



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

**District of Columbia
Department of Transportation**

Unified Certification Program (UCP) Compliance Review

Final Report
May 2019



U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

The District of Columbia Department of Transportation (DDOT) is a certifying partner in the Metropolitan Washington Unified Certification Program (MWUCP). This compliance review was conducted concurrently with a review of the Washington Metropolitan Area Transit Authority (WMATA), the other certifying partner in MWUCP. The findings of the WMATA review are addressed in a separate report. This report details the findings from a compliance review of DDOT's Disadvantaged Business Enterprise (DBE) certification practices and procedures as a MWUCP certifying partner. The compliance review examined DDOT's DBE certification procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA) and DDOT. In addition, the following entities were interviewed as part of this review: DDOT officials, MWUCP certifying and noncertifying members, DBE applicants, DBE-certified firms, firms that were denied DBE certification, and other stakeholders. The on-site review included interviews, assessments of data collection systems, and an examination of program and relevant documents.

DDOT's Certification Program includes the following positive program elements –

Positive Program Elements

- DDOT's UCP has experienced staff and a well-established process for reviewing applicant files to determine eligibility for certification as a DBE.
- DDOT maintains an online directory for reporting applicant firms that have been certified. This online database was able to store relevant information regarding each certified applicant, such as firm name, firm owner's name, firm address and phone number, firm website address, owner's email address, and certified North American Industry Classification System (NAICS) code. This information could be updated instantaneously as needed and was published on DDOT's public website.

The Program has the following administrative deficiencies –

Administrative Deficiencies

- The most recent MWUCP Agreement does not appear to be approved by the U.S. Department of Transportation (USDOT). MWUCP was established under a memorandum of understanding (MOU) that was approved by USDOT in 2004. Subsequently, the UCP partners signed revised MOUs in 2012 and 2016, both of which included a substantial change to WMATA's certification of applicants located in the areas where its rail and bus system operated, which included jurisdictions in Maryland and Virginia.

The Program has the following substantive deficiencies –

Substantive Deficiencies

- MWUCP partners were not meeting monthly (last meeting date was March 2017) and DDOT did not prepare annual reports in accordance with the MWUCP Agreement.
- DDOT did not appear to have sufficient resources to perform all the required functions of the UCP. DDOT had only one dedicated staff to perform certification functions.
- Due to lack of resources and ineffective operation of the MWUCP (since early 2017), DDOT has not consistently complied with the UCP requirements to issue 30-day notification letters, process applications within a 90-day processing deadline, or process all annual updates.
- DDOT's directory was separate from the WMATA directory, and it had not been accurately updated. This prevented DDOT from accurately conveying directory information in response to USDOT's annual request.

DDOT indicated it received up to 80 DBE certification applications each fiscal year. In FY 2015, DDOT received and certified 67 applications; in FY 2016, it received 80 and certified 79; and in FY 2017 it received 73 and certified 64. The remaining applications were denied certification. The denial data for FY 2015 were not available.

DDOT had internal policies and procedures to review and process all applications within 90 days of receipt. However, according to DDOT, it had not been able to successfully adhere to this time frame due to lack of sufficient resources and ineffective operation of the UCP with its certifying partner, WMATA.

This report provides an in-depth assessment of DDOT's overall certification practices.

I. General Information

This chapter provides basic information concerning this compliance review of DDOT, a certifying partner of the MWUCP. Information on DDOT, the review team, and the dates of the review are presented below.

Grant Recipient:	District of Columbia Department of Transportation (DDOT)
City/State:	Washington, DC
Grantee Number:	1397
Executive Official:	DDOT Jeffrey M. Marootian
On-site Liaison:	DDOT Tyra Redus
Report Prepared By:	The DMP Group, LLC
Dates of On-site Visit:	June 5–8, 2018
Compliance Review Team Members:	John Potts Dana Lucas Khalique Davis

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2. Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of U.S. Department of Transportation (USDOT) to conduct Civil Rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and sub recipients with Section 12 of the Master Agreement, Federal Transit Administration M.A. (21), October 1, 2014, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs."

As direct or indirect recipients of FTA funding assistance, the UCP and its members (i.e., DOT recipients within the state) must comply with the DBE regulations at 49 CFR. Part 26 as a condition associated with the use of these funds. The DBE regulations define the components that must be addressed and incorporated in the MWUCP Agreement and were the basis for this compliance review.

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3. Purpose and Objectives

3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of recipients and sub recipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26. FTA has determined that a compliance review of DDOT's participation in the MWUCP Program, of which DDOT is a certifying partner, is necessary.

The DBE regulations require USDOT recipients to participate in a Unified Certification Program—as evidence by a signed UCP agreement. The UCP provides “one-stop shopping” to applicants for DBE certification. An applicant is required to apply once for DBE certification which will be honored by all recipients in the state.

The primary purpose of the compliance review is to determine the extent DDOT's participation in the MWUCP has met its goal and objectives as represented to USDOT in its UCP agreement. This compliance review is intended to be a fact-finding process to (1) examine DDOT's participation in the MWUCP and its certification practices and procedures, (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 sub recipients, nor to adjudicate these issues on behalf of any party.

3.2 Objectives

Recipients in each state must sign an agreement establishing a Unified Certification Program for that state. As specified in 49 CFR Part 26, the agreement must provide for the establishment of a UCP meeting all the requirements of the Regulation. Each UCP agreement must provide that its members will:

- Follow all certification procedures and standards of 49 CFR Parts 26.
- Cooperate fully with all oversight, review, and monitoring activities of USDOT and its operating administrations.
- Implement USDOT directives and guidance on DBE certification matters.
- Commit to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of 49 CFR Parts 26 and 23.

Certification decisions by the UCP shall be binding on all DOT recipients within the State. The UCP will:

- Provide a single DBE certification, such that applicants are required to apply only once for DBE certification that will be honored by all UCP members.

- Maintain a unified DBE directory (for all firms certified by the UCP including those from other states) 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 Unified DBE directory must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The objectives of this compliance review are to:

- Determine whether DDOT, as a certifying partner of the MWUCP, is honoring the UCP agreement submitted to the Secretary of Transportation.
- Examine the required certification procedures and standards of DDOT against the Disadvantaged Business Enterprise program compliance standards set forth in the regulations and official DOT guidance, and to document the compliance status of each component.
- Gather information and data regarding the operation of DDOT through interviews and certification file review.

4. Background Information

The purpose of this section is to provide an understanding of DDOT's operations and scale. The section highlights DDOT's services, budget, and the history of its DBE program.

4.1 Introduction to District of Columbia Department of Transportation and Organization Structure

In 2003, DDOT and the Washington Metropolitan Area Transportation Authority (WMATA) entered into an agreement to enact a Unified Certification Program for the purposes of administration and monitoring of the DBE Program, in accordance with Section 26.81 of 49 CFR Part 26. The Unified Certification Agreement was accepted and agreed to by WMATA and DDOT on June 18, 2003, and July 17, 2003, respectively, and ultimately approved by the U.S. Department of Transportation (USDOT) on September 3, 2004. The UCP is known as the Metropolitan Washington Unified Certification Program (MWUCP).

Subsequent to the original agreement, the MWUCP partners signed revised memorandums of understanding (MOUs) in 2012 and again in 2016. A major change in these agreements was WMATA's decision to certify businesses in areas where its rail and bus system operated, which included jurisdictions in Maryland (MD) and Virginia (VA) (i.e., Montgomery and Prince George's Counties in MD and Fairfax, Arlington, and Loudon Counties in VA).

WMATA and DDOT are certifying members of the MWUCP. The current MOU (2016) addresses the following DBE program areas by section: *Section 1.0. General Provisions, Section 2.0. Program Administration, Section 3.0. Application Procedures, Section 4.0. Annual Update of DBE Certification, Section 5.0. Certification of Additional Services/NAICS Codes, Section 6.0. Miscellaneous Certifications/Renewal Procedures, Section 7.0. Recording Keeping and Reporting, Section 8.0. MWUCP DBE Directory, Section 9 .0. Training, and Section 10.0. Liability.*

In accordance with the MOU, the MWUCP established a committee that consisted of staff from both certifying partners that met monthly until its last meeting, which was held in March 2017. The MWUCP committee consisted of no more than seven staff who were designated by the DBE liaison officer (DBELO) of each certifying partner. Designees served terms of 12 months, renewable at the end of the calendar year, and could be replaced at the discretion of the DBELO of each certifying partner. In accordance with the MWUCP Agreement, a staff person from one of the MWUCP partners served as chairperson of the committee for a period of one year and alternated between member organizations. A DDOT member served as chair in 2017, and a WMATA member served as chair in 2016. During the monthly meetings, all members reviewed certification applications prepared by both partners and voted whether to grant certification to firms that were applying for initial certification that were not certified in any other jurisdiction and were seeking home-state certification. No vote was required of the committee for out-of-state firms. The District of Columbia area was established as the home state for the UCP. However, WMATA certified firms in additional jurisdictions as stated above. Committee meetings were recorded, and agendas and other notes were maintained as the official records of the certification process.

The certification functions and processes were outlined in the most recent MOU between DDOT and WMATA (signed March 2016), which also included the standard operating procedures (SOPs) of the UCP. In accordance with the MOU and SOPs, MWUCP reviewed, evaluated, and made determinations to certify or deny new applicants; reviewed annual no change affidavits and performed certification reviews of existing DBEs to confirm continued eligibility; and initiated the process to decertify DBEs from the program as prescribed by 26.87 of 49 CFR Part 26.

At the time of the site visit, DDOT had one staff person, the EEO Specialist/DBE & Small Business Enterprise Program Manager, who primarily handled the MWUCP certification responsibilities on behalf of DDOT, along with her supervisor, the Equity and Inclusion Officer. Both DDOT staff also performed other duties for DDOT. The DBE certification functions had been performed by two certification staff until one of the staff members left DDOT in 2017. DDOT indicated that with the two staff, they were able to adhere to the application certification review deadlines (30-day, 60-day, and 90-day), conduct site visits, and review annual affidavits in accordance with 49 CFR Part 26.83(h)–(j). However, with just one certifier, DDOT indicated it is meeting the required processing deadlines about 50 percent of the time and is only able to review about 200 (out of 1,400+) annual affidavits.

At the time of the site visit, DDOT was working with WMATA to update the MOU and SOPs for the MWUCP. Two major changes being contemplated to the MOU were a change in the name and a change in the interstate certification process.

