



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

Washington Metropolitan Area Transit Authority
Unified Certification Program (UCP) Compliance Review

Final Report
June 2019



U.S. Department of Transportation
Federal Transit Administration

This page intentionally left blank to facilitate duplex printing.

Table of Contents

Executive Summary.....	1
1. General Information	3
2. Jurisdiction and Authorities	5
3. Purpose and Objectives	7
3.1 Purpose.....	7
3.2 Objectives.....	7
4. Background Information	9
4.1 Introduction to Washington Metropolitan Area Transit Authority and Organizational Structure	9
4.2 Budget and FTA-Assisted Projects.....	10
5. Scope and Methodology.....	13
5.1 Scope	13
5.2 Methodology.....	14
5.3 Stakeholder Interviews.....	17
6. Findings and Advisory Comments	21
6.1 Group Membership	21
6.2 Business Size	24
6.3 Social and Economic Disadvantage	25
6.4 Ownership	28
6.5 Control	28
6.6 Other Rules Affecting Certification	29
6.7 UCP Requirements.....	29
6.8 UCP Procedures.....	31
6.9 Interstate Certification	38
6.10 Denials of Certification	40
6.11 Compliance and Enforcement.....	43
6.12 Record Keeping.....	45
6.13 Submitting Reports to USDOT.....	46
7 – Summary of Files Review and Findings	47

ATTACHMENT A – FTA NOTIFICATION LETTER TO WMATA.....57

ATTACHMENT B – WMATA’S RESPONSE TO DRAFT REPORT63

Executive Summary

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

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

Positive Program Elements

- WMATA's UCP has had experienced staff and a well-established process for reviewing applicant files to determine eligibility for certification as a DBE. At the time of the site visit, WMATA was beginning to train new staff on the certification requirements and establish new internal procedures for certifying firms under the DBE program.
- WMATA developed and implemented an online application and annual renewal process that allowed applicants to submit applications online, and upload supporting documents, and allowed certified DBEs to submit annual No Change Affidavit forms and federal tax returns.

The Program has the following administrative deficiencies –

Administrative Deficiencies

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

The Program has the following substantive deficiencies –

Substantive Deficiencies

- MWUCP partners were not meeting monthly (last meeting date was March 2017) and WMATA did not prepare annual reports in accordance with the MWUCP Agreement.
- WMATA had recent turnover in certification staff. Newly hired staff had little or no experience with the certification process.
- Due to lack of resources and ineffective operation of the MWUCP (since early 2017), WMATA has not consistently complied with the UCP requirements to issue 30-day notification letters, process applications within a 90-days, or process all annual updates.
- WMATA's DBE directory was separate from DDOT's DBE directory, and it had not been accurately updated.

In FY2017, WMATA received 157 applications and certified 156; and in FY2018 (as of March 23, 2018), it received 69 applications and certified 66. The balance of the applications was pending. The denial data for FY2017 and FY 2018 was not available.

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

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

I. General Information

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

Grant Recipient:	Washington Metropolitan Area Transit Authority
City/State:	Washington, DC
Grantee Number:	1398
Executive Official:	Paul J. Wiedefeld 202-962-1234 pwiedefeld@wmata.com
Onsite Liaison:	Sylvia Edwards 202-962-2480 Sedwards1@wmata.com
Report Prepared By:	The DMP Group, LLC
Dates of Onsite Visit:	June 5-8, 2018
Compliance Review Team Members:	John Potts Dana Lucas Khaliq Davis

This page intentionally left blank to facilitate duplex printing.

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 subrecipients with Section 13 of the Master Agreement, Federal Transit Administration M.A. (24), October 1, 2017, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs."

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

This page intentionally left blank to facilitate duplex printing.

3. Purpose and Objectives

3.1 Purpose

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

The primary purpose of the compliance review is to determine the extent WMATA's participation in the MWUCP has met its goal and objectives as represented to USDOT in its UCP agreement. This compliance review is intended to be a fact-finding process to (1) examine WMATA's participation in the MWUCP and its certification practices and procedures, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

This compliance review is not to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its subrecipients, nor to adjudicate these issues in 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 non-discrimination requirements of 49 CFR Parts 26 and 23.
- Cooperate fully with all oversight, review, and monitoring activities of USDOT and its operating administrations.
- Implement USDOT directives and guidance on DBE certification matters.
- Make all certification and decertification decisions on behalf of all UCP members with respect to participation in the USDOT DBE Program. Certification decisions by the UCP shall be binding on all UCP members.
- 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 are to:

- Determine whether WMATA, as a certifying partner of the MWUCP, is honoring the UCP agreement submitted to the Secretary of Transportation.
- Examine the required certification procedures and standards of WMATA 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 the operation of WMATA through interviews and certification file review.

4. Background Information

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

4.1 Introduction to Washington Metropolitan Area Transit Authority and Organizational Structure

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

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

Each MWUCP member organization is a certifying partner of the MWUCP. The current MOU (2016) includes policies and procedures for a MWUCP committee and monthly meetings, program administration, application procedures, annual update of DBE certification, certification of additional services/NAICS codes, renewal procedures, DBE directory, training, and record keeping.

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

The certification functions and processes were outlined in the most recent MOU between DDOT and WMATA (signed March 2016), which also included the standard operating procedures (SOPs) of the UCP. Under the MOU and SOPs, the MWUCP reviewed, evaluated, and made determinations to certify new applicants; renewed existing certifications of DBEs; denied certifications to new applicants; and initiated the process to decertify existing participants from the DBE program for violations of 49 CFR Part 26.

In December of 2017, WMATA's DBE Program was reorganized from the Office of Fair Practices to the Office of Procurement and Materials (PRMT). The WMATA PRMT staff responsible for MWUCP management and administration included a Director Small Business Programs Office who was the DBELO, two Senior Small Business Auditors, a Small Business Auditor, a Senior Business Analyst, a Small Business Analyst, two Business Analyst and a Performance Analyst. There was a vacancy in the Small Business Operations Manager and a Small Business Auditor positions.

In response to a notice from FTA to conduct a DBE Program Compliance Review and a UCP Review, WMATA's internal Management Audits, Risk and Compliance (MARC) department conducted an Audit Readiness Assessment (ARA) of the DBE Program and certification process. The ARA included an evaluation of DBE certifications processed by WMATA in the 3rd and 4th quarters of the calendar year 2017. MARC selected a random sample of 66 firms processed within the review period and found 138 instances where the files did not contain adequate documentation to demonstrate compliance with applicable federal regulations. MARC's Internal Compliance Report dated March 16, 2018 included details of the 138 instances and recommendations for improvements.

MARC's recommendations primarily addressed the lack of standard operating procedures, inadequate records management standards and protocols, and staff training. Corrective actions were due by July 31, 2018.

Immediately prior to the site visit, WMATA provided a 2016 Desk Book that included a set of policies and procedures, forms and letter templates for certifying applicant firms in the DBE Program. However, there was no evidence that staff were utilizing this document.

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

4.2 Budget and FTA-Assisted Projects

In accordance with the latest MOU (2016), each certifying partner of the MWUCP is responsible for its own financing, staffing, and budgeting without recourse to the MWUCP for expenses on any kind. WMATA's budget for the DBE program, including certification and all other aspects of DBE and SBE program administration was \$797,120. WMATA did not use any FTA or Federal Highway Administration (FHWA) funds to cover UCP costs. WMATA's DBE budget is shown in the following table:

Cost Element	Annual Budget
Employee salaries	\$703,538
Benefits	\$53,297
Contractual services	\$20,690
Supplies and materials	\$7,595
Other	\$12,000
TOTAL	\$797,120

This page intentionally left blank to facilitate duplex printing.

