

COMPLIANCE REVIEW REPORT
OF THE
TEXAS
UNIFIED CERTIFICATION PROGRAM

**Final Report
August 2010**

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

by

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SECTION 1 - GENERAL INFORMATION

Hosting Grant Recipient: Texas Department of Transportation
125 East 11th Street

City/State: Austin, Texas 78701

Grantee Number: 1567

Executive Official: Amadeo Saenz Jr., P.E.
Executive Director

On Site Liaison: R. D. Brown, M.A.
DBE Certification Section Director
512-486-5500

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Site visit Dates: January 22-23, 2009 (Austin, TX)
February 13, 2009 (Houston, TX)

Compliance Review Team
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John Clare
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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., (15), October 1, 2008 and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

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

The Texas Unified Certification Program (TUCP) 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 TUCP's agreement and were the basis for the selection of compliance elements that were reviewed.

SECTION 3 – PURPOSE AND OBJECTIVES

PURPOSE

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

The primary purpose of the compliance review is to determine the extent to which the Texas Unified Certification Program (TUCP) 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 Texas 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 responsibilities of Unified Certification Programs, as specified in 49 CFR Part 26, are to:

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

The objectives of this compliance review are to:

- determine whether the TUCP is honoring the Unified Certification Program agreement submitted to the Secretary of Transportation;
- examine the required certification procedures and standards of the TUCP 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 TUCP from certifying members through interviews and certification file review.

SECTION 4 – BACKGROUND INFORMATION

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

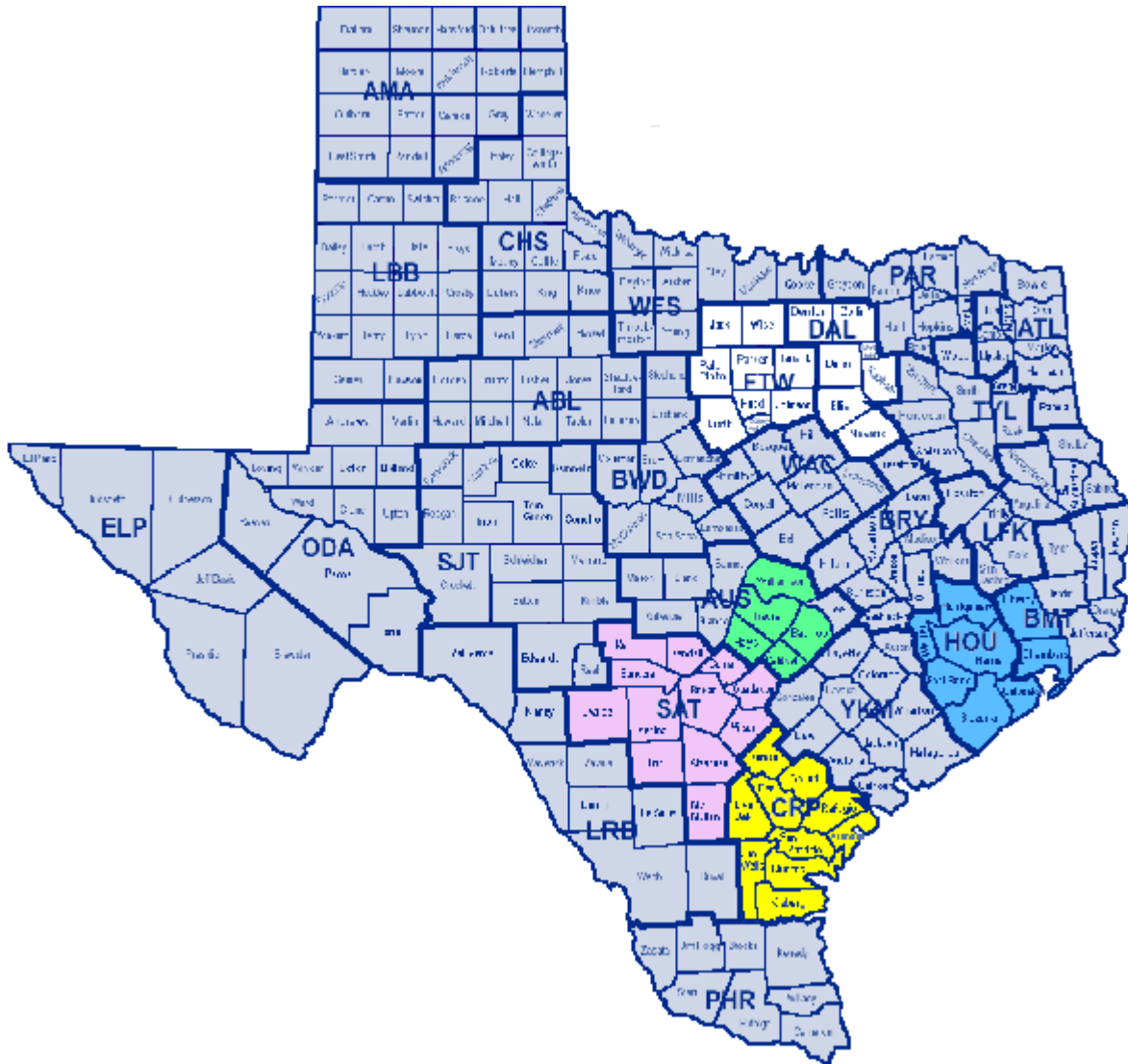
An agreement establishing the UCP for the state was to be submitted to the Secretary of Transportation within three years of March 4, 1999. The agreement was to provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all 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.