4.2 Budget

In accordance with the latest MOU (2016), each certifying partner of the MWUCP is responsible for its own financing, staffing, and budgeting without recourse to the MWUCP for expenses of any kind. DDOT's budget for the DBE certification program was valued at \$169,531. DDOT did not use any FTA or Federal Highway Administration (FHWA) funds to cover UCP costs. DDOT's UCP budget is shown in the following table:

Cost Element	Annual Budget
Employee salaries	\$75,000
Benefits	\$18,750
Contractual services	\$50,000
Supplies and materials	\$10,000
Travel	\$2,500
Overhead allocation	\$13,281
TOTAL	\$169,531

5. Scope and Methodology

5.1 Scope

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

1. The rebuttable presumption that members of the designated groups identified in 26.67 are socially and economically disadvantaged [49 CFR 26.61].
2. Collecting additional evidence of group membership when there is a well-founded reason to question the individual's claim of membership in a group [49 CFR 26.63].
3. Applying 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. Requiring applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged [49 CFR 26.67].
5. Considering all facts in the record, viewed as whole, when determining whether the socially and economically disadvantaged participants in a firm own the firm [49 CFR 26.69].
6. Considering all facts in the record, viewed as a whole, when determining whether socially and economically disadvantaged owners control a firm [49 CFR 26.71].
7. Excluding commercially useful function issues from certification decisions except in cases where a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. [49 CFR 26.73]
8. Evaluating the eligibility of a firm on the basis of present circumstances and ensuring only firms organized for profit are considered eligible DBEs [49 CFR 26.73].
9. Participation as a certifying or non-certifying UCP member—as evidenced by signing the UCP agreement. [49 CFR 26.81 and 26.31].
10. Ensure that only firms certified as eligible DBEs under this section participate as DBEs on federally assisted projects [49 CFR 26.83].
11. Properly applying interstate certification requirements [49 CFR 26.85].
12. Issuing denial letters that clearly explain the reason why the individual was denied DBE certification [49 CFR 26.86–26.89].

13. If the UCP fails to comply with any requirement of the DBE regulations, it 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].
14. Maintaining proper records (i.e., application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews) for a minimum of three years. [49 CFR 26.11]
15. Submitting to the USDOT the number of minority women, non-minority women, and men that are certified DBEs in the UCP Directory [49 CFR 26.11].

5.2 Methodology

The initial step of this compliance review consisted of consultation with the FTA Office of Civil Rights and a review of available information from the certifying partners' websites and other sources. After reviewing this information, potential dates for the site visit were coordinated.

The FTA Office of Civil Rights sent a notification letter to DDOT (and WMATA) that informed them of the upcoming visit, requested necessary review documents, and explained the areas that would be covered during the on-site visit. The letter also informed DDOT of staff and other parties that would potentially be interviewed.

Before conducting the on-site visit, DDOT was asked to provide the following documents:

- MWUCP Agreement
- MOUs or similar documents forming the MWUCP (signed by all members of the MWUCP)
- The certification criteria and guidelines used in determining DBE eligibility
- SOPs or similar documents that explained the DBE certification process, including copies of the application used during certification, annual affidavits/updates, personal net worth (PNW) forms, and so forth
- A list of all firms certified, denied, and decertified or removed by the MWUCP in FYs 2013–18. The list was to include firm's name, city, state, ethnicity, gender, date of site visit, reasons for denial and/or decertification (e.g., size, PNW, control), whether the denial decision was appealed to the UCP or USDOT, and the result of the appeal.
- An explanation of MWUCP appeals process(es) and a list the individuals involved in the appeals process and how they were selected.
- Any third-party complaints regarding DBE firms certified by the MWUCP and actions taken to resolve the matter.
- Any Freedom of Information or similar requests for certification information
- Any enforcement action against a DBE firm (e.g., summary suspension, decertification, debarment) regarding certification

A joint opening conference was conducted at the beginning of the compliance review with FTA representatives, DDOT staff, WMATA staff, and the review team. The following people attended the meeting:

District of Columbia Department of Transportation

Tyra Redus, Transportation Equity and Inclusion Officer
Leutisha Stills, EEO Specialist/DBE & SBE Program Manager

Washington Metropolitan Area Transit Authority

Paul Wiedefeld, General Manager and CEO
John Kuo, Chief Information Business Operations
Elizabeth Sullivan, Chief Risk and Audit Officer
Suzette Moore, Chief Procurement Officer
Sylvia Edwards, Director Small Business Programs Office and DBELO
Thomas Turner, Senior Auditor
Carl Farmer, Senior Auditor
Lilliette Rivera, Small Business Analyst
Rashida Reid, Small Business Auditor
Bekwele Amadi, Performance Analyst
Araina Wallace, Small Business Administration Assistant
Jay Johnson, Policy Supervisor
Nicole Brewer, Special Projects Coordinator
Judy-Ann Davis, Procurement
Daniel G. Smith, Deputy Chief Procurement Officer
Chris Hoadley, Assistant General Counsel
Mike Riess, Counsel
Katrina Welch Smith, Management Audits, Risk, and Compliance (MARC) Internal Control Officer
Vanita King, MARC Internal Compliance Director
Gary Owens, MARC Consultant

Federal Transit Administration

John Day, Program Manager, Policy and Technical Assistance
Terry Garcia Crews, Regional Administrator – Region 3
Janelle Hinton, Equal Opportunity Specialist
Lynn Bailey, Regional Civil Rights Officer – Region 3
Guljed Birce, Equal Opportunity Specialist
Samira Louis, Financial Analyst – Region 3
Corey Walker, General Engineer, DC Metropolitan Office
Monique Myatt Galloway, Regional Counsel – Region 3

The DMP Group

John Potts, Lead Reviewer, DDOT UCP Review Team
Dana Lucas, Reviewer, DDOT UCP Review Team
Khalique Davis, Reviewer, DDOT UCP Review Team
Maxine Marshall, Lead Reviewer, WMATA DBE Review Team
Donald Lucas, Reviewer, WMATA DBE Review Team
Gregory Campbell, Reviewer, WMATA DBE Review Team

Following the opening conference, the review team met with DDOT and WMATA to discuss issues and activities conducted jointly by the certifying partners. The review team then met with DDOT and examined DDOT's certification files and other documents submitted by DDOT. The team conducted interviews with DDOT staff regarding MWUCP administration, organizational structure, certification procedures, record keeping, monitoring, and enforcement. A sample of DBE applications and DDOT certification decisions was selected and reviewed, as shown in the following table.

Status	Firm Name
New Certifications <1 Year	
	A & C Construction, Inc.
	Greenscape Environmental Services, Inc.
Existing Certifications >1 Year	
	DRM International
	Fells Masonry and Concrete Construction, LLC
	Ilium Associates, Inc.
Interstate	
	Wendake Consulting, LLC
	Air Hub, LLC
Removals	
	Tidewater, LLC
Denials	
	Sysnet America, Inc.
	Allstate Floors of DC
	Forney Enterprises

Additional interviews with DBE firms, applicant firms, decertified firms, and firms that were denied DBE certified were also conducted.

At the end of the review, FTA representatives, DDOT staff, WMATA staff, and the review team convened for the final joint exit conference. At the exit conference, initial findings and corrective actions were discussed with DDOT and WMATA. Attending the conference were:

District of Columbia Department of Transportation

Todd McIntyre, Chief of Staff

Tyra Redus, Transportation Equity and Inclusion Officer

Leutisha Stills, EEO Specialist/DBE & SBE Program Manager

Washington Metropolitan Area Transit Authority

Paul Wiedefeld, General Manager and CEO

John Kuo, Chief Information Business Operations

Elizabeth Sullivan, Chief Risk and Audit Officer

Suzette Moore, Chief Procurement Officer

Sylvia Edwards, Director Small Business Programs Office and DBELO

Thomas Turner, Senior Auditor

Carl Farmer, Senior Auditor
Lilliette Rivera, Small Business Analyst
Rashida Reid, Small Business Auditor
Bekwele Amadi, Performance Analyst
Araina Wallace, Small Business Administration Assistant
Jay Johnson, Policy Supervisor
Nicole Brewer, Special Projects Coordinator
Judy-Ann Davis, Procurement
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5.3 Stakeholder Interviews

Prior to the on-site visit, the review team contacted DBE firms, stakeholders, and organizations regarding their interaction with DDOT and the MWUCP.

DBE Firms

Twenty-two DBE firms listed in the UCP directories provided by WMATA and DDOT were contacted for an interview to gain insight into how the MWUCP works with the small minority and women-owned business community and learn about their experiences with the certification process.

The interview questions included:

1. *Is your firm currently certified in the state UCP?*
2. *How did you learn about the UCP?*
3. *To which UCP certifying entity was your firm's certification application submitted?*
4. *Did the UCP acknowledge receipt of your application?*
5. *Did the UCP communicate the status of your firm's certification application review?*
6. *Was an on-site visit conducted with your firm?*
7. *Approximately how long did your firm's certification review and approval process take?*
8. *Have you visited the UCP DBE Directory website to verify the accuracy of your firm's profile and the types of work your firm has been certified to perform?*
9. *Are you familiar with the requirements for continued certification eligibility (such as annual updates, notification of change, personal net worth under the current limit, current tax returns, etc.)?*
10. *Do you have any concern(s) about the UCP or the certification process?*

Nine of the 22 firms that were contacted had applied to DDOT; two of those nine firms had applied to both agencies. Of the nine firms that applied to DDOT, two had directory contact numbers that were not valid, two were unresponsive, one declined to be interviewed, and four were interviewed. The firms interviewed were all currently certified and learned of the UCP program from a prime contractor or from another certifying agency. The firms had initially applied several years earlier. One firm initially applied to DDOT, and the other three firms were interstate applicants that had been certified with another state when they applied to DDOT. DDOT had acknowledged receipt of the applications and communicated the status of the applications to the DBEs. DDOT conducted a site visit for the home-state firm, and the site visits for the interstate firms were conducted by their home state's certifying agency. All four DBEs had reviewed their information in the directory. One DBE notified DDOT that their information in the directory was incorrect and needed to be updated. DDOT was unresponsive and had not made the corrections.

