

**TEXAS UNIFIED CERTIFICATION
PROGRAM**

STANDARD OPERATING PROCEDURES

**U.S. DEPARTMENT OF TRANSPORTATION
PARTNERS**



**Texas Department of Transportation
City of Houston
City of Austin
Corpus Christi Regional Transportation Authority
North Central Texas Regional Certification Agency
South Central Texas Regional Certification Agency**

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TEXAS UNIFIED CERTIFICATION PROGRAM STANDARD OPERATING PROCEDURE

I. INTRODUCTION

A Disadvantaged Business Enterprise (DBE/ACDBE) Unified Certification Program (UCP) has been established in the State of Texas in accordance with Title 49 Part 23 and Part 26 of the Code of Federal Regulations. Pursuant to a Memorandum of Agreement (MOA) signed by all certifying partners 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) are Certifying Partners for the TUCP. The cost of creating and establishing the TUCP web site and the electronic DBE/Airport Concessionaire DBE (ACDBE) 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 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/ACDBE certification program in accordance with 49 CFR Parts 23 and 26. 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.

A thorough certification process ensures that the DBE/ACDBE program benefits only bona fide disadvantaged businesses. In order to ensure consistent application and interpretation of the regulatory requirements for DBE/ACDBE 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 23 and Part 26.

II. DEFINITIONS

- A. **BURDEN OF PROOF:** Measure of persuasion that is required to convince someone that an alleged fact is true.
- B. **DBE/ACDBE 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 23 and 26.
- C. **CERTIFICATION INTERVIEW:** Face-to-face meeting between the applicant

firm's qualifying owner(s) for DBE/ACDBE certification and the Certifying Partner.

- D. **DECISION MEMORANDUM:** Written document prepared by Certifying TUCP Partner detailing basis of decertification determination.
- E. **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 (12 months) from the date of denial.
- F. **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.
- G. **GRANTEE:** Any public entity that receives USDOT assistance.
- H. **TUCP CERTIFYING PARTNER:** A State of Texas federal aid recipient with a current DBE/ACDBE 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 remove DBE/ACDBE certification in compliance with §26.87. 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.
- I. **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.
- J. **RECIPIENT:** Any public entity, which receives direct USDOT financial assistance.
- K. **SUB RECIPIENT:** Any public entity that receives USDOT financial assistance through another recipient.

III. CERTIFICATION PROCEDURES

- A. **APPLICATION FOR DBE/ACDBE CERTIFICATION:** All applicants requesting initial DBE/ACDBE certification must complete and submit a complete certification application package to one of the TUCP Certifying Partners. The Certifying Partner will review the application to 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 5 business days to the appropriate TUCP Certifying Partner.
- B. **APPLICATION FOR ACDBE (an Airport Concessions DBE application shall be processed by the TUCP Certifying Partner based on the geographical area of the applicant firm's principal place of business in the State of Texas. Airport DBE applications will be processed by the receiving TUCP entity by identified territories as referenced in the MOA.**
- C. **APPLICATION FOR INTERSTATE DBE/ACDBE:** DBE/ACDBE interstate applicants are required to:
1. Applicants must submit all supporting documents and any other information submitted to the home state or any other state related to the firm's certification. This includes affidavits of no change as referenced in CFR §26.83(j) and any notices of changes as referenced in CFR §26.83(i) that have been submitted to the home state, as well as any correspondence submitted to other UCPS.
 2. Provide any notices or correspondence of denied certification in another state or appealed a certification decision with USDOT as referenced in CFR §26.89.
 3. Submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.
 - a) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by §26.85(c)(1), is an identical copy of the information submitted to the home state.
 - b) If the on-site report from the home state is more than three years old, the applicant may be required to affirm that the facts in the on-site report remain true and correct. *(See APPENDIX A AND APPENDIX B of the TEXAS UNIFIED CERTIFICATION PROGRAM STANDARD OPERATING PROCEDURE)*

4. A complete package consists of the following:
 - a) USDOT Uniform Certification Application and Affidavit. (49 CFR, Part 26, Appendix F)
 - b) Personal Net Worth Statement for each qualifying socially and economically disadvantaged owner. (49 CFR, Part 26, Appendix G)
 - c) Required basic and supporting documentation as determined by business structure and in accordance with 49 CFR Parts 23 and 26.

