. One of the reasons that the firm was denied acceptance into the DBE program was because OMWBE determined that the owner's ownership of another construction firm in California, Delta 3 Construction Services, represented independence and affiliation issues. Delta 3 had not been certified as a DBE firm. The owner, Mr. Martinez, indicated on the PNW statement that he submitted with his application that he was in the process of closing Delta 3. Also, the certification file included a printout from California Secretary of State's website, dated April 26, 2011, showing that Delta 3 was dissolved.

The denial of certification letter was dated May 4, 2011, and included affiliation with Delta 3 as one of the reasons for denial. When the OMWBE analyst who worked on this file was questioned by the Director during the compliance review, he stated that this issue was one of the reasons for the firm being denied on a prior application to the DBE Program. The review team cited the DBE regulation that states, "You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part." It was clear that the applicant firm, Alpha Construction, had no affiliation with Delta 3 at the time the denial letter was drafted, and this particular reason for denial should have been excluded.

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The certification file for ██████████ revealed some discrepancies regarding control. The firm was certified as an ACDBE firm to perform work at the airport many years ago. The firm has been owned by a disadvantaged female and her non-disadvantaged spouse since the 1970s. The by-laws indicate that these two individuals are the only members of the board of directors and that a majority of the directors must be present at the annual meetings.

The onsite report conducted on February 15, 2006, indicated that the disadvantaged female owned the firm through a community property relationship with her non-disadvantaged husband. The onsite reviewer additionally commented that upon first review the firm appeared to be ineligible as the role of the non-disadvantaged spouse seemed to compromise the control of the disadvantaged female. It was noted that both individuals were officers and directors and did not meet the regulations for control. However, the reviewer felt the firm met the burden of proof and showed that she met control requirements since the non-disadvantaged individual was retired and she controlled the day-to-day operations, was president, and had the respect of all of the employees. The reviewer noted some reservations and recommended to continually confirm that the non-disadvantaged spouse's retirement has removed him from the operations of the firm through verification of W-2 and 1099 documents.

An annual update file summary conducted on May 15, 2008, indicated that the disadvantaged spouse is president and could obtain a quorum on her own. The Certification Specialist followed the recommendation of the 2006 onsite reviewer and collected the W-2 documents from the firm and confirmed that the non-disadvantaged

spouse was retired but played a minor role in the firm. Another onsite visit was conducted on February 9, 2011, and the onsite reviewer (different than the 2006 reviewer) recommended that the firm remain certified but made some comments in the file.

The comments included that the disadvantaged owner indicated that a non-participation agreement was not initially signed or a separate property agreement when the firm was initially certified and that her spouse was “somewhat” retired. The 2011 onsite reviewer requested that the non-participation agreement and separate property agreement be signed and remitted to back to OMWBE. Another comment included that the spouse be removed as an officer in the firm. None of these requested documents from the 2011 onsite reviewer were discovered in the certification files during the onsite compliance review.

Write of Way Technical Consultants

In the certification file for Write of Way Technical Consultants, Inc., the review team noted that the primary NAICS code designation was incorrect. The description of the company in the application and the company brochure did not match the NAICS code selected by OMWBE. The firm provides scientific technical writing for information technology, grant writing, business plans, marketing plans, surveys, forms, brochures and loan packaging. OMWBE selected NAICS code 711510–Independent Artists, Writers, and Performers. This industry comprises independent individuals engaged primarily in performing in artistic productions and in creating artistic and cultural works or productions. The file included a description of the incorrect NAICS code designation that OMWBE staff had printed and added to the file. The owner later made the request for the correct NAICS code designation of 541611–Administrative Management and General Management Consulting Services, which was added as the secondary NAICS code under the incorrect classification. The primary code of 711510 was not removed from the firm’s profile.

A graph for the number of processed requests for additional work codes from firms was provided to the review team. OMWBE processed 37 requests to add work codes in 2009, 81 in 2010, and 157 in 2011.

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 and work codes are appropriately addressed.

OMWBE Response: Since the FTA audit, OMWBE has undertaken several measures that will ensure more quality determinations and eliminate the issues regarding control determinations and NAICS code assignments raised in Alpha Construction, Rite of Way Consultants, and [REDACTED]. Specifically, since November 2011, OMWBE has designated a Lead Certification Management Analyst to review all DBE status recommendation determinations prior to issuance. OMWBE also adopted an NAICS code template during 2011 that enables analysts to clearly document their analysis for NAICS code assignment. OMWBE also requested NAICS code training from FHWA.

