

29A

AGENDA ITEM



Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701 2483 • (512) 463-8585

April 30, 2009



Ms. Yvette Moldonado
Administrative Manager of Finance
Fort Bend County
Department of Public Transportation
12550 Emily Ct., Suite 400
Sugarland, Texas 77478

Dear Ms. Moldonado:

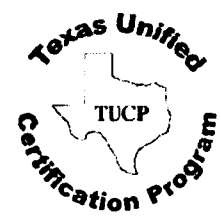
The Texas Department of Transportation and the Texas Unified Certification Program (TUCP) is pleased that the Fort Bend County will be using the Department as its Disadvantaged Business Enterprise (DBE) certifying authority for programs funded through the U.S. Department of Transportation.

Enclosed are the TUCP Letter of Agreement, Memorandum of Agreement and the TUCP Standard Operating Procedures. Please sign the documents where indicated and forward to our office after execution of same.

Should you need any additional information, please contact me at 512-486-5500.

Sincerely,

R.D. Brown, M.A., Director
Certification and Reporting Section
Office of Civil Rights



NOTE: The TUCP includes the City of Austin, Corpus Christi Regional Transportation Authority, City of Houston, North Central Texas Regional Certification Agency, and South Central Texas Regional Certification Agency.

7-8-09 Copy received

Texas Unified Certification Program
Letter of Agreement

Federal Regulation, 49 CFR, Part 26, Subpart E, section 26.81 states that each state must implement a "one stop" certification process for Disadvantaged Business Enterprises (DBEs). Each entity receiving Department of Transportation (DOT) funds is required to enter into and sign an agreement establishing and supporting a Unified Certification Program (UCP) within the state. The regulation directs that a process is defined, an implementation schedule is devised and the program submitted to the Secretary of Transportation through the regional Civil Rights Offices for each modal, for approval no later than March 1, 2002.

In response to this mandate, six agencies have agreed to perform the certification of DBEs within the state of Texas under the Texas Unified Certification Program (TUCP). The six agencies are: Texas Department of Transportation, North Central Texas Regional Certification Agency, South Central Texas Regional Certification Agency, City of Houston, City of Austin and the Corpus Christi Regional Transportation Authority.

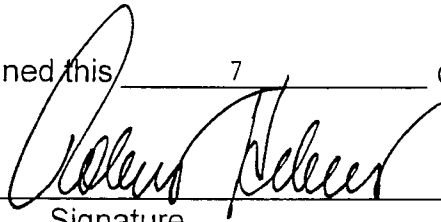
The regulation requires the TUCP to construct and maintain a database directory, which the Texas Department of Transportation (TxDOT) has agreed to host. Specific responsibilities of the certifying entities and the territories for which they are responsible are specified in the attached Memorandum of Agreement.

By signing this Letter of Agreement, **Fort Bend County** certifies that it is willing to participate in the certification decisions of the six certifying agencies of the TUCP, which will conduct certification evaluations for DBEs within the state of Texas, according to the guidelines promulgated in 49 CFR, Part 26. This agency also acknowledges that 49 CFR Part 26 Subpart E-Certification Procedures, Section 26.81(a)(2) commits recipients to ensure that the TUCP has sufficient resources and expertise to carry out the TUCP requirements.

Fort Bend County also acknowledges that the TUCP Memorandum of Agreement is, as currently structured, only a DBE certification program. Any changes to the structure of the TUCP will be placed before each recipient and its respective authority for consideration at least thirty days (30) prior to any changes being enacted.

It may be amended if 49 CFR, Part 26 is amended by Congress.

Signed this 7 day of July, 2009

by  County Judge
Signature Title

Print Robert E. Hebert

TEXAS

MEMORANDUM OF AGREEMENT

for a

**DISADVANTAGED BUSINESS
UNIFIED CERTIFICATION PROGRAM**

U.S. DEPARTMENT OF TRANSPORTATION PARTNERS



**Texas Department of Transportation
City of Houston
City of Austin**

**Corpus Christi Regional Transportation Agency
North Central Texas Regional Certification Agency
South Central Texas Regional Certification Agency**

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STATE OF TEXAS

MEMORANDUM OF AGREEMENT

UNIFIED CERTIFICATION PROGRAM

This Memorandum of Agreement (MOA) establishes a Disadvantaged Business Enterprise (DBE) Unified Certification Program (UCP) in the State of Texas in accordance with Title 49 Parts 26 and 23 of the Code of Federal Regulations (49 CFR Parts 26 and 23). The TUCP Certifying Partners are the Texas Department of Transportation (TxDOT), City of Houston, City of Austin, Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), and South Central Texas Regional Certification Agency (SCTRCA).

Introduction

Each Certifying Partner in Texas is required to administer a DBE Certification Program in accordance with 49 CFR Part 26, Part 26.81 of this regulation require each state to develop a UCP by March 4, 2002. Each TUCP Certifying Partner agrees to commit sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

Organization

The TUCP shall establish an Executive Committee consisting of representatives from each of the Certifying Partner agencies, who shall be designated by the signatories to this MOA Agreement. The Executive committee will also be responsible for resolving any conflicts between certification actions of its members. The Standard Operating Procedures of the TUCP Section III-Agency Compliance, outlines the process for dealing with matters regarding the compliance with certification requirements. Nothing in this agreement should be construed to contravene the sovereignty of each participant. The contact person for the TUCP is the Texas Department of Transportation, Business Opportunity Program Section.

A Certifying TUCP Partner may terminate its responsibilities under this Agreement and become a Non-Certifying TUCP Partner upon a six month notice to all TUCP Partners.

Purpose

The objectives of the Texas UCP are as follows:

- To follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Parts 26 and 23.
- To cooperate fully with all oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.