D. INTAKE

1. Immediately upon receipt of the application package, it is reviewed for completeness. Specifically, the Affidavit of Certification and Personal Net Worth Statement are reviewed for 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 principle place of business. Determination of principle place of business is necessary in determining whether the Certifying Partner in receipt of the application will process the application or transfer it to another Certifying Partner with 5 days of receipt of the applications.
3. If a DBE applicant/firm is bidding on a TxDOT project and the TUCP Certifying Partner is unable to setup a site visit within 30 days, but TxDOT can, TxDOT will complete the certification. TxDOT will transfer all documents to the TUCP Certifying Partner upon completion. If there is a certification challenge, both TxDOT and the TUCP Certifying Partner will address the challenge.
4. If a TUCP Member Entity decides a submitted application will present a conflict of interest, a request will be sent to another TUCP entity to review and process the application. The TUCP entity that received the application will inform the applicant within 10 business days of receipt of application to applicant advising of conflict, and the TUCP entity that will process the application.

E. 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 ninety (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 no less than fifteen (15) business days and no more than thirty (30) days for the applicant to provide the requested information and shall identify the specific days in the entities internal SOP.
4. The processing staff will monitor the entity's 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.

F. 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 §23.33 and §26.65 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 §23.35 and §26.67 of the regulations.
 - d) 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.
2. Failure to Meet Requirement: If the applicant firm or its qualifying owners fail to meet any one of the threshold requirements for DBE/ACDBE certification, the firm is to be deemed ineligible for DBE/ACDBE 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) Citizenship: Each individual qualifying the firm for DBE/ADCBE 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 as referenced in CFR 26.67(a).
- c) 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.

G. 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 may be conducted on certified DBE/ACDBE firms in accordance with §26.83 (h) (2) of the regulations. 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.
 - a) 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.
 - b) 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.
 - c) An on-site visit to the job-site must be conducted if at the time of the on-site, the applicant firm is working.

2. The following information, if applicable, should be received and reviewed no later than the on-site review:
 - a) Cash receipts and disbursements
 - (1) Check for entries in the cash receipts journal, which disclose initial capital contributions.
 - (2) Verify operational expenditures in the cash disbursements journal. Note questionable/exceptional/unusual entries and the frequency or consistency of such expenditures.
 - (3) Note payments to and from shareholders, directors, officers and key employees in the cash disbursements journal.
 - (4) Note payments to similar businesses for possible broker activity or evidence of conduit activity.
 - (5) Cross reference cash disbursements with cancelled checks.
 - b) Bank statements and cancelled checks
 - (1) Verify initial capitalization of firm with the first bank statement, if available.
 - (2) Verify and document signature authority and consistency in which DBE/ACDBE owner v. non-DBE/ACDBE owner(s)/offices sign checks.
 - (3) Verify payments to shareholders, key employees and consultants.
 - (4) Pay particular attention to the “memo” section of checks.
 - (5) Determine if there are any additional checking accounts not disclosed prior to the visit. If so, note the authorized signatories.
 - (6) Cross reference payments to and from clients, suppliers, consultants, etc.
 - c) Payroll
 - (1) Determine who is on the firm’s payroll.
 - (2) Determine if the owner is receiving compensation in accordance with his/her ownership interest.
 - (3) Determine who receives bonus payments and amounts.
 - (4) Compare W-2’s and 1099’s to payroll register, to extent possible, for key employees.
 - (5) Pay attention to any “memo” notations on any payroll checks.
 - d) Invoices and receipts

- (1) Check telephone bills to determine if they are addressed to the DBE/ACDBE firm.
 - (2) Review invoices to substantiate method and source of payment.
 - (3) Check invoices for suggestion of brokering activity or reliance on non-DBE/ACDBE firms.
 - (4) Examine invoices for resolution of regular dealer issues (freight charges).
- e) Contract files
- (1) Determine who executes contracts on behalf of the firm.
 - (2) Verify the services provided by the applicant firm and the terms and conditions of the provision of their services.
 - (3) Verify consistency in which firm does business with a particular firm and whether there are any issues of dependency.
- f) Inventory and equipment
- (1) Identify nature and use of equipment possessed by firm.
 - (2) Verify ownership of equipment with invoices.
 - (3) If equipment is leased, review equipment lease agreements.
 - (4) Identify inventory maintained by firm.
 - (5) Determine whether lack of inventory suggests broker or conduit activity.
 - (6) If regular dealer, verify inventory, warehouse facility, transportation equipment, etc.
 - (7) Determine if firm's name is on vehicles (trucks).
- g) Bonding and insurance
- (1) Determine who is guaranteeing or financing bonding.
 - (2) Is bond commensurate with size of firm?
 - (3) Are insurance documents in the name of the firm?
 - (4) Verify types of insurance maintained by firm.
 - (5) 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