5. Scope and Methodology

5.1 Scope

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

1. The rebuttable presumption that members of the designated groups identified in 26.67 are socially and economically disadvantaged [49 CFR 26.61].
2. Collecting additional evidence of group membership when there is a well-founded reason to question the individual's claim of membership in a group [49 CFR 26.63].
3. Applying current Small Business Administration (SBA) business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts [49 CFR 26.65].
4. Requiring applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged [49 CFR 26.67].
5. Considering all facts in the record, viewed as whole, when determining whether the socially and economically disadvantaged participants in a firm own the firm [49 CFR 26.69].
6. Considering all facts in the record, viewed as a whole, when determining whether socially and economically disadvantaged owners control a firm [49 CFR 26.71].
7. Excluding commercially-useful function issues from certification decisions [49 CFR 26.73].
8. Evaluating the eligibility of a firm on the basis of present circumstances and ensuring only firms organized for profit are considered eligible DBEs [49 CFR 26.73].
9. Participation as a certifying or non-certifying UCP member—as evidence by signing the UCP agreement. [49 CFR 26.81 and 26.31].
10. Ensure that only firms certified as eligible DBEs under this section participate as DBEs on federally-assisted projects [49 CFR 26.83].
11. Properly applying interstate certification requirements. [49 CFR 26.85].
12. Issuing denial letters that clearly explain the reason why the individual was denied DBE certification [49 CFR 26.86–26.89].

13. If the UCP fails to comply with any requirement of the DBE regulations, it may be subject to formal enforcement action under program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants, or contracts until deficiencies are remedied [49 CFR 26.101–26.109].
14. Maintaining proper records (i.e., application package for each certified firm and all affidavits of no-change, change notices, and onsite reviews) for a minimum of 3 years. [49 CFR 26.11]
15. Submitting to the USDOT the number of minority women, non-minority women, and men that are certified DBEs in the UCP Directory. [49 CFR 26.11]

5.2 Methodology

The initial step of this compliance review consisted of consultation with the FTA Office of Civil Rights and a review of available information from the certifying partners' websites and other sources. After reviewing this information, potential dates for the site visit were coordinated. The FTA Office of Civil Rights sent a notification letter to WMATA (and DDOT) that informed them of the upcoming visit, requested necessary review documents, and explained the areas that would be covered during the onsite visit. The letter also informed WMATA of staff and other parties that would potentially be interviewed.

Before conducting the onsite visit, WMATA was asked to provide the following documents:

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

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

Washington Metropolitan Area Transit Authority

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

District of Columbia Department of Transportation

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

Federal Transit Administration

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

The DMP Group

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

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

Status	Firm Name
New Certifications <1 Year	
	Tamaco Construction
Existing Certifications >1 Year	
	Apex Petroleum Corporation
	Davis Freight Management
	Aquas, Inc.
	Gagne Parker
	A & A Premium Paint Dist., LLC
Interstate	
	Bergman Enterprises, Inc.
	Project Management Technologies, Inc
	Mindboard, Inc.
	GNC Consulting, Inc
	Kormex Metalcraft, Inc.
Removals	
	186 Engineering, PLLC
	Subsurface Technologies, Inc.
Denials	
	Forney Enterprises

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

Washington Metropolitan Area Transit Authority

Paul Wiedefeld, General Manager and CEO
 John Kuo, Chief Information Business Operations
 Elizabeth Sullivan, Chief Risk and Audit Officer
 Suzette Moore, Chief Procurement Officer
 Sylvia Edwards, Director Small Business Programs Office and DBELO
 Thomas Turner, Senior Auditor
 Carl Farmer, Senior Auditor
 Lilliette Rivera, Small Business Analyst

Rashida Reid, Small Business Auditor
Bekwele Amadi, Performance Analyst
Araina Wallace, Small Business Administration Assistant
Jay Johnson, Policy Supervisor
Nicole Brewer, Special Projects Coordinator
Judy-Ann Davis, Procurement
Daniel G. Smith, Deputy Chief Procurement Officer
Chris Hoadley, Assistant General Counsel
Mike Riess, Counsel
Katrina Welch Smith, Management Audits, Risk, and Compliance (MARC) Internal Control Officer
Vanita King, MARC Internal Compliance Director
Gary Owens, MARC Consultant

District of Columbia Department of Transportation

Todd McIntyre, Chief of Staff
Tyra Redus, Transportation Equity and Inclusion Officer
Leutisha Stills, EEO Specialist/DBE & SBE Program Manager

Federal Transit Administration

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

The DMP Group

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

5.3 Stakeholder Interviews

Prior to the onsite visit, the review team contacted DBE and non-DBE firms, UCP participants, and other organizations regarding their interaction with the MWUCP.

DBE Firms

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

The interview questions included:

1. *Is your firm currently certified in the state UCP?*
2. *How did you learn about the UCP?*
3. *To which UCP certifying entity was your firm's certification application submitted?*
4. *Did the UCP acknowledge receipt of your application?*
5. *Did the UCP communicate the status of your firm's certification application review?*
6. *Was an onsite 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?*

Fourteen of the 22 firms that were contacted had applied to WMATA, two of those 14 firms had applied to both agencies. Of the 14 firms that applied to WMATA, two had directory contact numbers that were not valid, six were unresponsive, and six were interviewed. The firms interviewed were all currently certified and learned of the MWUCP while applying for another certification, responding to a request for proposals, on the WMATA website, or from another certifying agency. The firms had initially applied several years earlier. Three firm initially applied to WMATA, and the other three firms were interstate applicants that had been certified with another state when they applied to WMATA. Two agencies recalled WMATA acknowledged receipt of the applications and communicated the status of the applications to the DBEs. Two agencies could not recall if WMATA had conducted an onsite visit and one of the agencies confirmed that WMATA had conducted a site visit when they initially submitted their application. One agency advised it took WMATA approximately 90 days to process the applications. Five of the six DBEs had reviewed their listing in the directory within the last year. One DBE notified WMATA that their information in the directory was incorrect and needed to be updated. WMATA had not responded and had not updated the information. Two firms expressed a concern about having to apply to both WMATA and DDOT to be included in the MWUCP directory.

Stakeholder Groups

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

- US Pan Asian American Chamber of Commerce
- Greater Washington Hispanic Chamber of Commerce
- National Black Chamber of Commerce
- Greater Washington Urban League
- Washington, DC Women's Business Center
- National Association of Women Business Owners
- US Black Chamber, Inc.

- National Association of Minority Contractors
- Conference of Minority Transportation Officials
- Association of General Contractors

The interview questions included:

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

Three stakeholders responded to the interview request. The organizations had some familiarity with the MWUCP and the federal requirements for a UCP for DBEs. The organizations were not aware if their members were currently certified by the MWUCP, but members of the organizations had worked with DBEs who were certified. Two of the organizations had interacted with WMATA in several ways. The organizations had referred minority businesses to WMATA for participation in the MWUCP. The organizations generally felt the MWUCP was effective.

This page intentionally left blank to facilitate duplex printing.

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 WMATA's participation in the MWUCP Program is provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub requirements are also presented below.