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The firm had previously been identified for review of ownership issues. The review will be conducted during the next Annual Update review (August 2012).

Write of Way Technical Consultants

The U.S. Dept of Census NAICS Code Technical Assistance office advised OMWBE that NAICS code 711510 index entry—Technical Writers, Independent—is the appropriate index entry for this firm, given the nature of its services conveyed to OMWBE, even though this NAICS code index entry is part of the industry for independent writers, artists, and performers. NAICS code 541611 would be appropriate only if the firm was providing business plan advice, counseling firms about their business/marketing plans, etc. Based upon the information in the firm’s file, it appears that the firm does not provide these services. However, OMWBE will contact the firm to review its NAICS code assignment and obtain further information concerning the scope of the firm’s actual services.

FTA Response: FTA partially agrees with OMWBE’s response to the noted deficiency. To close this deficiency, by March 4, 2013, OMWBE must submit a copy of the NAICS code template. Also, by March 4, 2013, OMWBE must either re-evaluate or submit an update on the re-evaluation of the eligibility of ██████████ and Alpha Construction.

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 (ANCs), and Native Hawaiian organizations in the 1999 issuance. The 2003 amended DBE regulations included a separate evaluation process for ANCs seeking DBE certification. None of the certifying members expressed much experience with processing ANC or Native Hawaiian certification determinations. However, the WADOT representative had indicated that he had experience with such determinations and could provide assistance in these areas.

The OMWBE DBE Certification Procedures Manual has a provision that OMWBE understands that firms owned by an Indian tribe or a Native Hawaiian Organization may be eligible for certification and must also meet the size standard limits and control requirements. The manual includes the process for reviewing requests from ANCs seeking DBE certification.

8. UCP Requirements

A) UCP Agreement

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

Discussion: During this UCP Compliance Review, deficiencies were found regarding the WA UCP Agreement.

The Washington UCP submitted the Memorandum of Understanding to USDOT in March 2002. A copy of a January 31, 2003, letter from USDOT approving the WA UCP was provided to the review team. All of the signatories to the WAUCP are listed in the background section of this report. Copies of all the signature pages for each DOT recipient were provided to the review team.

One of the requirements for UCPs is that they should have sufficient resources and expertise to carry out the responsibilities outlined for certification. Based on some of the findings and comments in this report, the review team advises that OMWBE staff research the availability of training for certification and the DBE program be administered directly or indirectly by USDOT through webinars and other resources.

WSDOT representatives mentioned during the exit meeting that a change in Directors has led to findings and it is addressing issues from previous directors. A quality control person was hired in June 2011. A person also was hired a week prior to the onsite compliance review to conduct process improvement specifically for DBE issues. WSDOT expressed staff concerns and changes at OMWBE as a contributing factor and committed to more oversight of OMWBE.

The review team additionally advises OMWBE to review its policy regarding joint ventures in the Certification Manual and verify if the joint venture certification/approval language is referencing a state regulation rather than a federal regulation. The OMWBE certification manual states, "Generally, joint ventures are not certified by OMWBE, but federal regulation does specifically indicate joint ventures can be DBE certified for a specific project. In this case, the joint venture does not apply for certification with OMWBE. Joint ventures must be approved by WSDOT in the same way regular dealers are approved." OMWBE must clearly state that regular dealers and joint ventures are not certification issues but rather counting issues as noted in 49 CFR Part 26.55.

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

- revise the certification manual to clearly state that regular dealers and joint ventures are not certified as such
- provide training opportunities or webinars to certification staff

OMWBE Response: OMWBE's Certification Manual has been revised to state that OMWBE does not certify regular dealers and joint ventures. (See Exhibit 2, FTA Plan-

Joint Venture Revision). OMWBE has requested webinar training from USDOT and WSDOT.

FTA Response: FTA agrees with OMWBE's response to the noted deficiency. To close this deficiency, by March 4, 2013, OMWBE must submit the revised Certification Manual that establishes OMWBE's policy for all regular dealers and joint ventures. Also by March 4, 2013, submit a listing of certification-related trainings to date in which OMWBE staff have participated.

