

**COMPLIANCE REVIEW REPORT
OF THE
UTAH
UNIFIED CERTIFICATION PROGRAM**

**Final Report
August 2010**

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

by

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Table of Contents

SECTION 1 – GENERAL INFORMATION	1
SECTION 2 – JURISDICTION AND AUTHORITIES	2
SECTION 3 – PURPOSE AND OBJECTIVES	3
SECTION 4 – BACKGROUND INFORMATION	5
SECTION 5 – SCOPE AND METHODOLOGY	7
SECTION 6 – ISSUES AND RECOMMENDATIONS	11
1. Burden of Proof	11
2. Group Membership.....	11
3. Business Size	12
4. Social and Economic Disadvantage	13
5. Ownership	14
6. Control.....	15
7. Other Rules Affecting Certification	15
8. UCP Requirements	16
9. UCP Procedures	17
10. DOT / SBA MOU	19
11. Denials of Certification	20
12. Compliance and Enforcement	22
SECTION 7 – SUMMARY OF FINDINGS	24
SECTION 8 – LIST OF ATTENDEES	26

SECTION 1 - GENERAL INFORMATION

Hosting Grant Recipient: Utah Department of Transportation
4501 South 2700 West

City/State: Salt Lake City, UT 84114-3600

Grantee Number: 1164

Executive Official: John Njord
Executive Director

On Site Liaison: Denice Graham
Civil Rights Manager
801-965-4695

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Site visit Dates: April 27-30, 2009

Compliance Review Team
Members: Benjamin Sumpter, Lead Reviewer
John Caruolo
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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 Utah Unified Certification Program (UUCP) 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 UUCP’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 Utah Unified Certification Program (UUCP) is necessary.

The primary purpose of the compliance review is to determine the extent to which the Utah Unified Certification Program (UUCP) 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 Utah Unified Certification Program and its implementation, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

This compliance review is not to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its subrecipients, nor to adjudicate these issues in behalf of any party.

OBJECTIVES

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

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

The objectives of this compliance review are to:

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

SECTION 4 – BACKGROUND INFORMATION

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

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

Utah Unified Certification Program

The DOT recipients entered into an Agreement Establishing Utah Uniform Certification Program (UUCP) For Disadvantaged Business Enterprises (Agreement) between the Utah Transit Authority (UTA), the Salt Lake City Department of Airports (SLCDA), the Utah Department of Transportation (UDOT), the City of Logan, and Park City. All the DOT recipients signed the Agreement in 2002, submitted their UCP program to the Secretary of Transportation and were approved the same year.

The work of the UUCP is performed by three “certifying recipients”, three agencies with established DBE programs that continued to certify DBEs on behalf of all recipients. The three certifying recipients are UDOT, UTA, and SLCDA. All certification actions under the UUCP are binding on all USDOT recipients within the State of Utah.

The certifying recipients make all certification decisions on behalf of all USDOT recipients in the state with respect to participation in the USDOT DBE program. Each certifying recipient independently evaluates and makes decisions on DBE certification application and affidavits of no change in accordance with 49 CFR Part 26.

All applicants seeking certification with the UUCP must submit their application to UDOT for processing and distribution to the other certifying recipients if necessary. UDOT determines the appropriate certifying recipient based on the product or services provided by the applicant. UTA is responsible for certification in the area of public transit construction and public transit-related services (e.g., transit-related planning, engineering and design services, staffing services, or office supply merchants), SLCDA is responsible for certifications in the area of airport-specific expertise and airport concessions, and UDOT is responsible for certifications in the area of general construction for highways and airports and all other areas.

UDOT receives and screens all applications and disperses the UUCP DBE applications based on a rank order system. UDOT enters the application information in its data base system, known as the “Project Development Business system” (PDBS), to begin tracking the DBE application.

UDOT then reviews the applicant's supplemental questionnaire to the UUCP application. The supplemental questionnaire allows the applicant to select whether their type of business would be most often utilized on airport specific work, general construction of highways, or public transit and related services. If multi-jurisdictional work categories were selected by the applicant or it fell under the jurisdiction of two or more of the UUCP entities, UDOT would determine which entity most often would utilize the types(s) of DBE work that the DBE had listed by using a rank order system.