- To implement USDOT directives and guidance on DBE certification matters.
- To make all certification and decertification decisions on behalf of all TUCP Partners with respect to participation in the USDOT DBE Program. Certification decisions by the TUCP shall be binding on all TUCP Partners. Certification decisions must be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
- To provide a single DBE certification that will be honored by all TUCP Partners.
- To maintain a unified DBE directory containing at least the following information for each firm listed: address, phone number and approved NAICS codes. The TUCP shall make the directory available to the public electronically on the Internet as well as in print. TxDOT shall update the electronic version of the directory by including additions, deletions and other changes upon notification by the DBE and/or Certifying Partner.
- The TUCP Partners will commit adequate resources and expertise to carry out this agreement. The partners will continue to individually bear the costs of training staff, certifying firms and sharing DBE files, i.e. postage and copying costs. Travel to and from meetings will be the responsibility of individual partners.

The TUCP will be created and fully functional no later than 18 months from the date of approval by the Secretary of Transportation and in accordance with the Implementation Schedule as described herein.

Definitions

TUCP Certifying Partner

A State of Texas recipient with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. This includes those entities, North Central Texas Regional Certification Agency and South Central Texas Regional Certification Agency, who are not recipients, but were formed as domestic non-profit organizations for the purposes of performing certifications on behalf of recipients. A certifying partner can issue or revoke DBE certification.

TUCP Partner

All Texas State recipients participating in this Memorandum of Agreement, both Certifying and Non-certifying Partners.

Non-Certifying TUCP Partner

A State of Texas recipient, sub-recipient or grantee with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. A Non-Certifying Partner can neither issue nor revoke DBE certification.

Recipient

Any public entity which receives direct USDOT financial assistance.

Sub-recipient

Any public entity receiving USDOT financial assistance through another recipient.

Grantee

Any public entity that has received USDOT assistance.

TUCP PROGRAM DESCRIPTION

Partners' Roles, Responsibilities & Obligations

All TUCP Partners agree to maintain DBE certification application files, conduct site visits, make certification decisions and handle appeals and complaints. The Certifying TUCP Partners agree to utilize the USDOT Uniform Certification Application and Affidavit.

- All decisions related to eligibility and certification must agree with 49 CFR Parts 26 and 23.
- The TUCP Certifying Partners and Non-Certifying Partners must have an approved DBE Program. Additionally, each Certifying Partner must have clearly defined and written processes and procedures related to the administration of its DBE Program and certification decisions.
- Each TUCP Certifying Partner must adhere to the processes and procedures as set forth in the Standard Operating Procedures.

DBE Directory Management :

Upon approval of a firm for DBE certification by the UCP Certifying Partners, the originating Certifying Partner shall submit the firm's information for inclusion in the electronic database directly to the DBE Database Manager. This information shall include at a minimum:

- Name, Street Address, P.O. Box, City, County, State, Telephone and Fax Number, E-mail address and Federal Tax Identification Number/SSN;
- Name, Sex, Ethnicity, Race and Country of Origin of qualifying DBE owner(s);

- Type of work performed by the DBE using the North American Industry Classification System (NAICS) adopted by the SBA on October 1, 2000, as amended;
- Date Business was Established;
- Name of TUCP Certifying Partner;
- Certification and Annual Update Affidavit Dates;

The TUCP Certifying Partners agree that a UCP Database Manager will be designated. The DBE Database Manager shall assume the following responsibilities:

- Input all data and make any corrections, additions and/or deletions upon receipt of information from the Certifying TUCP Partners;
- Maintain and keep the electronic DBE database current;
- Make the electronic DBE database available to all TUCP Partners and other interested parties;
- Provide printed copies only of the list of firms that are DBE certified upon request and at a charge to be established; (Third parties should only be provided with a list of DBE certified firms. They should not be provided with information that a firm has been denied certification.)
- Maintain the TUCP Website.

DBE Directory & Internet Access

The DBE Directory will be located on the TUCP website. In accordance with 49 CFR Part 26.31 and 23.31(b), the DBE Directory will include the following minimum information for each firm:

- Name, address and telephone number of firm;
- Contact person
- Types of work performed by the firm with appropriate six (3) digit NAICS code and description.

The TUCP DBE Directory may contain additional information, including but not limited to the following:

- Geographic Location of the Firm (i.e., county)
- Website Address of the Firm
- Fax Number & E-Mail Address of the Firm
- Certification and Annual Update Affidavit Dates

TUCP PROGRAM COSTS AND FUNDING

The cost of creating and establishing the TUCP website and the electronic DBE Directory will be the responsibility of the Texas Department of Transportation.

Training and Resources

The TUCP Certifying Partners will conduct ongoing in-service training. The TUCP Certifying Partners will agree to rotate the duties of planning and conducting training sessions.

CERTIFICATION PROCEDURES AND PROCESS

In addition to the following procedures, the TUCP will follow all certification procedures and standards of 49 CFR Part 26, and will implement USDOT directives and guidance concerning DBE certification matters. A Standard Operating Procedure (SOP) has been developed and will be utilized by all Certifying TUCP Partners. They may be modified as needed and agreed upon by the Certifying TUCP Partners and approved by U.S. DOT.

- The TUCP will accept an application from the SBA, but will not automatically recognize the DBE certification of a firm certified by the Small Business Administration . (See attached SOP for process)
- The TUCP will utilize the USDOT approved Uniform Certification Application and other related certification documents to facilitate “one-stop shopping” for applicants.

Geographic & Industry Considerations

Six agencies have agreed to perform the certification process for DBE program applicants within the State of Texas by geographical location. If a DBE applicant/firm works only in the highway construction industry, TxDOT agrees to process the

application and/or have certification responsibility for the DBE firm. Therefore, the certifying TUCP partner to whom application is made will ascertain the geographical area of the applicant firm and/or its primary work type or industry, and take the appropriate action to either process the application or forward the application within three to five business days to the appropriate TUCP certifying partner.