B) UCP Directory

Basic Requirements (49 CFR Part 26.31 and 26.81(g)): UCPs must maintain a unified DBE directory containing, for all firms certified by the UCP, the information required by 26.31. The listing shall include for each firm, its address, phone number, and the types of work the firm has been certified to perform as a DBE. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

Discussion: During this DBE compliance review, no deficiencies were found with the requirements for the UCP directory. The Washington State UCP directory is maintained by OMWBE and meets all the requirements of 26.31. The new DBE regulation requires that directories include by August 26, 2011, the most specific NAICS that describes the type of work for which a DBE is certified. OMWBE is in compliance with the NAICS designation requirement and other requirements of 26.81 in the DBE regulation. OMWBE is in compliance with the new DBE regulations requiring that the UCP directory include the most specific NAICS code available to describe the type of work provided by the DBE. The UCP directory is also updated as changes occur, as required by Part 26.81 of the DBE regulations.

9. 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.

The OMWBE DBE Certification Procedures Manual indicates that no application will be approved without the completion of an onsite visit. The manual indicates that the process includes visual inspections of the office if located in the local area and photos of the office, activities, equipment, and vehicle markings.

During the review, the review team verified that onsite visits were conducted with firms seeking DBE certification. The certification files included a completed interview form,

notes about the visit, Google Map printouts and directions to the location, and photos of the site, owner, office and work equipment that was used.

The manual also discusses the procedure for performing job site visits, which includes taking photos of employees on the site, the work that the company is performing, equipment that the company uses, and vehicles, equipment, and uniforms with company markings. Job site visits notes were also found in some of the applicable certification files.

B) Uniform Application

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

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for using the Uniform Certification Application Form in Appendix F.

There are various certification applications used by OMWBE, including a state application, a state/federal application, and a federal-only application. There is an application fee based on the business structure and type of certification. The state and state/federal application fees are \$50 for sole proprietorships, \$75 for partnerships or limited partnerships, and \$100 for corporations or limited liability companies. The federal-only application is \$25 regardless of business structure.

The federal-only application includes a Washington State Supplement page requesting items such as PNW statements from spouses when transfers occur without adequate consideration, a Washington State Uniform Business Identification Number Certificate, a birth certificate or other document that establishes gender and/or race ethnicity/group membership, proof of citizenship or legal permanent residence, and photo identification. The OMWBE Director indicated that the state supplement was intended to be in the state application but will be reviewed to see if the supplement should stay in the federal-only application. The review team advised OMWBE to consider the issues discussed during the compliance review concerning Group Membership, collecting PNWs from spouses, and state business license requirements when assessing the applicability of the state supplement in the federal only application.

The review team noted that there were certification files in which the certification determination exceeded 90 days. OMWBE received an application for AP Design Works, LLC, on June 9, 2010, and accepted the firm into the program on December 21, 2010. Elite Construction Company applied for certification on May 18, 2010, and was denied on February 7, 2011. The actual processing time could not be determined since the date when all documents were received by OMWBE was not readily available in the certification file. A chart showing the percentage of state and federal applications processed within 90 days from 2008 to 2011 was provided to the review team. The chart showed that the processing time has improved since 2008; however, for some quarters in 2011, the highest percentage that certification determinations were made

within 90 days was 71%. This indicates that, at best, OMWBE still had close to 30% of applications that did not make the 90-day certification determination window.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan to determine the appropriate supporting document list and process to ensure that certification determinations are timely completed as prescribed in the DBE regulations.

OMWBE Response: The Washington State Supplement Document Checklist to the Uniform Application has been revised in accordance with the advice of the FTA auditors (see Exhibit 1). Since the FTA audit, OMWBE has hired a Lead Certification Management Analyst 4 to review all application recommendation determinations prior to issuance. By the end of June 2012, OMWBE expects to hire three additional analysts who will be devoted directly to processing new DBE applications. This is critically necessary if OMWBE is to issue all initial certification determinations within 90 days, given the increased certification application work load since the FTA audit.

FTA Response: FTA agrees with OMWBE's response to the noted deficiency. To close this deficiency, by March 4, 2013, OMWBE must provide additional information on projected staffing, such as number of positions and deployment following the June 2012 hirings. Also, by March 4, 2013, OMWBE must submit an update detailing its progress toward making certification determinations within 90 days.

C) Annual Updates

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

Discussion: During this DBE Compliance Review, deficiencies were found with the requirement for annual updates.

The OMWBE provides the DBE firm a printout of its basic information from a database-driven form, along with a No Change Affidavit for annual updates. The firm makes changes on the printout, if necessary, and returns the form along with the affidavit. Several certification files examined by the review team were missing the annual updates.