Example #1 of rank order system:

Facility construction and builders: UTA would utilize facility construction and builders most often, SLCDA would utilize them less and then lastly, UDOT.

Example #2 of rank order system:

Electrical: If an electrical firm applied for DBE certification, UDOT would contact the DBE firm to determine if they performed electrical work for airport runways, loop detectors for traffic signal lighting on UDOT highways, or railway work for UTA. UDOT would then apply the rank order system and direct the application accordingly.

Should a large number of applications come in simultaneously, UDOT would disperse the applications evenly, using the rank order system, so as to not overwhelm one agency with an abundance of applications.

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 UUCP by FTA's Office of Civil Rights. The agenda letter notified the UUCP of the planned site visit, requested preliminary documents, and informed the UUCP 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 UUCP Certifying Members and the review team.

Subsequent to the entrance conference, a review was conducted of the UUCP agreement and other documents submitted to the review team by the UUCP representative. Interviews were then conducted with UUCP Certifying Members regarding DBE program certification standards and certification procedures. These interviews included members with the responsibility of certifying on behalf of the members. A sample of certification files (see table on next page) were then selected and reviewed for their DBE required elements.

At the end of the review, an exit conference was held with the UUCP Certifying Members 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 UUCP Certifying Members.

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

Utah Transit Authority:

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

*Application form prior to 2003 USDOT Form

UT DOT:

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

Salt Lake City Airport:

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

SECTION 6 – ISSUES AND RECOMMENDATIONS

1. **Burden of Proof**

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

Discussion: During this UCP Compliance review, no deficiencies were found with requirements for burden of proof. The UUCP uses the U.S. Department of Transportation's (USDOT) Uniform Application Form found in Appendix F of the regulation, which includes the statement of social disadvantage. The review team also found examples of denial letters where the applicant had not met the burden of proof standards of the regulation.

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, an advisory comment was made with the requirement for Group Membership. The regulations state that UCPs must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. If the UCP has a well founded reason to question the individual's claim of membership in that group, it must require the individual to present additional evidence that he or she is a member of the group. The UCP must provide the individual a written explanation of reasons for questioning group membership.

The certifying recipients were interviewed by the review team collectively and individually. In regards to group membership determinations, some of the responses were inconsistent with the regulatory requirements of determining group membership. The UUCP uses the Affidavit of Social Disadvantage in the Uniform Application Form to determine group memberships. Some of the certifying recipients will collect additional information from Native Americans during the on-site process if there is a question of group membership during the interview. The certifying recipients did explain that group membership questions sometimes come up during discussions and the applicant sometimes would volunteer tribal cards during the interview. Rather than the certifying recipient going back to the office to put a request in writing, they would accept or request supporting group membership information in person. The review team cautioned the certifying recipients that imposing a disproportionate burden on members of a particular

group could violate 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

Recommended Action: The UUCP will determine if additional information will be collected from all individuals seeking DBE certification or on a case-by-case basis. The UUCP will require operating administration approval to include group membership documentation on their “Supplemental Questionnaire” or will make request in writing if on a case-by-case determination. This process should be outlined in the operating procedures of the UUCP.

UCP Response: The UUCP will determine if additional information will be collected from all individuals seeking DBE certification or on a case-by-case basis. Any changes to the current process will be updated to the UUCP Standard Operating Procedures (SOP) and submitted to the respective operating administrations for approval.

DOT Response: DOT concurs with UCP Response.

3. Business Size

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

Discussion: During this UCP Compliance Review, an advisory comment was made with the requirement of business size. The UUCP 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 UUCP was also aware of the adjustment to the DOT size standard from \$20.41 million to \$22.41 million to be considered a small business concern for certification in the DBE program. SLCDAs were also aware of the DOT size standard adjustments for Airport Concessionaire Disadvantaged Business Enterprises (ACDBE).