Stakeholder Groups

Ten stakeholder organizations were contacted for an interview to gain insight into how DDOT's participation in the MWUCP worked with external organizations and the small minority and women-owned business community. The organizations contacted were:

- US Pan Asian American Chamber of Commerce
- Greater Washington Hispanic Chamber of Commerce
- National Black Chamber of Commerce
- Greater Washington Urban League
- Washington, DC Women's Business Center
- National Association of Women Business Owners
- US Black Chamber, Inc.
- National Association of Minority Contractors
- Conference of Minority Transportation Officials
- Associated General Contractors of America

The interview questions included:

1. *Is your organization and membership familiar with the state Unified Certification Program (UCP) and the certifying authorities?*
2. *Are any of your members currently certified in the UCP?*
3. *Are any of your members currently applying for DBE or ACDBE certification with the UCP?*
4. *Has your organization ever contacted the state certifying authorities regarding DBE or ACDBE certification requirements?*
5. *Has your organization referred firms interested in DBE certification to the state UCP?*
6. *Have you been requested to participate in the development of or comment on the agency's DBE goal?*
7. *Is your organization made aware of contracting/subcontracting opportunities on the agency's contracts? If so, how?*
8. *Does your organization include UCP information in its membership outreach literature?*
9. *Has your organization participated in any outreach activities organized by the state UCP?*
10. *Has the state UCP participated in any outreach activities organized by your organization?*
11. *What is your organization members' view of the state UCP?*
12. *Have members of your organization seen an increase in work as a result of becoming certified?*
13. *What is your agency's view of the effectiveness of the UCP?*
14. *Do you have any concern(s) about the UCP or the certification process?*
15. *Do you have any suggestions for the agency to improve their DBE program?*
16. *Have any members of your organization ever worked on an FTA-assisted project for this grantee?*

Three stakeholders responded to the interview request. The organizations had some familiarity with MWUCP and the federal requirements for a UCP for DBEs. The organizations were not aware if their members were currently certified by MWUCP, but members of the organizations had worked with DBEs who were certified. Two of the organizations had interacted with DDOT in several ways. The organizations had been a reference point to minority businesses for DDOT and the MWUCP. The organizations generally felt the MWUCP was effective. One organization expressed an interest in seeing DDOT provide additional training to DBEs on the technical and administrative requirements for subcontractors to effectively comply with contract requirements.

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6. Findings and Advisory Comments

This chapter details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to DDOT's participation in the MWUCP Program is provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub requirements are also presented below.

For the purposes of this section, the term "UCP" refers to the certifying members and/or other certification committees/entities associated with the Metropolitan Washington Unified Certification Program.

Findings are expressed in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review.
- A statement concerning the DBE requirements being violated or potentially being violated.
- A statement concerning the required corrective action to resolve the issue.

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

6.1 Group Membership

A) Burden of Proof

Basic Requirement (49 CFR Part 26.61)

There is a rebuttable presumption that members of the designated groups identified in §§26.5 and 26.67(a) are socially and economically disadvantaged. Individuals must submit a signed, notarized statement that they are a member of one of the groups in 26.67. Individuals who are not presumed to be member of these groups and individuals for which the presumption has been rebutted, have the burden of proving by a preponderance of the evidence that they are socially and economically disadvantaged. The UCP must ensure that its review process comports with this standard.

Discussion

During this compliance review, no deficiencies were found with this requirement.

DDOT's DBE Program Plan, revised December 2015, indicated that DDOT would use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, the plan stated that a firm must meet all certification eligibility standards, which would include group membership, and that certification decisions would be based on the facts as a whole.

DDOT required that all applicants use the mandatory certification application provided by USDOT, and applicants were to submit a completed, signed, and notarized certification application package that included a statement that the applicant was a member of one of the groups in §§26.5 and 26.67(a). DDOT rebuttably presumed that members of the designated group identified in §§26.5 and 26.67(a) were socially and economically disadvantaged as required by the regulation, and therefore, the applicant did not have the burden of proving that they were socially and economically disadvantaged. If an individual was not presumed to be a member of the groups identified in Part 26.67(a), DDOT imposed the burden of proof on the applicant to prove by a preponderance of the evidence that they were socially and economically disadvantaged.

A review of the applicant files processed by DDOT indicated that the application evaluation process complied with this standard.

B) Additional Evidence of 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, 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 with a written explanation of its reasons for questioning his or her group membership. The UCP must take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued advisory comments regarding this requirement.

DDOT's certifying staff indicated that if, after reviewing the applicant's signed, notarized statement of membership in a presumptively disadvantaged group per Part 26.67(c), they had a well-founded reason to question the applicant's claim of membership, DDOT notified the applicant of the requirements to prove by preponderance of the evidence that he or she was a member of the group and requested the applicant to present additional evidence that he or she was a member of the group. Further, the MWUCP Agreement stated that *"if the application package is incomplete the applicant will be notified by email of the documentation missing and required."*

A review of the applicant files processed by DDOT indicated that the application evaluation process complied with this standard.

Advisory Comments

It is advised that DDOT develop written procedures (i.e., standard operating procedures [SOPs]) that establish well-defined policies and procedures regarding the steps that would be taken if the DDOT certifier questioned the applicant's group membership. Specifically, the SOPs should state, in accordance with Part 26.63(a)(2), that the MWUCP must "provide the applicant a written explanation of the reasons for questioning his or her group membership and a written request for additional evidence of group membership."

In addition, the SOPs should incorporate the regulations regarding rules governing group membership determinations of 49 Part 26, as follows:

- Part 26.63(a)(3) - *in implementing this section, the UCP must take special care to ensure that the UCP does not impose a disproportionate burden on members of any particular designated group.*
- Part 26.63(b) - *in making such a determination, the UCP must consider whether the person has held himself out to be a member of the group over a long period of time prior to application of certification and whether the person is regarded as a member of the group by the relevant community.*
- Part 26.63(b)(1) - *if the UCP determines that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated group, the individual must demonstrate social and economic disadvantage on an individual basis.*
- Part 26.63(b)(2) - *the UCP's decisions concerning membership in a designated group are subject to the certification appeals procedures of Part 26.89.*

6.2 Business Size

Basic Requirement (49 CFR Part 26.65)

A UCP must apply current Small Business Administration (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. In addition, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years, in excess of \$23.98 million.

Discussion

During this compliance review, deficiencies were found with this requirement.

The MWUCP Agreement incorporated the requirements of 49 Part 26 by reference. However, DDOT did not have written SOPs to address the specific requirements contained in Part 26.65 regarding the SBA business size standards in 13 CFR Part 121 and the statutory DBE size standard of \$23.98 million for evaluating eligibility for the DBE program. In addition, DC-based A & C Construction (initial certification), one of the 11 files reviewed, was missing business tax returns for 2014, 2015, and 2016.

In accordance with Part 26.65, to be an eligible DBE, a firm (including its affiliates) must be an existing small business as defined by SBA standards and must not have average annual gross receipts over the firm's previous three fiscal years in excess of \$23.98 million. The UCP is required to obtain the business tax returns of the DBE applicant (and its affiliates), which should be analyzed by the UCP to determine whether the applicant meets the business size requirements to be an eligible DBE.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT must submit to the FTA Office of Civil Rights procedures to ensure that all applicable business tax returns will be obtained from the applicant entity and its affiliates in accordance with the USDOT-approved application form and that DDOT will perform the required analysis of the tax returns to determine whether the applicant meets the business size requirements to be an eligible DBE.

6.3 Social and Economic Disadvantage

A) Presumption of Disadvantage

Basic Requirement (49 CFR Part 26.67 (a)(1))

There is a rebuttable presumption that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. The UCP must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

Discussion

During this compliance review, no deficiencies were found with this requirement.

As stated in the MWUCP Agreement, DDOT required that all applicants use the model certification application provided by USDOT, and applicants were to submit a completed, signed, and notarized certification application package that included a statement that each presumptively disadvantaged owner was, in fact, socially and economically disadvantaged.

All application files reviewed included a signed and notarized statement that the presumptively disadvantaged owner was, in fact, socially and economically disadvantaged.

B) Personal Net Worth

Basic Requirement (49 CFR Part 26.67 (a)(2))

A UCP must require each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to certify that he or she has a

personal net worth that does not exceed \$1.32 million. All applicants must use the USDOT PNW form in Appendix G without change or revision. Moreover, the UCP must assess the PNW in the manner prescribed by 26.67.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

In accordance with Part 26.67, per review of the application files, DDOT had obtained certification from each individual owner of the applicant firm whose ownership and control were relied upon for DBE certification that he or she had a PNW that did not exceed \$1.32 million. Each file also contained a signed and notarized statement of PNW with appropriate documentation.

Advisory Comment

It is advised that DDOT develop written procedures (SOPs) to ensure that DDOT applies the requirements of Part 26.67(a)(2)(iii) as follows:

- Exclude the individual's ownership interest in the applicant firm.
- Do not include the use of contingent liabilities to reduce an individual's net worth.
- Include only the present value of assets held in vested pension plans, individual retirement accounts, 401(k) accounts, or other retirement savings or investment programs.

In addition, the SOPs should include a requirement that DDOT will not release an individual's PNW statement or any documentation supporting it to any third party without the written consent of the submitter, except to USDOT in accordance with 49 CFR Part 26.67(a)(2)(iv) and 28.89.

C) Rebutting the Presumption of Economic Disadvantage

Basic Requirement (49 CFR Part 26.67(b)):

An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(ii)(A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. You must have a proceeding under 26.67(b)(2) in order to rebut the presumption of economic disadvantage in this case.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

As stated in the PNW section of this report, DDOT had obtained certification from each individual owner of the applicant firm that he or she had a PNW that did not exceed \$1.32 million. Each file also contained a signed and notarized statement of PNW with appropriate documentation.

In one instance DDOT rebutted the individual's presumption of economic disadvantage. DDOT reviewed the owner's reported PNW statement and ascertained that the statement did not include the owner's assets. DDOT recalculated the owner's PNW and notified the applicant via a denial letter that his recalculated PNW of \$1.5 million exceeded the threshold of \$1.32 million. The applicant appealed the denial and has been awaiting a hearing with the MWUCP committee.

Advisory Comment

It is advised that DDOT develop written procedures (SOPs) that incorporate the regulations in Part 26.67(b) regarding the two ways an individual's presumption of economic disadvantage may be rebutted, as follows:

- If the statement of PNW and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's PNW exceeds \$1.32 million, or
- If the statement of PNW and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:
(1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000; (2) Whether the income was unusual and not likely to occur in the future; (3) Whether the earnings were offset by losses; (4) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm; (5) Other evidence that income is not indicative of lack of economic disadvantage; and (6) Whether the total fair market value of the owner's assets exceed \$6 million.