The Texas UCP created a Memorandum of Agreement (MOA) establishing a Unified Certification Program in the State of Texas in accordance with Title 49 CFR Parts 26 and 23 of the Code of Federal Regulations. The TUCP submitted their UCP agreement plan in October 2002 and it was officially approved by U.S. DOT Office of Civil Rights on April 18, 2008, after making amendments in several areas. The TUCP Certifying Partners are the Texas Department of Transportation (TxDOT), City of Houston, City of Austin, Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), and South Central Texas Regional Certification Agency (SCTRCA).

Each certifying partner in Texas is required to administer a DBE Certification Program in accordance to 49 CFR Part 26. The TUCP established an Executive Committee consisting of representatives from each of the Certifying Partner agencies, who are designated by the signatories to the MOA. The Executive Committee is responsible for resolving any conflicts between certification actions of its members. Standard Operating Procedures of the TUCP Section III-Agency Compliance, outline the process for dealing with matters regarding the compliance with certification requirements. A certifying TUCP partner may terminate its responsibilities under the MOA and become a non-certifying TUCP partner upon a six month notice to all TUCP partners.

The six certifying partners agreed to perform the certification process for DBE program applicants within the State of Texas by geographical location (see regional map). If a DBE applicant/firm works only in the highway construction industry, TxDOT agreed to process the application and/or have certification responsibility for the DBE firm. Therefore, the certifying TUCP partner to whom application is made will ascertain the geographical area of the applicant firm and/or its primary work type or industry, and take the appropriate action to either process the application or forward the application within three to five business days to the appropriate TUCP certifying partner.

Texas Unified Certification Program - Certifying Entities Region Map



Houston	City of Houston
Austin	City of Austin -Hays, Travis, Williamson, Caldwell and Bastrop counties
CCRTA	Corpus Christi Regional Transportation Authority
NCTRCA	North Central Texas Certification Agency
SCTRCA	South Central Texas Certification Agency
TxDOT	Texas Department of Transportation

SECTION 5 – SCOPE AND METHODOLOGY

Scope

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

1. You must rebuttably presume that members of the designated groups identified in 26.67 are socially and economically disadvantaged [49 CFR 26.61].
2. If you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group [49 CFR 26.63].
3. You must apply current Small Business Administration (SBA) business size standards found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts [49 CFR 26.65].
4. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged [49 CFR 26.67].
5. In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole [49 CFR 26.69].
6. In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole [49 CFR 26.71].
7. Other rules affecting certification include not considering commercially useful function issues, evaluating the eligibility of a firm on the basis of present circumstances, and making sure only firms organized for profit may be eligible DBEs [49 CFR 26.73].
8. You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP). You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program [49 CFR 26.81 and 26.31].
9. You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program [49 CFR 26.83].
10. You must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages [49 CFR 26.84 and 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 TUCP by FTA's Office of Civil Rights. The agenda letter notified the TUCP of the planned site visit, requested preliminary documents, and informed the TUCP 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 TUCP partners and the review team.

Subsequent to the entrance conference, a review was conducted of the TUCP agreement and other documents submitted to the review team by the TUCP representative. Interviews were then conducted with TUCP partners regarding DBE program certification standards and certification procedures. A sample of certification files (see table on next page) were then selected and reviewed for their required elements.

At the end of the review, an exit conference was held with the TUCP partners and the review team. A list of attendees is included at the end of this report. At the exit conference, initial findings and corrective actions were discussed with the TUCP partners.

Following the site visit, this draft report was compiled.

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

Ryan Inman
FTA Office of Civil Rights
1200 New Jersey Ave., S.E.
E54-426
Washington, DC 20590
202-366-5017
Ryan.inman@dot.gov

Certification Files Sampled

Texas Department of Transportation

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Approval <1 year	[REDACTED]	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
Approval <1 year	[REDACTED]	Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
Initial Denial	[REDACTED]	Y	Y	Y	N/A	Y/Y	N/A	Y	N/A
Approval >1 year	[REDACTED]	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
SBA Denial	[REDACTED]	N(SBA)	N	Y	N	Y/Y	Y	Y	N/A

City of Austin

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Approval <1 year	[REDACTED]	Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
Recertification	[REDACTED]	Y	Y	Y	Y	Y/Y	Y	N/A	N/A
Approval > 1 year	[REDACTED]	N (Old CoA Form)	Y	Y	Y	N/Y	N/A	N/A	N/A
Removal	[REDACTED]	N (Old CoA Form)	Y	Y	Y	Y/Y	N/A	N/A	N/A
Removal	[REDACTED]	N (1996 Form)	Y	Y	Y	Y/Y	N/A	Y	N/A

City of Houston

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Denial Appeal	[REDACTED]	Y	Y	Y	N/A	Y/Y	N/A	Y	Y
Removal	[REDACTED]	N(2003)	N (TxDOT Transfer)	Y	Y	Y/Y	N/A	Y	N/A
Approval <1 year	[REDACTED]	Y*	Y	Y	N/A	Y/N	N/A	N/A	N/A
Initial Denial	[REDACTED]	Y*	Y	Y	N/A	Y/Y	N/A	Y	N/A
Approval <1 year	[REDACTED]	Y*	Y	Y	N/A	Y/Y	N/A	N/A	N/A
Approval <1 year	[REDACTED]	Y*	Y	Y	N/A	Y/Y	N/A	N/A	N/A
Removal	[REDACTED]	N (1997)	Y	Y	Y	Y/Y	N/A	Y	N/A
Appeal Removal	[REDACTED]	N (2002)	Y	Y	Y	Y/Y	N/A	Y	Y
Recertification	[REDACTED]	Y*	Y	Y	Y	Y/Y	Y	N/A	N/A
Removal	[REDACTED]	N (2000)	Y	Y	Y	Y/Y	N/A	Y	N/A

*City of Houston's application supporting documents different than USDOT Uniform Application.