City of Austin: Geographical: Bastrop, Caldwell, Hays, Travis and Williamson

City of Houston: Geographical: Counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

Corpus Christi Regional Transportation Authority: Geographical: Counties of Aransas, Bee, Goliad, Jim Wells, Karnes, Kleberg, Live Oak, Nueces, Refugio, and San Patricio

North Central Texas Regional Certification Agency: Geographical: Counties of Collin, Dallas, Denton, Ellis, Erath, Hood, Jack, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise.

South Central Texas Regional Certification Agency: Geographical: Counties of Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, Uvalde and Wilson.

Texas Department of Transportation: Geographical: All other remaining counties in Texas.

Quality Assurance (New Certifications)

The SOP has been created to ensure consistent application of UCP program requirements among the Certifying TUCP Partners. Uniform documents have been developed for use by the Certifying TUCP Partners so that consistent information is obtained and used in certification determinations. At a minimum, there will be annual training of certification staff in order to maintain consistency in determinations.

Annual Review Process

DBEs will update their certifications annually using the TUCP Annual Update "No Change" Affidavit as required in the SOP. Failure to submit the required documentation may result in certification removal as outlined in 49 CFR Part 26.87 and the SOP. The annual review will be conducted by the responsible certifying TUCP Partner. A DBE on-site review will be conducted by the TUCP Partner every three years in conjunction with the DBE firm's submittal of the Annual Update Affidavit per 49 CFR Part 26.83(h).

Third-Party Challenges

Provisions exist in the Standard Operating Procedure for the Certifying TUCP Partners to accept written complaints from a third party alleging the ineligibility of a currently certified firm.

Appeals Process and Procedures

An appeals procedure has been established as part of the TX SOP for appeals of denial of original certification, and decertification that provides due process to the affected firm in accordance with 49 CFR Part 26.

Denials of Original Certifications and Decertification: The DBE applicant has the opportunity to appeal to U.S. DOT in accordance with 49 CFR Part 26.89. Firms that are decertified will have due process in accordance with 49 CFR Part 26.87.

IMPLEMENTATION SCHEDULE

The Certifying TUCP Partners will inform the public about the TUCP by holding public meetings throughout the State immediately upon approval by the USDOT of this MOA Agreement. Notification of the public meetings as well as the TUCP will occur in a variety of ways, including but not limited to the following: press releases, a notice on the Certifying TUCP Partners' website, and direct mailings to individual DBE firms, professional associations and community based organizations.

This MOA was submitted to the non-Certifying TUCP Partners, USDOT modal agencies and the Certifying TUCP Partners' respective counsels for their review and comment. Changes and revisions were made based on the comments received. The MOA was then re-submitted to all TUCP Partners for signature.

The following actions will be taken and completed by the Certifying Partners or designees no later than 18 months from the date of USDOT approval of this MOA Agreement:

Staff Training

- Develop and finalize training modules for SOP Manual, eligibility criteria, forms and procedures, on-site review, personal net worth analysis, internet-based system (DBE on-line directory).
- Recruit instructors and determine locations for training workshops.
- Schedule Joint Training Sessions.
- Conduct Initial Training.

Unified DBE Directory

- Develop and complete parameters for Unified DBE Directory.

- Compare UCP Certifying Partners databases.
- Remove duplicate DBE firms.
- Develop common database.
- Develop procedures for electronic submission of DBE firms for inclusion in the Unified DBE Directory.
- Develop and issue press release on public access to online DBE Directory (information will be maintained on TXDOT Website).

Transition of Currently Certified DBEs

The following actions have been accomplished by the TUCP Partners:(1) Each TUCP Partner has ensured each DBE has been certified under 49 CFR Parts 26 and 23; (2) TUCP Partners have reviewed the DBE firms and determined which TUCP Partner will have responsibility for the DBE firm's continued participation in the DBE program in accordance with 49 CFR Parts 26 and 23, based upon the geographical location of the DBE's home office; (3) Each TUCP Partner has forwarded to the designated TUCP Partner, the DBE certification file for which it has assumed responsibility based upon the geographical location of the DBE's home office.

CHANGES TO THE MOA

Changes to this MOA Agreement shall require the approval of the TUCP Certifying Partners and U.S. DOT.

SUMMARY

As a result of the requirements set forth in 49 CFR Parts 26 and 23, we the undersigned, agree to participate in the STATE OF TEXAS'S Unified Certification Program in accordance with the provisions of this MOA and agree to abide by its contents

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

City of Austin June 1, 2005
Name _____ Title _____
Agency _____

City of Houston June 1, 2005
Name _____ Title _____
Agency _____

Corpus Christi Regional Transportation Authority June 1, 2005
Name _____ Title _____
Agency _____

North Central Texas Regional Certification Agency June 1, 2005
Name _____ Title _____
Agency _____

South Central Texas Regional Certification Agency June 1, 2005
Name _____ Title _____
Agency _____

Texas Department of Transportation June 1, 2005
Name _____ Title _____
Agency _____

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

Jeffrey W. Staveland, Sr. Date 05/19/2005
Name

DIRECTOR

Title

CITY OF AUSTIN

Agency

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

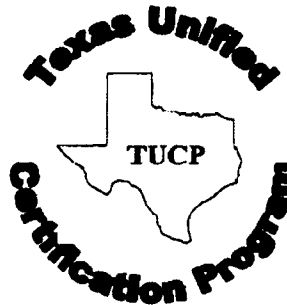
Rudolph J. Byrd Date 19 May 2005
Name
EXECUTIVE DIRECTOR
Title
SCTRCA
Agency