D) 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 this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

The MWUCP Agreement incorporated by reference the regulations of 49 CFR Part 26, which state in Part 26.67(d) that *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*. Applicants have the burden of demonstrating by a preponderance of the evidence that they are socially and economically disadvantaged.

All files reviewed contained documentation that the individuals whose ownership and control were relied upon for DBE certification were socially and economically disadvantaged.

Advisory Comment

It is advised that DDOT develop written procedures (SOPs) that specifically incorporate the provisions of Part 26.67(d) as stated above.

6.4 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 compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

The MWUCP Agreement incorporated by reference the regulations of 49 CFR Part 26, which state in Part 26.69 that *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*. All files reviewed contained documentation that the applicant firm was owned at least 51 percent by socially and economically disadvantaged individuals.

Advisory Comment

It is advised that DDOT develop written procedures (SOPs) that specifically incorporate all provisions of Part 26.69 that establish what rules govern determination of ownership.

6.5 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. Only an independent business can be certified as DBE and the UCP must scrutinize relationships with non-DBE firms in areas such as personnel, facilities, equipment, financial and/or bonding support, and other resources.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

DDOT indicated that it scrutinized documentation provided in the application and through interviews with applicant staff to ensure firms were independent from any non-DBE firm and that firm owners possessed the power to direct or cause the direction of management and policies of the firm, including day-to-day and long-term decision making. In addition, DDOT indicated it scrutinized documentation and information obtained through interviews with applicant staff to ensure that socially and economically disadvantaged owners had an overall understanding of, and possessed the technical and managerial competence for, the type of business the firm was engaged in.

All files reviewed contained documentation that the applicant firm was controlled by socially and economically disadvantaged owners.

Advisory Comment

It is advised that DDOT develop written procedures (SOPs) that specifically incorporate all provisions of Part 26.71 that establish what rules govern determinations concerning control.

6.6 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. The UCP may consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. DBE firms and firms seeking DBE certification shall cooperate fully with UCP requests for information relevant to the certification process.

Discussion

During this compliance review, no deficiencies were found with this requirement.

The MWUCP Agreement incorporated by reference the regulations of 49 CFR Part 26. In the files reviewed, there was no documentation relating to commercially useful function issues or documentation that showed a pattern of conduct indicating its involvement in

attempts to evade or subvert the intent or requirements of the DBE program. In addition, DDOT indicated that the certified applicant firms reviewed cooperated fully with the MWUCP's requests for information relevant to the certification process.

6.7 UCP Requirements

A) UCP Agreement

Basic Requirement (49 CFR Part 26.81)

All DOT recipients in a state must participate in a UCP. Recipients must sign an agreement establishing the UCP for the state and submit the agreement to the Secretary for approval.

Discussion

During this compliance review, deficiencies were found with this requirement.

The current MWUCP Agreement, signed in March 2016 by both certifying partners, did not appear to be approved by USDOT. The original MWUCP was established under an MOU that was approved by USDOT in 2004. Subsequently, the MWUCP partners signed revised MOUs in 2012 and again in 2016. A major change in the 2012 and 2016 Agreements was that WMATA decided to certify businesses in areas of its other compact signatories where its rail and bus system operated, which included jurisdictions in MD and VA (e.g., Montgomery and Prince Georges Counties in MD and Fairfax, Arlington, and Loudon Counties in VA).

At the time of the site visit, DDOT was in the process of updating the 2016 MOU with WMATA. Major changes planned for the MOU included a name change from MWUCP to the District of Columbia Unified Certification Program and documenting WMATA's change in practice of not certifying firms located in certain jurisdictions in MD and VA as described above but rather treating them as interstate firms. Specifically, the proposed language for the revised MOU was that *each certifying Partner will not process an application for certification from a firm having its principal place of business outside of the District of Columbia if the firm is not certified by the UCP in the state where it maintains its principal place of business*. Therefore, all firms located in MD and VA would be treated as interstate certifications.¹

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT, in conjunction with WMATA, must submit its updated MOU to the USDOT Office of Civil Rights for approval. DDOT must submit a copy of the transmittal to the FTA Office of Civil Rights.

¹ If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

B) UCP Directory

Basic Requirement *(49 CFR Part 23.31, 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 directory must include if the firm is an ACDBE, a DBE, or both. The listing shall include for each firm its address, phone number, and 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 compliance review, deficiencies were found with this requirement.

DDOT and WMATA were maintaining separate directories, neither of which had been accurately updated. DDOT's directory was accessible on DDOT's DBE website and included the data elements required by Part 26.31. However, DDOT's directory did not agree with WMATA's directory (e.g., by vendor or NAICS code); there were duplicate listings of firms within the directory; and firms reported in the USDOT decertified database were included in DDOT's directory. In addition, DDOT's database was not downloadable, and DDOT did not maintain a "printed" version of the directory.

Historically, DDOT's online directory was considered the master directory and was used by both certifying partners. DDOT provided WMATA with access to the directory to make updates for firms WMATA had certified. However, once the MWUCP stopped operating in its normal fashion in April 2017 and WMATA started processing applications electronically, WMATA stopped entering its certified DBEs in the DDOT master directory.

In addition, DDOT had not processed annual affidavits for many of the firms currently listed in the directories due to a lack of resources and effective MWUCP operations. Consequently, firms could be included in the directory that no longer met the requirements to be a certified DBE.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT, in conjunction with WMATA, must submit to the FTA Office of Civil Rights mutually acceptable processes for:

- Maintaining one MWUCP master directory that conforms to the requirements of Parts 23.31, 26.31, and 26.81(g), and
- Updating the master directory to reflect all currently certified DBEs and removing any firms that do not meet the requirements to be certified as a DBE.

6.8 UCP Procedures

A) Uniform Application

Basic Requirement (49 CFR Part 26.83 (c(2)))

UCPs must use the application form provided in Appendix F of the regulations without change or revision. However, the UCP may provide in its DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with the DBE regulations.

Discussion

During this compliance review, deficiencies were found with this requirement. In addition, FTA issued advisory comments regarding this requirement.

In accordance with the MWUCP Agreement, DDOT required that applicant firms use the most recent certification application form provided by USDOT. The most recent USDOT-approved form was available on DDOT's DBE website. All DDOT files reviewed contained the most recent certified application provided by USDOT.

The MWUCP Agreement established a MWUCP committee whose members had oversight on all matters involving initial certifications, denials, suspensions, and decertifications. Committee members were also charged with determining the conformance of the certifying partners' joint DBE directory with UCP rules and regulations.

The MWUCP Agreement stated:

Membership on the MWUCP (Committee) shall not exceed seven (7) and shall be designated by the DBE Liaison of each Certifying Partner. Members will serve terms consisting of 12 months, renewable at the end of the calendar year and may be replaced at the discretion of the DBE Liaison of each Certifying Partner. A quorum shall consist of a simple majority. If, at any scheduled meeting of the UCP, a quorum cannot be attained for purposes of voting to approve or disapprove an application for DBE certification or renewal, the meeting shall be postponed until such time as a quorum is achievable.

Monthly meeting shall be held the second (2nd) Thursday of each month with the location of the meetings to be determined monthly.... The meeting shall be facilitated by a Chairperson.

Any Committee member may serve as Chairperson of the Committee. Each term shall be for a period of one year and alternate from one member organization to the next. No chairperson shall serve consecutive terms. Minutes, agendas, attendance sheets, handouts and attachments, and notes shall be the responsibility of the Certifying Partner chairing the meeting.

The most recent MWUCP committee membership consisted of three DDOT members and four WMATA members. The Chairperson in 2016 was a WMATA member, and in 2017, a DDOT member. The committee met monthly from January 2016 through March 2017 except for March 2016 (no quorum present) and August 2016 (summer hiatus). The April 2017 and May 2017 meetings were canceled, and the committee had not met since. DDOT indicated the meetings ceased primarily due to staff turnover at both DDOT and WMATA. Consequently, FHWA requested that DDOT continue to operate and approve certifications of firms that qualified as DBEs under the applicable regulations.

In addition, the MWUCP Agreement stated:

Committee members shall review each evaluation prior to the meeting, present any questions to the responsible DBE Staff person and upon receipt of the responses, be prepared to vote during the monthly meeting. Because it is not always feasible to attain all committee members signatures for each evaluation as evidence of the final disposition of the application, the verbatim recording will serve as the approval of the committee members.

Further, if signatures cannot be obtained, the verbatim recording of the voting will serve as the approval of the committee members.

The *Metropolitan Washington Unified Certification Program DBE Evaluation Report* was used by DDOT and maintained in its files to document the recommendations of DDOT and the approvals (or denials) by the committee of DBE applicants. The Recommendations and Approvals page of each DBE evaluation included a list of the committee members for both WMATA and DDOT, their decision to approve or deny the application, and their signatures. Of the files reviewed, one file did not include the Recommendation and Approval page, and for three of the files only one committee member was listed or had signed. DDOT indicated the committee decisions were made by verbal vote and had been recorded for the record. The recordings were not readily available during this compliance review site visit.

At the time of the site visit, the certifying partners were developing unified SOPs for processing certifications. However, language in the draft unified SOPs addressed general application standards and procedures and indicated that each certifying partner should continue to use their respective procedures for processing applications except when inconsistencies or ambiguities occurred. Moreover, the draft SOPs specifically stated the following:

The UCP entities shall compare program documents (e.g. evaluation form, on-site form, checklist, etc.) and identify procedural difference that may impact final certification decisions. The parties shall develop mutually acceptable standards as necessary.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT, together with WMATA, must re-start the monthly meetings of the MWUCP committee, resume the committee's responsibilities as identified in the MWUCP Agreement, and submit to the FTA Office of Civil

Rights a written assurance that the meetings will continue in accordance with the MWUCP Agreement. In addition, both certifying partners should submit the firm names and any other required information and documentation for all firms certified independently of the MWUCP.

Advisory Comments

It is advised that the certifying partners perform the steps stated in the language quoted above (from the draft SOPs) prior to finalizing the SOPs and incorporate any mutually acceptable standards into the unified SOPs. It is also advised that the SOPs contain specific policies and procedures that incorporate all provisions of 49 Part 26 as stated throughout this report.

B) On-Site Visits

Basic Requirement (49 CFR Part 26.83(c)(1))

UCPs must perform an on-site visit to the offices of the firm. The UCP must interview the principal officers of the firm and review their resumes and/or work histories. The UCP 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 the UCP's jurisdiction or local area.