- (1) Cross reference documents in corporate kit with original submission.
 - (2) Review all minutes and entries for voting, control, attendance, etc.
- i) Corporate kit or business organization documents
- (1) Review stock transfer ledger.
 - (2) Review cancelled/voided stock certificates and note reasons for cancellations.
 - (3) Review non-issued stock certificates to determine if there is numerical continuity.
 - (4) Verify corporate seal.
 - (5) Review by-laws for revisions since original submission of documents.
- j) Employment agreements
- (1) Determine the existence of any Employment Agreements for owner(s) or key personnel.
 - (2) 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
- (1) Determine if the firm has identifying signs outside or inside of the building/office.
 - (2) Determine if DBE/ACDBE owner has own office.
 - (3) Request a tour of facilities and observe equipment on premises.
 - (4) Ask questions regarding operation of equipment.
 - (5) Determine if office space shared with other companies, and if so, the nature of the business of the other companies.
 - (6) Determine if equipment, supplies, etc. is shared with other companies.
 - (7) If shared facilities, equipment, verify arrangement for sharing.
 - (8) Determine if owner(s) are operating other related or unrelated businesses from the location. If so, identify the business and its owners.

H. APPLICATION WITHDRAWALS

1. An applicant's failure to permit an on-site review shall be grounds for denial of DBE/ACDBE certification for failure to cooperate. The firm will be denied certification and cannot reapply for twelve 12 months. The firm may appeal the denial determination to U.S. DOT in accordance with the procedures set forth in §26.89.
2. An applicant can withdraw the certification application prior to the certification determination and can reapply at any time in accordance with the procedures set forth in §26.83. The Certifying TUCP Partner may place the reapplication at the "end of the line" behind other applications that have been made since the firm's previous application was withdrawn.
3. An applicant's written request to the Certifying TUCP Partner to cease the certification review process is considered a withdrawal from the certification application review. A new applicant that has withdrawn its application, prior to submitting a complete DBE/ACDBE application (Desk Audit Checklist) and prior to an On-site Eligibility Review, can again reapply for DBE/ACDBE certification at any time. Any applicant that withdraws an application after an On-site Eligibility Review is conducted can reapply at any time if the application is withdrawn prior to the TUCP Certifying Partner's certification determination.
4. A firm decertified for cause may not apply again for DBE/ACDBE 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/ACDBE certification after a six (6) month waiting period from the date of decertification.

I. 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.

J. DBE/ACDBE CERTIFICATION AND ANNUAL CERTIFICATION REVIEW

1. Written Notification: A firm will be notified in writing by the TUCP Certifying Partner that it has been granted DBE/ACDBE certification.
2. Length of Certification: Once a firm is certified as a DBE/ACDBE 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/ACDBE 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/ACDBE certification. Such notice must be made within thirty (30) days of the change-taking place.

Once a DBE/ACDBE firm has notified their TUCP certifying agency of a location change of the principal place of business, which changes the TUCP certifying agency's authority, that agency must transfer firm's DBE/ACDBE authority. Such notice by DBE/ACDBE firm must be made within (30) days of the change to the TUCP certifying agency. The TUCP certifying agency will then notify the DBE/ACDBE firm and the new TUCP partner agency responsible for the firm's certification in writing and transfer their file within (14) days.

4. No Change Affidavit: A certified DBE/ACDBE firm must submit annually, on the anniversary of DBE/ACDBE 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/ACDBE certification, including the support documentation.
 - a) Each firm will be notified by the TUCP Certifying Partner at least thirty (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 thirty (30) days from the date that the submission was due, of the TUCP's intent to decertify the DBE/ACDBE 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.
 - d) Certification reviews: In the interest of prudent auditing, each TUCP Member has the option of conducting on-site reviews of any firm at any time in light of changed circumstances in operational control, management or ownership; a complaint or other information concerning a firm's eligibility and firms with on-site reviews older than (5) years prioritizing the oldest ones for review

first. Effective, January 1, 2018, TUCP Member agencies will conduct these on-site reviews based on the following:

- Less than 100 DBE firms in its directory: Up to 10 on-site reviews annually.
- 101 - 500 DBE firms in its directory: Up to 15 on-site reviews annually.
- More than 500 DBE firms in its directory: Up to 25 on-site reviews annually.