SECTION 6 – ISSUES AND RECOMMENDATIONS

Burden of Proof

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

Discussion: During this UCP Compliance review, deficiencies were found with requirements for burden of proof. The certification applications from the six certifying members were reviewed for required program elements. The Certifying Partners were found to use different applications, with some veering from the standard USDOT Uniform Application Form in Appendix F. This variation was evident in one certifier's (Corpus Christi Regional Transportation Authority) application package that excluded the requirement for a signed, notarized statement from members presumed to be socially and economically disadvantaged.

Corrective Action and Schedule: Within 90 days of the issuance of the final report, TUCP must submit to Ryan Inman at FTA's Office of Civil Rights evidence that all TUCP certifiers are using the prescribed Uniform Application which includes the requirement for a signed, notarized statement from members presumed to be socially and economically disadvantaged.

UCP Response: All TUCP agencies have agreed to utilize the standard USDOT application for the DBE Program which includes a notarized statement verifying social and economic disadvantage.

DOT Response: DOT concurs with TUCP's response. Corpus Christi Regional Transportation Authority (CCRTA) now requires a signed, notarized statement from members presumed to be socially and economically disadvantaged for certification as a Disadvantaged Business Enterprise. This finding is now closed.

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, a deficiency was found with the requirement for group membership. The regulations require that the certifier review the statement of disadvantaged in the Uniform Application Form in Appendix F and if there

is a well founded reason to question an individual's membership in a particular group, require the individual to present additional evidence that he or she is a member of the group. A written explanation of reasons for questioning group membership must accompany the request for additional evidence.

Interviews and file reviews were conducted with Texas Department of Transportation (TxDOT), City of Austin (CoA) and the City of Houston (CoH). The certification applications used by all six agencies were also reviewed. The review team found that applicants were required to present proof of ethnicity and/or citizenship by providing documents such as birth certificates, driver's license, tribal cards, passport, etc. for supporting documents as a standard part of the certification process. These items were requested in the list of supporting documentation in four of the six applications reviewed. The Uniform Application Form does not include supporting documentation for proof of ethnicity and citizenship. Texas Department of Transportation and the City of Austin use the Uniform Application Form, but as a standard collected these documents during the on-site visit. The team reviewed a sample of files from TxDOT, CoA, and CoH and found no evidence of a written explanation of the reasons for questioning the applicants' statement of disadvantaged.

The preamble of the 2003 amended 49 CFR Part 26 Final Rule indicates that UCPs can request for additional information through a supplemental form. They have flexibility to require proof of ethnicity uniformly. This means that at least one piece of information can be requested from each applicant uniformly. Then, if there is still a question about an applicant's group membership, they must be notified of the reasons for seeking additional evidence.

Corrective Action and Schedule: Within 90 days of the issuance of the final report, TUCP must submit to Ryan Inman at FTA's Office of Civil Rights evidence that proof of ethnicity and citizenship is part of their supplemental form, if necessary. This should include parameters that do not cause an undue burden on a particular group member to provide more documentation than another.

UCP Response: The TUCP will add a Supplemental Information Form to the DBE application used in Texas to improve the verification of proof of citizenship and social disadvantage for TUCP consistency.

DOT Response: DOT partially concurs with TUCP's response. The proposed supplemental Information Form of the TUCP requests proof of group membership from the applicant. The applicant has to provide one document from a list that would demonstrate proof of membership in a presumptively disadvantaged group. The list of approved documents includes a birth certificate, passport, tribal roll card, tribal voter registration certificate, or naturalization papers. The Corpus Christi Regional Transit Authority, North Central Texas Regional Certification Agency and City of Houston continue to request multiple documents for proof of ethnicity and/or proof of citizenship in their application packages. The TUCP is required to use the supporting document list from the Uniform Certification Application Form in Appendix F. The TUCP is to immediately cease and desist requiring proof of ethnicity and citizenship as part of the

initial application until such time as the proposed TUCP Supplemental Information Form has been approved by the operating administration.

Business Size

Basic Requirement: (49 CFR Part 26.65) A UCP must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts. A firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts over \$20.41 million.

Discussion: During this UCP Compliance Review, no deficiencies were found with the requirement of business size. The TUCP utilizes the North American Industry Classification System (NAICS) codes to determine if an applicant firm meets the requirements of 13 CFR 121 for the appropriate type(s) of work the firm seeks to perform in DOT-assisted contracts. The review team found no issues with how these firms were coded for the types of work performed in the files reviewed. The TUCP also appears to accurately assess the DOT size standard of \$20.41 million to be considered a small business concern for certification in the DBE program.

UCP Response: The TUCP has now increased the maximum size limit available for DBE Program applicants, in accordance with recent USDOT changes, to \$22.41 million in gross receipts averaged over a three-year period.

Social and Economic Disadvantage

A) 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 \$750,000.

Discussion: During this UCP Compliance Review, deficiencies were found with the requirement for Personal Net Worth (PNW) statements. The review team interviewed the certifying representatives in the TUCP from TxDOT, City of Austin and City of Houston. There were inconsistencies between individual certification processes as to who was required to provide the personal net worth statement. TxDOT required only the disadvantaged owners whose ownership and control were relied upon to provide a PNW statement, while the other two agencies required all disadvantaged owners to provide a PNW without regard to their ownership and control. The regulations clearly state that you 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 \$750,000. From the file selection sample, the review team did not discover any PNW statements from disadvantaged owners whose ownership and control were not relied upon.