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

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

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

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

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

6.1 Group Membership

A) Burden of Proof

Basic Requirement (49 CFR Part 26.61):

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

Discussion

During this compliance review, deficiencies were found with this requirement. The MWUCP Agreement, as well as WMATA's DBE Program Plan dated June 2017, indicated that WMATA would follow the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, the Agreement stated that a firm must meet all certification eligibility standards, which would include group membership. WMATA required that all applicants use the model certification application provided by USDOT that included a signed and notarized statement that the applicant was a member of one of the groups in Part 26.67(a). Per a review of the application files during the site visit, the USDOT form with the signed and notarized statement regarding group membership were missing from the files for four (29 percent) of the applicants, as follows:

- Mindboard, Inc
- GNC Consulting, Inc.
- A & A Premium Paint Distributor, LLC
- 186 Engineering, PLLC

Subsequent to the issuance of the draft report, WMATA provided a copy of the USDOT form and signed and notarized statement regarding group membership for GNC Consulting, Inc. and 186 Engineering, PLLC. For the remaining files reviewed, the USDOT form was included in the applicants' files and the standards of Part 26.67 were followed.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA must submit to the FTA Office of Civil Rights procedures to ensure that all applicants submit the USDOT-approved application form with a signed and notarized statement that the applicant was a member of one of the groups in Part 26.67(a). In addition, in accordance with Part 26.67, procedures should include that WMATA will rebuttably presume that members of the designated group identified in Part 26.67(a) were socially and economically disadvantaged as required by the regulation, and therefore, ensure the applicant does not have the burden of proving that they were socially and economically disadvantaged. If an individual was not presumed to be a member of the groups identified in Part 26.67(a), WMATA should impose the burden of proof on the applicant to prove by a preponderance of the evidence that they 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. An advisory comment was made regarding this requirement.

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

A review of the applicant files, except for the files listed above that did not contain the USDOT form, indicated that WMATA had not identified a reason to question the applicants claim of membership.

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

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

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

6.2 Business Size

Basic Requirement (49 CFR Part 26.65):

A UCP must apply current Small Business Administration (SBA) business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts. A firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years, in excess of \$23.98 million.

Discussion

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

The MWUCP Agreement and WMATA's DBE Program Plan incorporated the requirements of 49 Part 26 by reference. However, WMATA did not have written SOPs to address the specific requirements contained in Part 26.65 regarding SBA business size standards in 13 CFR Part 121 and DBE size standards of \$23.98 million for evaluating eligibility for the DBE program. In addition, six of the 14 files reviewed (43 percent) did not contain any business or personal tax returns, as follows:

Firm Name	Certification Type
A & A Premium Paint Distributor, LLC	Existing DBE
186 Engineering, PLLC	Existing DBE/Removal

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

Corrective Actions and Schedule

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

6.3 Social and Economic Disadvantage

A) Presumption of Disadvantage

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

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

Discussion

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

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

However, four of the files reviewed did not contain the USDOT form or a signed and notarized statement that the presumptively disadvantaged owner was, in fact, socially and economically disadvantaged.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA must submit to the FTA Office of Civil Rights procedures to ensure that all applicants submit a signed and notarized statement that the presumptively disadvantaged owner was, in fact, socially and economically disadvantaged in accordance with the USDOT-approved application form.

B) Personal Net Worth

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

A UCP must require each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$1.32 million. All applicants must use the USDOT PNW form in Appendix G without change or revision. Moreover, the UCP must entirely assess the PNW in the manner prescribed by 26.67.

Discussion

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

Per a review of the application files, the files were missing a signed and notarized USDOT PNW form, and other related documentation, for the following four applicants:

Firm Name	Certification Type
Kormex Metalcraft, Inc	Interstate
Mindboard, Inc	Interstate
GNC Consulting, Inc.	Interstate
A&A Premium Paint Distributor, LLC	Existing DBE

As a result, there was no documentation to support that WMATA had determined that each individual owner of the applicant firm whose ownership and control were relied upon for DBE certification had a PNW that did not exceed \$1.32 million.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA must submit to the FTA Office of Civil Rights procedures to ensure that all applicants submit a signed and notarized USDOT-approved PNW statement.

In addition, WMATA must develop written procedures (SOPs) to ensure that WMATA applies the requirements of Part 26.67(a)(2)(iii), as follows:

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

Further, the SOPs should include a requirement that WMATA will not release an individual's PNW statement or any documentation supporting it to any third party without the written consent of the submitter. However, in accordance with Part 26.67(a)(2)(iv), WMATA must submit this information to USDOT in any certification appeal proceeding under Part 28.89 in which the disadvantaged status of the individual is in question.

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, no deficiencies were found with this requirement. An advisory comment was made regarding this requirement.

Except for files identified above that did not contain a USDOT application form, WMATA had obtained certification from each individual owner of the applicant firm that he or she had a PNW that did not exceed \$1.32 million. These files also contained a signed and notarized statement of PNW with appropriate documentation.

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

- If the statement of PNW and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's PNW exceeds \$1.32 million, or
- If the statement of PNW and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth.

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. An advisory comment was made regarding this requirement.

The MWUCP Agreement and WMATA DBE Program Plan incorporated by reference the regulations of 49 CFR Part 26, which state in Part 26.67(d) that *UCPs must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged*. Applicants have the burden of demonstrating by a preponderance of the evidence that they are socially and economically disadvantaged.

Except for the files identified above that did not contain a USDOT application form, the applicant files reviewed contained documentation that the individuals whose ownership and control were relied upon for DBE certification were socially and economically disadvantaged.

WMATA was advised to develop written procedures (SOPs) that specifically incorporate the provisions of Part 26.67(d) as stated above.

6.4 Ownership

Basic Requirement (49 CFR Part 26.69):

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

Discussion

During this compliance review, no deficiencies were found with this requirement. An advisory comment was made regarding this requirement.

The MWUCP Agreement and WMATA DBE Program Plan incorporated by reference the regulations of 49 CFR Part 26, which state in Part 26.69 that *in determining whether the socially and economically disadvantaged participants in a firm own the firm, UCPs must consider all the facts in the record, viewed as a whole.*

Except for the files identified above that did not contain a USDOT application form, the applicant files reviewed contained documentation that the applicant firm was owned at least 51 percent by socially and economically disadvantaged individuals.

WMATA was advised to develop written procedures (SOPs) that specifically incorporate all provisions of Part 26.69 that establish what rules govern determination of ownership.

6.5 Control

Basic Requirement (49 CFR Part 26.71):

In determining whether socially and economically disadvantaged owners control a firm, UCPs must consider all the facts in the record, viewed as a whole. Only an independent business can be certified as DBE and the UCP must scrutinize relationships with non-DBE firms in areas such as personnel, facilities, equipment, financial and/or bonding support, and other resources.

Discussion

During this compliance review, no deficiencies were found with this requirement. An advisory comment was made regarding this requirement.

WMATA indicated that it scrutinized documentation provided in the application and through interviews with applicant staff to ensure firms were independent from any non-DBE firm and that firm owners possessed the power to direct or cause the direction of management and policies of the firm, including day-to-day and long-term decision making. In addition, WMATA indicated it scrutinized documentation and information obtained through interviews with

applicant staff to ensure that socially and economically disadvantaged owners had an overall understanding of, and possessed the technical and managerial competence for, the type of business the firm was engaged in.

Except for the files indicated above that did not contain a USDOT application form, the applicant files reviewed contained documentation that the applicant firm was independent and controlled by socially and economically disadvantaged owners.

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

6.6 Other Rules Affecting Certification

Basic Requirement (49 CFR Part 26.73):

UCPs must not consider commercially-useful function issues in any way in making decisions about whether to certify a firm as a DBE. The UCP may consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. DBE firms and firms seeking DBE certification shall cooperate fully with UCP requests for information relevant to the certification process.

