

## FEDERAL TRANSIT ADMINISTRATION

# Port Authority of New York and New Jersey Unified Certification Program (UCP) Compliance Review

Final Report June 2019





U.S. Department of Transportation Federal Transit Administration



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## **Executive Summary**

Objective and Methodology – This report details the findings from a Compliance Review of the Port Authority of New York and New Jersey's (PANYNJ) Disadvantaged Business Enterprise (DBE) certification practices and procedures as a certifying partner in both the New York State Unified Certification Program (NYSUCP) and the New Jersey Unified Certification Program (NJUCP). The Compliance Review examined PANYNJ's DBE certification procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA) and PANYNJ. In addition, the following entities were interviewed as part of this review: PANYNJ officials, 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 review of certification program and other relevant documents.

#### PANYNJ's Certification Program includes the following positive program elements -

#### **Positive Program Elements**

- PANYNJ had devoted adequate resources to manage its DBE certification program.
- > PANYNJ staff was experienced with and knowledgeable about the UCP requirements.
- PANYNJ had good documentation in its files to support local and interstate certification decisions.

#### The Program has the following administrative deficiencies -

#### **Administrative Deficiencies**

- ➤ PANYNJ's DBE Program Plan did not address all applicable certification requirements and provisions in detail or by reference.
- PANYNJ did not confirm that it issued 30-day application receipt notices, as required.

#### The Program has the following substantive deficiencies –

#### **Substantive Deficiencies**

- ➤ PANYNJ did not comply with 90-day application decision requirements or 60-day application processing extensions, as required.
- > PANYNJ applicant files were missing annual No Change Affidavits.
- ➤ PANYNJ did not adequately enforce DBE program compliance (i.e., annual No Change Affidavit compliance) in all cases.

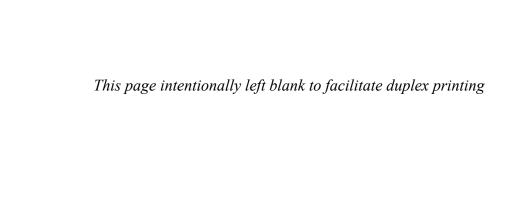
From 2016 through 2018, PANYNJ processed an average of 85 new DBE certification applications per year. In 2016, 2017, and 2018, respectively, PANYNJ received and processed 80, 80, and 96 new applications. In the same period, PANYNJ processed an average of 25 interstate applications per year. Additionally, PANYNJ annually reviewed the ongoing eligibility of an average of 323 certified DBEs, which included the processing of annual No Change Affidavits. At the time of the review PANYNJ was creating internal Desk Standard Operating Procedures (Desk SOPs) that consolidated state UCP SOPs, DBE program regulations, and business-to-government (B2G) diversity management system tools and utilities. PANYNJ underutilized the tools in its B2G Diversity Management System software designed to automate application processing and compliance monitoring. This report provides an in-depth assessment of PANYNJ's overall certification practices. It is anticipated that completion of and adherence to its Desk SOPs, along with better use of the tools in its B2G system, will help PANYNJ address the administrative and substantive deficiencies documented by the review team.

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## I. General Information

This chapter provides basic information concerning this Compliance Review of PANYNJ. Information on PANYNJ, the review team, and the dates of the review are presented below.

Grant Recipient:	Port Authority of New York and New Jersey		
City/State:	New York, NY		
Recipient Number:	2577 and 1925		
Executive Official:	Rick Cotton, Executive Director		
On-site Liaison:	Ida Perich, Assistant Director Office of Diversity and Inclusion		
Dates of On-site Visit:	February 5–7, 2019		
Site Visit Location:	2 Montgomery Street, 2nd Floor Jersey City, NJ 07302		
Review Team Members:	John Potts, Lead Reviewer Donald Lucas, Reviewer Khalique Davis, Reviewer Melanie Potts, Reviewer		



## 2. Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of the 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. (25), October 1, 2018, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs."

As direct or indirect recipients of FTA funding assistance, Unified Certification Programs (UCPs) and their 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 NYSUCP and NJUCP agreements 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 determined that a Compliance Review of PANYNJ was necessary.

The DBE regulations require USDOT recipients to participate in a Unified Certification Program—as evidenced 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 was to determine the extent PANYNJ complied with USDOT UCP requirements as a certifying partner in the NYSUCP and NJUCP, and the extent PANYNJ helped meet NYSUCP and NJUCP goals and objectives as represented to DOT in the agencies' UCP agreements. This Compliance Review was intended to be a fact-finding process to (1) examine PANYNJ and its certification practices and procedures, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

The purpose of this Compliance Review was not to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its sub recipients, or to adjudicate these issues on behalf of any party.

## 3.2 Objectives

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

- Adhere to the certification procedures and standards and the nondiscrimination requirements of 49 CFR Parts 26 and 23.
- Cooperate fully with all oversight, review, and monitoring activities of USDOT and its operating administrations.
- Implement USDOT directives and guidance on DBE certification matters.
- Make all certification and decertification decisions on behalf of all UCP members with respect to participation in the USDOT DBE Program. Certification decisions by the UCP shall be binding on all UCP members.
- Provide a single DBE certification that will be honored by all UCP members.
- Maintain a unified DBE directory containing at least the following information for each firm listed: address, phone number, and the types of work the firm has been certified to perform.
- Ensure the UCP agreement shall commit recipients to verify that the UCP has sufficient resources and expertise to carry out the requirements of 49 CFR Parts 26 and 23.

The objectives of this Compliance Review were to:

- Determine whether PANYNJ is honoring the NYSUCP and NJUCP agreements submitted to the Secretary of Transportation.
- Examine the required certification procedures and standards of PANYNJ against the Disadvantaged Business Enterprise program compliance standards set forth in the regulations and to document the compliance status of each component.
- Gather information and data regarding PANYNJ's certification process from certifying members through interviews and certification file review.

## 4. Background Information

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

## 4.1 Introduction to the Port Authority of New York and New Jersey and Organizational Structure

The Port Authority of New York and New Jersey (PANYNJ) is a bi-state agency created through a 1921 compact between the States of New York and New Jersey and consented to by the Congress of the United States. PANYNJ provides transportation and facilities of trade and commerce within the Port District, which is centered around New York Harbor and comprises an area of about 1,500 square miles in both States. PANYNJ operates and maintains many important transportation and trade facilities, including:

- the region's five major commercial airports
- marine terminals in both States
- the Port Authority Trans-Hudson Corporation (PATH)
- two interstate tunnels and four interstate bridges
- the George Washington Bridge Bus Station
- the Port Authority Bus Terminal in Manhattan

PANYNJ also owns and manages the 16-acre World Trade Center (WTC) site.

PANYNJ is financially self-sustaining and raises the monies necessary to operate its facilities and provide services to the public at large through tolls, fares, rentals, and other user charges. Funds needed for capital improvements, construction, and acquisition of facilities are raised based on PANYNJ's own credit. PANYNJ cannot pledge the credit of either state or any municipality, nor can it levy taxes or assessments. Within the context of programmatic agencywide objectives, PANYNJ establishes various financial measures designed to ensure that the agency can sustain its projects, plan for the future, and fund debt service. The Port Authority maintains two reserve funds, the General Reserve Fund and the Consolidated Bond Reserve Fund, which were established in accordance with applicable laws, statutes, and resolutions. PANYNJ sets specific targets for the balances of the reserve funds at any given time, as well as other debt-related ratios, including the Additional Bonds Test (as defined in the Consolidated Bond Resolution), and debt service coverage.

PATH, an interstate heavy rail rapid transit system, serves as the primary transit link between Manhattan and the neighboring New Jersey urban communities and includes suburban commuter railroads. It was established in 1962 as a subsidiary of PANYNJ after assuming control from the Hudson & Manhattan Railroad. As a subsidiary, certain staff functions are provided through PANYNJ corporate departments including, but not limited to, Procurement, Office of Business Development and Civil Rights, Engineering, Audit, and Law. The PATH system connects terminals in Newark, Jersey City, and Hoboken in New Jersey to lower and Midtown Manhattan in New York City. This service is provided via two pairs of tunnels beneath the Hudson River: the uptown tunnels (A&B) lead from Hoboken to Midtown Manhattan, and the downtown tunnels (E&F) lead from Exchange Place in Jersey City to the WTC. The system has four service lines that serve approximately 270,000 passengers per day (2012 average

weekday pre—Hurricane Sandy ridership was 267,678). The service lines include Newark to WTC, Journal Square to 33rd Street, Hoboken to WTC, and Hoboken to 33rd Street. There is no redundancy built into this system; thus, the loss of a single tunnel would affect all service on both the uptown and downtown lines.

PANYNJ is a certifying partner in the New York State and New Jersey UCPs and administers DBE certifications for both UCPs. PANYNJ is one of four certifying partners in the NYSUCP; the other three are the New York State DOT, the Metropolitan Transit Authority, and the Niagara Frontier Transportation Authority. PANYNJ is also one of three certifying partners in the NJUCP, the other two being the New Jersey DOT and New Jersey Transit Corporation. DBE firms certified by PANYNJ are listed in both the NYSUCP and NJUCP DBE directories. PANYNJ is the only certifying partner in either UCP that certifies Airport Concessions Disadvantaged Business Enterprises (ACDBEs).

The original NYSUCP Memorandum of Understanding (MOU) was dated June 2004. An addendum identifying the NYSUCP noncertifying partners was dated June 2018. The original NJUCP MOU was signed in March 2004, and there had been no changes to the original MOU at the time of the site visit.