The regulations also provide guidance in determining an individual's net worth. With respect to assets held in vested pension plans, individual retirement accounts, 401(k) accounts, or other retirement savings or investment program in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, certifiers are to include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

It appeared during the certification file review that the City of Houston did not take into account the present value of retirement accounts and community property in determining the applicant's PNW. One DBE had been certified for a number of years with the TUCP certifier and had their certification removed in May 2008 due to a PNW of \$881,507. The certification record showed that the individual's PNW was \$841,137 in 2007 and no action was taken, which was attributed as an oversight by the certifier. The 2008 PNW of \$881,507 included over \$535,000 in saving accounts and over \$133,000 in an IRA. The certification representative indicated that they made no adjustments to the savings or IRA for present values, nor did they ask for clarification from the applicant if these figures included present day asset values or only their portion of the community property assets. The representative indicated that the applicant was given an opportunity to appeal the removal of certification if they disagreed with the determination.

Corrective Action and Schedule: Within 90 days of the issuance of the final report, TUCP must submit to Ryan Inman at FTA's Office of Civil Rights procedures that require collection of Personal Net Worth statements only from owners claiming disadvantage whose ownership and control are relied upon. This should also include procedures and instructions for the applicant in completing the PNW statement and how to calculate retirement accounts and jointly held or community property.

UCP Response: The TUCP will modify its SOP procedures to ensure consistent application of collected Personal Net Worth (PNW) information for the owner(s) for the disadvantaged DBE firm. The TUCP will clarify standard asset evaluation concerning Texas Family Law for community property and retirement funds analysis. If there are complex questions from PNW information, each agency will discuss issue(s) with other TUCP agencies and consult with their Audit or Legal Offices for expert advice in these matters.

DOT Response: DOT partially concurs with TUCP's response. The City of Houston's *Uniform Certification Supporting Documentation Checklist* requests from DBE applicants a "signed and notarized personal financial statement from each minority/women owner." This remains inconsistent with 49 CFR Part 26 requirements. To close this finding, the TUCP will submit a copy of their modified SOP procedures and appropriate supporting documentation checklist by November 1, 2010 to Ryan Inman at FTA's Office of Civil Rights.

B) 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. Individuals who are not members of a presumed group can apply for an individual determination of social and economic disadvantaged. The UCP 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. The applicant is required to provide sufficient information to permit determinations under the guidance of Appendix E of the regulations. The TUCP certifiers interviewed indicated they had experience evaluating these types of requests and verified that they used the guidance of Appendix E to make the determinations.

Ownership

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

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

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, no deficiencies were found in the area of control. The interviews and files reviewed indicated that the certifiers of the TUCP had a strong grasp of the elements concerning socially and economically disadvantaged individuals controlling the applicant firm. Several of the denials of initial certification were based on lack of control in the applicant firm. The reasons were well documented and referenced the areas of concern for each applicant denied certification as a DBE.

Section 26.71(n) states that UCPs must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm needs to demonstrate to the UCP only that its disadvantaged owners are able to control the firm with respect to that type of work. UCPs may not, in this situation, require that the firm be recertified or submit a new application for certification, but must verify the disadvantaged owner's control of the firm in the additional type of work.

The City of Houston provided a written procedure for DBEs requesting such an expansion to their certification. This procedure was outlined as follows: firm submits request for expansion of capabilities, expansion request document screening, request for additional information (if necessary), on-site visit (if necessary), summary recommendation, committee review, and certification determination. If the applicant's request is denied, it would follow the normal internal appeal process with the City of Houston. The City of Austin and TxDOT expressed similar procedures when interviewed during the compliance review.

Other Rules Affecting Certification

Basic Requirement: (49 CFR Part 26.73) UCPs must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. DBE firms and firms seeking DBE certification shall cooperate fully with UCP requests for information relevant to the certification process.

Discussion: During this UCP Compliance Review, no deficiencies were found with the other rules affecting certification. This section of the regulations covers areas dealing with commercially useful functions and regular dealer issues affecting the certification determination. None of the interviews or file reviewed indicated any issues in the TUCP with either of these areas. This section also covers determination of ownership and control through parent or holding companies. In these situations, disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary. The UCP may certify the subsidiary if it otherwise meets all requirements of subpart D. No TUCP files were reviewed that met the criteria of a subsidiary controlled by disadvantaged individuals through a parent company.

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, an advisory comment was made regarding the UCP agreement. Section (a)(2) of the regulations indicated that the UCP

agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The Texas UCP MOU reiterates having adequate resources to carry out the requirements of this part.

The State of Texas is the second largest state in the nation with 268,601 square miles of territory. Certification allocations for the TUCP are based on geographic location of the applicant firm, using state area districts (see map in Section 4). TxDOT is responsible for the largest certification area in the state. This is typical for state DOTs; however, TxDOT has only two certification staff members to conduct on-site visits and make determinations. Other than Corpus Christi Regional Transportation Authority, TxDOT has the smallest certification staff in the TUCP, coupled with the most area to cover for certification. Based on research information provided by TxDOT, they also have one of the smallest certification staffs among other state DOTs in the country. One file reviewed did not have an on-site visit and the TxDOT representative mentioned that another DBE file had an on-site visit conducted a few days prior to the UCP review. More on this topic is discussed in *Section 9* of this report regarding on-site visits. TxDOT attributed the discrepancy in on-site visits to staff and money constraints needed to travel by air for on-site visits over 300 miles away. The review team concluded that it appeared Texas Department of Transportation does not have adequate resources to consistently conduct required on-site visits for the TUCP program.