Once a DBE has been certified, it remains certified until and unless its certification has been removed, in whole or in part, through the procedures of Section 26.87. DBEs are not required to reapply for certification or to be "recertified." The review team also advised OMWBE to revise its manual procedures and forms to coincide with new DBE requirements. The annual update forms were revised during the onsite review to read "certification review" rather "certification renewal."

The review team also noted that OMWBE should review its certification approval letter. The certification letter indicated that a firm must renew its certification three years from the certification anniversary date. The anniversary date listed in the letter was already

three years from the initial certification date, which would actually be six years from the certification date.

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. Additionally, submit a plan to remove any reference to certification renewals or recertifications from manuals and other certification material.

OMWBE Response: Every year after the date of a DBE's original certification date, it is sent an annual update form, except in the third year, when it is sent a Certification Review form. These forms are automatically generated from OMWBE's database according to the DBE's last certification/annual/certification review date. (Note: Although this form is entitled "DBE Certification Review Form," there were references within the form to "renewal." These references have now been deleted. OMWBE's DBE Manual has also been revised to indicate that a certification "review" will be conducted every three years. OMWBE's letters notifying of completion of the Certification Review (also previously containing the term "renewal") have also been revised to eliminate all references to the terms "renewal" and "recertification.")

FTA Response: FTA agrees with OMWBE's response to the noted deficiency. This deficiency is now closed.

10. Denials of Certification

A) Initial Request Denials

Basic Requirement (49 CFR Part 26.86): When a UCP denies a request by a firm that is not currently certified with it, to be certified as a DBE, the UCP must provide the firm with 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, deficiencies were found with the requirement for denial of initial certification request.

The review team analyzed two firms that were denied certification, Alpha 1 Construction and Elite Construction Company. The Alpha 1 denial letter was dated May 4, 2011, and the denial letter for Elite Construction was completed February 7, 2011. The denial letters did not include a waiting period, despite a waiting period of 12 months being mentioned in the Certification Manual and in the certification file notes. The OMWBE Director was unaware that no waiting period was communicated in the denial letters and will ensure that this waiting period is included in future denial letters.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan for denial letters to include applicable waiting period as outlined in the OMWBE certification manual.

OMWBE Response: OMWBE's denial letter form has been revised to indicate a 12-month waiting period, per the OMWBE DBE Certification Manual for re-applying for certification.

FTA Response: FTA agrees with OMWBE's response to the noted deficiency. To close this deficiency, by March 4, 2013, OMWBE must submit the revised denial letter templates.

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 review team analyzed three certification files OMWBE removed from the program. The files reviewed were J & B Architectural Signs, Bioresources, and Write of Way Technical Consultants. The removal process of Bioresources included an Intent to Remove letter and Final Removal letter; however, the required information was either incorrect or not present in the letters.

A Letter of Intent to remove the eligibility of Bioresources was sent to the firm on August 27, 2009. OMWBE indicated that the firm failed to submit the annual update in a timely manner. The intent letter had no information pertaining to an informal hearing or number of days to respond to the Intent to Remove letter. The letter stated that the firm could appeal this decision to USDOT but did not include a number of days to submit the appeal. OMWBE sent a final removal letter on October 7, 2009, stating that the August 27, 2009, letter gave the firm 20 days to respond or the decision would become final. The firm was notified that, effective October 7, 2009, it had been removed from the federal program. No USDOT appeal information was included by OMWBE in the final letter. The review team advised OMWBE that the intent letter must include an opportunity for an informal hearing. If the informal hearing concurs with the removal reasons or if the firm does not respond to the intent letter, then a final determination letter would be sent outlining the reasons for removal and that the decision could be appealed to USDOT within 90 days of OMWBE's final determination.

Write of Way Technical Consultants certification was removed on what appeared to be October 19, 2010. The certification record did not include an intent letter or final removal letter but rather a memorandum from the Acting Manager–State Certification to the DBE Certification Manager. The memo indicated that mail addressed to this firm was returned as “undeliverable” and that the State Certification Manager took the actions of calling the primary and secondary telephone numbers and contacting Directory Assistance for a new listing for the firm. The DBE Certification Manager signed the memo approving the removal.

The daughter of the J&B Architectural Signs' owner contacted OMWBE via email to inform it that her mother had passed away. A letter was sent to the firm notifying it that the email was received concerning the passing of the owner and that it no longer qualified for DBE certification and was removed from the federal program.