PANYNJ's Office of Business Diversity and Civil Rights (OBDCR) within the Office of Diversity and Inclusion is responsible for administering DBE certifications for the agency. OBDCR comprises four operations units: Compliance, Certification, Policy Effectiveness & Change Management, and Business & Labor Force Capacity Building. OBDCR's Certification Unit is primarily responsible for all DBE certification matters and for administering PANYNJ's Minority, Women-Owned, Small, and Disadvantaged Business Enterprise and Small Business Enterprise programs. The Certification Unit consists of 15 staff members, including the OBDCR Assistant Director, a Certification Program Manager, a Certification Supervisor, six Certification Analysts, and six Certification Operations Specialists.

## 4.2 Budget and FTA-Assisted Projects

PANYNJ's transit operating and capital budgets for FY 2017, FY 2018, and FY 2019 were as follows:

PATH Operating Revenues by Category (in thousands)

	2017 Actual	2018 Budget	2019 Budget
Fares	\$192,525	\$192,624	\$190, 929
Rentals	\$8,207	\$7,671	\$10,208
Parking and Other	\$1,907	\$1,768	\$1,862
Utilities	\$241	\$235	\$251
Total Operating	\$202,880	\$202,298	\$203,250
Revenues			

PATH Operating Expenses by Category (in thousands)

THE OPERATING EXPENSES I	2017 Actual	2018 Budget	2019 Budget
Operations	\$136,757	\$146,614	\$141,927
Security	\$67,174	\$60,619	\$62,869
Maintenance	\$135,180	\$137,520	\$138,088
Management Services	\$31,703	\$35,688	\$39,474
Rent	\$1,123	\$1,177	\$1,190
Subtotal Operating &	\$370, 937	\$381, 618	\$383,548
Maintenance			
Allocated	\$52,448	\$49,060	\$55,197
Total Operating	\$423,385	\$430,678	\$438,745
Expenses			

PATH Capital Expenditures by Facility (in thousands)

	2017 Actual	2018 Budget	2019 Budget
PATH	\$220,773	\$397,902	\$346,509
Journal Square Transportation Center	\$274	\$1,084	\$4,298
Total Capital Expenditures	\$221,047	\$398,986	\$350,807

FTA has provided Hurricane Sandy Disaster Relief funding to PANYNJ in the recent past. Below is a list of PANYNJ's active FTA-assisted grants at the time of the review:

Grant Number	Grant Amount	Year Executed	Description
NJ-2018-005-00	\$17,010,000	2018	H. Sandy Locally Prioritized Resilience Grant #2
NJ-2017-012-00	\$377,004,285	2017	Restoration & Recovery Grant #2
NY-2017-020-00	\$33,390,000	2017	World Trade Center Flood Mitigation and Resiliency Improvements - Below Grade, 49 USC 5324
NJ-2017-005-00	\$37,084,650	2017	Head House Protections - Exchange Place, Newport & Grove St.
NY-2017-010-00	\$84,675,000	2017	WTC Flood Mitigation and Resiliency Improvements - At Grade, 49 USC 5324
NJ-2016-006-00	\$18,900,000	2016	Extension of C-Yard Rail Storage Facility
NJ-44-X008-00	\$24,587,549	2015	H. Sandy Locally Prioritized Resilience
NJ-44-X006-00	\$16,815,975	2015	Concrete Sea Wall East of PATH's HCMF
NJ-44-X007-00	\$14,861,400	2015	Automatic Flood Barrier at PATH's HCMF
NJ-44-X004-02	\$677,781,626	2015	PATH-H. Sandy Repair Recovery Resiliency

NY-44-X014-00	\$69,230,700	2015	WTC Transp. Continued Sandy Recovery, 49 USC 5324
NY-44-X013-00	\$783,423	2015	H. Sandy Response - WF Ferry/Air Train/PABT, 49 USC 5324
NY-44-X005-00	\$54,243,826	2013	WTC Transportation – H. Sandy Recovery, 49 USC 5324
NJ-44-X002-00	\$159,720,171	2013	PATH Super Storm Sandy Recovery Effort

## 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].
- 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 DOTassisted 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].
- 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 [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 noncertifying UCP member—as evidenced by signing the UCP agreement. [49 CFR 26.81 and 26.31].
- 10. Ensuring 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 3 years. [49 CFR 26.11].
- 15. Submitting to the USDOT the number of minority women, nonminority 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 PANYNJ, NYSUCP, and NJUCP websites and other sources. After reviewing this information, site visit dates were confirmed.

The FTA Office of Civil Rights sent a notification letter to PANYNJ that informed the agency 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 PANYNJ of staff and other parties who would potentially be interviewed.

Prior to the on-site visit, PANYNJ was asked to provide the following documents:

- Current DBE Program Plan (including PANYNJ's organization chart).
- Current MOU or similar documents (i.e., current Unified Certification Program Agreement) forming the UCP, which should be signed by all members of the UCP.
- A narrative describing the PANYNJ individuals and resources dedicated to implementing the DBE UCP requirements, handling DBE UCP inquiries, and educating PANYNJ staff on DBE UCP policies and procedures. The narrative should include an organization chart showing PANYNJ's DBE UCP staff and a budget showing funds allocated to the DBE UCP.
- The certification criteria/guidelines used in determining DBE eligibility.
- Standard Operating Procedures or similar documents, as well as copies of documents such as the application used during certification, annual affidavits/updates, and personal net worth, that explain the DBE certification process and are uniformly applied by all UCP certifying entities.
- Documents or forms used during DBE certification site visits.
- Written procedures for updating the UCP DBE Directory.

- A list of all firms certified, denied, and decertified or removed by the UCP in FY 2016 to the current fiscal year. The list must include:
  - o the firm's city and state
  - o the ethnicity of the firm's owners
  - o the gender of the firm's owners
  - the date of site visit
  - the reasons for denial and/or decertification (e.g., size, personal net worth, control)
  - whether the denial decision was appealed to the UCP or USDOT
  - o the result of the appeal.
- An explanation of PANYNJ's UCP appeals process(es), including a list of the individuals involved in the appeals process and a description of how they are selected.
- Any third-party complaints or lawsuits regarding DBE firms certified by PANYNJ 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., suspension or debarment) regarding certification.
- The UCP ethnicity and gender breakdown required by 49 CFR 26.11(e) for the last two years.
- Other pertinent information determined by PANYNJ staff to further demonstrate its UCP operations and procedures.

An opening conference was conducted at the beginning of the Compliance Review with PANYNJ staff and the review team. FTA representatives participated in the opening conference by conference call. The following people attended the opening conference:

#### Port Authority of New York and New Jersey

Ida Perich, Assistant Director, Office of Business Diversity and Civil Rights (OBDCR) Suchetha Premchan, Certification Program Manager, OBDCR Jayson Ortiz, Certification Supervisor, OBDCR Liza Akopdzhanova, Certification Analyst, OBDCR Risa Resnick, Attorney Jacqueline Carroll, Compliance Manager Tina Almeida, Audit Manager Brett Abramson, Law Department Allison Agliardo, Operations Manager, Procurement Michael Vozza, Port Authority Trans-Hudson Corporation (PATH)

#### **Federal Transit Administration**

John Day, Program Manager, Policy and Technical Assistance, FTA Headquarters Janelle Hinton, Equal Opportunity Specialist, FTA Headquarters Lynn Bailey, Acting Regional Civil Rights Officer, FTA Regions 2 and 3 Louis Rodriquez, Civil Rights, FTA Region 2

#### The DMP Group

John Potts, Lead Reviewer Donald Lucas, Reviewer Khalique Davis, Reviewer Melanie Potts, Reviewer

Following the opening conference, the review team examined PANYNJ's certification documents and other documents submitted by PANYNJ. The team then conducted interviews with PANYNJ members and staff regarding UCP administration, organizational structure, certification procedures, record keeping, monitoring, and enforcement. A sample of DBE applications and certification decisions were selected and reviewed. Additional interviews with DBE firms, applicant firms, decertified firms, and firms that were denied DBE certification were also conducted.

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

#### Port Authority of New York and New Jersey

Ida Perich, Assistant Director, Office of Business Diversity and Civil Rights (OBDCR) Suchetha Premchan, Certification Program Manager, OBDCR Jayson Ortiz, Certification Supervisor, OBDCR Liza Akopdzhanova, Certification Analyst, OBDCR Paula London, Certification Analyst, OBDCR Risa Resnick, Attorney Jacqueline Carroll, Compliance Manager Tina Almeida, Audit Manager Brett Abramson, Law Department Allison Agliardo, Operations Manager, Procurement Michael Vozza, Port Authority Trans-Hudson Corporation (PATH)

#### **Federal Transit Administration**

John Day, Program Manager, Policy and Technical Assistance, FTA Headquarters Janelle Hinton, Equal Opportunity Specialist, FTA Headquarters Lynn Bailey, Acting Regional Civil Rights Officer, FTA Regions 2 and 3 Louis Rodriquez, Civil Rights, FTA Region 2

#### **The DMP Group**

Donald Lucas, Reviewer Khalique Davis, Reviewer Melanie Potts, Reviewer Following the site visit, a draft report was compiled and transmitted to PANYNJ for comments. A final report incorporating PANYNJ's responses and identifying the remaining open corrective actions will be produced.