Another advisory comment was made regarding processing certification requests from firms outside of the TUCP. The Department is closely monitoring the efforts of UCPs to reduce the burdens on firms applying for certification outside their home states. The Official Questions & Answers posted on 6/18/08 indicated that UCPs should not unnecessarily require the preparation of duplicative certification application packages. Based on the interviews with the certifying agencies in the TUCP, it appears that no streamlined process is in place for firms certified as DBEs in their home state, and seeking certification out-of-state.

Recommended Action: TUCP should discuss reallocation of territory assignments or TxDOT should address lack of resources issue affecting on-site visits. The TUCP should also revise Standard Operating Procedures to include a streamlined process for out-of-state DBE firms seeking certification by the TUCP.

UCP Response: The DBE Program certification staff of TUCP member agencies has recently been increased to ensure that DBE applications are completed in a timely manner while still ensuring that DBE program eligibility requirements are met. The TUCP Standard Operating Procedures document is updated regularly and the TUCP will address the issue of streamlining the application process, including out-of-state firms seeking DBE certification in Texas.

DOT Response: DOT concurs with TUCP's response

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 TUCP Standard Operating Procedure identified that the cost of creating and establishing the electronic DBE directory and website is the responsibility of TxDOT. The directory was reviewed for the required elements of Parts 26.31 and 26.81(g). The directory was found to include the business name, contact person, address, phone, types of work performed, NAICS code and title, district areas to perform work, certification agency, region, and expiration date. Each agency is responsible for maintenance of their certification records in the internal database, to include new certifications, renewals and removals. TxDOT then takes the information in the internal database and populates the public directory every Tuesday. Approximately 3,200 DBEs are maintained in the TUCP directory.

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, deficiencies were found with the requirements for on-site visits. The TUCP has a standard on-site visit form that all certifying partners use for recording information during the on-site visit. The TUCP has detailed procedures outlined for conducting on-site visits for DBE applicants. It states that “the on-site review is the second phase of the certification review process and will also be conducted on certified firms every three years.” It continues that “an on-site review of the applicant firm and an interview of the socially and economically disadvantaged principals of the firm must be made in accordance with 26.83(c)(1) of the regulations.” The following information should be received and reviewed no later than the on-site review: cash receipts, bank statements, payroll, invoices, contract files, inventory and equipment, bonding, business organization documents, employment agreements, physical characteristics of office and familial-marital relationships. An on-site visit to the job-site must be conducted if at the time of the on-site, the applicant is working is also a requirement in the TUCP procedures.”

The review team found discrepancies in the implementation of these procedures during the review. TxDOT provided a list of firms that had their certification removed. For the column titled site visit date, there were several firms with a date followed by (8a). The representative for TxDOT was not able to explain the meaning of the code in the list. Upon review of a file from the list of 8(a) firms removed, no on-site visit was present in

the file. It appeared that TxDOT did not consistently conduct on-site visits on firms certified by the Small Business Administration as an 8(a) or SDB.

The regulations also state that in addition to visiting the office location a visit should be conducted at the applicant's worksite, if applicable. This process is also outlined in the TUCP procedures; however, of the three certifying partners interviewed it appears that only TxDOT incorporated visiting job or worksites. The TUCP procedures also state that on-site visits will be conducted on certified firms every three years. The DOT Official Questions & Answers states that any on-site over three years old should be updated. TxDOT indicated that conducting on-site visits every three years was challenging due to their large responsibility area. Flight arrangements are made if an on-site location is more than 300 miles away and are often grouped together.

Corrective Action and Schedule: Within 90 days of the issuance of the final report, the TUCP must submit to Ryan Inman at FTA's Office of Civil Rights evidence that certification partners are visiting worksites and all SBA certified firms that have not have an onsite visit.

UCP Response: All TUCP certification member agencies have agreed to conduct on-site eligibility reviews on all new DBE applicant firms. All TUCP certification member agencies also agree to conduct nearby project site visits that the DBE applicant firms are working at, if practicable. All out-of-state certified DBE firms applying to Texas need home state on-site eligibility reports which are obtained from the home state DBE certification agency.

DOT Response: DOT concurs with TUCP's response. This finding is now closed.

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 Application Form in Appendix F. The TUCP procedures indicate that the USDOT Uniform Application is used as part of the certification package. Upon review of the applications used by the certifying partners, variations of applications and supporting documentation were discovered. The City of Austin and TxDOT both used the TUCP application which is consistent with the requirements of this part. Proof of ethnicity was collected after receipt of the application or during the site visit.

The City of Houston application was in a different format than the TUCP application but included the same questions. The City of Houston combined their application for certification with their local certification programs and the DBE program. The variation with their application was found in the list of supporting documentation. The DBE

applicant guidelines instructed that each minority/women owner submit a signed and notarized personal financial statement along with signed personal tax returns and all related schedules for the last three years. Part 26 does not make reference to minority and women owners but rather socially and economically disadvantaged individuals. The regulations also state that disadvantaged individuals whose ownership and control are relied upon must provide a personal financial statement. Birth certificates are also requested by the City of Houston from each minority/women owner applicant.

The Regional Certification Agencies (RCA) in North (Arlington) and South Central Texas (San Antonio) used their own version of the Uniform Application Form. The questions were consistent with the Uniform Application; however, there were variations in the supporting documentation from the TUCP application. Both agencies requested proof of citizenship requiring submittal of a birth certificate, passport or alien resident card. South Central Texas RCA also requested proof of ethnicity which included the same documents as proof of citizenship in addition to a driver's license or tribal card.