Prior to the exit meeting, OMWBE provided drafts of revised Intent to Remove letters. The letters included information for an informal hearing that OMWBE referred to as an "informal show cause review" with 20 days to respond. The letter also included information regarding appeal to USDOT if it was decided to affirm the removal determination after the informal show cause review meeting. The letter still did not include the 90-day time frame to appeal to USDOT. There was no revised final determination letter provided to the review team to meet the "notice of decision" requirement in 26.87(g), which must also contain the USDOT appeal information. The review team recommends that these revised letters be amended to reflect an opportunity for an informal hearing in the intent letter and an opportunity for a USDOT appeal in the final determination letter.

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.

OMWBE Response: All of OMWBE's Intent to Remove letters have been revised to include USDOT federal appeal information, including the 90-day time frame to appeal to USDOT, as outlined in 49 CFR 26.87. All of OMWBE's Final Removal letter templates for causes including the death of disadvantaged owner, disadvantaged owner's request to withdraw as DBE, and failure of owner to cooperate/respond have been revised to include USDOT federal appeal information, including the 90-day time frame to appeal to USDOT.

FTA Response: FTA agrees with the response to the noted deficiency. To close this finding, by March 4, 2013, OMWBE must provide the revised Intent to Remove and Final Removal letter templates.

C) Appeals to DOT

Basic Requirement (49 CFR Part 26.89): When USDOT 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 request.

Discussion: During this UCP Compliance Review, deficiencies were made with the Appeals to USDOT.

If an applicant or firm that had its certification removed wants to appeal to USDOT, the firm must submit this appeal within 90 days of the recipient's final decision. The appeal information in the OMWBE removal letters did not include the number of days the firm had to appeal to USDOT.

Appeals should be sent to the following address: Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE, Washington, DC 20590. The February 7,

2011, denial letter to Elite Construction Company included the number of days to appeal to USDOT in the letter; however, it included the incorrect appeal address of 400 7th Street SW, Room 5414, Washington, DC 20590.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan to revise and ensure that all denial and removal letters to include the appropriate appeal time frame and correct USDOT address.

OMWBE Response: One of OMWBE's denial letter templates incorrectly listed the mailing address of the USDOT Office of Civil Rights. It has now been corrected to state the correct mailing address: 1200 New Jersey Avenue, SE, Washington, DC 20590. This letter template also has been corrected to include the number of days (90) in which a firm may file a notice of appeal to USDOT.

FTA Response: FTA agrees with OMWBE's response to the noted deficiency. To close this deficiency, by March 4, 2013 OMWBE must provide copies of the denial letter templates.

11. 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 OMWBE Certification Manual included detailed information concerning complaint requirements and complaint investigations. A list of complaints OMWBE received during FY 2010 and FY 2011 was requested and provided to the review team. OMWBE received 20 complaints regarding eligibility issues with control and other areas. The two complaints received in FY 2010 have been investigated and closed. The remaining 18 complaints were received in FY 2011; 17 are pending and 1 has been completed. The OMWBE Director advised the review team that complaints require more time to process and they have had a difficult time keeping up with the number of complaints received this fiscal year.

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, no deficiencies were found with the confidentiality issues in the Washington UCP.

A list of all Freedom of Information requests was requested and provided to the review team. There were 8 requests for certification file information in FY 2010 and 16 in FY 2011. The list included the date of the request, name of the requester, information requested, and the outcome of the request. The majority of the requests were from attorneys representing their denied clients in the certification process. Other requests from firms seeking information in the certification file of certified businesses were denied because the certified firm did not consent to have the information released and OMWBE correctly cited 26.109(a) as the reason.

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 such information is a ground for a denial or removal of certification.

Discussion: During this DBE Compliance Review, no deficiencies were made with cooperation.

The WA UCP indicated in its response letter that it had no issues with cooperation from other UCPs. It has also included the interstate certification process in its Certification Manual that requires a prompt response (seven days) to UCPs requesting copies of onsite visit reports. OMWBE has removed and denied firms based on failure to cooperate with requests for information.