Discussion

During this compliance review, no deficiencies were found with this requirement.

The MWUCP MOU and DDOT DBE Program Plan addressed the requirement to conduct on-site visits of applicant firms during the application review process, per 49 CFR Part 26.83(c)(1). DDOT conducted and documented on-site reviews accordingly. The applicant files reviewed during this compliance review included applicant firm on-site review reports prepared and completed by DDOT. The on-site review reports documented the following: type of review, company profile, ownership, average gross receipts for the preceding three years, officers/board of directors/members, control, personnel/resources, general facilities observation, construction equipment, warehouse, job site observations, and additional information.

Per the MWUCP MOU and DDOT DBE Program, on-site reviews of interstate applicants were conducted by the interstate applicant's home state. Findings related to interstate applications are reported in Section 6.9 Interstate Certification of this report.

C) 30-Day Notification

Basic Requirement (49 CFR Part 26.83(l))

The UCP must advise each applicant within 30 days from receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

Discussion

During this compliance review, deficiencies were found with this requirement. In addition, FTA issued an advisory comment regarding this requirement.

Due to the lack of staff resources, DDOT indicated that the 30-day notification letters were not being provided to applicants in a timely manner. DDOT also indicated that when there were two certifying staff members, DDOT was able to meet this requirement.

None of the DDOT certification files reviewed met the 30-day notification requirement. In addition, neither the MWUCP Agreement nor DDOT's DBE Program Plan specifically stated this requirement.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT must submit to the FTA Office of Civil Rights written procedures for ensuring that applicants are notified within 30 days of receipt of the status of their application and whether additional information or action is required.

Advisory Comment

It is advised that DDOT and the MWUCP develop SOPs that incorporate the requirements of Part 26.83(l) to notify DBE applicants within 30 days whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

D) 90-Day Determinations

Basic Requirement (49 CFR 26.83 (k))

The UCP must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under the DBE regulations. The UCP may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

Discussion

During this compliance review, deficiencies were found with this requirement. In addition, FTA issued an advisory comment regarding this requirement.

Due to the lack of staff resources, DDOT indicated they were not making certification decisions on applicant files within 90 days of receiving all information required under the DBE regulations. DDOT indicated they received approximately 8 to 10 applications a month and made certification decisions on completed files within 90 days only 50 percent of the time. DDOT also indicated that when there were two certifying staff and the MWUCP was meeting regularly, DDOT was able to meet this requirement.

None of the DDOT certification files reviewed included certification decisions within 90 days as required. In some cases, it was unclear when the firm's application was considered

complete, and consequently the reviewer was unable to ascertain whether the certification determination was made within 90 days.

Further, neither the MWUCP Agreement nor DDOT's DBE Program Plan specifically stated this requirement.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT must submit to the FTA Office of Civil Rights written procedures for ensuring that DDOT and the MWUCP make decisions on certification applications within 90 days of receiving from the applicant firm all required information.

Advisory Comment

It is advised that DDOT develop written procedures (SOPs) that incorporate the requirements of 26.83(k) to make decisions on certification applications within 90 days of receiving all required information from the applicant firm.

E) Annual Updates

Basic Requirement (49 CFR 26.83(h)-(j))

Once the UCP has certified a DBE, it shall remain certified until and unless the UCP removes its certification. The UCP may not require DBEs to reapply for certification or undergo a recertification process. The certified DBE must provide to the UCP, every year on the anniversary of the date of its 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 compliance review, deficiencies were found with this requirement.

The MWUCP Agreement stated the following:

certified DBEs are required to submit a "No Change" or "Notice regarding Change" statement on an annual basis, attesting to their continuous status as a "socially and economically disadvantaged owned and operated firm. The applicant must also submit the firm's Federal tax return for that year. The results of the review of the documentation should be updated in the Certifying Partner's database where applicable.

DDOT's DBE Program stated the following:

DDOT requires all DBEs to inform the agency in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantage status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with DDOT's application for certification. DDOT also requires all owners of

all DBEs that have been certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). DDOT requires DBEs to submit with the affidavit documentation of the firm’s size and gross receipts.

DDOT indicated that due to a lack of staff resources, it was only able to process approximately 200 Annual No Change Affidavits out of its 1,400+ certified DBE firms. It was unclear whether DDOT had received any written affidavits from DBE firms notifying DDOT of any change in its circumstances affecting eligibility in the DBE program.

DDOT’s DBE Program also stated that “DDOT will notify all currently certified DBE firms of these obligations through electronic notification 30-90 days prior to their anniversary date.” However, DDOT indicated there was no process in place to send reminders to DBE firms.

None of the DDOT files reviewed on-site contained annual updates.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT must submit to the FTA Office of Civil Rights written procedures for ensuring that DDOT and the MWUCP receive and review Annual No Change Affidavits and “Notice of Change” affidavits from certified firms, in accordance with 49 CFR Part 26.83(h)–(j). The procedures must adequately address the removal of firms that no longer qualify for the DBE program due to changes in their circumstances or that do not cooperate with Annual No Change Affidavit and notice of change requirements, as provided for in 49 CFR Part 26.109(c) and 26.87(f).

6.9 Interstate Certification

Basic Requirement (49 CFR Part 26.85)

This section applies with respect to any firm that is currently certified in its home state. When a firm currently certified in its home State (“State A”) applies to another State (“State B”) for DBE certification, State B may, at its discretion, accept State A’s certification and certify the firm, without further procedures. In any situation in which State B chooses not to accept State A’s certification of a firm, as the applicant firm, you must provide the information in paragraphs (c)(1) through (4) of Part 26.85 to State B.

Discussion

During this compliance review, a deficiency was found with this requirement.

The MWUCP Agreement and DDOT’s DBE Program Plan stated that out-of-state applications would be reviewed in accordance with 26.85(c), which required all out-of-state applicant firms to submit a complete copy of the Uniform Certification Application, all supporting documentation, and any other information that was submitted to the home state or any other state related to the firm’s certification. Additional documents that may also be required were listed in DDOT’s DBE Program Plan as follows:

1. *Submit copies of any notices or correspondence from states other than your home state relating to your status as an applicant or certified DBE in those states.*
2. *If you have filed a certification appeal with DOT, you must provide this information including your letter of appeal and DOT's response.*
3. *Submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85 (c).*
4. *If your on-site report from your home state supporting your certification in your home state is more than three years old, as of your application to DDOT, DDOT may require that your affidavit also affirm that the facts in the on-site report remain true and correct.*

All DDOT files reviewed included a complete copy of the Uniform Certification Application and other required documents as described above. However, certification files for two interstate applicants did not include an on-site visit report. The DDOT staff advised that the on-site visit reports were requested from these applicants' home states but had not been received. When the home state does not respond to DDOT's request for the on-site report within 14 days, DDOT's DBE Program Plan provided for the following:

DDOT may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, DDOT-OCR must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

DDOT did not exercise this provision or otherwise attempt to comply with 49 CFR Part 26.85(d)(1) to obtain interstate applicant home state site visit reports.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT must submit the following to the FTA Office of Civil Rights:

- Confirmation that it has received home state site visit reports for the two interstate certification files reviewed, Wendake Consulting, LLC and Air Hub, LLC
- Written confirmation that all active interstate certification files contain site visit reports from the applicant firms' home state and that DDOT will exercise the provisions in 49 CFR Part 26.85(e) to ensure DBE program compliance when processing all future interstate applications.

6.10 Denials of Certification

A) Initial Request Denials

Basic Requirement (49 CFR Part 26.86)

When a UCP denies a request by a firm that is not currently certified with it, to be certified as a DBE, the UCP must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that support each reason for the denial. When a firm is denied certification, the UCP must establish a timeframe of no more than 12 months before the firm may reapply for certification.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

The DDOT DBE Program Plan stated the following:

If DDOT Office of Civil Rights denies a firm's application or chooses to decertify a firm, the firm may not reapply until one (1) year has passed from our action.

- 1. When DDOT denies a request by a firm, which is not currently certified with DDOT, to be certified as a DBE, DDOT must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.*
- 2. When a firm is denied certification, DDOT must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. DDOT may provide, in the DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.*
- 3. When DDOT makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.*

Three of the DDOT files selected were listed as denials. However, upon review of the files, only one of the files was a denial; one of the other two was a withdrawal by the applicant firm, and one was a firm-initiated request to be removed from the DBE program. In the case of the denial, the denial letter explained the reason for the denial, specifically referenced the evidence in the record that supported each reason for the denial, and advised the firm owner of his appeal rights and how to appeal. In addition, the letter stated that a reapplication for certification may be made 12 months from the date of the denial decision.

Advisory Comment

It is advised that DDOT develop written procedures (SOPs) and (per USDOT guidance) an application-tracking mechanism processes and/or systems that certification staff can use to

identify and record key dates and milestones in the application review process, such as the date it receives a certification application, notes on documents or information that may be missing, and dates when the DDOT requests additional information from an applicant.

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, the UCP must provide written notice to the firm that the UCP proposes to find the firm ineligible, setting forth the reasons for the proposed determination. When the firm notifies the firm that there is reasonable cause to remove its certification, the UCP must allow the firm an opportunity for an informal hearing. Following the final decision, the UCP must provide written notice of the final decision and a rationale for that decision.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

The MWUCP incorporated the regulations of Part 26 by reference. However, neither the MWUCP Agreement nor the DDOT DBE Program Plan clearly stated policies and procedures for the removal of certified DBEs. The regulations at Part 26.87(f)(1)–(5) state:

Grounds for decision. *You may base a decision to remove a firm's eligibility only on one or more of the following grounds:*

- (1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;*
- (2) Information or evidence not available to you at the time the firm was certified;*
- (3) Information relevant to eligibility that has been concealed or misrepresented by the firm;*
- (4) A change in the certification standards or requirements of the Department since you certified the firm;*
- (5) Your decision to certify the firm was clearly erroneous;*
- (6) The firm has failed to cooperate with you (see §26.109(c));*
- (7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see §26.73(a)(2)); or*
- (8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.*

In addition, the regulations in Part 26.87 provide other standards and requirements for ineligibility complaints, recipient-initiated proceedings, USDOT directives to initiate proceedings, hearings, separation of functions, and notice of decisions. It is advised that DDOT develop clearly stated policies and procedures (SOPs) for removal of a certified DBE firm in accordance with the regulations.