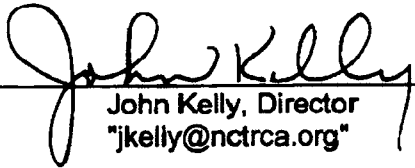
NCTRCA

North Central Texas Regional Certification Agency
AND

RECEIVED
CONSTRUCTION DIVISION
2005 MAY 25 AM 10:42



Memorandum of Agreement Signature Page Executed and Delivered
by the
NCTRCA a TUCP Certifying Partner



John Kelly, Director
"jkelly@nctrca.org"

20, May 2005
Date

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

Alma Jay _____ Date 5/20/05 _____
Name
Director _____
Title
City of Houston _____
Agency

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

Name *John R. ...* Date June 1, 2005
Title *Director*
Agency *Texas Department of Transportation*

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNER



Lamont C. Taylor
DBE/EEO Officer
Regional Transportation Authority

6.05

Date

APPENDIX A

Texas Unified Certification Program (TUCP) Participating Entities

Airports:

Abilene Regional Airport	McAllen Miller International Airport
Austin-Bergstrom International Airport	San Angelo Regional Airport/Mathis Field
Corpus Christi International Airport	San Antonio International Airport
Dallas-Fort Worth International Airport	Tyler Pounds Field
Easterwood Fields (Texas A&M)	Valley International Airport (Harlingen)
Gregg County Airport – Longview	Victoria Regional Airport
Houston Airport System	Waco Regional Airport
Killeen Municipal Airport	Wichita Falls Municipal Airport
Southeast Texas Regional Airport	

Cities:

City of Amarillo	City of Garland	City of Wichita Falls
City of Arlington	City of Grand Prairie	City of Austin
City of Cedar Park	City of Brownsville	City of San Marcos
City of Houston	City of Leander	City of Lewisville
City of Dallas	City of Longview	City of Denton
City of McAllen	City of DeSoto	City of Plano
City of El Paso	City of San Antonio	City of Forth Worth
City of Texarkana	City of Round Rock	

Transit:

Beaumont Municipal Transit	Brownsville Urban System
Capital Metropolitan Transportation Authority, Austin	City of Galveston, Island Transit
Corpus Christi Regional Transportation Authority	CTCOG (Central Texas Council of Governments) Transit, Belton
Dallas Area Rapid Transit (DART)	Fort Worth Transportation Authority
Golden Crescent RPC – Transit, Victoria	Hill County Transit District, San Saba
Lower Rio Grande Valley Development Council Transit, McAllen	Lubbock Citybus System
Metropolitan Transit Authority of Houston	Texoma Council of Governments Transit, Sherman
The Mass Transit Department of the City of El Paso (Sun Metro)	VIA Metropolitan Transit Authority, San Antonio
Waco Transit System	

Other:

North Central Texas Regional Certification Agency	Edward Aquifer Authority
South Central Texas Regional Certification Agency	Fort Worth Housing Authority
Austin Water & Wastewater Utility	Forth Worth Public Schools
City Public Service, San Antonio	Hidalgo County
Central Texas Regional Mobility Authority	MHMR of Tarrant County
County of Bexar	Montgomery County
Dallas Community College District	North Texas Tollway Authority
Dallas Metrocare Services	San Antonio Housing Authority

Dallas County	San Antonio Water System
Dallas Public Schools	Travis County
	Williamson County

AGREEMENT

EXECUTED AND DELIVERED by and between the TUCP Partners and Non-Certifying Partner as of the effective date of this MOA.

TUCP NON-CERTIFYING PARTNER



Name Robert Hebert

Date July 7, 2009

County Judge
Title

Fort Bend County
Agency

TEXAS
UNIFIED CERTIFICATION PROGRAM
STANDARD OPERATING PROCEDURE

I. INTRODUCTION

A Disadvantaged Business Enterprise (DBE) Unified Certification Program (UCP) has been established in the State of Texas in accordance with Title 49 Part 26 of the Code of Federal Regulations (49 CFR Part 26). Pursuant to a Memorandum of Agreement (MOA) signed by all recipients required to participate in the TUCP, the Texas Department of Transportation (TXDOT), City of Houston, City of Austin, Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), and South Central Texas Regional Certification Agency (SCTRCA) as Certifying Partners for the TUCP. The cost of creating and establishing the TUCP web site and the electronic DBE Directory will be the responsibility of TXDOT. The TUCP reserves the right to develop a methodology to ascertain maintenance and operational costs. Any changes to the web site or Directory that results in costs to the Certifying and Non-Certifying Partners will be reviewed and approved by the TUCP recipients before the changes are implemented.

Each of the Certifying Partners is required to administer a DBE certification program in accordance with 49 CFR Parts 26 and 23. As part of the TUCP, Certifying Partners will make certification decisions on behalf of all USDOT recipients, sub recipients and grantees in Texas with respect to participation in the USDOT DBE Program. Certification decisions by the TUCP shall be binding on all USDOT recipients, sub recipients and grantees within Texas.

1. The following actions have been taken by the TUCP Partners: All TUCP Partners electronically submitted the current DBE firms to the DBE Database Manager for inclusion in the TUCP DBE Directory.
2. Each DBE firm was confirmed by each TUCP Partner, that the DBE firm was certified under the provisions of 49 CFR Parts 26 and 23.
3. The TUCP Partners met to review each of the DBE firms, and concluded which TUCP Partner would have custody of the certification record.

A thorough certification process ensures that the DBE program benefits only bona fide disadvantaged businesses. In order to ensure consistent application and interpretation of the regulatory requirements for DBE certification and consistent certification determinations, a Standard Operating Procedure (SOP) will be used by all Certifying Partners.