Discussion

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

The MWUCP Agreement and WMATA DBE Program Plan incorporated by reference the regulations of 49 CFR Part 26. In the files reviewed, there was no documentation relating to commercially useful function issues or documentation that showed a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. In addition, WMATA indicated that the certified applicant firms reviewed cooperated fully with the MWUCP's requests for information relevant to the certification process.

6.7 UCP Requirements

A) UCP Agreement

Basic Requirement (49 CFR Part 26.81):

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

Discussion

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

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

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

Corrective Actions and Schedule

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

B) UCP Directory

Basic Requirement (49 CFR Part 23.31, 26.31, and 26.81(g)):

UCPs must maintain a unified DBE directory containing, for all firms certified by the UCP, the information required by 26.31. The directory must include if the firm is an ACDBE, a DBE, or both. The listing shall include for each firm its address, phone number, and types of work the firm has been certified to perform as a DBE. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

Discussion

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

WMATA and DDOT were maintaining separate directories, neither of which had been accurately updated. WMATA's directory was accessible on WMATA's DBE website and included the data elements required by Part 26.31. However, WMATA's directory did not agree with DDOT's directory (e.g., by vendor or NAICS code); there were duplicate listings

of firms within the WMATA directory; and firms reported in the USDOT decertified database were included in WMATA's directory. WMATA's database was downloadable, however, WMATA did not maintain a "printed" version of the directory.

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

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

Corrective Actions and Schedule

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

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

6.8 UCP Procedures

A) Uniform Application

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

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

Discussion

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

In accordance with the MWUCP Agreement, WMATA required that applicant firms use the most recent certification application form provided by USDOT. The most recent USDOT-approved form was available on WMATA's DBE website. As previously stated, ten of the 14 files reviewed contained the most recent certified application provided by USDOT.

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

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

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

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

The most recent MWUCP committee membership consisted of four WMATA members and three DDOT members. The Chairperson in 2016 was a WMATA member, and in 2017, a DDOT member. The committee met monthly from January 2016 through March 2017 except for March 2016 (no quorum present) and August 2016 (summer hiatus). The April 2017 and May 2017 meetings were cancelled, and the committee had not met since. DDOT indicated the meetings ceased primarily due to staff turnover at both DDOT and WMATA. Consequently, WMATA continued to process and approve certifications of firms independently of DDOT and the UCP.

In addition, the MWUCP Agreement stated:

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

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

The Metropolitan Washington Unified Certification Program DBE Evaluation Report was used by WMATA and maintained in its files to document the recommendations of WMATA

and the approvals (or denials) by the committee of DBE applicants. The Recommendations and Approvals page of each DBE evaluation included a list of the committee members for both WMATA and DDOT, their decision to approve or deny the application, and their representatives' signatures. Of the files reviewed, one file did not include the Recommendation and Approval page, and for three of the files only one committee member was listed or had signed. WMATA indicated the committee decisions were confirmed by verbal vote and had been recorded for the record. The recordings were not readily available during the site visit.

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

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

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

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA, together with DDOT, must begin holding monthly meetings of the MWUCP Committee again, resume the Committee's responsibilities as identified in the MWUCP Agreement, and submit to the FTA Office of Civil Rights a written assurance that the meetings will continue in accordance with the MWUCP Agreement. In addition, both certifying partners should submit the firm names and any other required information and documentation to the Committee for all firms certified independent of the MWUCP.

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, deficiencies were found with this requirement.

The MWUCP Agreement required the following:

once the applicant's file has been reviewed and evaluated for completeness, the certification staff must conduct an on-site review with the owner(s) at the principal place of business of applicants considered in-state or "home-state" firms. Certification reviews conducted for in-state firms result in the final evaluation report being submitted to the MWUCP Committee for approval or denial.

The applicant files reviewed for the following four home-state applicants did not include documentation that an onsite review was conducted as required:

- Apex Petroleum Corporation
- Gagne, Parker CPAs, PLLC
- Subsurface Technologies, Inc
- Aquas, Inc.

The remaining home-state files included an onsite report that documented the following items: type of review, company profile, ownership, average gross receipts for the preceding three years, officers/board of directors/members, control, personnel/resources, general facilities observation, construction equipment, warehouse, job site observations, and additional information. The WMATA staff indicated they believed the onsite reviews were conducted; however, documentation of the reviews was missing from the files.

The MWUCP Agreement also stated the following:

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

The certification files for the following four interstate applicants did not include an onsite review form:

- Bergman Enterprises, Inc
- Kormex Metalcraft, Inc.
- Mindboard, Inc, and
- GNC Consulting, Inc.

The WMATA staff indicated the onsite reports or other supporting documentation for onsite visits was obtained, however, the documentation was missing from the files.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA must submit to the FTA Office of Civil Rights procedures to ensure that WMATA conducts an onsite visit for all home-state applicants and maintains an onsite visit report in the files. For interstate applicants, WMATA must obtain the onsite report conducted by the home-state and maintain the report in the applicant files.

C) 30-Day Notification

Basic Requirement (49 CFR Part 26.83(l)):

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

Discussion

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

WMATA indicated that the 30-day notification letters were not always being provided to applicants in a timely manner. None of the WMATA certification files reviewed appeared to meet the 30-day notification requirement.

Further, neither the MWUCP Agreement nor WMATA's DBE Program Plan specifically addressed the 30-day requirement. Therefore, WMATA was advised in its capacity as an MWUCP certifying partner to develop SOPs that incorporate the requirements of Part 26.83(l) to notify DBE applicants within 30 days whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

Corrective Actions and Schedule

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

D) 90-Day Determinations

Basic Requirement (49 CFR Part 26.83 (k)):

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

Discussion

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

WMATA's DBE Program Plan stated the following:

WMATA's DBE certification program shall make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under 49 CFR Part 26. WMATA 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. WMATA may establish a different time frame in the DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. WMATA's failure to make a decision by the applicable deadline shall be deemed a constructive denial of the application, on the basis of which the firm may appeal to USDOT under 49 CFR Part 26.89.

WMATA indicated in a May 2018 monthly status report (required by FTA pursuant to corrective actions documented in the WMATA FY2017 Triennial Review report), that as of March 23, 2018, in FY2018 it received 69 applicants and processed 66, and in FY2017 it received 158 and processed 157. A record of these FY2018 and FY2017 applications, which included the dates the full application was received and the dates of the decisions, was provided during the UCP review. A review of this record indicated that, in most cases, WMATA was making certification decisions on applicant files within 90 days of receiving all information required under the DBE regulations. However, in some cases the application was approved after the 90-day timeframe, some were approved after the allowed extension period of 60-days, some approval dates were prior to the application dates, and in some cases the approval dates were missing and there was no indication of the status of the application, i.e. pending or denied. In the instances where the application approvals were done after the 90-day initial period and 60-day extension period, it was not clear whether an extension letter was issued, or another agreed to time frame was established as described in the DBE Program Plan.

Further, it was noted in the MARC Report that of the 66 randomly selected files, 32 files were approved in over 90 days, and five of those were approved in over 180 days.

The 14 applicant files reviewed during this review indicated that application decisions were made in a timely manner.

The MWUCP Agreement did not specifically state the requirements of Part 26.83(k). Therefore, it is advised that MWUCP develop written procedures (SOPs) that incorporate the requirements of Part 26.83(k) as described above.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA, in conjunction with DDOT, must submit to the FTA Office of Civil Rights written procedures for ensuring that WMATA and the

MWUCP make decisions on certification applications within 90 days of receiving from the applicant firm all required information, or if a one-time extension of 60 days is needed, WMATA issues a letter to the applicant that fully and specifically explains the reasons for the extension.

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. In addition, advisory comments were made regarding this requirement.