Corpus Christi Regional Transportation Authority (RTA) certification application was completely different than the TUCP application and USDOT Uniform Application. This approximately four-page form's questions and supporting documentation were different than the other UCP Partners. The RTA application requested proof of citizenship and ethnicity similar to South Central Texas RCA's supporting documentation. RTA did not require personal tax returns in the supporting documentation list nor did they require concessionaires seeking ACDBE certification to complete a personal net worth statement. RTA's application also did not include language found in the Uniform Application under section 26.107 regarding enforcement actions against firms applying in the DBE program.

Corrective Action and Schedule: Within 90 days of the issuance of the final report, the TUCP must submit to Ryan Inman at FTA's Office of Civil Rights evidence that all certifying partners are using the TUCP application which is consistent with the USDOT Uniform Application Form in Appendix F. Develop a supplemental form to address the questions sought from the certifying partners that cannot be included in the Uniform Application. The TUCP must seek approval from the operating administration of a supplemental form.

UCP Response: All TUCP certification agencies now utilized the standard USDOT application for the DBE Program and will have that form added to their websites.

DOT Response: DOT does not concur with TUCP's response. As of November 11, 2009, all TUCP certification agencies are not utilizing the standard USDOT Uniform Certification Application Form. Applications for DBE certification were printed from all TUCP certification partners' websites. Corpus Christi RTA did change their application to be consistent with the other TUCP partners. However, only TxDOT, City of Austin, and South Central Texas RCA have supporting documentation checklists in their certification applications consistent with 49 CFR Part 26. To close this finding, the TUCP will submit evidence that all TUCP Partners are using the USDOT Uniform

Certification Application Form for DBE certification by November 1, 2010 to Ryan Inman at FTA's Office of Civil Rights.

C) Annual Updates

Basic Requirements: (49CFR Part 26.83 (j) If you are a DBE, you must provide to the UCP, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirement for annual updates. The TUCP procedures include an annual update form that all certifying partners would utilize. Review of TUCP files indicated that the certifying partners utilize the TUCP annual update form to meet the requirements of this part.

10. DOT / SBA MOU

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

Discussion: During this UCP Compliance Review, deficiencies were found with the requirement for following the DOT/SBA Memorandum of Understanding (MOU). The TUCP Standard Operating Procedures states that a copy of a firm's application package that was submitted to the SBA will be accepted along with a copy of their certification letter. The procedures also state that SBA firms must undergo a site visit.

The regulations state when an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, a UCP must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete their application forms and packages. The applicant may submit the package directly, or may request that the SBA forward the package to you. Pursuant to the MOU, the SBA will forward the package within thirty days.

The USDOT Official Questions & Answers outlined additional guidance concerning the DOT/SBA MOU. The TUCP is to request that the applicant provide a copy of the full and complete application package on the basis of which SBA certified the firm. The UCP should require an affidavit from the firm stating, under penalty of perjury, that the documentation is identical to the provided SBA. The UCP may also have a provision limiting this expedited process to application packages filed with SBA within three years of the application to the UCP. The UCP should direct the applicant to provide to the UCP any updates needed to make the SBA application materials current (e.g., changes in Personal Net Worth of the owner, more recent tax returns, changes affecting ownership and control).

The TUCP certifying partners from TxDOT and City of Austin described their process for SBA firms as attempting to contact the SBA for the certification package. If the SBA does not forward the application package, then the DBE applicant is required to complete the TUCP application in its entirety. These certifying partners shared that the SBA has been uncooperative in sharing the certification application package. The TUCP procedures indicate that a copy of a firm's application package submitted to the SBA and a copy of their certification letter would be accepted. The procedures also mentioned that SBA firms must undergo a site visit. The review team did see a 1995 SBA application in one of TxDOT's certification files; however, no site visit was conducted. The TUCP application includes the "Roadmap For Applicants" regarding a streamlined process for SBA firms from the Uniform Application, but not all TUCP partners had these instructions in their individual applications.

Corrective Action and Schedule: Within 90 days of the issuance of the final report, TUCP will submit to Ryan Inman at FTA's Office of Civil Rights revised procedures for processing SBA firms seeking DBE certification. TUCP will develop a process to request the application package from SBA firms if it was filed within three years of the application to the TUCP. An affidavit from the firm stating, under penalty of perjury, that the documentation is identical to that provided SBA will also be required by the TUCP.

UCP Response: At a USDOT training session in Fort Worth late last month (July 2009) the TUCP members were advised that the SBA/USDOT certification MOU was NOT renewed. The TUCP recently chose to treat SBA certified firms in the same manner that firms who are certified by local or state certification programs are treated.

DOT Response: DOT does not concur with TUCP's response. The Official Questions and Answers DBE Program Regulation state, "While the memorandum of understanding between DOT and SBA that led to the creation of section 26.84 has expired, the regulatory requirements of this section remain in effect." The TUCP is to follow only written official guidance from the DOT. To close this finding, the TUCP will submit revised procedures for processing SBA firms seeking DBE certification by November 1, 2010 to Ryan Inman at FTA's Office of Civil Rights.

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 TUCP Standards and Procedures outline that a firm will be notified in writing by the certifying partner if it has

been denied DBE certification by the TUCP. The firm will be provided with a written explanation of the reasons for denial, specifically referencing the evidence in the record that supports each reason for the denial. The TUCP certification files reviewed showed that these procedures are followed by the certifying partners.