The Standard Operating Procedure sets forth the process to be utilized by the Certifying Partners when making determinations of DBE certification eligibility.

The procedures outlined herein are consistent with the U.S. Department of Transportation regulations codified at 49 CFR Part 26.

II. DEFINITIONS

Burden of Proof

Measure of persuasion that is required to convince someone that an alleged fact is true.

DBE Certification

A finding, after a certification eligibility review by a Certifying TUCP Partner that a business meets the certification eligibility requirements and is a bona fide Disadvantaged Business Enterprise in accordance with 49 CFR Parts 26 and 23.

Certification Interview

Face-to-face meeting between the applicant firm's qualifying owner(s) for DBE certification and the Certifying Partner

Decertification

The removal of certification based on a determination that a currently certified DBE no longer meets the eligibility criteria and is given due process under 49 CFR Part 26.

Decision Memorandum

Written document prepared by Certifying TUCP Partner detailing certification determination rendered.

Denial of Certification

A finding that a business is not a bona fide Disadvantaged Business Enterprise. A business that has been denied DBE certification or declared ineligible cannot again reapply for DBE certification for one year from the date of denial.

Executive Committee

A group consisting of representatives from each of the TUCP Certifying Partner agencies, who shall be designated by the signatories to the Memorandum of Agreement for the Unified Certification Program.

Grantee

Any public entity that has received USDOT assistance.

Non-Certifying TUCP Partner

A State of Texas recipient, sub-recipient, or grantee with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. A Non-Certifying TUCP partner can neither issue nor revoke DBE certification.

TUCP Certifying Partner

A State of Texas federal aid recipient with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. This includes those entities, North Central Texas Regional Certification Agency and South Central Texas Regional Certification Agency, who are not recipients, but were formed as domestic non-profit organizations for the purposes of performing certifications on behalf of recipients. A Certifying Partner can issue or revoke DBE certification. The TUCP Certifying Partners are the Texas Department of Transportation (TXDOT), Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Austin, and the City of Houston.

TUCP Partner

All Texas State federal-aid recipients, both Certifying and Non-Certifying, participating in the TUCP.

Preponderance of Evidence

A standard of proof which is met when the evidence on a fact indicates that it is “more likely than not” true.

Recipient

Any public entity, which receives direct USDOT financial assistance.

Sub recipient

Any public entity that receives USDOT financial assistance through another recipient.

Withdrawal of Application

An applicant’s written request to the Certifying TUCP Partner to cease the certification review process. An applicant that has withdrawn its application cannot again reapply for DBE certification for twelve (12) months from the date of the withdrawal.

III. CERTIFICATION PROCEDURES

A. Application for DBE Certification

1. All applicants requesting initial DBE certification must complete and submit a complete certification application package to one of the TUCP Certifying Partners. The TUCP will accept a copy of a firm’s application package that was submitted to the SBA and a copy of their certification letter. SBA firms must undergo a site visit.
2. A complete package consists of the following:
 - a) USDOT Uniform Certification Application and Affidavit

- b) Personal Financial Statement for each qualifying socially and economically disadvantaged owner
- c) Required basic and support documentation as determined by business structure and in accordance with 49 CFR Parts 26 and 23.

B. Intake

B. Intake

1. Immediately upon receipt of the application package it is reviewed for completeness of form. Specifically, the Affidavit of Certification and Personal Financial Statement are reviewed for original signatures and notarization, and to determine whether the basic required supporting documents have been submitted.
2. The application is reviewed to ascertain the firm's line of work and services provided. Type of business service is necessary in determining whether the Certifying Partner in receipt of the application will process the application or transfer it to another Certifying Partner.
3. Only firms organized for profit are eligible for DBE certification.

C. Desk Audit

1. The processing staff will organize and assemble the applicant information in a business file. The processing staff must be mindful that all applications are to be processed within 90 days of receipt of a complete application.
2. The processing staff will thoroughly review the application package to determine whether all required supporting documentation has been submitted, and to determine if additional information will be requested. Care should be taken to ensure that any requested documentation/information is actually pertinent to the certification review.
3. If additional information is required, the processing staff will prepare a letter to the applicant firm requesting additional information. The letter will include a due date for submission of the additional information and advise the applicant that failure to respond will administratively close the application. In establishing a due date, processing staff must allow sufficient time thirty (30) days for the applicant to provide the requested information.
4. The processing staff will monitor the timely receipt of the requested information. Upon receipt of the additional information, the processing staff will review it and make a determination as to the completeness of the certification file. Processing staff are required to obtain information from the Texas State Comptroller/Texas Secretary of State for "standing" of the applicant business and all known affiliates.
5. Familial- marital relationships (see page 9).

D. Threshold Requirements

1. The processing staff will make a determination on each of the threshold requirements.

a) **Size standard** - in making a determination of *size standard*, processing staff must reference and adhere to §26.65 and 23.33 of the regulations.

b) **Social disadvantage** - In making a determination of *social disadvantage*, processing staff must reference and adhere to § 26.63 and §26.67 of the regulations.

c) **Economic disadvantage** – in making a determination of economic disadvantage processing staff must reference and adhere to §26.67 and 23.35 of the regulations.

d) **Citizenship** - each individual qualifying the firm for DBE certification must demonstrate that he/she is a citizen of the United States or a lawfully admitted permanent resident. Each individual must submit acceptable documentation as proof of citizenship or permanent resident status.

e) **Irrevocable separation of property:** When marital assets held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest. A copy of the document legally transferring and renouncing the other spouse's rights must have been filed in the proper court. The document must clearly show receipt by the court.