The review team recognized that several business tax returns for certain years were missing from the application packages of the certifying recipients. The regulations require that UCPs review the average annual gross receipts of the applicant firm, as defined by SBA regulations. In SBA regulations, “How does SBA calculate annual receipts”, the Federal income tax return must be used to determine the size status of a business concern. The Uniform Application Form also requires the past three business tax returns from the applicant firm. Subsequent the review, UTA communicated that missing tax returns were requested from their DBEs whose files were examined during the review.

4. Social and Economic Disadvantage

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, a deficiency was found with the requirement for Personal Net Worth (PNW) statements. The UUCP operating procedures included the appropriate Uniform Application Form in addition to the recommended Small Business Administration (SBA) Personal Net Worth (PNW) Financial Statement. The UUCP also included instructions for the applicants completing the PNW. However, the review team found discrepancies in the PNW instructions regarding who is required to submit the PNW financial statement.

The regulations require that each individual owner of a firm whose ownership and control are relied upon for DBE certification certify that he or she has a personal net worth that does not exceed \$750,000. The UUCP instruction state, "Each DBE Owner must complete". However, the detailed instructions state to, *"Complete this form for: (1) each proprietor, or (2) each limited partner, each general partner, (3) each stockholder, or (4) any person(s) or entities upon which the disadvantaged status is dependent upon. (Complete) Only your portion of assets/liabilities."* At least one certifying recipient didn't know that a PNW financial statement was required from only the individual(s) whose ownership and control are relied upon for DBE certification. This means that situations could arise where an owner may not have to submit a PNW if an adequate number of other DBE owners met ownership and control certification requirements.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, UUCP must submit to Ryan Inman at FTA's Office of Civil Rights revised instructions in their PNW application package that are consistent with the DBE regulations. The instructions stating, "Each DBE Owner must complete" should be removed or revised.

UCP Response: The UUCP will remove the instructions that states, "Each DBE Owner must complete" at the top of the form. The UUCP will revise the PNW statement to ensure it is in compliance with the DBE regulations.

DOT Response: DOT concurs with UCP response. To close this finding, provide the revised PNW form with instructions by November 1, 2010.

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, 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 only UUCP certifying recipient interviewed that had experience evaluating these types of request was the representative from SLCDA. The review team examined the DBE certification approval of [REDACTED]. This firm sought and was approved as a DBE by the airport based on an individual determination of social disadvantaged. The applicant indicated in the application for group membership that he was a blind Caucasian (male). The regulations require the UCP to consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world. The certification record did not contain any of this information and the determination utilized that led the representative to approve this individual as a DBE under the individual determination of appendix E was unclear. The only information discovered in the certification record was some state guidelines for blind individuals. There was no work product or narrative information from the certifying recipient or the individual in the certification record that could address how education, employment and business history were considered in evaluating the applicant for certification. Subsequent to the review, the representative from SLCDA indicated he was going to collect additional information from the DBE regarding their social disadvantage.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, UUCP must submit to Ryan Inman at FTA's Office of Civil Rights operating procedures to evaluate individual determination of social and economic disadvantage in appendix E.

UCP Response: The UUCP will generate and submit UUCP standard operating procedures to evaluate individual determination of social and economic disadvantage (as found in appendix E).

DOT Response: DOT concurs with UCP response. To close this finding, provide the revised standard operating procedures by November 1, 2010.

5. Ownership

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

Discussion: During this UCP Compliance Review, no deficiencies were found with the requirement of ownership. 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 UUCP certifiers are appropriately allocating ownership percentages of socially and economically disadvantaged owners for certification.

6. Control

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

Discussion: During this UCP Compliance Review, no deficiencies were found in the area of control. The interviews and files reviewed indicated that the certifiers of the UUCP 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. Several of the applicants reviewed had appealed to the US DOT and were upheld based on their documentation of issues concerning control.

The review team recommended that the UUCP consider adding procedures for evaluating DBE requests to have additional work codes added to their certification. These procedures would explain how control determinations will be evaluated, if an on-site visit is necessary, or if additional licenses or other information would be required.