#### 5.3 Stakeholder Interviews

#### **DBE Firms**

Eighteen certified DBE firms listed in the PANYNJ Directory and six firms that had either been denied certification or decertified were contacted for an interview to learn about their experiences with PANYNJ's 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 statement, current tax returns, etc.)?
- 10. Do you have any concern(s) about the UCP or the certification process?

Nine of the 24 firms contacted were interviewed. Seven firms declined to be interviewed and eight were unresponsive. All of the certified firms interviewed were certified by PANYNJ and had used the agency's online application process in its B2Gnow Diversity Management System (B2G) software. The firms all had a similar experience in that they received notification from PANYNJ that their application had been received and was being processed through B2G. PANYNJ requested additional information, if needed. Three of the firms reported that PANYNJ was unresponsive or unprofessional in explaining the need for additional documentation. All firms interviewed confirmed the application process took less than 90 days. One of the applicants indicated that PANYNJ notified them of the need for a 60-day extension before it could make a final certification decision.

PANYNJ conducted an on-site visit at all but two of the firms, which were out-of-state applicants. The interviewees reported that PANYNJ was generally nonintrusive and easy to work with when planning and conducting the site visit.

Two of the certified firms interviewed reported they had not reviewed their listing in the DBE directory or did not know of its existence online. The firms interviewed that were denied certification reported they received notification letters from PANYNJ indicating the reason for the denial with reference(s) to the applicable regulation. The firms were aware of their right to appeal but elected to forgo the appeal process.

All of the firms found the online application process using B2Gnow to be user friendly. Some firms stated that PANYNJ staff could better communicate the requirements for continued certification.

#### Stakeholder Groups

Seven stakeholder organizations were contacted for an interview to gain insight into how PANYNJ worked with external organizations and the small, minority, and women-owned business community. The review team attempted to contact the following organizations:

- Asian American Business Development
- South Asian American Chamber of Commerce
- Chinese Chamber of Commerce
- Long Island African American Chamber of Commerce
- New York City Black Chamber of Commerce
- New York City Hispanic Chamber of Commerce
- New York State Coalition of Hispanic Chambers of Commerce

#### 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 certification with the UCP?
- 4. Has your organization ever contacted the state certifying authorities regarding DBE certification requirements?
- 5. Has your organization referred firms interested in DBE certification to the state UCP?
- 6. Is your organization made aware of contracting/subcontracting opportunities on the agency's contracts? If so, how?
- 7. Does your organization include UCP information in its membership outreach literature?
- 8. Has your organization participated in any outreach activities organized by the state UCP?
- 9. Has the state UCP participated in any outreach activities organized by your organization?
- 10. What is your organization members' view of the state UCP?
- 11. Have members of your organization seen an increase in work as a result of becoming certified?
- 12. What is your agency's view of the effectiveness of the UCP?
- 13. Do you have any concern(s) about the UCP or the certification process?
- 14. Have any members of your organization ever worked on an FTA-assisted project for this grantee?

Three organizations declined to be interviewed, one organization was unresponsive, and three organizations agreed to be interviewed. The organizations interviewed were aware of the Unified Certification Program and indicated some of their members were certified DBEs. One agency was asked to participate in some outreach activities sponsored by PANYNJ. Although they did not participate in the outreach, the agency staff anticipated working more with PANYNJ in the future. Another organization that had participated in PANYNJ outreach events and

trainings noted that PANYNJ held two or three events every year and further reported that the events were informative. This organization believed the annual events helped firms learn about and compete for PANYNJ contracting opportunities and learn how to get certified as a DBE. PANYNJ was described as helpful and supportive.

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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 PANYNJ 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 New York State Unified Certification Program or the New Jersey Unified Certification Program, in which PANYNJ is a certifying partner.

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 26.67(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 members of these groups and individuals for whom 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.

As a certifying partner in the NYSUCP and NJUCP, PANYNJ is required to certify DBE firms in accordance with Standard Operating Procedures (SOPs) developed separately by each UCP.

Both the NYSUCP and NJUCP SOPs required partners' compliance regarding group membership, ownership, control, and social and economic disadvantage standards.

In its DBE Program Plan, PANYNJ stated:

The Port Authority will use the certification standards in Subpart D of Part 26 and the certification procedures in Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The Port Authority will make certification decisions based on the facts as a whole.

At the time of the site visit, PANYNJ was developing internal certification Desk SOPs that incorporated some of the states' UCP procedures and its own more detailed procedures for application processing and ongoing certification management. PANYNJ's draft Desk SOPs also addressed burden of proof requirements.

Finally, a review of applicant certification files confirmed PANYNJ's compliance with this part. PANYNJ rebuttably presumed that members of the designated groups identified in 49 CFR Part 26.67(a) were socially and economically disadvantaged.

#### 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 an advisory comment regarding this requirement.

As reported in the previous section, PANYNJ summarily affirmed compliance with certification standards in 49 CFR Part 26 Subpart D, including the Additional Evidence of Group Membership provision, in its DBE Program Plan and pursuant to the terms of the NYSUCP and NJUCP MOUs and related SOPs. Both state UCP SOPs contained procedures for requesting additional evidence of group membership. PANYNJ did not describe its process for obtaining additional evidence of group membership in its draft Desk SOPs.

#### **Advisory Comment**

PANYNJ was advised to update its draft Desk SOPs to include detailed procedures for requesting additional evidence of group membership when it has a well-founded reason to question the individual's claim of membership in a socioeconomically disadvantaged group.

#### 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. 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, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

PANYNJ incorporated the business size standards described in 49 Part 26.65 by reference in its DBE Program Plan and explicitly in its draft Desk SOPs. In its draft Desk SOPs, PANYNJ stated that eligible applicant firms must have average annual gross receipts over the previous three years that do not exceed \$23.98 million. The files reviewed on site contained the applicant firms' most recent three years' business tax returns, which PANYNJ used to determine if the firm met the business size requirements.

As a certifying partner of both the NYSUCP and NJUCP, PANYNJ must operate in accordance with both states' DBE certification SOPs. The NJUCP SOPs incorporated the current business size standard by reference. The NYSUCP SOPs included the statement, "Notwithstanding a firm's ability to meet the SBA size standard for its area of work, a firm must not have annual gross receipts, as averaged over three previous years, in excess of \$22.41 million for the DBE program." The NYSUCP SOPs did not include the current business size standard.

#### **Advisory Comment**

PANYNJ was advised to inform the New York State DOT that its UCP SOPs should be updated to reflect the current \$23.98 million business size standard found in 49 CFR Part 26.65.

#### 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.

PANYNJ incorporated the presumption of disadvantage standard described in 49 Part 26.67(a)(1) by reference in its DBE Program Plan and explicitly in its draft Desk SOPs. The NYSUCP and NJUCP SOPs also included adherence to the current presumption of disadvantage standard. Accordingly, PANYNJ required that all applicants use the Uniform Certification Application provided by USDOT either in its native form or as made available through its online B2G Diversity Management System. Applicants were required 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 of the files reviewed contained the USDOT form and 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 Personal Net Worth (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.

PANYNJ incorporated the PNW standard described in 49 Part 26.67(a)(2)(i) by reference in its DBE Program Plan and explicitly in its draft Desk SOPs. The NYSUCP and NJUCP SOPs also included adherence to the current PNW standard of \$1.32 million. PANYNJ required applicants to complete and submit a signed and notarized Personal Net Worth Statement (found in 49 CFR Part 26 Appendix G) in its native form or as made available through the online B2Gnow Diversity Management System with their Uniform Certification Application. In addition, PANYNJ required applicants to submit the following:

- Personal Federal tax return for the past 3 years for each disadvantaged owner
- Documented proof of any transfers of assets to/from your firm and/or from any of its owners over the past 2 years

In order for PANYNJ to accurately determine an individual's PNW, the applicants could, on a case-by-case basis, be required to provide additional financial information.

Although the NJUCP SOPs incorporated the PNW standard by reference to 49 CFR Part 26.67, they did not require the use of the current and required Personal Net Worth Statement found in

49 CFR Part 26 Appendix G. The NJUCP SOPs required the "SBA Personal Financial Statement for each qualifying socially and economically disadvantaged owner." The SBA Personal Financial Statement differs from the required USDOT Personal Net Worth Statement. NJUCP SOPs notwithstanding, PANYNJ required the use of the USDOT Personal Net Worth Statement.

All files reviewed contained a PNW statement and personal income tax information that adequately substantiated the claims made on the PNW statement.

#### **Advisory Comment**

PANYNJ was advised to inform the New Jersey DOT that its UCP SOPs should be updated to require the use of the USDOT Personal Net Worth Statement found in 49 CFR Part 26 Appendix G.

#### C) Rebutting the Presumption of Disadvantage

#### Basic Requirement (49 CFR Part 26.67)

A UCP may rebut the presumption of disadvantage if the PNW statement of wealth exceeds \$1.32 million or the applicant's assets would lead a reasonable person to believe the applicant is not economically disadvantaged.

#### Discussion

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

PANYNJ incorporated the provisions for rebutting the presumption of disadvantage described in 49 CFR Part 26.67(b) by reference in its DBE Program Plan. The NJUCP SOPs also incorporated the provisions for rebutting the presumption of disadvantage by reference. The NYSUCP SOPs contained more detailed procedures for rebutting the presumption of disadvantage, including requirements for initiating a proceeding (per 49 CFR Part 26.87) to determine whether the presumption should be regarded as rebutted, in accordance with 49 CFR Part 26.67(b). PANYNJ's draft Desk SOPs did not incorporate by reference or explicitly include procedures for rebutting the presumption of disadvantage.