2. **FAILURE TO MEET REQUIREMENT** - If the applicant firm or its qualifying owners fail to meet any one of the threshold requirements for DBE certification, the firm is to be deemed ineligible for DBE certification. The firm may appeal the denial determination to the U.S. Department of Transportation in accordance with the procedures set forth in §26.89.

3. **REVIEW OF COMPLETED FILES** - If the firm meets the threshold requirements, the processing staff will, upon a thorough and careful review of the complete file, prepare a list of firm specific questions to be answered by the qualifying owners of the firm. These questions should be in addition to the standard questions asked of every firm and should address the particulars and unique facts of the applicant firm and its owners.

a) In preparing firm specific questions, processing staff should be sufficiently knowledgeable of the business area in which the firm is

seeking certification, anticipating issues, which will require close examination. The processing staff should have knowledge of the capitalization requirements, licensing, technical expertise, staffing and industry practices. In the event that processing staff is unfamiliar with the requirements for the applicant business, technical assistance should be obtained from technical personnel within the agency.

b) Once the applicant file is complete and the questions have been prepared, processing staff must schedule a face-to-face certification on-site review meeting with the qualifying owners at a time convenient for all participants.

E. On-Site Review

1. The purpose of the on-site review is to verify the firm's location, personnel and operations; to substantiate information/documentation contained in the applicant file and to review business and financial records. The on-site review is the second phase of the certification review process and will also be conducted on certified firms every three years. An on-site review of the applicant firm and an interview of the socially and economically disadvantaged principals of the firm must be made in accordance with §26.83(c) (1) of the regulations.

2. The following information, **if applicable**, should be received and reviewed no later than the on-site review:

a) Cash Receipts and Disbursements

- (i) Check for entries in the cash receipts journal, which disclose initial capital contributions.
- (ii) Verify operational expenditures in the cash disbursements journal. Note questionable/exceptional/unusual entries and the frequency or consistency of such expenditures.
- (iii) Note payments to and from shareholders, directors, officers and key employees in the cash disbursements journal.
- (iv) Note payments to similar businesses for possible broker activity or evidence of conduit activity.
- (v) Cross reference cash disbursements with cancelled checks.

(b) Bank Statements and Cancelled Checks

- (i) Verify initial capitalization of firm with the first bank statement, if available.
- (ii) Verify and document signature authority and consistency in which DBE owner v. non-DBE owner(s)/offices sign checks.
- (iii) Verify payments to shareholders, key employees and consultants.
- (iv) Pay particular attention to the "memo" section of checks.

- (v) Determine if there are any additional checking accounts not disclosed prior to the visit. If so, note the authorized signatories.
 - (vi) Cross reference payments to and from clients, suppliers, consultants, etc.
- (c) Payroll**
- (i) Determine who is on the firm's payroll.
 - (ii) Determine if the owner is receiving compensation in accordance with his/her ownership interest.
 - (iii) Determine who receives bonus payments and amounts.
 - (iv) Compare W-2's and 1099's to payroll register, to extent possible, for key employees.
 - (v) Pay attention to any "memo" notations on any payroll checks.
- (d) Invoices and Receipts**
- (i) Check telephone bills to determine if they are addressed to the DBE firm.
 - (ii) Review invoices to substantiate method and source of payment.
 - (iii) Check invoices for suggestion of brokering activity or reliance on non-DBE firms.
 - (iv) Examine invoices for resolution of regular dealer issues (freight charges).
- (e) Contract Files**
- (i) Determine who executes contracts on behalf of the firm.
 - (ii) Verify the services provided by the applicant firm and the terms and conditions of the provision of their services.
 - (iii) Verify consistency in which firm does business with a particular firm and whether any issues of dependency.
- (f) Inventory and Equipment**
- (i) Identify nature and use of equipment possessed by firm.
 - (ii) Verify ownership of equipment with invoices.
 - (iii) If equipment is leased, review equipment lease agreements.
 - (iv) Identify inventory maintained by firm.
 - (v) Determine whether lack of inventory suggests broker or conduit activity.
 - (vi) If regular dealer, verify inventory, warehouse facility, transportation equipment, etc.
 - (vii) Determine if firm's name on vehicles (trucks).
- (g) Bonding and Insurance**
- (i) Determine who is guaranteeing/financing bonding.
 - (ii) Is bond commensurate with size of firm?
 - (iii) Are insurance documents in the name of the firm?
 - (iv) Verify types of insurance maintained by firm.
 - (v) Does firm carry Key Man Insurance (life insurance on key person in business, should be owner—business is beneficiary)? If so, for whom?
- (h) Corporate Kit or Business Organization Documents**

- (i) Cross reference documents in corporate kit with original submission.
- (ii) Review all minutes and entries for voting, control, attendance, etc.
- (i) Corporate Kit or Business Organization Documents**
 - (i) Review stock transfer ledger.
 - (ii) Review cancelled/voided stock certificates and note reasons for cancellations.
 - (iii) Review non-issued stock certificates to determine if there is numerical continuity.
 - (iv) Verify corporate seal.
 - (v) Review by-laws for revisions since original submission of documents
- (j) Employment Agreements**
 - (i) Determine the existence of any Employment Agreements for owner(s) or key personnel.
 - (ii) Review terms of Employment Agreements for possible conflict with qualifying owner's ability to control operations of firm.
- (k) Physical Characteristics of Office/Building Location**
 - (i) Determine if the firm has identifying signs outside or inside of the building/office.
 - (ii) Determine if DBE owner has own office.
 - (iii) Request a tour of facilities and observe equipment on premises.
 - (iv) Ask questions regarding operation of equipment.
 - (v) Determine if office space shared with other companies, and if so, the nature of the business of the other companies.
 - (vi) Determine if equipment, supplies, etc. is shared with other companies.
 - (vii) If shared facilities, equipment, verify arrangement for sharing.
 - (viii) Determine if owner(s) are operating other related or unrelated businesses from the location. If so, identify the business and its owners.
- (l) Familial-martial relationships-** Familial-martial relationships between owners and employees that is pertinent to ownership and control of the company.