The City of Austin and TxDOT do not have internal appeals processes for initial denials. The City of Houston does have an internal process for firms whose initial certification request was denied. Certification approvals and denials are signed by Tim Warren, Division Manager, Business Development/Certification for the City of Houston. A firm seeking to appeal a denial files an appeal with Velma Laws, Director, Affirmative Action and Compliance. The Director will uphold or reverse the tentative denial. If denial is upheld, an informal appeal hearing is held with the applicant and Director. The firm is also given the option to appeal to the USDOT.

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 TUCP Standards and Procedures state that the TUCP certifying partners will follow procedures consistent with part 26.87 when removing DBE certification eligibility. The regulations state that for recipient-initiated proceedings, if a UCP determines that there is reasonable cause to believe that a currently certified firm is ineligible, it must provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination.

The removal processes for TxDOT, City of Austin and City of Houston were examined during the review. The City of Austin's process was found to be inconsistent with the requirements found in part 26.87. The review team noted two files from the City of Austin ([REDACTED] and [REDACTED]) that had intent to decertify letters. The letters informed the DBE firms that they had failed to respond to requests for annual updates and informed of the intent to decertify the firms from the DBE program. The letter continued, "If your firm is decertified, you will not be able to reapply for DBE certification for one year from the effective date of initial denial."

The next section was information on the appeal process for the City of Austin. It stated, *"Pursuant to 49 CFR 26.87(d), you have an opportunity to respond to these findings through an informal hearing, at which you may respond in person and provide information and arguments concerning why your firm should remain certified. You have seven (7) days from receipt of this letter to submit a written notice of intent to appeal this adverse decision to the Small and Minority Business Resources. Failure to file a written notice of intent within this time waives all rights to appeal this adverse decision. After filing written notice of intent to appeal, you may submit a written appeal, stating the*

grounds for appeal; including the reasons you believe the adverse certification decision is inappropriate. You must submit your appeal within 21 days from the receipt of this letter. If you choose to appeal, an informal hearing will be scheduled to hear your firm's eligibility for the City of Austin's Disadvantaged Business Procurement program."

The last paragraph in the letter stated, *"During the pendency of these procedures, your firm will remain an eligible DBE. Once SMBR has reached a decision, you will be informed of this decision in writing, including the specific reasons supporting the decision. If the decision is to remove your firm's DBE eligibility, such removal will be effective upon the issuance of the written notice of decision."* This process appears to be incomplete since there was no final letter stating that the firms' certification was removed and giving them an opportunity to appeal the decision to the USDOT.

The removal process for TxDOT and the City of Houston appeared to be in accordance with part 26.87. TxDOT process consisted of notifying the DBE that an annual update was not received and requested receipt of the information within a number of days. The DBE firm of [REDACTED] was sent a letter on April 23, 2008, notifying them that an annual update was not received and to provide one by April 30, 2008. On May 20, 2008, TxDOT sent a certified letter informing the firm of intent to decertify the firm with an opportunity of an informal hearing. A certified letter was mailed to the firm on June 19, 2009, notifying that the firm was not eligible for the DBE Program based on 49 CFR Part 26.73(c), regarding cooperating fully with request. Information was provided to the firm regarding appeals to the USDOT. The review team recommended that TxDOT add a more decisive sentence that the firms' certification was removed. TxDOT revised their letter to include such a sentence during the review. TxDOT also provided information indicating that 99 of their 132 certification removals in fiscal years 2007 and 2008 were because of failing to provide annual updates. The City of Houston's intent to decertify letter to [REDACTED] was mailed on April 8, 2008 with an option for a hearing and a final removal letter on June 13, 2008.

During an informal hearing, separation of functions must be in place. UCPs must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject to direction from the office or personnel who did take part in these actions. The Department also emphasized in the Official Question & Answers that UCPs should ensure that any state-level appeal process from certification decisions available to firms calls for appeals to be heard and decided by experienced, professional employees very familiar with DOT DBE program certification standards and procedures. The informal hearing individual for TxDOT is Ed Simmons, Deputy Director; City of Austin is Byron Johnson, Purchasing Officer; and for the City of Houston the Director of Affirmative Action and Contract Compliance, Velma Laws.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, TUCP will submit to Ryan Inman at FTA's Office of Civil Rights evidence that the removal process outlined in part 26.87 is followed by all certifying partners in the TUCP. This should include a sample of intent to remove certification letter and final removal of certification letter.

UCP Response: All TUCP agencies have agreed to follow Federal DBE Program regulations concerning the removal of currently certified firms. Some of the agencies will change internal procedures to meet this requirement.

DOT Response: DOT concurs with TUCP's response. This finding is now closed.

C) Appeals to the DOT

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

Discussion: During this DBE Compliance Review, no deficiencies were found with the appeals to the USDOT. The TUCP certifying partners interviewed all had firms appeal denial of certification determinations to the USDOT. The certifying partners adhered to the 20 day requirement to provide the administrative record to USDOT. The City of Houston provided information on the denied firms that appealed to the USDOT in fiscal years 2007 and 2008. Thirty-seven firms were denied certification by the City of Houston during this period. Three firms appealed to the USDOT and all three decisions were upheld by USDOT.

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 the firm under 49 CFR part 29.