During the compliance review, PANYNJ staff described a process by which it evaluated instances of potential rebuttal of disadvantage based on PNW. This undocumented process was designed to ascertain an applicant's PNW in relation to the standard, but it did not consider the applicant's ability to accumulate substantial wealth or other circumstances that may lead a reasonable person to conclude that the applicant was not economically disadvantaged, despite having a PNW of less than \$1.32 million (see example in 49 CFR Part 26.67(b)(i)).

#### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, PANYNJ must submit to the FTA Office of Civil Rights updated Desk SOPs that describe in detail PANYNJ's procedures for rebutting the presumption of disadvantage in accordance with 49 CFR Part 26.67(b)(i), (b)(ii)(A), and (b)(ii)(B)(2-4).

#### 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.

PANYNJ incorporated the individual determinations of social and economic disadvantage provision by reference in its DBE Program Plan and explicitly in its draft Desk SOPs, which included the statement, "Other individuals may be found to be socially and economically disadvantaged on a case-by-case basis." The NYSUCP SOPs included the required provision along with a reference to the guidance on making individual determinations of social and economic disadvantage found at 49 CFR Part 26 Appendix E. The NJUCP SOPs included a requirement to comply with the provision by reference.

During the site visit, PANYNJ described an instance when the owner of an applicant firm who was not presumed to be a part of a socioeconomically disadvantaged group claimed social and economic disadvantage. The applicant asserted his group membership limited his educational opportunities, which put him and his business at a competitive disadvantage. PANYNJ requested additional substantiating information from the applicant, as required. After reviewing all information and further considering the applicant's claim, PANYNJ denied the firm's application and provided written justification for its decision to the applicant.

The certified applicant files reviewed contained documentation, including partnership agreements and salaries, that the individuals whose ownership and control were relied upon for DBE certification were socially and economically disadvantaged.

#### 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.

PANYNJ's DBE Program Plan defined ownership as 51 percent owned by socially and economically disadvantaged individuals. The Plan also detailed procedures for reviewing documented proof of contributions from all owners to acquire ownership in the applicant firm,

including contributions of securities; capital; expertise; assets gained through divorce, inheritance, or death; marital assets; gifts; or transfers.

The applicant files reviewed contained documentation that the applicant firms that were certified were owned at least 51 percent by socially and economically disadvantaged individuals. The files included documentation of the contribution of capital, copies of securities or stocks, and gifting and/or transfer of assets for the applicant firm.

#### 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.

PANYNJ incorporated the requirement for DBE firms to be controlled by socially and economically disadvantaged owners by reference in its DBE Program Plan and explicitly in its draft Desk SOPs. NYSUCP SOPs addressed control requirements. NJUCP SOPs did not address control requirements by reference or otherwise.

PANYNJ's draft Desk SOPs stated, "DBEs are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and one or more of the owners manage, operate and control the business." To confirm applicant firms met and maintained compliance with this requirement, PANYNJ evaluated the following at the time of application:

- Documented proof of contributions/capitalization used to acquire ownership for each owner
- Schedules of salaries (or other remuneration) paid to all officers, managers, owners and/or directors of the firm
- List of all employees, job titles and dates of employment
- Corporate bank signature card, bank resolution or letter from bank
- Partnership Agreement
- Certificate of formation and/or organization, including date approved by State
- Operating and/or managing agreements
- Franchise and/or third-party agreement
- Articles of incorporation, including date approved by State
- Corporation By-laws
- Minutes of first corporate organizational meeting and amendments

- Copies of all issued stock certificates front and back, as well as next unused certificate
- Copy of stock ledger
- Shareholder agreements
- Shareholder voting rights
- Facts pertaining to the value of shares
- Restrictions on the control of the corporation

PANYNJ also confirmed compliance with control requirements when DBEs submitted annual No Change Affidavits.

PANYNJ indicated that it scrutinized documentation provided with 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, PANYNJ indicated it scrutinized documentation and information during the on-site visit with the applicant's 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 in which the firm engaged.

The applicant files reviewed contained documentation that the applicant firm was independent and controlled by socially and economically disadvantaged owners. The file documentation included the firm's bylaws, articles of incorporation, board minutes, resumes, salaries, certifications and licenses, and completed Certification Interview Questionnaires. One firm was denied certification because the firm's by-laws limited the disadvantaged owner's control.

#### **Advisory Comment**

PANYNJ was advised to notify the NJUCP that its SOPs did not address control requirements by reference or otherwise.

#### 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. FTA issued an advisory comment regarding this requirement.

PANYNJ incorporated other rules affecting certification by reference in its DBE Program Plan. In the files reviewed, there was no documentation relating to considerations of commercially useful

function in PANYNJ's certification process. One instance documented in the files indicated a DBE firm's pattern of conduct involving attempts to evade or subvert the intent or requirements of the DBE program that was handled by PANYNJ in accordance with the DBE regulations. At the time of the site visit, PANYNJ had suspended SIMCO Engineering P.C.'s DBE status due to a change in ownership, ongoing investigations of procurement fraud by the City of New York Citywide Construction Fraud Task Force, and a criminal bribery and corruption case filed against the firm by the New York County District Attorney.

The file review revealed a pattern of nonresponsiveness by DBEs with respect to the timely filing of annual No Change Affidavits and related requests by PANYNJ to obtain outstanding affidavits.

#### **Advisory Comment**

PANYNJ was advised to ensure compliance with the certification requirements described in 49 CFR Part 26.83(j) related to the timely filing of annual No Change Affidavits and DBE program cooperation requirements described in 49 CFR Part 26.109(c). PANYNJ should define and document what it deems noncooperation and in appropriate cases, PANYNJ should consider issuing summary suspensions, as described in 49 CFR Part 28.88(b)(1), for firms that do not cooperate.

#### 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, no deficiencies were found with this requirement.

As a certifying partner in both the NYSUCP and NJUCP, PANYNJ is party to UCP agreements with the New York State DOT and New Jersey DOT. These state agencies are the lead agencies in the NYSUCP and NJUCP, respectively, and are primarily responsible for UCP compliance and administration. PANYNJ signed the original NYSUCP agreement on June 24, 2014 and signed an addendum to the agreement on June 7, 2018. The NYSUCP addendum added the signatures of noncertifying UCP partners that had not signed the original agreement. PANYNJ signed the NJUCP agreement on March 19, 2004. PANYNJ did not report updates or addendums to the original NJUCP agreement.

As a certifying partner, PANYNJ is responsible for certifying DBEs in the NYSUCP and NJUCP in accordance with the *New York State Unified Certification Program Proposal and Memorandum of Understanding* and the *State of New Jersey Memorandum of Understanding*. Both agreements require all certifying partners to certify DBEs in accordance with the MOUs and established SOPs. Although both MOUs complied with requirements in 49 CFR Part 26.81,

some elements of the NYSUCP SOPs and NJUCP SOPs did not comply with current DBE program regulations and are addressed throughout this report in the appropriate sections.

#### **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, no deficiencies were found with this requirement. FTA issued advisory comments regarding this requirement.

In its DBE Program Plan, PANYNJ stated:

The Port Authority through the New York State and New Jersey Unified Certification Programs (UCP) maintains directories identifying all firms eligible to participate as DBEs. The Directories list a firm's name, address, phone number, date or the most recent certification, and the type of work that the firm has been certified to perform as a DBE. Each state UCP revises its Directory periodically.

We make the Directories available as follows:

New York State UCP Directory: https://nysucp.newnycontracts.com

New Jersey UCP Directory: <a href="https://njucp.dbesystem.com">https://njucp.dbesystem.com</a>

A review of the New York State and New Jersey UCP directories confirmed the directories contained all information required in 49 CFR Part 26.31. Both directories included DBEs certified by all certifying partners.

In addition to the New York State and New Jersey directories accessible from the respective state DOT websites, PANYNJ made available through its website a DBE directory that was limited to firms that only PANYNJ had certified. This directory contained all information required in 49 CFR Part 26.31 and included information indicating in which state UCP each firm was registered. The PANYNJ-certified DBEs were the same in all three directories.

All directories were managed using B2Gnow, a third-party diversity management software program designed specifically for managing federal, state, and local diversity programs, including the USDOT DBE programs. The directories could be searched by firm name and NAICS code and could also be downloaded and printed. At the time of the site visit, when searching the PANYNJ directory by firm name, the firm's approved NAICS codes and NAICS code descriptions were included in the information returned by the search. However, when downloading the directory for viewing or printing (i.e., exporting the directory to Microsoft Excel),

the directory information included NAICS code descriptions, but it did not include the actual NAICS codes.

In accordance with the NYSUCP and NJUCP MOUs, PANYNJ's DBE Database Manager submitted regular updates to all three directories. Updated information was immediately available to the public.

#### **Advisory Comments**

PANYNJ was advised to update its DBE Program Plan to include a description of the DBE directory it makes available on its website. In addition, PANYNJ was advised to update the DBE directory export function to include NAICS codes and NAICS code descriptions in the information it makes available for export and download.

#### **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, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement.

As confirmed from the review of applicant files, PANYNJ used the current USDOT Uniform Certification Application provided in Appendix F of 49 CFR Part 26. The application form and instructions were available for download from the PANYNJ website. Applicants could also apply directly online through PANYNJ's B2Gnow Diversity Management System. The online application was consistent with the application available for download.

