

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Unified Certification Program

OKLAHOMA

TABLE OF CONTENTS

General	1
Ratification Process	1
Implementation Schedule	2
Regulatory Requirements	2
DBE Directory	2
Initial Consolidation.....	3
Certification Procedures	3
Denial of Initial Requests for Certification.....	5
Removal of Eligibility.....	5
Compliance	7
Revisions to the UCP Document	8
Confidentiality of Records.....	8

OKLAHOMA DISADVANTAGED BUSINESS ENTERPRISE PROGRAM UNIFIED CERTIFICATION PROGRAM

General

As required by 49 CFR Part 26.81, Subpart E, USDOT recipients in the state of Oklahoma must participate in a Unified Certification Program (UCP). Within three years of March 4, 1999, Oklahoma DOT recipients must sign an agreement establishing the UCP for Oklahoma and submit the agreement to the US Secretary of Transportation for approval.

This agreement provides for the establishment of a UCP meeting all the requirements of 49 CFR Part 26, Subpart E. This agreement specifies that the UCP will follow all certification procedures and standards of this part, on the same basis as the recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement commits recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part.

The partnership of Oklahoma USDOT recipients determined that due to the availability of resources, the Oklahoma Department of Transportation (ODOT) would assume the lead role in the UCP as the certification entity. ODOT, through its Regulatory Services Office, has an established certification program and sufficient staff to perform these functions.

The UCP will not establish, recommend, or alter any agency's overall Disadvantaged Business Enterprise (DBE) Program, other than to supplement an approved program submittal. DBE goal development, administration, monitoring, and reporting remains the sole responsibility of the agency with a USDOT approved DBE Program, in accordance with 49 CFR Part 26, subject to any oversight requirements of FHWA, FAA or FTA. All USDOT recipients to whom the UCP applies will be required to ratify the UCP agreement and all DBE certifications by the UCP will be binding.

Ratification Process

All recipients of federal funds administered by the USDOT that are required to have a DBE Program, either directly or indirectly, must ratify and comply with the UCP agreement. Failure to ratify the agreement may result in the loss of federal funds from the UCP members and/or the USDOT.

Prior to submission of the UCP document to USDOT, recipients will be required to make an affirmative statement of intent to comply and will be subject to administrative review by the UCP or any branch of the USDOT. If at any time a recipient of federal funds not previously covered by this agreement becomes eligible to require a DBE Program, the recipient must accept and execute the UCP agreement and participate accordingly.

Implementation Schedule

Upon approval of the submitted Unified Certification Program, the Oklahoma UCP shall immediately move forward to consolidate all certification functions under ODOT.

Regulatory Requirements

The UCP shall make all certification decisions on behalf of all DOT recipients in Oklahoma with respect to participation in the DBE Program. The UCP shall notify each recipient of applications and all actions taken regarding applicants. In the event of removal of certification, the applicable recipient shall be notified of the pending decision.

Certification decisions by the UCP will be binding on all DOT recipients in Oklahoma.

The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all DOT recipients in Oklahoma.

All obligations of DOT recipients with respect to certification and nondiscrimination as required in 49 CFR Part 26.81(b)(3) will be carried out by the UCP, and recipients may use only the UCP that complies with the certification and nondiscrimination requirements of 49 CFR Part 26.

All certifications by the UCP shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

The UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The home state UCP will be contacted and shall share information and documents concerning the firm with the Oklahoma UCP. The Oklahoma UCP will share certification information with other states upon request.

DBE Directory

The UCP will maintain a unified DBE Directory containing all firms certified by the UCP. The printed paper version of the directory will be updated monthly and made available to all interested persons. The directory will list each certified firm, its address, phone number, owner, ethnic/gender designation, and work category. The directory will be maintained by the Oklahoma Department of Transportation and will be available to the public electronically, on the Oklahoma Department of Transportation's website (<http://www.okladot.state.ok.us/>), as well as in print. The directory may also be obtained by calling the Regulatory Services Office of ODOT at (405)521-6046 or 1(800)788-4539. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

Initial Consolidation

In order to establish a comprehensive UCP Directory of certified DBEs, an initial consolidation process will occur. Recipients administering approved USDOT DBE Programs under 49 CFR Part 26 shall submit to the UCP, for review, a list of currently certified firms to be added to the UCP Directory. Firms submitted for review must be currently certified in accordance with 49 CFR Part 26, Subpart D. This does not include firms certified as a DBE, MBE, or WBE by any city, state, or federal agency or any other entity who does not comply with 49 CFR Part 26, as determined by the UCP.

The UCP will review any investigative information, the certification file, and any other documentation provided, as necessary. The UCP may request additional information from the recipient or firm as determined on a case-by-case basis. A determination will then be made as to whether or not the firm meets the eligibility requirements of 49 CFR Part 26, Subpart D. If the UCP determines the firm is ineligible to participate as a DBE, the firm will be advised of the intent to remove their certification, setting forth the reasons for the proposed determination. The firm will be advised of the appeal process found in the section titled UCP Initiated Proceedings.