Section 7 – Summary of Findings

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Description of Deficiencies	Submit Corrective Action for the following:	Response Days/Date
1. Burden of Proof	26.61	ND			
2. Group Membership	26.63	D	Misapplication of questioning group membership	Submit updated Certification Manual with updated procedures	March 4, 2013
3. Business Size	26.65	AC	Ensure that staff thoroughly review file for size eligibility		
4. Social and Economic Disadvantage a) Presumption of Disadvantage	26.67	ND			
Personal Net Worth	26.67	D	<ul style="list-style-type: none"> No standardized policy for collecting PNWs on a case by case basis ACDBE application says PNW not required 	<ul style="list-style-type: none"> Update DBE Certification Manual to include policy for requesting additional PNWs from non-disadvantaged owners Submit revised UCP application checklist to inform applicants that PNWs may be requested for non-disadvantaged owners Submit revised ACDBE application to request PNW statements 	March 4, 2013 March 4, 2013 March 4, 2013
b) Individual determination	26.67	ND			
5. Ownership	26.69	D	No legal document transferring community assets rights in files	<ul style="list-style-type: none"> Submit updated Certification Manual containing guidance regarding community property rights and transfer of assets Submit update on reconciliation process & timeline for completion 	March 4, 2013 March 4, 2013
6. Control	26.71	D	<ul style="list-style-type: none"> Misapplication of independence/affiliation rules Disadvantage owner subject to restrictions Incorrect NAICS code designation 	<ul style="list-style-type: none"> Submit a copy of updated NAICS code template. Re-evaluate or submit an update on the re-evaluation of [REDACTED] and Alpha Construction 	March 4, 2013 March 4, 2013
7. Other Certification Rules	26.73	ND			

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Description of Deficiencies	Submit Corrective Action for the following:	Response Days/Date
8. UCP Requirements a) UCP agreement	26.81	D	<ul style="list-style-type: none"> Invalid statements on regular dealers and joint ventures Training needed for certification staff 	<ul style="list-style-type: none"> Submit updated Certification Manual that includes policy on regular dealers and joint ventures Submit listing of certification trainings attended by OMWBE certifiers 	<p>March 4, 2013</p> <p>March 4, 2013</p>
b) UCP directory	26.31	ND			
9. UCP Procedures a) on-site visit	26.83	ND			
b) Uniform Application	26.83	D	<ul style="list-style-type: none"> Applications not processed in 90 days Review of state supplements needed 	<ul style="list-style-type: none"> Submit update on staffing changes. Submit update on progress of meeting the 90 day certification window. 	<p>March 4, 2013</p> <p>March 4, 2013</p>
c) Annual Updates	26.83	D	<ul style="list-style-type: none"> Annual updates missing in files References to renewals/recertifications 	<ul style="list-style-type: none"> Process to ensure annual updates are collected and maintained in files Plan to remove references to renewal/recertifications in all materials 	<p>Closed</p> <p>Closed</p>
10. Denials a) Initial Request	26.86	D	Inconsistent information about waiting period	Submit revised denial letters	March 4, 2013
b) Remove Existing	26.87	D	Removal letter does not follow 26.87	Revise removal letters for consistency with Part 26.87	March 4, 2013
c) Appeals	26.89	D	Incorrect appeal contact information	Submit revised letter templates that include the correct notice of appeal	March 4, 2013
11. Compliance and Enforcement a) DBE Enforcement Actions	26.107	ND			
b) Confidentiality	26.109	ND			
c) Cooperation	26.109	ND			

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

Section 8 – List Of Attendees

Name	Organization	Title	Phone	Email
FHWA:				
Jodi L. Petersen	FHWA – Washington Division	Civil Rights Program Manager	(360) 534-9325	Jodi.petersen@dot.gov
WA UCP Members:				
Brenda R. Nnambi	WSDOT- Office of Equal Opportunity	Director	(360) 507-0869	Nnambib@wsdot.wa.gov
John L. Huff	WSDOT-Office of Equal Opportunity	DMWBE Supervisor	(360) 705-6801	Huffj@wsdot.wa.gov
Gregory Bell	WSDOT- Office of Equal Opportunity	Manager, External Civil Rights Branch	(360) 481-9268	Bellg@wsdot.wa.gov
Cathy Canorro	Office of Minority & Women’s Business Enterprises	Acting Director	(360) 704-1187	Ccanorro@omwbe.wa.gov
Milligan & Co., LLC:				
Benjamin Sumpter	Milligan & Co., LLC	Lead Reviewer	(215) 496-9100	Bsumpter@milligancpa.com
Habibatu Atta	Milligan & Co., LLC	Reviewer	(215) 496-9100	Hatta@milligancpa.com