7. Other Rules Affecting Certification

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

Discussion: During this UCP Compliance Review, no deficiencies were found with the other rules affecting certification. This section of the regulation 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 UUCP with either of these areas.

8. UCP Requirements

A) UCP Agreement

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

Discussion: During this UCP Compliance Review, an advisory comment was made regarding the UUCP Agreement. The UUCP Agreement has written instructions in Section III.C. - UUCP Procedures for Out-of-State applications. A firm located outside Utah seeking DBE certification under the UUCP shall apply for certification as a DBE in the same manner as an in-state firm, except that the firm located outside Utah must be certified in their home state before seeking certification under the UUCP. The Supplemental Questionnaire indicates if a firm has been certified in a USDOT DBE Program in their home state and is applying for certification in Utah, they are required to have their home state forward a copy of their on-site review (by fax or mail) to the UUCP. The UUCP states in the questionnaire that they cannot certify the firm without the home state's on-site review.

The Department mentions in the Official Question & Answers that UCP should promptly respond to requests from other UCPs for information needed for the certification process (e.g. a request from another site for an on-site review report). Representatives of the UUCP indicated problems obtaining on-site reports from UCPs in District of Columbia and Virginia.

The UUCP Certification Criteria/Guidelines indicate that a firm requesting certification from outside of the state must:

- Be certified in their home state;
- Provide a copy of the current certification letter issued by the home state UCP;
- Complete a new uniform certification and apply directly to the UUCP; and
- Provide a copy of the home states' on-site review.

It is the policy of the Department of Transportation that UCPs should, to the maximum extent feasible, reduce burdens on firms which are certified as DBEs in their home state and which seek certification in other states. In particular, UCPs should not unnecessarily require the preparation of duplicative certification application packages. The Department believes strongly that all states should put into place procedures to avoid having firms certified in one state start the certification process from scratch in another state.

The UUCP procedures also include a dispute resolution mechanism. The procedures state that disputes would be settled by a UUCP certifying entity majority vote. All three UUCP certifying entities would meet either by conference call or in person and discuss the dispute issue(s). There would be a vote between the three DBE Liaison Officers, and the majority votes would rule.

Recommended Action: Discuss how the UUCP can develop procedures consistent with the Department policy of reducing burdens on firms which are certified as DBEs in their home state and are seeking certification in the UUCP.

UCP Response: The UUCP will ensure the procedures in UUCP Agreement are consistent with the Department's policy of reducing burdens on firms which are certified as DBEs in their home state and are seeking certification with the UUCP. The UUCP will ensure the procedures are also consistent with the DBE regulations, specifically 49 CFR Part 26.81 and 26.84.

DOT Response: DOT concurs with UCP 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 UUCP states in the Agreement that UDOT agreed to host and maintain a unified DBE directory for the UUCP in accordance with 49 CFR Part 26.31. UDOT maintains the DBE directory in electronic format, and make the directory available to the public through its website. The directory lists each firm certified under the UUCP. Each recipient is to provide a link on its website to the UDOT website.

Each certifying recipient has ongoing internet access to review and make changes to the directory. Each certifying recipient is to update the directory to reflect certification additions, deletions or changes within its purview. The certifying recipients are to promptly update the directory no later than 14 days after the effective date of any addition, deletion, or change.

The review team visited the websites of UDOT, UTA and SLCD. Both UTA and SLCD have links to the DBE directory on UDOT's website. The directory is a Portable Document File (PDF) of all the DBE firms certified by the UUCP. The directory contains the required information found in 26.31.

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 made with the requirements for on-site visits. The UUCP procedures state the following regarding on-

site reviews: The assigned certifying entity designated to conduct the certification of the application will conduct the on-site interview as part of the certification process. The date the on-site interview is performed will be posted to the PDBS database system. The certifying entity is responsible for bearing the cost to conduct the on-site interview. Under the Agreement, this cost is not reimbursable to the certifying entity.

The Department also recommends that on-site reviews be updated every three years. The UUCP procedures state that the certifying entities will complete an on-site review at the time of re-certification which occurs every three years according to their procedures.