After the effective date of this UCP agreement, only firms certified based on guidelines prescribed in 49 CFR Part 26 and provisions under this agreement shall be recognized as certified by the UCP.

Certification Procedures

The Oklahoma UCP agrees to certify all firms in compliance with 49 CFR Part 26. The Uniform Certification Application will be made available, both in print and on the Oklahoma Department of Transportation's website. The UCP will determine the eligibility of firms as DBEs consistent with the standards of 49 CFR Part 26, Subpart D.

Once the Regulatory Services Office receives a completed Uniform Certification Application and supporting documentation, an on-site review of the firm will be performed, if the firm is located within the state of Oklahoma. In the instance an out of

state firm applies, the home state UCP or, until all UCP's are functioning, the currently approved home state certification entity will be contacted for certification information, including the on-site performed by the home state. If there is no recent on-site available, one will be requested. Once the on-site review is performed, the DBE Reviewer will forward their report, eligibility checklist, and the applicant's file to the DBE Certification Officer for the UCP. This will be the manager of the Regulatory Services Office for the Oklahoma Department of Transportation. The Certification Officer will either make the certification decision or choose to forward the file and supporting documentation to the DBE Certification Committee. If certified, the firm and the applicable recipient will be mailed a certification notice.

The UCP will ensure that the applicant attests to the accuracy and truthfulness of the information on the application form by requiring the applicant to complete the affidavit of certification, as provided for in the Uniform Certification Application.

Once certified, a DBE shall remain certified for a period of three years unless its certification has been removed through the procedures of 49 CFR Part 26.87. If the factual basis on which the certification was made changes, the UCP shall require a DBE to reapply for certification. At the end of three years the DBE's certification expires and the DBE firm may apply for certification again by requesting and completing an application.

Once certified, a DBE must inform the UCP of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership, control requirements, or any material changes in the information provided in the application form. Changes in management responsibility among members of a limited liability company are covered by this requirement for notification to the UCP. If such changes occur, the DBE must provide the UCP written documentation within 30 days of the occurrence of the change, along with supporting documentation describing in detail the nature of such changes. If the DBE fails to make timely notification of such a change, he or she will be deemed to have failed to cooperate under 49 CFR Part 26.109(c), which is grounds for appropriate action, including, but not limited to, denial of certification, removal of eligibility, and/or suspension or debarment of the firm if it is prequalified.

A DBE must provide to the UCP, every year on the anniversary of the date of the DBE firm's certification, a sworn affidavit affirming that there have been no changes in the firm's circumstances which affect its ability to meet size, disadvantaged status, ownership, control or any material changes in the information provided in its application form, except for changes about which the DBE has notified the UCP under the above paragraph. The affidavit will specifically affirm that the business continues to meet the small business size criteria. If the DBE fails to provide this affidavit in a timely manner, it will be deemed to have failed to cooperate and proceedings will commence to remove the DBE's certification as set forth in 26.87. The UCP will mail the firm, prior to its anniversary date, the annual affidavit. The firm will have 15 days to complete the affidavit, attach supporting documentation as to small business size, and return the affidavit and documentation to the UCP. If the factual basis upon which certification

was made changes, the UCP may require the firm to reapply for certification and the UCP may conduct an eligibility review of the firm.

At the end of the three year certification, a firm wishing to be certified again will be required to complete a Uniform Certification Application. The qualifying firms will be notified, in writing, by the UCP that their certification is due to expire and be given the opportunity to request certification through the completion of the application. Once a completed application is received, an on-site review will be completed. The review, along with supporting documentation, will be utilized by the DBE Reviewer in writing the eligibility report. The report, eligibility checklist, and file will be forwarded to the DBE Certification Officer for consideration of the firm for certification.

Decisions on applications for certification will be made within 90 days of receiving from the applicant firm all information required. The time may be extended once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

UCP members who are required to develop a DBE Concession plan in accordance with the Regulation, 49 CFR Part 23, Subpart F, and Part 26, where applicable, will be responsible for approving concessionaires. If additional assistance is requested, ODOT will provide certification assistance to the UCP member.

Denial of Initial Requests for Certification

If a firm, which is not currently certified with the UCP, or whose certification has expired at the end of three years, is denied certification as a DBE, the UCP will provide the firm a written explanation of the reasons for denial, specifically referencing the evidence in the record that supports each reason for denial. A firm may request reconsideration of the file within 15 days of receipt of the letter. The firm's written request for reconsideration, along with supporting documentation, should specifically address the reasons for denial cited in the UCP's decision. If no response is received from the applicant firm within 15 days, the decision becomes administratively final. When a firm is denied certification, they may not apply for certification for a time period of 12 months from the firm's receipt of the denial letter. The firm may appeal the UCP's denial of certification to the USDOT under 49 CFR Part 26.89.