Discussion: During this DBE Compliance Review, deficiencies were found with DBE enforcement actions. The TUCP Standard and Procedures indicate that their certification application is consistent with the USDOT Uniform Application Form. The Uniform Application has been approved and required to be used by all UCPs. The application asks all the necessary questions and requests information for UCPs to make a bona fide determination of eligibility in the DBE program. Penalties are also included for firms misrepresenting themselves as a DBE. The Uniform Application has section 26.107 regarding submittal of fraudulent and deceitful statements and the penalties imposed for doing such. The certification application from Corpus Christi Regional Transportation Authority did not have the necessary language of section 26.107 found in the Uniform Application Form.

Corrective Action and Schedule: Within 90 days of the issuance of the final report, TUCP will submit to Ryan Inman at FTA's Office of Civil Rights evidence that all certifying

partners are using an application form consistent with the Uniform Application Form in Appendix F.

UCP Response: All TUCP members now utilize the standard USDOT application for the DBE Program and are placing the form on their websites. The TxDOT Audit Office has reviewed twenty randomly chosen TxDOT DBE certification files.

DOT Response: DOT concurs with TUCP's response. Corpus Christi RTA has updated their certification application to include the necessary language of section 26.107. This finding is now closed.

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

In the course of reviewing an application or otherwise considering the eligibility of a firm, the UCP and its staff may produce documents (e.g. memoranda, evaluations, records, notes, other working papers) that reproduce or refer to the information subject to the disclosure prohibitions of the DOT rule.

C) Cooperation

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

Discussion: During this DBE Compliance Review, no deficiencies were found with cooperation. The Department addressed cooperation in two areas of the 2008 updated Questions & Answers. UCPs were encouraged to reduce burdens on applicant who are certified in other states or certified by SBA. UCPs must promptly provide requested information or on-site visit information to other UCPs or the SBA. The certifying partners of the TUCP interviewed during the compliance review stated that they have promptly provided information to UCPs from other states. None of the partners interviewed had received requests for information from the SBA.

The other area discussed in the 2008 updated Questions & Answers was the emphasis of UCP members working together to make certification decisions. The guidance instructed UCP members to work through their differences. UCP agreements should always include a dispute-resolution mechanism. The TUCP Standard Operating and Procedures address agency compliance. According to the TUCP procedure, *“if any TUCP Certifying Partner has reason to believe that another TUCP Certifying Partner is not in compliance with the requirements of 49 CFR Part 26, Subpart E, they should bring the matter to the attention of the TUCP Executive Committee. The TUCP Executive Committee will be responsible for reviewing any compliance matters that pertain to the requirements of 49 CFR Part 26, Subpart E. If the TUCP Certifying Partner raising a compliance matter is not satisfied with the action taken by the TUCP Executive Committee to resolve the matter, they may make a written complaint to the appropriate U.S. DOT Intermodal Agency, e.g. FTA, FAA, FHWA, etc”*. The TUCP Executive Committee also meets on a quarterly basis to discuss best practices, any issues in the TUCP process, and training matters. Detailed minutes from November 16, 2007 and January 9, 2009 meeting by the Executive Committee were provided during the review.

SECTION 7 – SUMMARY OF FINDINGS

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action(s)	Current Status
1. Burden of Proof	26.61	D	Not providing applicant written reasons to question group membership.	Develop supplemental form for group membership documentation	Closed
2. Group Membership	26.63	D	Causing disproportionate burden on particular group members	Develop supplemental form for group membership documentation	Partially concur with additional requirements
3. Business Size	26.65	ND			
4. Social and Economic Disadvantage a) Personal Net Worth b) Individual Determination	26.67	D ND	Inconsistency among UCP members collecting PNW from owners claiming disadvantage. Inaccurately calculating PNW	Ensure that UCP members are collecting PNW as required by regulations. Ensure that proper calculations of PNW occur with all agencies. Attend certification training on PNW.	Partially concur with revised SOP by 11/1/10
5. Ownership	26.69	ND			
6. Control	26.71	ND			
7. Other Certification Rules	26.73	ND			

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action(s)	Current Status
8. UCP Requirements					
a) UCP Agreement	26.81	AC	UCP certification members should have sufficient resources to carry out the requirements of this part.	Address staffing issues of TUCP members	Concur
b) UCP Directory	26.31	ND			
9. UCP Procedures					
a) On-site Visits	26.83	D	UCP certification members not visiting the work sites of applicants. Inconsistent with conducting site visits on SBA firms.	Visit worksites in local jurisdiction for future applicants.	Closed
b) Uniform Application		D		Conduct on-site visits on all firms without one.	Closed
c) Annual Updates		ND	All UCP certification members not using Uniform Application	All TUCP certification members must use Uniform Application	Do not concur. Submit evidence by 11/1/10
10. DOT/SBA MOU	26.84 – 26.85	D	Not following SBA MOU	Develop procedures for certifying SBA firms	Do not concur. Revised SOP by 11/1/10
11. Denials					
a) Initial Request	26.86	ND	Removal letters not notifying of final removal	Revise intent to remove certification letters	Closed
b) Remove Existing	26.87	D			
c) Appeals	26.89	ND			
12. Compliance and Enforcement					
a) DBE Enforcement Actions	26.107	D	DBE Enforcement Actions language not in all applications	All TUCP members should use Uniform application.	Closed
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
TUCP Members:				
Pat Bittner	TxDOT	Program Manager	512-374-5237	pbittner@dot.state.tx.us
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Elton Price	City of Austin	Sr. Bus. Dev. Counselor	512-577-3054	Elton.price@ci.austin.tx.us
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Milligan & Co LLC:				
Benjamin Sumpter	Milligan & Co., LLC	Lead Reviewer	215-496-9100	bsumpter@milligancpa.com
John Clare	Milligan & Co., LLC	Reviewer	716-831-9283	jmecca@milligancpa.com
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