The regulations also require visits to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. The UUCP on-site review form includes a section for observations made during the job site tour.

B) Uniform Application

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

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirements for using the Uniform Application Form in Appendix F. The UUCP Agreement states that the Certifying Members will use the Uniform Application Form to review DBE applicants seeking certification. The UUCP also appropriately incorporated a supplemental questionnaire that request additional documents to facilitate the certification process in Utah. The questionnaire covered additional information for collecting bank signature cards, 8(a) firms, out-of-state DBEs, types of work (e.g. airport, general construction, transit, etc.), areas in state to perform work, and requested NAICS codes. The certification files examined during the compliance review supported the UUCP's use of the Uniform Application Form.

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, an advisory comment was made with the requirement for annual updates. The regulations require that annual no change affidavits are collected every year on the anniversary of the firm's initial certification. The review team found several files from all the certifying recipients in the UUCP to have missing no change affidavits.

The UUCP has a third year review application package that includes completion of an abbreviated UUCP DBE Application form, PNW, and an annual no change affidavit. The review team found inconsistencies with collection of the same information by the

certifying recipients. UDOT followed the process outlined above. The review team did not see annual no change affidavits for the third year review in addition to the Uniform application for UTA and SLCDA. The UTA representatives indicated during the review that third year review applicants only had to complete the Uniform Application when changes had occurred. SLCDA's third year process included completing the Uniform Application in its entirety but also did not include the annual no change affidavit. Several of the files reviewed were also no change affidavits for some years.

Recommended Action: The UUCP should discuss implementing a quality assurance process to ensure that annual no change affidavits are collected routinely. UUCP should outline formal procedures to conduct a third year review. This will include what documents to collect and how information is to be completed.

UCP Response: The UUCP will discuss and implement an updated process for requiring the annual update affidavit for anniversary dates and the third year review. Additionally, the UUCP will update the process and forms for conducting the third year review. This will include what documents to collect and how the information is to be completed.

DOT Response: DOT concurs with UCP response.

10. DOT / SBA MOU

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

Discussion: During this UCP Compliance Review, an advisory comment was made with processing SBA certified firms. The UUCP Supplemental Questionnaire requires SBA 8(a) firms to request (in writing) a copy of their application be sent to the UUCP (by fax or mail). The UUCP also had written procedures for SBA 8(a) applicants seeking certification as a DBE. In addition to requesting a copy of the application package to be forwarded to the UUCP, the applicant also needs to specify what type of work they perform. The certifying official will then determine if the applicant performs the type of service that will fit the DOT program. If the type of work the SBA participant does not fit the DOT program, the UUCP certifying official would write a letter denying them DBE certification because their type of work did not fit the DOT program.

During the review, the three certifying recipients gave varying procedures of how 8(a) firms were processed in their respective agencies. The Department gives recommended procedures for processing SBA participants in the DBE program. Historically, UCPs have found it difficult to obtain the SBA application package directly from the SBA. The USDOT Official Questions & Answers include provisions to allow the DBE applicant to submit the same package that was submitted to the SBA. The Department recommends that this information be contemporary (within 3 years). The option for the SBA participant to submit the same package from SBA to the UUCP was not outlined in the

procedures nor did it address requesting SBA participants to update their information to make it contemporary.

Recommended Action: The UUCP should develop updated procedures for processing application consistent with 26.84 and 26.85 of the DBE regulations and the USDOT Official Question & Answers.

UCP Response: The UUCP will review and update the UUCP's SOP to reflect U.S. Department of Transportation guidance when SBA certified firms request DBE certification, in accordance with 49 CFR Part 26.84 and 26.85.

DOT Response: DOT concurs with UCP response.

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. Several of the certification files examined by the review team were initial denials of DBE certification. The denial letters were very detailed, thoroughly explaining the reasons for denial and referencing the regulation.