The MWUCP Agreement and DBE Program Plan explained steps to be taken once DDOT (or WMATA) determined a firm should be recommended for decertification. The DBE Program Plan stated, “In the event DDOT proposes to remove a DBE’s certification, DDOT will follow procedures consistent with 26.87. **Attachment 8** to this program sets forth these procedures in detail.”

Attachment 8 to the DBE Program Plan was a set of letter templates that included a Proposed Decertification Letter to notify DBE firms that DDOT proposed to decertify the firm, the reasons for decertification, DBE regulations impacted, and an invitation to the firm to attend an informal hearing with the MWUCP to respond to the reasons for the proposal to remove the firm’s eligibility and provide information and arguments concerning why it should remain certified. Attachment 8 also included a letter template for Notice of Final Decertification. The final notice notified the firm of the final decision to decertify the firm, the reasons for the decision, and information regarding the firm’s right to appeal to USDOT.

The MWUCP Agreement also referenced the letter templates and stated that proposed and final decertification letters would be submitted to the MWUCP for discussion if necessary, and a vote would be taken to approve the proposed and final decertification letters.

The review team requested the files for two DBE-certified firms that appeared to have been removed from the DBE program (Tidewater and Miracle Cleaning). DDOT was only able to provide the file for Tidewater, LLC.

Based on a review of its file, Tidewater, LLC, was removed from the DBE Program due to evidence that showed the firm exceeded the gross receipts threshold to continue be an eligible certified DBE. The files contained the proposed and final decertification letters.

DDOT indicated that Miracle Cleaning was removed from the DBE Program due to nonresponsiveness to an information request. However, the certification file for this firm was not available for review.

Advisory Comment

It is advised that DDOT develop written procedures that clearly describe its process for removing certified DBEs in accordance with the requirements in 49 CFR Part 26.87 and the retention of records requirements described in 26.11(d).

C) Mandatory Summary Suspension

Basic Requirement (49 CFR 26.88(a))

The UCP must immediately suspend a DBE’s certification without adhering to the requirements in §26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm’s certification dies or is incarcerated.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

The MWUCP and DBE Program Plan referenced the regulations in Part 26. However, neither the MWUCP Agreement nor the DDOT DBE Program Plan included specific procedures for mandatory summary suspension.

Advisory Comment

It is advised the DDOT develop written procedures (SOPs) for mandatory summary suspension as required by Part 26.88(a).

D) Optional Summary Suspension

Basic Requirement (49 CFR 26.88(b))

The UCP may immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances that may affect the eligibility of the DBE firm to remain certified as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

The MWUCP and DBE Program Plan referenced the regulations in Part 26. However, neither the MWUCP Agreement nor the DDOT DBE Program Plan included specific procedures for optional summary suspension.

Advisory Comment

It is advised the DDOT develop written procedures (SOPs) for optional summary suspension as required by Part 26.88(b).

E) Appeals to USDOT

Basic Requirement (49 CFR Part 26.89)

When the Department receives an appeal and requests a copy of the administrative record, the UCP must provide the administrative record, including a hearing transcript, within 20 days of the Department's request.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

The MWUCP and DDOT DBE Program Plan referenced the regulations in Part 26. In addition, DDOT's DBE Program Plan stated the following:

Notwithstanding any provision of Federal or state law, DDOT is prohibited from releasing any 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 applications for DBE certification and supporting information. However, DDOT will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

Advisory Comment

It is advised that DDOT develop written procedures (SOPs) to meet the requirements of Part 26.89, such as the 20-day time frame requirement for providing requested documents to USDOT.

6.11 Compliance and Enforcement

A) DBE Enforcement Actions

Basic Requirement (49 CFR Part 26.107)

If a firm does not meet the eligibility criteria of subpart D and attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR Parts 180 and 1200.

Discussion

During this compliance review, no deficiencies were found with this requirement.

DDOT's DBE Program Plan stated the following:

Subpart F Compliance and Enforcement: *In accordance with 49 CFR Part 26, DDOT and/or any sub-recipients may be subject to compliance actions or sanctions for failing to carry out any requirement of this part.*

DDOT is required to take legal action against any firm that subverts the intent of the DBE program for illegal purposes. The following are, but not limited to, the enforcement tools that DDOT may use to insure the honesty and integrity of the DBE Program:

1. *If a firm that does not meet the eligibility criteria of subpart D of this part 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 DDOT may initiate suspension or debarment proceedings against a firm under 2 CFR parts 180 and 1200.*
2. *If a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the DDOT may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.*
3. *In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the DC Division FHWA may consider the fact that a purported DBE has been certified by a the MWUCP. Such certification does not preclude the DDOT from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.*
4. *DDOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31. (e) DDOT-OCR may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.*

DDOT indicated it did not have reason to debar or suspend a DBE firm in the last three years.

B) Confidentiality

Basic Requirement (49 CFR Part 26.83(g) and 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 DBE certification and supporting documentation.

Discussion

During this compliance review, no deficiencies were found with this requirement.

The MWUCP Agreement stated that each MWUCP member would safeguard from disclosure to third parties information that may reasonably be regarded as confidential

business information, consistent with Federal, state, and local law. Notwithstanding any contrary provision of state or local law, a MWUCP member would not release personal financial information submitted in response to the PNW requirement to a third party (other than USDOT) without written consent of the submitter.

In addition, DDOT's DBE Program Plan stated:

DDOT will safeguard from disclose to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Availability of records.

- a. *In responding to requests for information concerning any aspect of the DBE program, DDOT complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). DDOT may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.*
- b. *Notwithstanding any provision of Federal or state law, DDOT is prohibited from releasing any 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 applications for DBE certification and supporting information. However, DDOT will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.*

Confidentiality of information on complainants.

Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

C) Cooperation

Basic Requirement (49 CFR Part 26.109 (c))

All participants in the Department's DBE program are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information (49 CFR Part 26.73 (c.)) DBE firms and firms seeking DBE certification shall cooperate fully with the UCP's requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is grounds for a denial or removal of certification.)

Discussion

During this compliance review, no deficiencies were found with this requirement.

DDOT's DBE Program Plan stated:

Cooperation.

All participants in the DDOT'S DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The reviewers found that DBE firms cooperated fully with MWUCP certification requirements and requests for information. In cases in which a firm did not respond to requests for information, MWUCP initiated the process to either administratively close the firm's file or remove the firm's certification eligibility from the program.

6.12 Record Keeping

Basic Requirement (49 CFR 26.11(d))

The UCP must maintain records documenting a firm's compliance with the DBE requirements. At a minimum, the UCP must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

Discussion

During this compliance review, deficiencies were found with this requirement.

The MWUCP Agreement and DDOT's DBE Program Plan referenced the regulations of Part 26. The MWUCP Agreement also stated the following:

Copies of complete application documents and final disposition reports, including hearings and appeals, shall be maintained in the files of each MWUCP member's respective DBE office.

The MWUCP Agreement did not specifically state records for all affidavits of no-change, change notices, and on-site reviews should be maintained; nor did it include provisions for

the requirement that other certification or compliance-related records must be retained for a minimum of three years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever was longer.

Further, as noted elsewhere in this report, several files were missing and/or unavailable for review, including:

- Missing and/or incomplete MWUCP evaluation reports (Section 8.A. Uniform Application)
- Recordings and minutes from the committee meetings (Section 8.A. Uniform Application)
- Missing home-state on-site reports for interstate firms (Section 8.B. On-Site Visits)
- Missing DBE firm files to support decertification (10.B. Removing Existing Certification)

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT must submit to the FTA Office of Civil Rights written procedures that clearly state the policies and procedures for record keeping of DBE certification files in accordance with Part 26.11(d), including documentation of a firm's compliance with the DBE requirements.

6.13 Submitting Reports to USDOT

Basic Requirement (49 CFR 26.11(e))

Each year, the State department of transportation in each UCP must report to USDOT the number of certified DBEs in its DBE Directory that are controlled by minority female(s), non-minority female(s), and socially and economically disadvantaged males, and location of the firm.

Discussion

During this compliance review, deficiencies were found with this requirement.

DDOT provided documentation that it prepared its annual reports for USDOT on the number of certified DBEs that are minority female, non-minority female, and male for FY 2016 and FY 2017. However, WMATA had not prepared its report on the same data. Therefore, a complete report of the number of certified DBEs in the DBE directory that are minority female, non-minority female, and male was not provided by the MWUCP to USDOT.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT in conjunction with WMATA must submit to the FTA Office of Civil Rights written procedures for ensuring that DDOT and the MWUCP will submit a full combined report to USDOT of the number of certified DBEs in its DBE directory that are controlled by minority female(s), non-minority female(s), and socially and economically disadvantaged males, and location of the firm.

7. Summary of File Review and Findings

Of the 11 application files requested, three files could not be located, so three additional files were requested. There were no 30- or 90-day letters or annual affidavits noted in the files. According to DDOT, correspondence with the applicants is tracked by year and filed separately from the application file. One applicant withdrew its application before it had been reviewed, and another firm requested to be removed from the program in lieu of submitting its annual affidavit.

File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	A & C Construction	Y	Y	Y	N/A	Y / N	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	DRM International, Inc.	Y	Y	Y	N	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Removal/ Decertification	Tidewater, LLC	Y	Y	Y	N	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
			Y	Y	Y	Y	Y	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Forney Enterprises	Y	Y	Y	N/A	Y / Y	N/A	Y	Y
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	X	N	Y	Y	N/A	N*	N/A

File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Greenscape Environmental Services, Inc.	Y	Y	Y	N/A	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Fells Masonry and Concrete Construction, LLC	Y	Y	Y	N	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Ilium Associates, Inc.	Y	Y	Y	N	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		I	Y	Y	Y	Y	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Allstate Floors of DC†	Y	N/A	Y	N/A	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N/A	N/A	N	N/A	N/A	N/A	N/A	N/A

File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Sysnet America, Inc.‡	Y	Y	Y	N	Y / Y	N/A	N/A	N/A

		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	Y	N	N	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate Certification	Wendake Consulting, LLC	Y	N (s)	Y	N	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		I	Y	Y	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate Certification	Air Hub, LLC	Y	N(s)	Y	N	Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		I	Y	Y	Y	Y	Y	N/A	N/A

Y = yes; N = no; N/A = not applicable; Cert. = certification; Inter. = interstate; I = only one committee member signed certification decision; N (s) = DDOT requested the on-site visit reports from the home state but did not receive them.

* Hearing not scheduled because committee was not meeting.

† Application was withdrawn prior to review of application.