3. Information obtained during the on-site review must be compiled in a separate comprehensive written report. The on-site review report is made a part of the certification file and incorporated accordingly.

4. Depending upon the location of the firm, a Certifying Partner may request another Certifying Partner to conduct the on-site review. In such instances, a written request must be made to the Certifying Partner conducting the review with issues of concern identified. The Certifying Partner conducting the on-site review will be responsible for preparing the on-site review report.

5. An on-site visit to the job-site must be conducted if at the time of the on-site, the applicant firm is working.

6. In lieu of conducting an on-site review for a firm outside of Texas, a Certifying Partner may utilize an on-site review report from the potential DBE's home state DOT that certified the firm in accordance with 49 CFR Parts 26 and 23.

7. An applicant's failure to permit an on-site review shall be grounds for denial of DBE certification for failure to cooperate. The firm will be denied certification and cannot reapply for 12 months. The firm may appeal the denial determination to U.S. DOT in accordance with the procedures set forth in §26.89.

F. Certification Determination and Recommendation

1. **DECISION MEMORANDUM** - The certification recommendation is the final product of all information, which has been reviewed, and is an evaluation of the firm's compliance with the certification eligibility standards set forth in the regulations. The written recommendation must be sufficiently comprehensive to persuade an objective party of the merits of the recommendation.

2. **MANAGEMENT REVIEW** - The certification recommendation must be submitted to the supervisor responsible for certification review. The complete file must accompany the submission of the certification recommendation. The supervisor responsible for the certification review must provide written concurrence with the recommendation for certification or denial of certification before a letter can be forwarded to the firm's owners.

G. DBE Certification and Annual Certification Renewal

1. **WRITTEN NOTIFICATION** - A firm will be notified in writing by the TUCP Certifying Partner that it has been granted DBE certification.

2. **LENGTH OF CERTIFICATION** - Once a firm is certified as a DBE by the TUCP, it shall remain certified, unless and until its certification has been removed in accordance with procedures set forth in 49 CFR §26.87.

3. **CHANGE OF CIRCUMSTANCE** - A certified DBE firm has an affirmative responsibility to notify the TUCP Certifying Partner in writing, of any change in circumstances affecting size, disadvantaged status, ownership, or control requirements of the regulation, or any material change in the information provided in its application for DBE certification. Such notice must be within thirty (30) days of the change-taking place.

4. **NO CHANGE AFFIDAVIT** - A certified DBE firm must submit annually, on the anniversary of DBE certification, a No Change Affidavit. A

No Change Affidavit is a sworn affidavit affirming that there have been no changes in the firm's circumstances affecting its size, disadvantaged status, ownership or the control requirements of the regulation, or any material change in the information provided in its application for DBE certification, including the support documentation.

- a) Each firm will be notified by the TUCP Certifying Partner at least 30 days in advance of its anniversary date, of the annual submission requirement and will be provided with the necessary affidavits to complete and return.
- b) A firm failing to comply with the annual submission requirement will be notified in writing 30 days from the date that the submission was due, of the TUCP's intent to decertify the DBE in accordance with §26.87 of the regulation.
- c) A firm failing to comply with the annual submission requirement will be decertified under the procedures of §26.87.

H. Initial Denial of DBE Certification

1. A firm will be notified in writing by the Certifying Partner that it has been denied DBE certification by the TUCP.
2. The firm will be provided with a written explanation of the reasons for denial, specifically referencing the evidence in the record that supports each reason for the denial.
3. All documents and information used to render a determination of denial will be made available for inspection by the applicant, upon written request to the Certifying Partner.
4. A firm that is denied DBE certification may not again apply for certification with the TUCP for a period of one year.
5. A firm denied DBE certification may appeal the denial of DBE certification to the USDOT in accordance with §26.89 of the regulation.

I. Removal of DBE Eligibility (Decertification)

1. The TUCP Certifying Partners will follow procedures consistent with §26.87 when removing DBE certification eligibility.
2. A DBE firm whose eligibility has been removed (decertified) for any of the following reasons will be afforded an Appeal Process as stated in Section J(2):

- a) The business has changed to the extent that it is no longer owned or controlled by socially and economically disadvantaged individual(s).
 - b) The DBE firm is no longer an ongoing business entity.
 - c) The socially and economically disadvantaged owners falsified a sworn statement. This action may also result in more punitive action such as debarment.
 - d) The DBE fails to notify the TUCP Certifying Partner, within 30 days, of changes in ownership, control, independence or status as an ongoing concern.
 - e) A determination by the TUCP Certifying Partner that the firm no longer meets certification eligibility standards.
 - f) The DBE exhibits a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirement of the regulations. This action may also result in more punitive action such as debarment.
3. Decertified firms shall be removed from the TUCP directory..
 4. A decertified firm may not again apply for certification with the TUCP for a period of one year.

J. Appeal Process

1. Initial Denials

- a) a firm denied DBE certification may appeal the denial of DBE certification to the United States Department of Transportation (USDOT) in accordance with §26.89 of the regulation. Such appeal must be filed within 90 days of the date of the determination letter.
- b) Pending a determination by USDOT, the decision rendered by the Certifying Partner remains in effect for the TUCP. Upon notification by USDOT, the TUCP Certifying Partner will forward a copy of the complete administrative record for review.
- c) All appeal decisions rendered by USDOT are administratively final and are not subject to petitions for reconsideration.
- d) A firm that is denied DBE certification may not again apply for certification with the TUCP for a period of one year.
- e) The Database Manager will receive written notification of the certification determination rendered by the TUCP Certifying Partner.