The MWUCP Agreement stated:

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

Further, WMATA's DBE Program stated:

WMATA's DBE certification program will electronically notify all currently certified DBE firms of "no change" affidavit and "notice of change" submission obligations through mail correspondence. This notification will inform DBE's that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

WMATA indicated in its May 2018 monthly status report to FTA that in FY2018 it received 82 "no change" affidavits and processed 76, and in FY2017 it received 149 and processed 148 as of March 23, 2018. A record of these FY2018 and FY2017 "no change" affidavits was provided during the review. However, the following two files did not contain a "no change" affidavit:

- Gagne, Parker CPAs, PLLC
- Forney Enterprises

In addition, these DBE applicants were not included on the FY2018 and FY2017 records of DBE firms processed but were included in the WMATA directory.

It was not clear whether WMATA processed any “notice of change” submissions.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA must submit to the FTA Office of Civil Rights written procedures for ensuring that WMATA and the MWUCP process annual “no change” and “notice of change” forms in accordance with Part 26.83(h)–(j). The procedures must include a process for firms that no longer qualify as an eligible DBE due to changes in their circumstances or that refuse to cooperate and should be removed as an eligible DBE.

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, deficiencies were found with this requirement.

In the 2012 and 2016 revised MOU’s between WMATA and DDOT, WMATA indicated it would certify businesses in areas where its rail and bus system operated, which included jurisdictions in Maryland and Virginia (i.e., Montgomery and Prince George’s Counties in MD and Fairfax, Arlington, and Loudon Counties in VA). Therefore, WMATA was certifying (until recently) certain out-of-state firms as home state firms, and not requiring them to obtain certification in the “home state” as defined by the regulation. The revised MOU’s were not approved by USDOT and the inclusion of certain interstate firms as “home state” firms was not specifically addressed in the regulations.

In addition, the MWUCP Agreement stated that the MWUCP had opted to have out-of-state firms submit a complete copy of the application form, all supporting documents, and any other information they submitted to their home state. Further, the MWUCP would not be required to conduct an onsite investigation of the out-of-state firm, and an assessment of the firm’s eligibility would be based on the home state’s onsite report.

WMATA’s DBE Program Plan did not specifically address interstate certifications.

As previously stated in this report, WMATA's interstate certification files reviewed did not include all the documents required in Part 26.85(c)(1) through (4) and in accordance with WMATA's policy for interstate applicants.

In addition, subsequent to the issuance of the draft report, WMATA indicated that they processed interstate certifications for Mindboard, Inc. and GNC Consulting by accepting the certification of the home state. A copy of the home states' certification letters was provided for both firms, as well as, the USDOT application form for GNC Consulting. This policy conflicts with WMATA's written policy for certifying interstate firms stated in the MWUCP Agreement as described above.

At the time of the site visit, WMATA was in the process of updating the 2016 MOU with DDOT to document WMATA's change in practice of not certifying firms located in certain jurisdictions in Maryland and Virginia as described above but rather treating them as out-of-state firms. Specifically, the proposed language for the revised MOU was that *each certifying Partner will not process an application for certification from a firm having its principal place of business outside of the District of Columbia if the firm is not certified by the UCP in the state where it maintains its principal place of business*. Therefore, all firms located in Maryland and Virginia would be treated as interstate certifications. See Corrective Action stated in 6.7.A. *UCP Agreement* above.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA must submit to the FTA Office of Civil Rights procedures to ensure that it will comply with the requirements of Part 26.85(c) in accordance with the MWUCP Agreement and obtain information in paragraphs (c)(1) through (4) of Part 26.85(a) as follows:

- 1) A complete copy of the application form, all supporting documents, and any other information you have submitted to the home state or any other state related to the firm's certification. This includes affidavits of no change (see 26.83(j)) and any notices of changes (see Part 26.83(i)) that were submitted to the home state, as well as any correspondence with the home state's UCP or any other recipient concerning the application or status as a DBE firm.
- 2) Any notices or correspondence from states other than the home state relating to the status as an applicant or certified DBE in those states.
- 3) If applicable, the letter of appeal and DOT's response to the home state.
- 4) An affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

Additionally, once information has been received from the applicant firm, WMATA must comply with the requirements in Part 26.85 (d) and (e). If WMATA chooses to follow the regulations that allow the UCP to accept the home state's certification, it must revise its policies to reflect this change and follow its updated policies going forward.

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, deficiencies were found with this requirement.

The MWUCP Agreement did not specifically address the requirements in Part 26.86 for initial request denials. WMATA's DBE Program Plan only stated the following regarding denials of initial request:

Denials of Initial Requests for Certification If WMATA's DBE certification program denies a firm's application or decertify it, it may not reapply until twelve months have passed from our action or, if applicable, twelve months from final determination by USDOT.

WMATA was unable to provide a clear list of applicants denied. However, the Review Team identified a 2013 denial by WMATA in the USDOT DBE database. The application file of Forney Enterprises was reviewed to confirm WMATA's process for initial request denials. The file included a denial letter that explained the reason for the denial (exceeded the DOT size limitation), specifically referenced the evidence in the record that supported the reason for the denial and advised the firm owner of his appeal rights and how to appeal. In addition, the letter stated that a reapplication for certification may be made 12 months from the date of the denial decision.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA must submit to the FTA Office of Civil Rights procedures that incorporate all the requirements of Part 26.86, and procedures to track and identify the status of all applicants and certified firms in its records including all denials.

B) Removing Existing Certification

Basic Requirement (49 CFR Part 26.87):

If a UCP determines that there is reasonable cause to believe that the firm is ineligible, the UCP must provide written notice to the firm that the UCP proposes to find the firm ineligible, setting forth the reasons for the proposed determination. When the firm notifies the firm that

there is reasonable cause to remove its certification, the UCP must allow the firm an opportunity for an informal hearing. Following the final decision, the UCP must provide written notice of the final decision and a rationale for that decision.

Discussion

During this compliance review, no deficiencies were found with this requirement. Advisory comments were made regarding this requirement.

The MWUCP Agreement and WMATA DBE Program Plan incorporated the regulations of 49 CFR Part 26 by reference. In addition, the Agreement explained steps to be taken once WMATA (or DDOT) determined a firm should be recommended for decertification. The MWUCP Agreement also referenced letter templates and stated that proposed and final decertification letters would be submitted to the MWUCP for discussion, if necessary, and a vote would be taken to approve the proposed and final decertification letters.

However, neither the MWUCP Agreement nor the WMATA DBE Program Plan clearly stated policies and procedures for determining the removal of certified DBEs. The regulations at 49 CFR Part 26.87(f)(1)-(5) state:

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

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

In addition, the regulations in 49 CFR Part 26.87 provide other standards and requirements for ineligibility complaints, recipient-initiated proceedings, USDOT directives to initiate proceedings, hearings, separation of functions, and notice of decisions.

The review team requested the files for two DBE-certified firms that were removed from the DBE program (186 Engineering, PLLC and Subsurface Technologies, Inc.). Based on a review of its file, 186 Engineering, PLLC was removed from the DBE Program due to failure to cooperate with information request, and Subsurface Technologies was removed due to

the determination that owner exceeded PNW limitation. The files contained the proposed and final decertification letters.

WMATA was advised to develop written procedures (SOPs) that clearly state policies and procedures for the determination for removal of certified DBEs in accordance with the regulations at Part 26.87.

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. An advisory comment was made regarding this requirement.

The MWUCP and WMATA DBE Program Plan referenced the regulations in 49 CFR Part 26. However, neither the MWUCP Agreement nor the WMATA DBE Program Plan included specific procedures for mandatory summary suspension.