The NYSUCP MOU and NJUCP MOU addressed the requirement to use the current USDOT Uniform Certification Application. PANYNJ's DBE Program Plan did not address the requirement to use the current USDOT Uniform Certification Application in its native form or online through its B2G system.

#### **Advisory Comment**

PANYNJ was advised to update its DBE Program Plan to include the requirement to use the current USDOT Uniform Certification Application.

#### 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. FTA issued advisory comments regarding this requirement.

As confirmed from the review of applicant files, PANYNJ conducted on-site visits as part of its certification process, as required by 49 CFR Part 26.83(c)(1)(i). When conducting on-site visits, PANYNJ used its Certification Interview Questionnaire to document the on-site review. The Certification Interview Questionnaire contained 50 questions that collectively met the purpose of the on-site review as described in 49 CFR Part 26.83(c)(1)(i) and the NYSUCP SOPs and NJUCP SOPs. The review team noted that PANYNJ's Certification Interview Questionnaire included a question (31B) that read, "Are the other owners' combined net worth less than \$750,000?" The current PNW standard is \$1.32 million.

The NYSUCP MOU, NJUCP MOU, and related SOPs addressed the requirement to conduct on-site visits. PANYNJ addressed the on-site requirement in its draft Desk SOPs; however, it did not address this requirement in its DBE Program Plan.

#### **Advisory Comments**

PANYNJ was advised to update its DBE Program Plan to describe how it addresses the requirement to conduct on-site visits as a part of its DBE certification process. PANYNJ was advised to update its Certification Interview Questionnaire to reflect the current PNW standard of \$1.32 million.

#### C) 30-Day Notification

#### Basic Requirement (49 CFR Part 26.83(I))

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. FTA also issued advisory comments regarding this requirement.

The NYSUCP SOPs addressed the requirement to provide notice of receipt of application within 30 days; the NJUCP SOPs did not address this requirement. PANYNJ did not address this

requirement in its DBE Program Plan or its draft Desk SOPs (except for B2G screenshot examples of how the system registered receipt of an application and subsequent processing). PANYNJ did not provide documentation confirming it consistently provided the required 30-day notice of receipt.

During the site visit, PANYNJ explained that, in some cases, notice of application receipt and initial requests for additional information were made by email, and in other cases notices and requests were made by letter. Although notices of receipt and initial requests for additional information were missing from several of the files reviewed, PANYNJ staff were able to produce some letters of receipt stored on staff computers and on shared network storage locations during the site visit. Some of the files stored electronically in PANYNJ's B2G system contained records of correspondence between applicants regarding initial receipt of application and subsequent requests for additional information. However, Certification Status Reports from 2016 through 2018 provided by PANYNJ from its B2G system did not confirm that application receipt notices were processed in a timely manner.

#### **Corrective Actions and Schedule**

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

- An updated DBE Program Plan that includes procedures for ensuring compliance with the 30-day application receipt notification requirement. PANYNJ must include procedures for documenting the 30-day notice of receipt in the application file.
- Updated Desk SOPs that include procedures for ensuring compliance with the 30-day application receipt notification requirement. PANYNJ must include procedures for documenting the 30-day notice of receipt in the application file.

# **Advisory Comments**

PANYNJ was advised to more fully operationalize the compliance and enforcement tools included in its B2G system (e.g., alerts) to track and monitor the timely processing of applications. PANYNJ was advised to notify NJUCP that its SOPs do not address the 30-day notice of application receipt requirement and that NJUCP should update its SOPs to ensure compliance with 49 CFR Part 26.83(I).

#### D) 90-Day Determinations

# Basic Requirement (49 CFR Part 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. FTA also issued advisory comments regarding this requirement.

The NYSUCP SOPs addressed the requirement to make decisions on applications for certification within 90 days of receiving all required information and recognized the provision of a one-time 60-day extension. The NJUCP SOPs addressed the 90-day decision-making requirement but did not reference or otherwise include the one-time 60-day extension. PANYNJ did not address the 90-day decision-making requirement or the 60-day extension provision in its DBE Program Plan or draft Desk SOPs. PANYNJ provided Certification Status Reports from 2016 through 2018 that showed the number of days between application receipt (all required documents) and certification decision. In 2016, PANYNJ made certification decisions within 90 days 69 percent of the time (11 decisions were made after 150 days). In 2017, PANYNJ made certification decisions within 90 days 46 percent of the time (20 decisions were made after 150 days). In 2018, PANYNJ made certification decisions within 90 days 53 percent of the time (13 decisions were made after 150 days).

PANYNJ did not provide documentation confirming it notified the applicant in writing that it was extending the application review and certification decision for 60 days, explaining fully and specifically the reasons for the extension.

#### **Corrective Actions and Schedule**

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

- An updated DBE Program Plan that includes detailed procedures for making certification decisions within 90 days and detailed procedures for extending certification decisions for 60 days, as needed. Procedures must comply with requirements in 49 CFR Part 26.83(k).
- Updated Desk SOPs that include detailed procedures for making certification decisions within 90 days and detailed procedures for extending certification decisions for 60 days, as needed. Procedures must comply with requirements in 49 CFR Part 26.83(k).

# **Advisory Comments**

PANYNJ was advised to more fully operationalize the compliance and enforcement tools included in its B2G system (e.g., alerts) to track and monitor the timely processing of applications. PANYNJ was advised to notify NJUCP that its SOPs do not address the 60-day certification decision extension provision in 49 CFR Part 26.83(k).

#### 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.

#### Discussion

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

Although the NYSUCP and NJUCP SOPs addressed the requirement to submit annual No Change Affidavits and PANYNJ referenced the state UCP SOPs in its DBE Program Plan, PANYNJ did not adequately implement state UCP procedures and did not always ensure firms complied with the annual No Change Affidavit requirements described in 49 CFR Part 26.83(j).

Both state UCP SOPs required certifying partners to notify DBEs 30 days in advance of their certification anniversary dates of the requirement to submit the annual No Change Affidavit and other supporting documentation. NYSUCP required certifying partners to "develop a monitoring mechanism to determine if each certified firm provided their annual No Change Affidavit and required supporting documentation, by the annual due date." Both state UCP SOPs required certifying partners to issue a "Proposal to Remove DBE Certification" letter (in the case of NYSUCP) and "Notice of Intent to Revoke Certification" (in the case of NJUCP) 30 days after the anniversary date if a DBE did not submit its annual No Change Affidavit, as required. If a firm was unresponsive, both state UCPs required the initiation of certification removal procedures. In accordance with NYSUCP SOPs, PANYNJ was able to monitor DBE compliance with the annual No Change Affidavit requirement through its B2G system. PANYNJ provided documentation confirming it sent notices to firms 30 days in advance of each firm's anniversary date reminding firms that their annual No Change Affidavit due date was approaching. PANYNJ also provided examples of its "Notice of Intent to Revoke Certification" letter.

Five of the 15 files reviewed on site were missing annual No Change Affidavits. One firm had not submitted affidavits for two consecutive years (2017 and 2018), another firm had not submitted required affidavits for three consecutive years (2015–2017), and a third firm had not submitted affidavits for six consecutive years (2012–2017). Regarding this last example, PANYNJ explained that subsequent to the firm being certified by PANYNJ and being listed in the NYSUCP and NJUCP DBE directories, the firm applied for DBE certification with the Metropolitan Transit Authority (MTA), a NYSUCP certifying partner. MTA certified the firm presumably without realizing the firm was already certified by PANYNJ. After years of unresponsiveness, PANYNJ sent the firm a "Notice of Intent to Revoke Certification" letter on October 19, 2017, after which PANYNJ learned that the firm was submitting its annual No Change Affidavits to MTA and was in good standing with that agency. At the time of the site visit, this same firm was listed twice in the NYSUCP DBE directory and once in the NJUCP DBE directory.

Regulations described in 49 CFR Part 26.88(b) provided for firms that are unresponsive to the annual No Change Affidavit requirement to be optionally suspended for noncompliance. Regulations found at 49 CFR Part 26.109(c) describe enforcement actions that provide for the removal of certification for DBE noncooperation. The NYSUCP and NJUCP SOPs required the timely initiation of certification removal procedures, as allowed in 49 CFR Part 26.109(c). PANYNJ stated it tried to work with noncompliant firms to bring them into compliance. However, in doing so it appeared PANYNJ did not always follow state UCP SOPs or enforce the

cooperation requirements described in 49 CFR Part 26.109(c), which could result in participation in the DBE program by firms that are no longer eligible.

#### **Corrective Actions and Schedule**

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

- Updated Desk SOPs that include detailed procedures for protecting against participation in the DBE program by ineligible firms for reasons related to noncompliance with annual No Change Affidavit requirements.
- An updated DBE Program Plan that incorporates the procedures for protecting against participation in the DBE program by ineligible firms for reasons related to noncompliance with annual No Change Affidavit requirements, in their entirety or by reference.

## **Advisory Comment**

PANYNJ was advised to work with MTA and NYSUCP to remove duplicate firm entries in the NYSUCP DBE directory and to implement procedures to prevent, monitor, and remove duplicate firm entries should they occur.

#### 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, no deficiencies were found with this requirement. FTA issued advisory comments regarding this requirement.