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, an advisory comment was made with the requirements for removing existing certification. The UUCP procedures entitled "Denial and Decertification" outline the process for removing a firm's certification. The procedures state that de-certifications are first handled within the UUCP in accordance with 49 CFR Part 26. The certifying entity will provide a written response detailing the reasons for the decertification. Final determinations may be administratively appealed to USDOT in accordance with 49 CFR Part 26, Section 26.89.

When the UUCP notifies a firm that there is reasonable cause to remove its eligibility, the UUCP will give the DBE firm an opportunity for an informal hearing. The UUCP will allow the DBE firm 10 business days from the date the notification letter is received by the DBE to schedule an informal hearing, or provide the requested documentation to prove why it should remain certified. If a hearing is scheduled, at the time of the hearing the firm may respond to the reasons for the proposal to remove its eligibility in person

and provide information and arguments concerning why it should remain certified. The UUCP also maintains a verbatim record of the hearing.

The UUCP decision makers are a panel comprised of two of the three UUCP certifying officials. The UUCP has determined that the certifying officials would be the persons who would be the most knowledgeable about the certification requirements of the UUCP. The review team examined a file that requested an informal hearing for the UDOT's intent to remove certification. The hearing was conducted by a certifying representative from UTA and SLCD, who then generated a final determination letter.

The UUCP certifying recipient would sometimes put a decertified date in the intent to remove certification letter. The DBE has 10 days from the date of notification to schedule an informal hearing. The UUCP would include a date after the 10 day period that the firm is decertified. The removal procedures should be a two-letter process, which would include intent to remove certification and a final determination.

UDOT had two third party complaints regarding DBE firms certified by the UUCP. These firms were [REDACTED] and [REDACTED]. The review team briefly reviewed the file for [REDACTED] to verify the process outlined in the UUCP procedures concerning third party complaints.

The UUCP procedures indicate the UCP will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. The UUCP may request additional information from the firm or conduct any other investigation that the UUCP deems necessary.

On August 9, 2008, UDOT received a complaint from a third party regarding the certification of [REDACTED]. UDOT conducted an investigation of the certification record on August 19, 2008, which included checking properties listed on the PNW against Utah county records, telephone interviews with employees of the firm, evaluation of tax returns and financial statements. UDOT drafted a response on August 21, 2008 to the third party that they found the DBE to remain eligible for certification.

Recommended Action: The UUCP should remove the decertified date in the letter for intent to remove certification. The final determination letter should indicate the date of removal if the firm is determined not to be eligible.

UCP Response: The UUCP will use two letters when removing a DBE firm's program eligibility. A letter of intent to remove will be sent to the DBE firm. And when appropriate, a letter of notice of removal will be sent.

DOT Response: DOT concurs with UCP response.

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 UUCP does not have an internal appeal process for initial denials. All appeals for initial denial are referred to the USDOT. Several files of firms denied initial certification were examined by the review team. The letters included information about appealing to the USDOT. A few of the firms had appealed to the USDOT and the UUCP decisions were upheld in the files reviewed.

12. Compliance and Enforcement

A) DBE Enforcement Actions

Basic Requirement: (49 CFR Part 26.107) If a firm does not meet the eligibility criteria of subpart D and attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceeding against you under 49 CFR part 29.

Discussion: During this DBE Compliance Review, no deficiencies were found with DBE Enforcement Actions.

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 UUCP. 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.

The UUCP Agreement state that each certifying recipient shall safeguard from disclosure to unauthorized persons information that may reasonably be considered confidential business information consistent with the requirements of federal, state and local law.

Each certifying recipient will classify records as confidential or private in accordance with such requirements. The recipients recognize that it is the responsibility of persons seeking records to comply with the applicable provisions of Utah's Governmental Records Access Management Act (GRAMA).

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. UCP were encouraged to reduce burdens on applicants who are certified in other states or certified by SBA. UCP must promptly provide requested information or on-site visit information to other UCPs or 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 UUCP procedures include how contractual disputes between UUCP participants are handled. Financial disagreements are processed through UDOT. UDOT's finance department administers reimbursements under the UUCP. If the certifying entities do not agree on a solution to the problem, the complaining party is encouraged to address the problem by submitting the dispute in writing to the chief executive officers of UDOT, UTA, and SLCDA. The three chief executive officers will arrange for a facilitation meeting within 30 days after the date when the submission was delivered. If the chief executive officers have not resolved the matter in one-hundred twenty days, then the complaining party will pursue legal action.