Removal of Eligibility

Ineligibility Complaints

Any person may file a written complaint with the UCP alleging that a currently certified firm is ineligible to participate in the DBE Program. The complainant shall specify the alleged reasons why the firm is ineligible. The UCP is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint should

include all information supporting the assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants identities will be protected as provided in 49 CFR Part 26.109(b). The UCP will review the records concerning the firm, any material provided by the firm and the complainant, and any other available information. The investigator may request additional information from the firm or conduct any other investigation deemed necessary. The applicable recipient shall be notified of the complaint.

If the UCP determines that there is reasonable cause to believe that the firm is ineligible, the UCP will provide written notice to the firm that the UCP proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the UCP determines reasonable cause does not exist, the complainant and the firm will be notified in writing.

UCP Initiated Proceedings

If based upon changes in the circumstances of a firm's eligibility or other information that comes to the attention of the UCP, the UCP determines that there is reasonable cause to believe a currently certified firm is no longer eligible, the UCP will provide written notice to the firm that the UCP proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons will reference the evidence in the record on which each reason is based. The letter will be provided to each recipient by the UCP.

USDOT Directive to Initiate Proceeding

If the concerned operating administration determines that information in the certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a currently certified firm does not meet the eligibility criteria of the Regulation, the concerned operating administration may direct the UCP to initiate a proceeding to remove the firm's certification.

The concerned operating administration must provide the UCP and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. The UCP must immediately commence and prosecute a proceeding to remove the eligibility as provided by the Regulation.

Appeal Rights and Informal Hearings

When a firm is notified that there is reasonable cause to remove its eligibility, the UCP will give the firm an opportunity to meet with the DBE Certification Officer to provide additional information or clarification of the issues cited in the letter of proposed decertification. After meeting with the firm, the Certification Officer will notify the firm in writing of its findings. If the firm is unable to clarify the issues cited, it will be informed of its opportunity to request a hearing before the DBE Hearing Board. This request shall be made in writing, within 30 days of receipt of the findings, and should be addressed to

the Oklahoma Department of Transportation's General Counsel, who will then schedule a hearing. The firm may elect to present information and arguments in writing, without going to a hearing. The DBE Hearing Board is an Administrative Hearing Board comprised of three (3) ODOT employees chosen by ODOT's General Counsel, who will ensure that none of these individuals take part in decisions to remove a firm's eligibility, and they are not subject to direction from the office or personnel who took part in these actions.

Following the decision, the DBE Hearing Board will provide the firm written notice of the decision and reasons for it, including specific references to the evidence in the record that supports the decision. The notice will inform the firm of the consequences of the decision and the availability of appeal to the US Department of Transportation under 49 CFR 26.89. Each recipient will be notified of the Hearing Board's decision.

Administrative Removal of Eligibility

In circumstances where a certified firm, or a new applicant firm, has failed to submit required documentation or exceeded Personal Net Worth thresholds, there will be no administrative re-consideration. Those circumstances include:

- 1. Any certified firm that does not submit the annual "No change Affidavit" required by 49 CFR Part 26, it will be deemed to have failed to cooperate and proceedings will commence to remove the DBE's certification as set forth in 49 CFR Part 26.87.**
- 2. Any firm not previously certified and denied certification due to exceeding Personal Net Worth cap by the disadvantaged owner cannot appeal to the UCP.**
- 3. If any certified firm's disadvantaged owner's Personal Net Worth exceeds the cap within the 3 year period of certification, the eligibility of the firm will be removed. When the disadvantaged owner challenges the UCP's determination that his or her PNW exceeds the cap, a decertification proceeding under 49 CFR Part 26.87 will be held.**

Compliance

In the event of noncompliance complaints under 49 CFR Part 26.103, the UCP through the Oklahoma Department of Transportation will cooperate with the concerned

operating administration's Office of Civil Rights in providing information and access to documentation. The UCP shall also cooperate with the concerned operating administration in the event of a compliance review of paperwork and on-site reviews. Files will be maintained in the Regulatory Services Office.

In order for the UCP to be successful and the recipients to maintain the level of trust necessary to effectively comply with the UCP requirements, minimum requirements for compliance include:

1. All decisions related to the certification must be made in compliance with 49 CFR Part 26. The UCP shall maintain the political independence to make decisions based solely upon the specific eligibility requirements.

2. Outside entities such as construction boards or other politically mandated organizations will not be involved in the certification determination.

3. The UCP understands there is no "emergency" certification, nor is there a provision within 49 CFR Part 26 for "conditional" certification. The eligibility requirements are to be determined with the factors present at the time of application and the decision is to be made in compliance with Part 26.

Revisions to the UCP Document

Revisions or changes to this UCP document can be proposed by any member. The revision must be submitted in writing to the UCP and include reasons why the change is necessary. The UCP will submit the proposed change to the members for review and comment. A consensus of the members will be necessary to affect any changes to the document before the revised agreement is submitted to USDOT for approval.

Confidentiality of Records

The UCP, through the certification entity of ODOT and/or certifying agent, shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal and state law.

Notwithstanding any provision of state law, the UCP will not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. In the case of a noncompliance complaint, the identity of complainants will be kept confidential, at their election.