WMATA was advised to develop written procedures (SOPs) for mandatory summary suspension as required by Part 26.88(a).

D) Optional Summary Suspension

Basic Requirement (49 CFR 26.88(b)):

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

Discussion

During this compliance review, no deficiencies were found with this requirement. An advisory comment was made regarding this requirement.

The MWUCP and WMATA DBE Program Plan referenced the regulations in 49 CFR Part 26. However, neither the MWUCP Agreement nor the WMATA DBE Program Plan included specific procedures for optional summary suspension.

WMATA was advised to develop written procedures (SOPs) for optional summary suspension as required by Part 26.88(b).

E) Appeals to USDOT

Basic Requirement (49 CFR Part 26.89):

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

Discussion

During this compliance review, no deficiencies were found with this requirement. An advisory comment was made regarding this requirement.

The MWUCP and WMATA DBE Program Plan referenced the regulations in 49 CFR Part 26. However, neither document incorporated the requirements of 49 CFR Part 26.89 regarding certification appeals to USDOT.

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

6.11 Compliance and Enforcement

A) DBE Enforcement Actions

Basic Requirement (49 CFR Part 26.107):

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

Discussion

During this compliance review, no deficiencies were found with this requirement. An advisory comment was made regarding this requirement.

The MWUCP and WMATA DBE Program Plan referenced the regulations in 49 CFR Part 26. However, neither document incorporated the requirements of 49 CFR Part 26.107 regarding what enforcement actions apply to firms participating in the DBE program.

WMATA was advised to develop written procedures (SOPs) to incorporate the requirements of 49 CFR Part 26.107.

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

B) Confidentiality

Basic Requirement (49 CFR Part 26.83(g) and 26.109 (a)):

Notwithstanding any provision of Federal or state law, UCPs must not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes DBE certification and supporting documentation.

Discussion

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

The MWUCP Agreement stated that each MWUCP member would safeguard information from disclosure to third parties that may reasonably be regarded as confidential business information consistent with federal, state, and local law. Notwithstanding any contrary provision of state or local law, a MWUCP member would not release personal financial information submitted in response to the PNW requirement to a third party (other than USDOT) without written consent of the submitter.

In addition, WMATA's DBE Program Plan stated the following:

Subpart F - Compliance and Enforcement. Confidentiality: WMATA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with applicable Federal law and WMATA's Public Access to Records Policy (PARP), which can be found online at <http://intranet/pi/docs/9.3.0%20PARP%20Policy%202-3-ll.pdf>.

When consistent with applicable Federal law and WMATA's PARP policy, WMATA will not release any information including applications for DBE certifications and supporting information that may reasonably be considered confidential business information to any third party without the written consent of the firm that submitted certification.

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.

The MWUCP and WMATA DBE Program Plan referenced the regulations in 49 CFR Part 26. However, neither document incorporated the requirements of 49 CFR Part 26.109(c) regarding the rules governing cooperation.

WMATA was advised to develop written procedures (SOPs) to incorporate the requirements of 49 CFR Part 26.109(c).

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

6.12 Record Keeping

Basic Requirement (49 CFR 26.11(d)):

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

Discussion

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

The MWUCP Agreement and WMATA's DBE Program Plan referenced the regulations of 49 CFR Part 26. The MWUCP Agreement also stated the following:

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

The MWUCP Agreement did not specifically state records for all affidavits of no-change, change notices, and onsite reviews should be maintained; nor did it include provisions for the requirement that other certification or compliance-related records must be retained for a minimum of three years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever was longer.

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

- Missing USDOT application forms (Section 6.1.A. Burden of Proof)
- Missing personal and business tax returns (Section 6.2 Business Size)
- Missing signed and notarized PNW forms (Section 6.3.B. Personal Net Worth)
- Recordings and minutes from the committee meetings (Section 8.A. Uniform Application)
- Missing onsite reports for home-state and interstate firms (Section 8.B. Onsite Visits)

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA must submit to the FTA Office of Civil Rights written procedures that clearly state the policies and procedures for record keeping of DBE certification files in accordance with 49 CFR Part 26.11(d), including documentation of a firm's compliance with the DBE requirements.

6.13 Submitting Reports to USDOT

Basic Requirement (49 CFR 26.11(e)):

Each year, the State department of transportation in each UCP must report to USDOT the number of certified DBEs in its DBE Directory that are minority female, non-minority female, and male.

Discussion

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

WMATA did not prepare its annual reports for USDOT on the number of certified DBEs that are minority female, non-minority female, and male for FY2016 and FY2017. (DDOT had prepared its report on the same data.) Therefore, a complete report of the number of certified DBEs in the DBE directory that are minority female, non-minority female, and male was not provided by the MWUCP to USDOT.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, WMATA must submit to the FTA Office of Civil Rights written procedures for ensuring that WMATA and the MWUCP will submit a full combined report to USDOT of the number of certified DBEs in its DBE directory that are minority female, non-minority female, and male.

7 – Summary of Files Review and Findings

Of the initial 15 DBE files requested, no information was provided for one of the applicants. There were no 30-day, or 90-day letters noted in the files. The files for five of the applications were provided electronically. The electronic files were substantially more incomplete than those provided in hard copy and varied with respect to which required documents were missing.

File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Tamaco Construction	Y	Y	Y	N/A	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	Y	Y	Y	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Apex Petroleum Corporation	Y	N	Y	Y	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	Y	Y	Y	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 Year	Davis Freight Management	Y	Y	Y	Y	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Gagne Parker CPAs, PLLC	Y	N	Y	N	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter

Interstate Certification	Bergman Enterprises, Inc.	Y	N	Y	Y	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	Y	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate Certification	Project Management Technologies, Inc.	Y	Y	Y	Y	N/N	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	N	Y	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate Certification	Kormex Metalcraft, Inc.	Y	N	N	Y	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	Y	Y	Y	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Removal/ Decertification	Subsurface Technologies, Inc.	Y	N	Y	Y	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		I	N	Y	N	N	Y	Y	Y
		USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Denial Certification	Forney Enterprises	Y	Y	Y	N	Y / Y	N/A	Y	N
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	Y	Y	N/A	N	N
		USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter

Interstate Certification	Mindboard Inc.	N	N	N	N/A	N/N	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	N	Y	N	N	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate Certification	GNC Consulting, Inc.	N	N	N	N/A	N/N	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	N	Y	N	N	N/A	N/A	N/A
Existing Certification >1 Year	A & A Premium Paint Distributor LLC	N	Y	N	Y	N / N	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Removal Decertification	186 Engineering, PLLC	N	Y	Y	N/A	N / N	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	Y	Y	N/A	N/A	N/A
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Personal/ Business Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 Year	Aquas, Inc	Y	N	Y	Y	Y / Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	Y	Y	N/A	N/A	N/A

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
6.1 Group Membership A) Burden of Proof	26.61	D	WMATA's files were missing the USDOT application form that would have included a signed and notarized statement that they were a member of one of the groups in 49 CFR Part 26.67.	Provide procedures to ensure that all applicants submit the USDOT-approved form with a signed and notarized statement that the applicant was a member of one of the groups in 49 CFR Part 26.67(a). In addition, submit procedures that WMATA will rebuttably presume that members of the designated group were socially and economically disadvantaged as required by the regulations.	Within 60 days of the issuance of the final report
B) Additional Evidence	26.63	ND, AC			
6.2 Business Size	26.65	D	WMATA lacked written SOPs to address 49 CFR Part 26.65 requirements regarding SBA business size standards for evaluating DBE eligibility. Tax returns were missing in six certification files to accurately determine business size.	Provide procedures to ensure that all applicable business and personal tax returns will be obtained from the applicant entity and its affiliates in accordance with USDOT-approved application form and that WMATA will perform the required analysis of the tax returns to determine whether the applicant meets the business size requirements to be an eligible DBE.	Within 60 days of the issuance of the final report
6.3 Social/Economic Disadvantage A) Presumption of Disadvantage	26.67	D	WMATA's files were missing the USDOT application form that would have included a signed and	Provide procedures to ensure that all applicants submit the USDOT-approved form with a signed and notarized statement	Within 60 days of the issuance of the final report