‡ Firm sent a letter requesting removal from the program.

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
1. Group Membership A) Burden of Proof B) Additional Evidence	26.61 26.63	ND ND, AC			
2. Business Size	26.65	D	DDOT lacked written SOPs to address the Part 26.65 requirements regarding SBA business size standards for evaluating DBE eligibility. Tax returns were missing in one certification file to accurately determine business size.	Provide procedures to ensure that all applicable business tax returns will be obtained from the applicant entity and its affiliates in accordance with USDOT-approved application form and that DDOT will perform the required analysis of the tax returns to determine whether the applicant meets the business size requirements to be an eligible DBE.	Within 60 days of the issuance of the final report
3. Social/Economic Disadvantage A) Presumption of Disadvantage B) Personal Net Worth C) Rebutting the Presumption of Disadvantage D) Individual Determination	26.67 26.67 26.67 26.67	ND ND, AC ND, AC ND, AC			
4. Ownership	26.69	ND, AC			
5. Control	26.71	ND, AC			
6. Other Certification Rules	26.73	ND			
7. UCP Requirements A) UCP Agreement	26.81	D	MWUCP Agreement did not appear to be approved by USDOT.	In conjunction with WMATA, DDOT must provide its updated MOU to the USDOT Office of Civil Rights for approval.	Within 60 days of the issuance of the final report

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
B) UCP Directory	26.31	D	DDOT's directory was separate from the WMATA directory, and it had not been accurately updated.	In conjunction with WMATA, provide mutually acceptable processes for maintaining a master MWUCP directory that conforms to the requirements of Parts 23.31, 26.31, and 26.81(g), and updating the master directory to reflect all currently certified DBEs and removing any firms that do not meet the requirements to be certified as a DBE.	Within 60 days of the issuance of the final report
8. UCP Procedures A) Uniform Application	26.83	D, AC	DDOT was not meeting with WMATA monthly to review and approve/deny DBE application or decertify DBEs as required.	DDOT, together with WMATA, must re-start the monthly meetings of the MWUCP committee, resume the committee's responsibilities as identified in the MWUCP Agreement, and submit to the FTA Office of Civil Rights a written assurance that the meetings will continue in accordance with the MWUCP Agreement. In addition, both certifying partners should submit the firm names and any other required information or documentation for all firms certified independently of the MWUCP.	Within 60 days of the issuance of the final report
B) On-Site Visits	26.83	ND			
C) 30-Day Notification	26.83	D, AC	30-day notification requirement was not followed.	Provide written procedures for ensuring that applicants are notified within 30 days of receipt of the status of their application and whether additional information or action is required.	Within 60 days of the issuance of the final report

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
D) 90-Day Processing	26.83	D, AC	Applications were not processed within 90 days.	Provide written procedures for ensuring that DDOT and MWUCP make decisions on certification applications within 90 days of receiving all required information from the applicant firm.	Within 60 days of the issuance of the final report
E) Annual Updates	26.83	D	Annual updates not processed as required.	Provide written procedures for ensuring that DDOT and the MWUCP receive and review Annual No Change Affidavits and "Notice of Change" affidavits from certified firms, in accordance with 49 CFR Part 26.83(h)–(j). The procedures must adequately address the removal of firms that no longer qualify for the DBE program due to changes in their circumstances or that do not cooperate with Annual No Change Affidavit and notice of change requirements, as provided for in 49 CFR Part 26.109(c) and 26.87(f).	Within 60 days of the issuance of the final report
9. Interstate Certification	26.85	D	Onsite review reports were not obtained from the home state.	Provide the following: <ul style="list-style-type: none"> • Confirmation that it has received home state site visit reports for the two interstate certification files reviewed, Wendake Consulting, LLC and Air Hub, LLC • Written confirmation that all active interstate certification files contain site visit reports from the applicant firms' home state and that DDOT 	Within 60 days of the issuance of the final report

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
				will exercise the provisions in 49 CFR Part 26.85(e) to ensure DBE program compliance when processing all future interstate applications.	
10. Denials A) Initial Request B) Remove Existing C) Mandatory Summary Suspension D) Optional Summary Suspension E) Appeals	26.86 26.87 26.88 26.88 26.89	ND, AC ND, AC ND, AC ND, AC ND, AC			
11. Compliance/ Enforcement A) DBE Enforcement Actions B) Confidentiality C) Cooperation	26.107 26.109 26.109	ND ND ND			
12. Record Keeping	26.11	D	DBE certification files were missing and/or unavailable for review.	Provide written procedures that clearly state the policies and procedures for record keeping of DBE certification files in accordance with Part 26.11(d), including documentation of a firm's compliance with DBE requirements.	Within 60 days of the issuance of the final report
13. Submitting Reports to USDOT	26.11	D	A complete report of the number of certified DBEs in the DBE directory that are minority female, non-minority female, and male was not provided by the MWUCP to USDOT.	In conjunction with WMATA, provide written procedures for ensuring that MWUCP will submit a full combined report to USDOT of the number of certified DBEs in its DBE directory that are minority female, non-minority female, and male.	Within 60 days of the issuance of the final report

Findings at the time of the site visit: ND = no deficiencies found; D = deficiency; AC = advisory comment.

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ATTACHMENT A – FTA NOTIFICATION LETTER TO DDOT



U.S. Department
Of Transportation
**Federal Transit
Administration**

Headquarters

East Building, 5th Floor, TCR
1200 New Jersey Ave., SE
Washington, D.C. 20590

April 12, 2018

Jeffrey M. Marootian
Director
District Department of Transportation
55 M Street, SE, Suite 400
Washington, D.C. 20003

Dear Mr. Marootian:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE compliance reviews of these grant recipients. For this reason, the District Department of Transportation (DDOT) has been selected for a review of its Unified Certification Program (UCP) to take place June 5-8, 2018.

The purpose of this review will be to determine whether DDOT is honoring its commitment, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26. The Unified Certification Program (UCP) is comprised of two entities, DDOT and the Washington Area Transit Authority (WMATA). Therefore, the review will incorporate the UCP responsibilities of both entities.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE certification procedures (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with UCP certifying and non-certifying members, DBE applicants, DBE certified firms, firms that were denied DBE certification, and other stakeholders, possible work-site visits and an exit conference. The reviewers will complete the on-site portion of the review within a four-day period. FTA has engaged the services of The DMP Group, LLC (DMP) of Washington, D.C. to conduct this compliance review. As part of the review, the following FTA contractor personnel will be granted temporary access to your TrAMS account: Maxine Marshall, John Potts, Donald Lucas, Khalique Davis, Gregory Campbell, and Dana Lucas. Please do not remove these individuals. FTA will do so at the close of the review. The DMP and FTA representatives will participate in the opening and exit conferences, with FTA participating in person or by telephone.

We request your attendance at a joint WMATA/DDOT opening conference for the UCP compliance review, scheduled for Tuesday, June 5, 2018 at 1:30 p.m. Eastern Standard Time, to introduce the DMP team and FTA representatives to DDOT. Attendees should include you and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. The review team will need adequate working space and the use of privately controlled offices with internet access to conduct interviews and review documents. Please let us know if you will designate a member of your staff to serve as DDOT's liaison with the review team and to coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Please forward electronic (softcopy) versions of these materials to the following contact person, who is available to discuss material transmission options with you:

Donald G. Lucas
The DMP Group, LLC
2233 Wisconsin Avenue NW, Suite 228
(202) 726-2630
donald.lucas@thedmpgroup.com

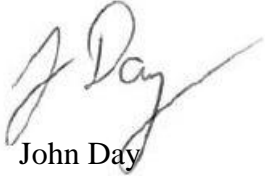
We request the joint exit conference be scheduled for Friday, June 8, 2018 at 1:30 p.m. Eastern Standard Time, to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to DDOT, will be considered public documents subject to release under the Freedom of Information Act, upon request.

DDOT representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact me at 202-366-1671, or via e-mail at john.day@dot.gov.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Day", with a long, sweeping horizontal stroke extending to the right.

John Day
Program Manager for Policy
and Technical Assistance
Office of Civil Rights

Enclosure

cc: Terry Garcia Crews, Regional Administrator, FTA Region III
Lynn Bailey, Regional Civil Rights Officer, FTA Region III
Anita Heard, Equal Opportunity Specialist, FTA
Janelle Hinton, Equal Opportunity Specialist, FTA
Tyra Redus, Transportation Equity and Inclusion Officer, DDOT
Howard Chang, TrAMS User Manager, DDOT
John Potts, Lead Reviewer, The DMP Group, LLC

District Department of Transportation
Unified Certification Program Compliance Review

Enclosure 1

You must submit the following information to the DMP Group, LLC contact person within 21 calendar days from the date of this letter.

1. Current DBE Program Plan.
2. Current Memorandum of Understanding or similar documents (i.e., current Unified Certification Program Agreement) forming the Unified Certification Program (UCP), which should be signed by all members of the UCP.
3. A narrative that describes the DDOT individuals and resources dedicated to implementing the DBE UCP requirements, handling DBE UCP inquiries, and educating DDOT staff on DBE UCP. The narrative should include an organization chart showing DDOT's DBE UCP staff and a budget showing DDOT funds allocated to the DBE UCP.
4. DDOT representation on the UCP Voting Committee.
5. UCP Annual Reports for the past three years.
6. The certification criteria/guidelines used in determining DBE eligibility.
7. Standard Operating Procedures or similar documents that explain the DBE certification process and are uniformly applied to all UCP certifying entities, including copies of the application used during certification, annual affidavits/updates, and personal net worth, etc.
8. Documents or forms used during DBE certification site visits.
9. Written procedures for updating the UCP DBE Directory.
10. List of all firms certified, denied, and decertified or removed by the UCP in FYs 2015-current. The list must include:
 - a) the firm's city and state
 - b) the firm's ethnicity
 - c) the firm's gender
 - d) the date of site visit
 - e) the reasons for denial and/or decertification (e.g., size, PNW, control, etc.)
 - f) whether the denial decision was appealed to the UCP or USDOT
 - g) The result of the appeal.
11. Explanation of DDOT's UCP appeals process(es). List the individuals involved in the appeals process and how they are selected.

District Department of Transportation
Unified Certification Program Compliance Review

12. Any third-party complaints or lawsuits regarding DBE firms certified by DDOT and actions taken to resolve the matter.
13. Any Freedom of Information or similar request for certification information.
14. Any enforcement action against a DBE firm (e.g., suspension, debarment, etc.) regarding certification.
15. The UCP ethnicity and gender breakdown required by 49 C.F.R. 26.11(e) for the last two years.
16. Other pertinent information determined by DDOT staff to further demonstrate its UCP operations and procedures.