The NYSUCP MOU and SOPs and NJUCP MOU and SOPs addressed the interstate certification requirement, as did PANYNJ's DBE Program Plan and draft Desk SOPs. PANYNJ also provided its "Checklist for Interstate DBE/ACDBE (construction and non-construction)," which included the following:

- Review Affidavit and notarized stamp
- Proof of Home State Certification
- Recent 3 years' business tax returns
- On-site visit report must be submitted directly from agency (cannot proceed without)
- Original files from 1st application

- Missing documents must be requested from the home state agency do not reach out to firm directly
- Proceed like a reciprocal app
- In B2G, complete Phase 1, 2, and 3 (Data Input only anniversary, renewal and expiration dates input after approval)
- Assign same NAICS codes as home state
- Create cover sheet (same as DBE/ACDBE) and letter (includes NAICS code(s) and description)
- After approval from supervisor/manager, input anniversary (day approved), renewal and expiration (both 1 yr. after approval) dates
- Scan cover sheet (add to files) and pdf letter (add to communication)
- Send Supervisor email of "firm and firm tax# ready to publish"
- When supervisor/manager responds, "done," email letter and certification one pager
- Once published, place folder in file room (if applicable)

During the review, PANYNJ's verbal description of its interstate certification process was consistent with the steps in the checklist. For initial confirmation of home state certification, PANYNJ stated it required applicants to provide their original certification letter from their home state. In addition, PANYNJ contacted the applicant's home state to further confirm the applicant's status and checked for the applicant firm's listing in the home state's DBE directory.

A review of interstate certification files confirmed PANYNJ processed interstate certification applications in accordance with internal and state UCP SOPs and in accordance with the requirements found at 49 CFR Part 26.85.

# **Advisory Comments**

PANYNJ was advised to include its "Checklist for Interstate DBE/ACDBE (construction and non-construction)" in its Desk SOPs. PANYNJ was also advised to check the USDOT Office of Civil Rights' Ineligibility Determination Online Database, as required by 49 CFR Part 26.85(f)(2), and to include this check in its Desk SOPs.

#### 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 NYSUCP SOPs and NJUCP SOPs addressed the requirements for making initial request denials. When making initial request denials the state UCP SOPs required certifying partners to provide a formal, written notice of denial to the applicant firm setting forth the reason(s) for the denial and specifically referencing the evidence in the record that supports each reason for the denial. Applicant firms were also notified that they could appeal initial request denials to the USDOT and, if the denial is upheld, the applicant firm could reapply in one year. When reapplying, both state UCP SOPs required applicants to reapply with the certifying partner that rendered the original denial of DBE certification.

PANYNJ provided a list of 19 applicants denied certification within the previous three years. The files for these applicants included a denial letter that explained the reason for the denial, sited the specific regulation, referenced the evidence in the record that supported the reason for the denial, and advised the firm owner of his or her right to appeal and how to appeal.

Although in practice PANYNJ complied with the requirements for making initial request denials, neither its DBE Program Plan nor its draft Desk SOPs sufficiently described its procedures for initial denials explicitly or by reference. Section 26.86 of PANYNJ's DBE Program Plan stated, "If a firm has been denied certification, it may not reapply until one year has passed from denial action." PANYNJ did not describe its procedures in any greater detail. PANYNJ's draft Desk SOPs did not address initial denial procedures.

# **Advisory Comment**

PANYNJ was advised to update its DBE Program Plan and its draft Desk SOPs with a detailed description of its initial application denial procedures. Alternatively, PANYNJ may consider including a complete and detailed description of its denial procedures in its final Desk SOPs and incorporate its final Desk SOPs by reference in its DBE Program Plan.

## **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 UCP 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 advisory comments regarding this requirement.

The NYSUCP SOPs and NJUCP SOPs addressed the requirements for DBE certification removal, including recipient-initiated, DOT-initiated, and other third party-initiated certification removal requirements. PANYNJ's DBE Program Plan incorporated the requirements found at 49 CFR Part 26.87 by reference and provided a detailed description of its removal procedures that were consistent with the state UCP procedures. PANYNJ's draft Desk SOPs did not address certification removal.

The state UCP procedures followed by PANYNJ included providing written notice informing the DBE of PANYNJ's intent to decertify that included evidence-based reasons for the proposed determination, the ability to appeal a decertification decision to the UCP or USDOT, and the ability to request an informal hearing for reconsideration by the UCP. Informal hearings were heard and decided by another UCP certifying partner(s) that did not participate in making the initial decision to decertify. Administrative UCP decisions to decertify remained in effect pending an appeal by the DBE to USDOT. Decisions by USDOT were final.

PANYNJ provided a list of 36 firms decertified within the previous three years. The reasons for decertification mostly included "Failure to Cooperate," "Owner Exceeds PNW Max," and "Owner Deceased." The files for several of the firms on the list were reviewed. All files reviewed contained documentation confirming adherence to the procedures described above.

Pursuant to requirements in 49 CFR Part 26.85(f)(1) regarding the requirement to report denials and decertifications to the USDOT Office of Civil Rights' (DOCR) Ineligibility Determination Online Database, the review team noted that a large number of PANYNJ denials and decertifications made between 2016 and 2018 did not appear in the DOCR database. Although in some states, the lead UCP agency (i.e., the state DOT) is responsible for reporting denials and decertifications to the database, in New York State and New Jersey the NYSUCP and NJUCP certifying partners, respectively, are responsible for the required reporting. During the site visit, PANYNJ explained that although it attempted to report all denials and decertifications in a timely fashion, it had experienced problems with the DOCR database. Specifically, PANYNJ stated that after making entries in the database, the entries were not showing up.

#### **Advisory Comments**

PANYNJ was advised to contact the USDOT Office of Civil Rights (DOCR) at the number provided on its Ineligibility Determination Online Database website (202-366-4648) to notify DOCR of the problem it is having making entries to the Ineligibility Determination Online Database. PANYNJ was further advised to document its efforts to resolve the problem it is having with the database.

## 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 advisory comments regarding this requirement.

Mandatory summary suspension requirements were not addressed in the NYSUCP SOPs, NJUCP SOPs, PANYNJ DBE Program Plan, or PANYNJ draft Desk SOPs. However, based on discussions with the certification staff during the site visit, if PANYNJ becomes aware that an owner whose ownership and control of the firm were necessary to a firm's certification has died or is incarcerated, then PANYNJ immediately suspends the DBE's certification without adhering to the requirements in 49 CFR Part 26.87(d). PANYNJ's list of 36 firms decertified between 2016 and 2018 included one firm that was decertified because the firm's owner was deceased.

# **Advisory Comments**

PANYNJ was advised to update its DBE Program Plan and its draft Desk SOPs with a detailed description of its procedures to immediately suspend a DBE firm pursuant to the requirements in 49 CFR Part 26.88(a). Alternatively, PANYNJ may consider updating its draft Desk SOPs to include procedures for mandatory summary suspension and incorporate its Desk SOPs by reference in its DBE Program Plan. PANYNJ was also advised to notify the NYSUCP and NJUCP that their UCP procedures should be updated to incorporate the mandatory summary suspension requirement.

#### 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 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, deficiencies were found with this requirement. FTA issued advisory comments regarding this requirement.

The NYSUCP and NJUCP SOPs addressed the requirement for DBEs to notify certifying partners when a change in circumstance materially affects their DBE program eligibility. However, the state UCP SOPs did not address the actions certifying partners should take when

notified of such change, including the option of summary suspension. PANYNJ did not address optional summary suspension as provided for in 49 CFR Part 26.88(b) in its DBE Program Plan or its draft Desk SOPs. Section 6.8(E) of this report describes DBE noncompliance with the requirement to submit annual No Change Affidavits. In such cases, summary suspension, as provided for in the regulation, could be a useful enforcement mechanism.

#### **Corrective Actions and Schedule**

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

- An updated DBE Program Plan that addresses the provisions for optional summary suspension described in 49 CFR Part 26.88 in detail or by reference.
- Updated Desk SOPs that include detailed procedures for suspending DBEs as provided for in 49 CFR Part 26.88.

# **Advisory Comments**

PANYNJ was advised to notify the NYSUCP and NJUCP that their SOPs do not address optional summary suspension provisions. PANYNJ was advised to consider using the summary suspension option as an enforcement mechanism when DBEs do not comply with annual No Change Affidavit requirements.

## 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.

The NYSUCP and NJUCP MOUs and SOPs and PANYNJ's DBE Program Plan incorporated the regulations of 49 CFR Part 26.89. According to its DBE Program Plan, firms could appeal adverse decisions within 90 days of PANYNJ's notice of determination to USDOT. Upon notification from USDOT that an appeal has been filed, PANYNJ would provide USDOT with a complete record of all administrative proceedings, including all supporting and requested documentation, files, and application forms.

The files reviewed on site contained a denial letter informing the firm of the reason for denial and advising the firm that the denial could be appealed 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 49 CFR Part 29.

#### Discussion

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

PANYNJ's DBE Program Plan included *Section 26.37 Monitoring and Enforcement Mechanisms* as well as the enforcement actions described in 49 CFR 26.107. The NYSUCP and NJUCP MOUs and SOPs did not address DBE enforcement actions, nor did PANYNJ's draft Desk SOPs.

PANYNJ's list of 36 firms decertified between 2016 and 2018 did not include any firms that were referred to USDOT for suspension and debarment on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty.

#### **Advisory Comment**

PANYNJ was advised to notify the NYSUCP and NJUCP that their SOPs do not address DBE enforcement action provisions.