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	ND			
2. Group Membership	26.63	AC	Periodic collection of group membership additional information w/o written reasons.	Either make group membership documentation a part of supplemental form or submit written request on a case-by-case basis.	Concur
3. Business Size	26.65	ND			
4. Social and Economic Disadvantage	26.67	D	Instructions require that each DBE must complete PNW. Certain agency requiring collection from all DBEs if claiming disadvantaged or not.	Review application instructions to make consistent with DBE regulations for submittal of PNW from those claiming disadvantaged.	Provide revised documents by 11/1/ 2010
a) Personal Net Worth					
b) Individual Determination		D	Insufficient information collected to evaluate individual determinations	Develop general guidelines/ procedure for evaluating individual determinations of disadvantage.	Provide revised documents by 11/1/2010
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	Out of State DBE process inconsistent with USDOT guidance.	Develop procedure to limit burden on out of state DBEs	Concur
b) UCP Directory	26.31	ND			
9. UCP Procedures					
a) On-site Visits	26.83	ND			
b) Uniform Application		ND			
c) Annual Updates		AC	Several No Change Affidavits missing for consecutive years.	Ensure that No Change Affidavits are consistently collected each year.	Concur
10. DOT/SBA MOU	26.84 – 26.85	AC	SBA MOU process needs updating.	Develop process consistent with MOU and USDOT guidance	Concur
11. Denials					
a) Initial Request	26.86	ND			
b) Remove Existing	26.87	AC	Intent to remove letter includes decertified date.	Remove reference to decertification date in the intent to remove letter.	Concur
c) Appeals	26.89	ND			
12. 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
UDOT Members:				
Beverly Crawford	UDOT Civil Rights Office	DBE Coordinator/ UUCP Certifying Official	801-965-4100	bcrawford@utah.gov
Kathi Wilcox	UDOT Civil Rights Office	DBE Coordinator/ UUCP Certifying Official	801-965-4102	kathiwilcox@utah.gov
Denice Graham	UDOT Civil Rights Office	Civil Rights Manager	801-965-4695	dgraham@utah.gov
Leone Gibson	UDOT	Transit Plans & Program Director	801-964-4508	lgibson@utah.gov
Tracy Young	UDOT	Rural Public Transit Program Manager	801-965-4360	tracyyoung@utah.gov
Christopher Meredith	UDOT	Specialized Transit Program Manager	801-964-4591	cmeredith@utah.gov
Kris T. Peterson, P.E.	UDOT	Dir. Of Construction & Materials	801-965-4111	krispeterson@utah.gov
SLCDA Members:				
Paul Marshall	Salt Lake City Airport	DBE Liaison Officer	801-575-2945	paul.marshall@slcgov.com
UTA Members:				
Raymond Christy	Utah Transit Authority	DBE Liaison Officer	801-287-3537	rchristy@rideuta.com
FHWA				
Bryan Cawley, P.E.	USDOT-FHWA	Asst. Div. Administrator	801-963-0182	Bryan.cawley@dot.gov
Steven Call	FHWA	Program Development Team Leader	801-963-0078 ext. 241	steven.call@dot.gov
Bernetta Collins	FHWA	National DBE Coordinator	720-963-3243	Bernetta.collins@fhwa.dot.gov
FTA Conference Call				
Ryan Inman	FTA	HQ Office of Civil Rights	202-366-5017	Ryan.Inman@dot.gov
Milligan & Co LLC:				
Benjamin Sumpter	Milligan & Co., LLC	Lead Reviewer	215-496-9100	bsumpter@milligancpa.com
John Caruolo	Milligan & Co., LLC	Reviewer	610-983-3694	Jcaruolo@aol.com
Renee E. Moore	Milligan & Co., LLC	Reviewer	215-496-9100	rmoore@milligancpa.com