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
B) Personal Net Worth	26.67	D	notarized statement that the presumptively disadvantaged owner was, in fact, socially and economically disadvantaged. WMATA files were missing a signed and notarized PNW statement and other related information. Therefore, there was no documentation of a determination that owners of applicant firms did not exceed \$1.32 million.	that the presumptively disadvantaged owner was, in fact, socially and economically disadvantaged. Provide procedures to ensure that all applicants submit a signed and notarized PNW statement and other related information. In addition, develop SOPs to ensure WMATA applies the requirements of 49 CFR Part 26.69(a)(2)(iii) and (iv).	Within 60 days of the issuance of the final report
C) Rebutting the Presumption of Disadvantage	26.67	ND, AC			
D) Individual Determination	26.67	ND, AC			
6.4 Ownership	26.69	ND, AC			
6.5 Control	26.71	ND, AC			
6.6 Other Certification Rules	26.73	ND			
6.7 UCP Requirements					
A) UCP Agreement	26.81	D	MWUCP Agreement did not appear to be approved by USDOT.	In conjunction with DDOT, WMATA must provide its updated MOU to the USDOT Office of Civil Rights for approval.	Within 60 days of the issuance of the final report
B) UCP Directory	26.31	D	WMATA's directory was separate from the DDOT directory, and it had not been accurately updated.	In conjunction with DDOT, provide mutually acceptable processes for maintaining a master MWUCP directory that conforms to the requirements of 49	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
				CFR Parts 23.31, 26.31, and 26.81(g), and updating the master directory to reflect all currently certified DBEs and removing any firms that do not meet the requirements to be certified as a DBE.	
6.8 UCP Procedures A) Uniform Application	26.83	D, AC	WMATA was not meeting with DDOT monthly to review and approve/deny DBE application or decertify DBEs as required.	WMATA, together with DDOT, must re-start the monthly meetings of the MWUCP committee, resume the committee's responsibilities as identified in the MWUCP Agreement, and submit to the FTA Office of Civil Rights a written assurance that the meetings will continue in accordance with the MWUCP Agreement. In addition, both certifying partners should submit the firm names and any other required information or documentation for all firms certified independently of the MWUCP.	Within 60 days of the issuance of the final report
B) Onsite Visits	26.83	D	WMATA's files were missing onsite reports for several applicant files, including home-state and interstate files.	Provide procedures to ensure that WMATA conducts onsite visits for home-state applicants and maintains onsite reports in the files and obtains and maintains onsite reports conducted by the home-state for interstate applicants.	Within 60 days of the issuance of the final report
C) 30-Day Notification	26.83	D, AC	30-day		

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
D) 90-Day Processing	26.83	D, AC	notification requirement was not followed. Applications were not processed within 90 days.	Provide written procedures for ensuring that applicants are notified within 30 days of receipt of the status of their application and whether additional information or action is required. Provide written procedures for ensuring that WMATA and MWUCP make decisions on certification applications within 90 days of receiving all required information from the applicant firm.	Within 60 days of the issuance of the final report Within 60 days of the issuance of the final report
E) Annual Updates	26.83	D, AC	Annual updates were not being processed.	Provide written procedures for ensuring that WMATA and MWUCP process annual "No Change" and "Notice of Change" forms in accordance with 49 CFR Part 26.83(h)–(j). The procedures must include a process for firms that no longer qualify as eligible DBEs due to changes in their circumstances or that refuse to cooperate and should be removed as an eligible DBE.	Within 60 days of the issuance of the final report
6.9 Interstate Certification	26.85	D	WMATA's files were missing pertinent documentation, e.g. onsite reports, for several interstate certification files.	Provide procedures to ensure that it will comply with the requirements of 49 CFR Part 26.85(c) and obtain required information in paragraphs (c)(1) through (4) of 49 CFR Part 26.85(a). If	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
				WMATA chooses to follow the regulations that allow the UCP to accept the home state's certification, it must revise its policies to reflect this change and follow its updated policies going forward.	
6.10 Denials A) Initial Request	26.86	D	WMATA did not provide a list of applicants denied.	Provide procedures that incorporate the requirements of 49 CFR Part 26.86 and procedures to track and identify the status off all applicants, including denied or certified firms in its records.	Within 60 days of the issuance of the final report
B) Remove Existing	26.87	ND, AC			
C) Mandatory Summary Suspension	26.88	ND, AC			
D) Optional Summary Suspension	26.88	ND, AC			
E) Appeals	26.89	ND, AC			
6.11 Compliance/ Enforcement					
A) DBE Enforcement Actions	26.107	ND			
B) Confidentiality	26.109	ND			
C) Cooperation	26.109	ND			
6.12 Record Keeping	26.11	D	DBE certification files were missing and/or unavailable for review.	Provide written procedures that clearly state the policies and procedures for record keeping of DBE certification files in accordance with 49 CFR Part 26.11(d),	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
				including documentation of a firm's compliance with DBE requirements.	
6.13 Submitting Reports to USDOT	26.11	D	A complete report of the number of certified DBEs in the DBE directory that are minority female, non-minority female, and male was not provided by the MWUCP to USDOT.	In conjunction with DDOT, provide written procedures for ensuring that MWUCP will submit a full combined report to USDOT of the number of certified DBEs in its DBE directory that are minority female, non-minority female, and male.	Within 60 days of the issuance of the final report

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

This page left intentionally blank to facilitate duplex printing.

ATTACHMENT A – FTA NOTIFICATION LETTER TO WMATA



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

Headquarters

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

April 12, 2018

Paul J. Wiedefeld
General Manager and CEO
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Dear Mr. Wiedefeld:

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

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

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

We request your attendance at a joint WMATA/DDOT opening conference for the UCP compliance review, scheduled for Tuesday, June 5, 2018 at 1:30 p.m. Eastern Standard Time, to introduce the DMP team and FTA representatives to WMATA. 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 WMATA's liaison with the review team and to coordinate the on-site review and address questions that may arise during the visit.

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

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

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

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

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

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

Sincerely,

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

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

Enclosure

cc: Terry Garcia Crews, Regional Administrator, FTA Region III
Lynn Bailey, Regional Civil Rights Officer, FTA Region III
Anita Heard, Equal Opportunity Specialist, FTA
Janelle Hinton, Equal Opportunity Specialist, FTA
Sylvia Edwards, Director of Small Business Programs, WMATA
Lucia Butts, TrAMS User Manager, WMATA
John Potts, Lead Reviewer, The DMP Group, LLC

Washington Metropolitan Area Transportation Authority
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 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.
2. A narrative that describes the WMATA individuals and resources dedicated to implementing the DBE UCP requirements, handling DBE UCP inquiries, and educating WMATA staff on DBE UCP. The narrative should include an organization chart showing WMATA's DBE UCP staff and a budget showing funds allocated to the DBE UCP.
3. WMATA representation on the UCP Voting Committee.
4. UCP Annual Reports for the past three years.
5. The certification criteria/guidelines used in determining DBE eligibility.
6. 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.
7. Documents or forms used during DBE certification site visits.
8. Written procedures for updating the UCP DBE Directory.
9. List of all firms certified, denied, and decertified or removed by the UCP in FYs 2015-current. The list must include:
 - a) the firm's city and state
 - b) the firm's ethnicity
 - c) the firm's gender
 - d) the date of site visit
 - e) the reasons for denial and/or decertification (e.g., size, PNW, control, etc.)
 - f) whether the denial decision was appealed to the UCP or USDOT
 - g) The result of the appeal.
10. Explanation of WMATA's UCP appeals process(es). List the individuals involved in the appeals process and how they are selected.