#### **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. FTA issued an advisory comment regarding this requirement.

The NYSUCP and NJUCP MOUs and SOPs and PANYNJ's draft Desk SOPs did not address confidentiality requirements. However, PANYNJ's DBE Program Plan stated the following in Section 26.109 Information, Confidentiality, and Cooperation:

The Port Authority will safeguard from disclosure to third parties all records rendered confidential, privileged or exempt from disclosure by Federal or State law or regulations. Notwithstanding any contrary provisions of State or local law and consistent with the Port Authority's Freedom of Information Code, the Port Authority will not release confidential or privileged records to a third party (other than DOT) without the written consent of the submitter.

No issues related to confidentiality were reported or otherwise uncovered during this compliance review.

# **Advisory Comment**

PANYNJ was advised to notify the NYSUCP and NJUCP that their SOPs do not address DBE program confidentiality requirements.

# 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. FTA issued advisory comments regarding this requirement.

Although PANYNJ provided documentation confirming it implemented cooperation requirements, the requirements were not addressed in the NYSUCP and NJUCP MOUs or SOPs or PANYNJ's DBE Program Plan or draft Desk SOPs. As reported in section 6.11(B) of this report, PANYNJ's DBE Program Plan included a section titled *Section 26.109 Information, Confidentiality, and Cooperation*. This section of PANYNJ's DBE Program Plan did not address cooperation requirements. As reported in section 6.10(D) of this report, PANYNJ's list of 36 firms decertified between 2016 and 2018 included 23 firms that were decertified because of a failure to cooperate.

## **Advisory Comments**

PANYNJ was advised to notify the NYSUCP and NJUCP that their SOPs do not address DBE program cooperation requirements. PANYNJ was advised to update its DBE Program Plan and/or Desk SOPs to include information on how it complies with the cooperation requirements described in 49 CFR Part 26.109(c).

# 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, no deficiencies were found with this requirement. FTA issued advisory comments regarding this requirement.

Neither the NYSUCP and NJUCP MOUs and SOPs nor PANYNJ's DBE Program Plan and draft Desk SOPs addressed the DBE program requirements for record keeping described in 49 CFR Part 26.11(d). A review of 15 certification files (applicant files kept either in PANYNJ's B2G system or as hard copies), including files of firms certified within the past year, firms certified for longer than one year, firms that had been denied, firms that had been decertified, and firms applying from out of state, revealed that PANYNJ maintained materially complete certification records, as required. As reported in Section 6.8(C) of this report, PANYNJ did not always include 30-day notifications of application receipt in its certification files. During the site visit, PANYNJ produced 30-day application receipt letters from certification staff computers and office shared drives that were not in the certification files. PANYNJ also stated that occasionally certification-related correspondence occurred via email.

#### **Advisory Comments**

PANYNJ was advised to notify the NYSUCP and NJUCP that its SOPs do not address requirements for record keeping. PANYNJ was advised to update its DBE Program Plan to include a description of how it complies with DBE program record keeping requirements. PANYNJ was advised to update its Desk SOPs with procedures for ensuring all records documenting a firm's compliance with DBE certification requirements are maintained.

# 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 minority female, nonminority female, and male.

# Discussion

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

The New York State DOT and New Jersey DOT were the lead agencies in the NYSUCP and NJUCP, respectively, and were responsible for complying with the requirement to submit reports to USDOT as described in 49 CFR 26.11(e) on behalf the state UCPs. As a certifying partner, PANYNJ was not responsible for submitting the required reports.

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# 7. Summary of File Reviews and Findings

While on-site, the review team requested and reviewed the record for at least three of each type of firm listed below (i.e., three firms that have been certified for less than one year, three firms that have been certified for more than one year, three firms that have been removed or decertified, three firms that were denied DBE certification, and three out-of-state firms.)

Initial	Firm Name	USDOT	Site		No	D = / D	Carre Itaa		
Initial	· · · · · · · · · · · · · · · · · · ·		0.00	PNW	INO	Per/Bus	Streamline	Denial	Appeal
ΔΡ		Form	Visit		Change	Tax	Application	Letter	Letter
<1 year	BT Products & Services, LTD	Υ	Υ	Υ	N/A	Υ	N	N/A	N/A
		Cert.	SBA	Inter.	Control	Ownership	Removal	Notice	Notice
		Decision	Size	Cert.	Review	Review	Process	of	of
		Decision	Size	cert.	Review	Review	Followed	Hearing	Decision
		Υ	Υ	N	Υ	Υ	N/A	N/A	N/A
						Concession	ACDBE Size	PNW	ACDBE
						Business	Standards	Exclus.	Dir.
		USDOT	Site	PNW	No	Per/Bus	Streamline	Denial	Appeal
		Form	Visit	PNW	Change	Tax	Application	Letter	Letter
	Bella Management Group, Inc.	Υ	Υ	Υ	Υ	Υ	N	N/A	N/A
		Cert.	SBA	Inter.	Control	Ownership	Removal	Notice	Notice
		Decision	Size	Cert.	Review	Review	Process	of	of
		Decision	Size	cert.	Keview	Review	Followed	Hearing	Decision
		Υ	Υ	N	Υ	Υ	N/A	N/A	N/A
		USDOT	Site		No	Per/Bus	Streamline	Denial	Appeal
		Form	Visit	PNW	Change	Tax	Application	Letter	Letter
Removal/ Decertification Pa	Shree admavati, Inc.	Υ	Υ	Υ	N	Υ	N	Υ	Pending
		Cert.	SBA	Inter.	Control	Ownership	Removal	Notice	Notice
		Decision	Size	Cert.	Review	Review	Process	of	of
		Decision	3120	Cert.	Keview	Keview	Followed	Hearing	Decision
		N/A	N/A	N	N/A	N/A	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Enovate Engineering	Y	N	Υ	N/A	Υ	N	Υ	N/A
		Cort	CDA	Inter	Control	Ownershin	Removal	Notice	Notice
		Cert.	SBA	Inter.	Control	Ownership	Process	of	of
		Decision	Size	Cert.	Review	Review	Followed	Hearing	Decision
		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<del> </del>	L		-						

File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Enterprise Solutions Products, Inc.	Y	Υ	Y	N/A	Υ	N	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Υ	Υ	N	Υ	Υ	N/A	N/A	N/A
	_								
		USDOT	Site	PNW	No	Per/Bus	Streamline	Denial	Appeal
Existing Certification >1 year	Jinga Construction, Inc.	Y	Visit Y	Υ	<b>Change</b> N	Y	Application N	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Υ	Υ	N	Υ	Υ	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Pistoli	Y	N	Y	N/A	Υ	N	Y	N
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Υ	Υ	N	Υ	Υ	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate	Williams Electrical Mechanical Group	Y	Y	Υ	Y	Y	N	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Υ	Υ	N	Υ	У	N/A	N/A	N/A
		LICEGE	C:+-		N/ -	Dow/Door	Chungary Pro-	David	America .
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate	Newburns Management Group, LLC	Y	Y	Y	N	Y	N	N/A	N/A
	1		CDA	Inter.	Control	Ownership	Removal	Notice	Notice
		Cert. Decision	SBA Size	Cert.	Review	Review	Process Followed N/A	of Hearing N/A	of Decision N/A

Initial Certification c1 year    Cert.   Cert.   Cert.   SBA   Inter.   Cert.   Cert.			USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Decision   Size   Cert.   Centrol   Cert.   Centrol   Cert.   Cert.   Centrol   Cert.   Centrol   Cert.   Centrol   Cert.   Centrol   Cert.   Centrol   Cert.   Centrol   Centrol   Cert.   Centrol   Cert.   Centrol   Cert.   Centrol   Cert.   Centrol   Cert.   Cert.   Centrol   Cert.   Cert.   Centrol   Cert.   Cert.   Centrol   Cert.   Ce	Certification		Y	Y	Y		Υ		N/A	N/A
Site   PNW   No   Per/Bus   Streamline   Appeal   Letter   Letter				-				Process	of	of
Existing Certification   S. Davis & Y			Υ	Υ	N	Υ	Υ	N/A	N/A	N/A
Certification					PNW		-			
Cert.   Decision   Size   Cert.   Review   Review   Process   Followed   Hearing   Decision   Process	Certification		Y	Υ	Y	N	Υ	N	N/A	N/A
USDOT   Site   PNW   No   Per/Bus   Streamline   Appeal   Letter   Letter							-	Process	of Hearing	of
Notice			Υ	Υ	Υ	Υ	Υ	N/A	N/A	N/A
Certification Denial  Cert. Decision  Size  Cert. SBA Inter. Control Review  Removal					PNW		-			
Cert.   Decision   Size   Cert.   Cert.   Review   Review   Review   Process   Followed   Hearing   Decision   Process   Of   Decision   Process   Process	Certification		Y	N/A	Y	N/A	Y	N	Y	N
File Type  Firm Name  USDOT Form  Visit  PNW  No Change  Per/Bus Tax  Streamline Application  No N							-	Process	of	of
Interstate   Certification   Smart   Y   Y   Y   N   Y   N   N/A   N/A   N/A			Υ	Υ	N	Υ	Υ	N/A	N/A	N/A
Certification Smart Y Y Y N Y N N/A N/A N/A  Cert. Decision Size Inter. Control Review Review Review Process Followed Hearing Decision  Y Y Y Y Y N/A N/A N/A N/A  USDOT Form Visit PNW No Change Tax Application Letter Letter  Removal/ Decertification SIMCO Y Y Y Y Y N N/A N/A N/A  Cert. SBA Inter. Control Review Review Review Removal Process Followed Hearing Decision  Cert. SBA Size Cert. Review Review Review Process Followed Hearing Decision	File Type	Firm Name			PNW		-			
Cert.   SBA   Inter.   Control   Review   Review   Process   Followed   Hearing   Decision			Y	Υ	Υ	N	Y	N	N/A	N/A
USDOT   Site   PNW   No   Change   Tax   Streamline   Appeal   Letter   Letter				-			•	Process	of	of
Removal/   Decertification			Υ	Υ	Υ	Υ	Υ	N/A	N/A	N/A
Decertification  Cert. Decision  SINICO  Y  Y  Y  Y  Y  Y  N  N/A  N/A  N/A  N/					PNW		-			
Decision Size Cert. Review Review Process of Followed Hearing Decision		SIMCO	Y	Υ	Υ	Y	Y	N	N/A	N/A
Y   Y   Y   Y   N   N/A			Decision	Size	Cert.	Review	Review	Process	of	of Decision
			Υ	Υ	Υ	Y	Y	Υ	N	N/A