ATTACHMENT B – DDOT’S RESPONSE TO DRAFT REPORT

From: Redus, Tyra L. (DDOT) [REDACTED]
Sent: Friday, September 21, 2018 2:04 PM
To: Day, John (FTA)
Cc: Marootian, Jeffrey M. (DDOT); McIntyre, Todd P. (DDOT); Hinton, Janelle (FTA); Garcia Crews, Terry (FTA); Bailey, Lynn (FTA); Mitchell, Yolanda CTR (FTA); Heard, Anita (FTA)
Subject: RE: Draft Report: DDOT UCP Compliance Review
Attachments: DDOT UCP Compliance Review Draft Report DDOT Comments 9.21.18.docx



Good Afternoon Mr. Day,

I have reviewed the draft report and provided comments on a few factual corrections. Attached is the draft report with my comments.

We look forward to receiving the final report and addressing any deficiencies noted.

If you have questions or need any additional information, please let me know.

Thanks,

Tyra L. Redus, Esq.
Transportation Equity and Inclusion Officer

Office of the Director
District Department of Transportation



procedures (SOPs) of the UCP. Under the MOU and SOPs, MWUCP reviewed, evaluated, and made determinations to certify new applicants; renewed existing certifications of DBEs; denied certifications to new applicants; and initiated the process to decertify existing participants from the DBE program for violations of 49 CFR Part 26.

At the time of the site visit, DDOT had one staff person, the EEO Specialist/DBE & Small Business Enterprise Program Manager, who primarily handled the MWUCP certification responsibilities on behalf of DDOT, along with her supervisor, the Equity and Inclusion Officer. Both DDOT staff also performed other duties for DDOT. The DBE certification functions had been performed by two certification staff until one of the staff members left DDOT in 2017. DDOT indicated that with the two staff, they were able to adhere to the applicable file certification review deadlines (30-day, 60-day, and 90-day), as well as conduct site visits and review annual affidavits in accordance with 49 CFR Part 26.83(h)–(j). Currently, with just one certifier, DDOT indicated it is meeting the required processing deadlines about 50 percent of the time and is only able to review about 200 (out of 1,400+) annual affidavits.

At the time of the site visit, DDOT was working with WMATA to update the MOU and SOPs for the MWUCP. Two major changes being contemplated to the MOU were a change in the name and a change in the interstate certification process.

In accordance with the latest MOU (2016), each certifying partner of the MWUCP is responsible for its own financing, staffing, and budgeting without recourse to the MWUCP for expenses on any kind. DDOT's budget for the DBE certification program was valued at \$169,531. DDOT did not use any FTA or Federal Highway Administration (FHWA) funds to cover UCP costs. DDOT's UCP budget is shown in the following table:

Cost Element	Annual Budget
Employee salaries	\$75,000
Benefits	\$18,750
Contractual services	\$50,000
Supplies and materials	\$10,000
Travel	\$2,500
Overhead allocation	\$13,281
TOTAL	\$169,531

Commented [RTL(1): There is a point of clarification here with respect to staffing. The EEO Specialist/DBE Certification Specialist is the only full-time staff member dedicated to DBE and SBE certification. There have been times when other staff or consultant staff have been tasked with supporting the DBE certification efforts in an attempt to meet deadlines and process applications in a timely manner. The staff member who left DDOT in 2017 was only supporting the certification efforts and was actually responsible for another program area.

Following the opening conference, the review team met with DDOT and WMATA to discuss issues and activities conducted jointly by the certifying partners. The review team then met with DDOT and examined DDOT's certification files and other documents submitted by DDOT. The team conducted interviews with DDOT staff regarding MWUCP administration, organizational structure, certification procedures, record keeping, monitoring, and enforcement. A sample of DBE applications and DDOT certification decisions was selected and reviewed, as shown in the following table.

Status	Firm Name
New Certifications <1 Year	
	A & C Construction, Inc.
	Greenscape Environmental Services, Inc.
	Potomac Aerials, LLC
Existing Certifications >1 Year	
	DRM International
	Fells Masonry and Concrete Construction, LLC
	Ilium Associates, Inc.
Interstate	
	Wendake Consulting, LLC
	Air Hub, LLC
Removals	
	Tidewater, LLC
	Miracle Cleaning and Maintenance
Denials	
	Sysnet America, Inc.
	Allstate Floors of DC
	Forney Enterprises

Commented [RTL(2)]: This firm is certified.

Additional interviews with DBE firms, applicant firms, decertified firms, and firms that were denied DBE certified were also conducted.

At the end of the review, FTA representatives, DDOT staff, WMATA staff, and the review team convened for the final joint exit conference. At the exit conference, initial findings and corrective actions were discussed with DDOT and WMATA. Attending the conference were:

District of Columbia Department of Transportation

Todd McIntyre, Chief of Staff

Tyra Redus, Transportation Equity and Inclusion Officer

Leutisha Stills, EEO Specialist/DBE & SBE Program Manager

Washington Metropolitan Area Transit Authority

Paul Wiedefeld, General Manager and CEO

John Kuo, Chief Information Business Operations

Elizabeth Sullivan, Chief Risk and Audit Officer

The MWUCP will not be required to conduct an on-site investigation of the out-of-state firm. An assessment of the firm's eligibility will be conducted utilizing the home-state's on-site report.

The certification files for two interstate applicants did not include an on-site review form. The DDOT staff advised that the on-site visit reports had been requested from the applicant's home states but had not been provided. When the home state does not respond to DDOT's request for the on-site report, DDOT asks the applicant to provide the approval letter from the home state and any evidence denoting that the home state had completed an on-site visit. The acceptance letters from the home state for the two applicants were included in their files.

C) 30-Day Notification

Basic Requirement (49 CFR Part 26.83(l))

The UCP must advise each applicant within 30 days from receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

Discussion

During this compliance review, deficiencies were found with this requirement. In addition, an advisory comment was made regarding the requirement.

Due to the lack of staff resources, DDOT indicated that the 30-day notification letters were not being provided to applicants in a timely manner. DDOT also indicated that when there were two certifying staff members, DDOT was able to meet this requirement.

None of the DDOT certification files reviewed met the 30-day notification requirement.

Further, neither the MWUCP Agreement nor DDOT's DBE Program Plan specifically stated this requirement. Therefore, it is advised that DDOT and the MWUCP develop SOPs that incorporate the requirements of Part 26.83(l) to notify DBE applicants within 30 days whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT must submit to the FTA Office of Civil Rights written procedures for ensuring that applicants are notified within 30 days of receipt of the status of their application and whether additional information or action is required.

Commented [RTL(3): As noted above, DDOT has only one dedicated full-time employee for DBE certification. Assistance and support is provided through contract consultants.

D) 90-Day Determinations

Basic Requirement (49 CFR Part 26.83 (k))

The UCP make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under the DBE regulations. The UCP may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

Discussion

During this compliance review, deficiencies were found with this requirement. In addition, an advisory comment was made regarding the requirement.

Due to the lack of staff resources, DDOT indicated they were not making certification decisions on applicant files within 90 days of receiving all information required under the DBE regulations. DDOT indicated they received approximately 8 to 10 applications a month and made certification decisions on completed files within 90 days only 50 percent of the time. DDOT also indicated that when there were two certifying staff and the MWUCP was meeting regularly, DDOT was able to meet this requirement.

Commented [RTL(4)]: See comment above.

None of the DDOT certification files reviewed included certification decisions within 90 days as required. In some cases, it was unclear when the firm's application was considered complete, and consequently the reviewer was unable to ascertain whether the certification determination was made within 90 days.

Further, neither the MWUCP Agreement nor DDOT's DBE Program Plan specifically stated this requirement. Therefore, it is advised that DDOT develop written procedures (SOPs) that incorporate the requirements of Part 26.83(k) to make decisions on certification applications within 90 days of receiving all required information from the applicant firm.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, DDOT must submit to the FTA Office of Civil Rights written procedures for ensuring that DDOT and the MWUCP make decisions on certification applications within 90 days of receiving from the applicant firm all required information.

E) Annual Updates

Basic Requirement (49 CFR Part 26.83(h)-(j))

Once the UCP has certified a DBE, it shall remain certified until and unless the UCP removes its certification. The UCP may not require DBEs to reapply for certification or undergo a recertification process. The certified DBE must provide to the UCP, every year on the anniversary of the date of its certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths.



U.S. Department
of Transportation
**Federal Transit
Administration**

Headquarters

5th Floor – East Bldg., TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

May 20, 2019

Jeffrey M. Marootian
Director
District Department of Transportation
55 M Street, SE, Suite 400
Washington, DC 20003

RE: Unified Certification Program (UCP) Review Final Report

Dear Mr. Marootian:

This letter concerns the Federal Transit Administration's (FTA) Disadvantaged Business Enterprise (DBE) Review of the District Department of Transportation's (DDOT) Unified Certification Program (UCP) conducted from June 5–8, 2018. Enclosed is a copy of the Final Report, which will be posted on FTA's website on our DBE page. As of the date of this letter, the Final Report is a public document and is subject to dissemination under the Freedom of Information Act of 1974.

FTA's Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of our ongoing oversight efforts, FTA conducts a number of onsite compliance reviews to ensure compliance with the applicable provisions of 49 CFR Part 26. FTA utilizes the findings from these reviews to provide technical assistance to transit agencies in order to achieve compliance with 49 CFR Part 26.

Unless otherwise noted, all corrective actions identified in the Final Report must be undertaken within 60 days of the date of this letter. Once we have reviewed your submissions, we will request either clarification or additional corrective action, or will close out the finding if your response sufficiently addresses the DBE requirements. Please submit your responses to me at john.day@dot.gov.

We appreciate the cooperation and assistance that you and your staff have provided us during this review, and we are confident DDOT will take steps to correct the deficiencies. If you have any questions about this matter, please contact Janelle Hinton at 202-366-9259 or via email at janelle.hinton@dot.gov.

Sincerely,

John Day
Program Manager for Policy
and Technical Assistance

cc: Terry Garcia Crews, Regional Administrator, FTA Region 3
Lynn Bailey, Regional Civil Rights Officer, FTA Region 3
Tyra Redus, Transportation Equity and Inclusion Officer, DDOT