Washington Metropolitan Area Transportation Authority
Unified Certification Program Compliance Review

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

ATTACHMENT B – WMATA’S RESPONSE TO DRAFT REPORT

**Washington Metropolitan Area Transit Authority
Unified Certification Program (UCP)
Compliance Review**

MANAGEMENT RESPONSE TO DRAFT REPORT

[Referenced attachments include sensitive applicant firm information and, therefore, are not included in this report]

Compliance Review Area and Findings:

Compliance Review Area: Unified Certification Program (UCP)

6.1 Group Membership

A) Burden of Proof (49 CFR Part 26.61):

On page 22 of the report the auditors stated that “WMATA required that all applicants use the model certification application provided by USDOT that included a signed and notarized statement that the applicant was a member of one of the groups in Part 26.67(a). Per a review of the application files, the USDOT form with the signed and notarized statement regarding group membership were missing from the files for four (29 percent) of the applicants, as follows:

- Mindboard, Inc
- GNC Consulting, Inc.
- A & A Premium Paint Distributor, LLC
- 186 Engineering, PLLC

The auditors were incorrect in their analysis. Mindboard, Inc, filed for interstate certification with WMATA on April 16, 2018. It was originally certified by Virginia on September 1, 2017. **(See Attachment 1)** Pursuant to 49 CFR Part 26.85, firms must be certified in their home state (State A) before seeking certification in another state under the rule. A DBE firm must present a copy of its certification notice from its home state to the second state (State B) and request interstate certification. State B may not require the certified DBE to submit a new uniform certification application as if it were seeking certification for the first time. The recipient receiving a request for interstate certification (State B) must respond in one of two ways. One: Accept the certification afforded to a DBE from its home state and certify the firm after confirming that the firm’s certification is valid in its home state. Verification can be done by reviewing State A’s electronic DBE/ACDBE directory or by obtaining written confirmation from State A. FTA in its guidance responses state that “it is not appropriate for a certifier to ask the DBE to produce its home state on-site report or additional information when the certifier chooses to accept the firm’s home state certification under this option.” **(See Attachment 2, pg.1)** WMATA followed the procedures followed by 49 CFR Part 26.85. I obtained a certification letter from the home state and verified that Mindboard, Inc., was in the directory. It is not required to have any other documents in the file. WMATA understands that it would be best practices to obtain the on-site report.

GNC Consulting, Inc. also requested interstate certification. Its home state is Illinois. FTA in its guidance responses state that “it is not appropriate for a certifier to ask the DBE to produce its home state on-site report or additional information when the certifier chooses to accept the firm’s home state certification under this option.” **(See Attachment 2, pg.1)** WMATA does have its notarized application and home state certification letter. **(See Attachment 3)** WMATA understands that it would be best practices to obtain the on-site report.

186 Engineering, LLC applied for certification in 2012. Attached is copy of the initial application and PNW. **(See Attachment 4)**

6.2 Business Size (49 CFR Part 26.65)

The auditors found that six files didn’t contain any business or personal tax returns. They also stated the Mindboard, Inc., was an initial certification. The auditors counted Project Management Technology, Inc., twice. It is number 1 and 6 on the list. **(See page 24 of Draft Report)**

Mindboard, Inc, filed for interstate certification with WMATA. It was originally certified by Virginia. **(See Attachment 1 and Response to 6.1 A)**

GNC Consulting, Inc., was interstate from Illinois. **(See Attachment 2 and Response to 6.1 A)** Pursuant to 49 CFR Part 26.85, firms must be certified in their home state (State A) before seeking certification in another state under the rule. WMATA accepts the certification afforded to a DBE from its home state and certify the firm after confirming that the firm’s certification is valid in its home state. Verification can be done by reviewing State A’s electronic DBE/ACDBE directory or by obtaining written confirmation from State A. FTA’s guidance information states that it is not appropriate for a certifier to ask the DBE to produce its home state on-site report or additional information when the certifier chooses to accept the firm’s home state certification under this option. WMATA followed the procedures followed by 49 CFR Part 26.85.

Project Management Technology, Inc., is an interstate certification doing business as Promatech, Incorporated. It was certified by the state of New Jersey. Attached is a copy of the on-site report. **(See Attachment 5)** Also attached are its tax returns. **(See Attachment 6)**. Attached are the Taxes for 186 Engineering, LLC. **(See Attachment 7)**.

6.3 Social and Economic Disadvantage (49 CFR Part 26.67 (a)(1))

Auditors found that four of the files reviewed did not contain the USDOT form or a signed and notarized statement that the presumptively disadvantaged owner was in fact, socially and economically disadvantaged.

- Mindboard, Inc, filed for interstate certification with WMATA. It was originally certified by Virginia. WMATA accepted Virginia’s certification. After confirming that the firm’s certification is valid in its home state. **(See Attachment 1 Response to 6.1 A)**

- 186 Engineering, LLC applied for certification in 2012. Attached are its Taxes. **(See Attachment 7)**
- Project Management Technology dba Promatech, Inc., home state is New Jersey. Attached is the on-site from that state; the WMATA DBE evaluation form 2007; and the review letter from 2017. **(See Attachment 5)**

WMATA accepted Virginia's and New Jersey's certification. It is not appropriate for a certifier to ask the DBE to produce its home state on-site report or additional information when the certifier chooses to accept the firm's home state certification under this option. **(See Attachment 2, pg.1)**

B) Personal Net Worth (49 CFR Part 26.67(a)(2).

The auditors stated that a review of the application files, the files were missing a signed and notarized USDOT PNW form, and other related documentation, for Mindboard, Inc., and GNC Consulting, Inc., and as a result, there was no documentation to support that WMATA had determined that each individual owner of the applicant firm whose ownership and control were relied upon for DBE certification had a PNW that did not exceed \$1.32 million. Both companies were certified by their home state. WMATA relied on that home state certification. **(See Attachment 2, pg.1)**

6.8 UCP Procedures

B) On-Site Visits (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.

The applicant files reviewed for the following six home-state applicants did not include documentation that an onsite review was conducted as required:

- Apex Petroleum Corporation
- Gagne, Parker CPAs, PLLC
- Subsurface Technologies, Inc
- Mindboard, Inc.
- GNC Consulting, Inc
- Aquas, Inc.

Mindboard, Inc., and GNC Consulting, Inc. are interstate applicants. WMATA accepted the certification. Interviewing the principal officers of the firms and reviewing their resumes and/or work histories was not required by FTA. **(See Attachment 2, pg.1)**



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

Headquarters

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

June 21, 2019

Paul J. Wiedefeld
General Manager and CEO
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

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

Dear Mr. Wiedefeld:

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

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

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

We appreciate the cooperation and assistance that you and your staff have provided us during this review, and we are confident WMATA 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: Terry Garcia Crews, Regional Administrator, FTA Region 3
Lynn Bailey, Regional Civil Rights Officer, FTA Region 3
Ed Birce, Equal Opportunity Specialist, FTA
Sylvia Edwards, Director of Small Business Programs, WMATA