2. Removal of Certification

- a) Any firm that was certified under 49 CFR Part 26 and has had their certification removed may file a written rebuttal or appear in person at an informal hearing.
- b) All requests for an informal hearing must be filed with the TUCP Certifying Partner responsible for the removal of DBE certification. The firm will have the opportunity to present information in person or in writing.
- c) The TUCP Certifying Partner must maintain a complete record of the hearing, by a means acceptable under State law for the retention of a verbatim record of an Administrative Hearing.
- d) Separations of Functions: The TUCP Certifying Partner must ensure that the decision in a proceeding to remove a firm's eligibility (decertification) is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
- e) Any firm may appeal directly to the United States Department of Transportation (USDOT). Such appeal must be filed within 90 days of the date of the denial letter from the Certifying Partner.
- f) Pending a determination by the USDOT, the decision rendered by the TUCP Certifying Partner remains in effect for the TUCP.
- g) Upon notification by USDOT, the TUCP Certifying Partner will forward a copy of the complete administrative record for review. USDOT will make a determination based solely on the administrative record.
- h) USDOT will provide written notice of its decision to the TUCP and the appellant.
- i) It is the policy of USDOT to make its determination within 180 days of receiving the complete administrative record. If a determination is not made within this period, USDOT will provide written notice to the parties explaining the reason for the delay and a date by which the appeal decision will be made.
- j) All appeal decisions rendered by the USDOT are administratively final and are not subject to petitions for reconsideration.

K. Third Party Challenge

1. In compliance with Section 26.87 the TUCP Certifying Partners shall accept written complaints from any person, including Non-Certifying Partners, USDOT, and or a TUCP Certifying Partner alleging that a currently certified DBE firm is ineligible.
2. The complainant must state the specific reasons for the challenge and submit documentation in support of the complaint. The complainant's identity shall be protected as provided for in §26.109 (b).
3. The challenged firm shall be notified, in writing, by the original TUCP Certifying Partner, of the challenge, the basis for the challenge and the relevant regulations.
4. The TUCP Certifying Partner responsible for the original certification shall thoroughly investigate the complaint within a reasonable time not to exceed 60 days.
5. The TUCP Certifying Partner shall notify the challenged firm in writing via certified mail of the preliminary findings of the complaint.
6. If reasonable cause to remove DBE certification eligibility is found, the original Certifying Partner will notify the complainant and DBE firm of the specific grounds for removal and will inform the DBE firm of its right to an informal hearing to address the preliminary findings.
7. The challenged firm may request reconsideration in writing, of the intent to remove certification eligibility, within 15 days of the date of the notice.
8. The request for an informal hearing must be made to the investigating TUCP Certifying Partner and must indicate whether the firm wishes to file a written appeal or appear in person for a hearing.
9. USDOT may also notify the TUCP of reasonable cause to find a certified DBE firm to be ineligible. In such cases, the TUCP shall without delay begin a proceeding to determine whether the firm's eligibility should be removed, as provided in Section 26.87.

III.AGENCY COMPLIANCE

If any TUCP Certifying Partner has reason to believe that another TUCP Certifying Partner is not in compliance with the requirements of 49 CFR 26, Subpart E, they should bring the matter to the attention of the TUCP Executive Committee. The TUCP Executive Committee will be responsible for reviewing any compliance matters that pertain to the requirements of 49 CFR Part 26 Subpart E. If the TUCP Certifying Partner raising a compliance matter is not satisfied with the action taken by the TUCP Executive

Committee to resolve the matter, they may make a written complaint to the appropriate U.S. DOT Intermodal Agency, e.g., FTA, FAA, FHWA etc.

**Texas Unified Certification Program
Memorandum of Agreement and Standard Operating Procedures
Amendment One**

From: R.D. Brown, Interim Director, Certification and Reporting
Office of Civil Rights, TxDOT

Effective Date: October 14, 2008

Purpose

The purpose is to revise Section II and Section III of the Texas Unified Certification Program Standard Operating Procedures

Changes:

Under Section II. Definitions – Withdrawal of Application - An applicant's written request to the Certifying TUCP Partner to cease the certification review process. An applicant that has withdrawn its application cannot again reapply for DBE certification for twelve (12) months from the date of the withdrawal changed to:

An applicant's written request to the Certifying TUCP Partner to cease the certification review process. A new applicant that has withdrawn its application, prior submitting a complete DBE application (Desk Audit Checklist) and prior to an On-site Eligibility Review, cannot again reapply for DBE certification for six (6) months from the date of the withdrawal.

Any application withdrawn after an On-site Eligibility Review is conducted must wait for a period of one year (12 months) from the date of withdrawal, to reapply.

Under Section III. H. 4. - A firm that is denied DBE certification may not again apply for certification with the TUCP for a period of one year changed to:

A firm decertified for cause may not apply again for DBE certification with the TUCP for a period of one year (12 months). A firm that is decertified for not submitting an Annual Affidavit (failure to cooperate clause) may reapply for DBE certification after a six (6) month waiting period from the date of decertification.

**SIGNATURES AND ACKNOWLEDGEMENT OF CERTIFYING ENTITIES ON
FOLLOWING PAGE**

R. P. Brown
Texas Department of Transportation

4/3/09
Date

Sheena Morgan
North Central Texas Regional Certification

4/3/09
Date

R. R. Mitchell
South Central Texas Regional Certification

4/3/09
Date

Elton R. Pinner Deanna Perez Brown
City of Austin

4/3/09
Date

W. C. [Signature]
Corpus Christi Regional Transportation Authority

4/3/09
Date

Dorothy [Signature]
City of Houston

4/3/09
Date