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification < 1 year	Dharm Lally and Smith, LLC	Υ	Υ	Υ	N/A	Υ	N	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Υ	Υ	N	Υ	Υ	N/A	N/A	N/A

The following table includes a summary of review findings.

Requirement of	Ref.	Site Visit	Deficiencies	Corrective Action(s)	Response
49 CFR Part 26	IXGI.	Finding	Deliciencies	Confective Action(3)	Days/Date
Group Membership					
A) Burden of Proof	26.61	ND			
B) Additional Evidence of Group	26.63	AC			
Membership 2. Business Size	26.65	AC			
3. Social/Economic	20.00	7.0			
Disadvantage					
A) Presumption of Disadvantage	26.67	ND			
B) Personal Net Worth	26.67	AC			
C) Rebutting the Presumption of Disadvantage	26.67	D	PANYNJ did not have a documented process for evaluating an applicant's rebuttal of the presumption of disadvantage.	PANYNJ must submit to the FTA Office of Civil Rights updated Desk SOPs that describe in detail PANYNJ's procedures for rebutting the presumption of disadvantage in accordance with 49 CFR Part 26.67(b)(i), (b)(ii)(A), and (b)(ii)(B)(2-4).	Within 60 days of the issuance of the final report
D) Individual Determinations of Social and Economic Disadvantage	26.67	ND			
4. Ownership	26.69	ND			
5. Control	26.71	AC			

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
6. Other Rules Affecting	26.73	AC			
7. UCP Requirements					
A) UCP Agreement     B) UCP Directory	26.81 26.31	ND AC			
8. UCP Procedures					
A) Uniform Application	26.83	AC			
B) On-Site Visits C) 30-Day Notification	26.83 26.83	AC D, AC	PANYNJ did not confirm it communicated receipt of applications in a timely manner and as required	PANYNJ must submit to the FTA Office of Civil Rights:  • An updated DBE Program Plan that includes procedures for ensuring compliance with the 30-day application receipt notification requirement. PANYNJ must include procedures for documenting the 30-day notice of receipt in the application file.  • Updated Desk SOPs that include procedures for ensuring compliance with the 30-day application receipt notification requirement. PANYNJ must include procedures for documenting the 30-day notice of receipt in the application file.	Within 60 days of the issuance of the final report
D) 90-Day Determinations	26.83	D, AC	PANYNJ did not comply with 90-day application processing	PANYNJ must submit to the FTA Office of Civil Rights:	Within 60 days of the issuance of

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
			requirements. PANYNJ did not confirm it notified applicants in writing that it was extending the application review and certification decision for 60 days, explaining fully and specifically the reasons for the extension, as required.	An updated DBE Program Plan that includes detailed procedures for making certification decisions within 90 days and detailed procedures for extending certification decisions for 60 days, as needed. Procedures must comply with requirements in 49 CFR Part 26.83(k).      Updated Desk SOPs that include detailed procedures for making certification decisions within 90 days and detailed procedures for extending certification decisions for 60 days, as needed. Procedures must comply with requirements in 49 CFR Part 26.83(k).	the final report
E) Annual Updates	26.83	D, AC	Missing annual No Change Affidavits	PANYNJ must submit to the FTA Office of Civil Rights:  Updated Desk SOPs that include detailed procedures for protecting against participation in the DBE program by ineligible firms for reasons related to noncompliance with annual No Change Affidavit requirements.	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
				An updated DBE     Program Plan that     incorporates the     procedures for     protecting against     participation in the     DBE program by     ineligible firms for     reasons related to     noncompliance with     annual No Change     Affidavit     requirements, in     their entirety or by     reference.	
Interstate     Certification	26.85	AC			
10. Denials of Certification					
A) Initial Request Denials	26.86	AC			
B) Removing Existing	26.87	AC			
Certifications C) Mandatory Summary	26.88(a)	AC			
Suspension D) Optional Summary Suspension	26.88(b)	D, AC	PANYNJ did not address optional summary suspension provisions	PANYNJ must submit to the FTA Office of Civil Rights:  • An updated DBE Program Plan that addresses the provisions for optional summary suspension described in 49 CFR Part 26.88 in detail or by reference.  • Updated Desk SOPs that include detailed procedures for suspending DBEs as provided for in 49 CFR Part 26.88.	Within 60 days of the issuance of the final report
	26.89	ND			

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
E) Appeals to USDOT					
11. Compliance and Enforcement					
A) DBE Enforcement Actions	26.107	AC			
B) Confidentiality	26.109	AC			
C) Cooperation	26.109	AC			
12. Record Keeping	26.11(d)	AC			
13. Submitting Reports to USDOT	26.11(e)	ND			

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment

# ATTACHMENT A – FTA NOTIFICATION LETTER TO PANYNJ



Headquarters

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

November 1, 2018

Rick Cotton
Executive Director
Port Authority of New York and New Jersey
4 World Trade Center
150 Greenwich Street
New York, NY 10007

Dear Mr. Cotton:

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 it 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 Port Authority of New York and New Jersey (PANYNJ) has been selected for a review of its Unified Certification Program (UCP) to take place February 5-7, 2019.

The purpose of this review will be to determine whether PANYNJ is honoring its commitment, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26.

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. 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 an opening conference scheduled for **Tuesday**, **February 5**, **2019** at **9:00** a.m. **EST**, to introduce the DMP team and FTA representatives to PANYNJ. 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 PANYNJ'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 exit conference be scheduled for **Thursday**, **February 7**, **2019 at 11:00 a.m. EST**, 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 PANYNJ, will be considered public documents subject to release under the Freedom of Information Act, upon request.

PANYNJ 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,

John Day

Program Manager for Policy and Technical Assistance

cc: Stephen Goodman, Regional Administrator, FTA Region II
 Lynn Bailey, Acting Regional Civil Rights Officer, FTA Region II
 Ida Perich, Assistant Director Office of Diversity and Inclusion, PANYNJ

# Port Authority of New York and New Jersey 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 (which should include PANYNJ's organization chart).
- 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 PANYNJ individuals and resources dedicated to implementing the DBE UCP requirements, handling DBE UCP inquiries, and educating PANYNJ staff on DBE UCP. The narrative should include an organization chart showing PANYNJ's DBE UCP staff and a budget showing funds allocated to the DBE UCP.
- 4. The certification criteria/guidelines used in determining DBE eligibility.
- 5. 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.
- 6. Documents or forms used during DBE certification site visits.
- 7. Written procedures for updating the UCP DBE Directory.
- 8. List of all firms certified, denied, and decertified or removed by the UCP in FYs 2016-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.
- 9. Explanation of PANYNJ's UCP appeals process(es). List the individuals involved in the appeals process and how they are selected.
- 10. Any third-party complaints or lawsuits regarding DBE firms certified by PANYNJ and actions taken to resolve the matter.

# Port Authority of New York and New Jersey Unified Certification Program Compliance Review

- 11. Any Freedom of Information or similar request for certification information.
- 12. Any enforcement action against a DBE firm (e.g., suspension, debarment, etc.) regarding certification.
- 13. The UCP ethnicity and gender breakdown required by 49 C.F.R. 26.11(e) for the last two years.
- 14. Other pertinent information determined by PANYNJ staff to further demonstrate its UCP operations and procedures.



Headquarters

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

June 7, 2019

Administration

Rick Cotton
Executive Director
Port Authority of New York and New Jersey
4 World Trade Center
150 Greenwich Street
New York, NY 10007

RE: Unified Certification Program (UCP) Compliance Review Final Report

Dear Mr. Cotton:

This letter concerns the Federal Transit Administration's (FTA) Disadvantaged Business Enterprise (DBE) Review of the Port Authority of New York and New Jersey's (PANYNJ) Unified Certification Program conducted from February 5-7, 2019. 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 PANYNJ will take steps to correct the deficiencies. If you have any questions about this matter, please contact Ed Birce at 202-366-1943 or via email at *guljed.birce@dot.gov*.

Sincerely,

John Day

Program Manager for Policy and Technical Assistance

cc: Stephen Goodman, Regional Administrator, FTA Region 2 Luis Rodriguez, Regional Civil Rights Officer, FTA Region 2

Ida Perich, Assistant Director Office of Diversity and Inclusion, PANYNJ