K. NAICS EXPANSION

If a DBE applicant/firm is bidding on a TxDOT project and the TUCP Certifying Partner is unable to setup a site visit within 30 days (if applicable), but TxDOT can, TxDOT will complete the expansion. TxDOT will transfer all documents to the TUCP Certifying Partner upon completion. If there is a certification challenge, both TxDOT and the TUCP Certifying Partner will address the challenge.

L. INITIAL DENIAL OF DBE/ACDBE CERTIFICATION

1. A firm will be notified in writing by the Certifying Partner that it has been denied DBE/ACDBE 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/ACDBE certification may not apply for certification with the TUCP for a period of one year (12 months).
5. A firm denied DBE/ACDBE certification may appeal the denial of DBE/ACDBE certification to the USDOT in accordance with §26.89 of the regulation.
6. Coordination of Denial Hearings and request for certification appeals, hearings and or meetings shall be coordinated and administratively handled by certifying TUCP Partner.

M. REMOVAL OF DBE/ACDBE ELIGIBILITY (DECERTIFICATION)

1. The TUCP members agree to follow the eligibility removal procedures set forth in 49 CFR §26.87 including:
 - a) Ineligibility complaints: Any person, including another TUCP member, may file a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reason(s) why the firm is ineligible within 90 days.

- b) Recipient initiated proceedings: If a direct recipient of federal funds determines that there is reasonable cause to believe that a currently certified firm is ineligible based on notification by that DBE/ACDBE firm of a change in its circumstances or any other information that becomes available, they must provide written notice to the firm that it proposes to find them ineligible for the DBE/ACDBE program setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.
- c) DOT directive to initiate proceeding: If the concerned operating administration (FHWA, FTA, FAA) determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.
- d) When a firm is notified that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, it will be provided the opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.
- e) A DBE/ACDBE firm whose eligibility has been removed (decertified) for any of the following reasons will be afforded an Appeal Process as stated in Section M:
 - (1) The business has changed to the extent that it is no longer owned or controlled by socially and economically disadvantaged individual(s).
 - (2) The DBE/ACDBE firm is no longer an ongoing business entity.
 - (3) The socially and economically disadvantaged owners falsified a sworn statement. This action may also result in more punitive action such as debarment.
 - (4) The DBE/ACDBE fails to notify the TUCP Certifying Partner, within 30 days, of changes in ownership, control, independence or status as an ongoing concern.
 - (5) A determination by the TUCP Certifying Partner that the firm no longer meets certification eligibility standards.
 - (6) The DBE/ACDBE 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.

- f) Decertified firms shall be removed from the TUCP directory.
- g) A firm decertified for cause may not apply again for DBE/ACDBE 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/ACDBE certification after a six (6) month waiting period from the date of decertification.

M. APPEAL PROCESS

1. Initial Denials

- a) A firm denied DBE/ACDBE certification may appeal the denial of DBE/ACDBE certification to the United States Department of Transportation (USDOT) in accordance with §26.89 of the regulation. Such appeal must be filed within ninety (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 within fifteen (15) business days.
- 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/ACDBE certification may not again apply for certification with the TUCP for a period of one year (12 months).

2. REMOVAL OF CERTIFICATION

- a) Any firm that was certified under 49 CFR Part 23 and Part 26 and has had their certification proposed to be 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/ACDBE certification. The firm will have the opportunity to present information in person or in writing to the certifying TUCP Partner and all aspects of the hearing shall be coordinated by the TUCP Certifying Partner.
- 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.

N. Decertification Procedures (3rd Party Certification Challenges)

1. In compliance with §26.87 the TUCP Certifying Partners shall accept written complaints from any entity alleging that a currently certified DBE/ACDBE 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 within five (5) business days 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 sixty (60) days.
5. A TUCP Certifying Partner may accompany and or conduct an investigation when a complaint is filed by another certifying partner. The TUCP Partner who receives the certification challenge has fifteen (15) days to respond in writing indicating the certification decision or indicate wishes for the challenger to proceed with the eligibility review. In cases where another TUCP 3rd Party has conducted the eligibility review, that TUCP Partner shall be responsible for all administrative procedures associated with the decertification process.
6. When TUCP Certifying Partners cannot reach a consensus regarding the eligibility of a DBE/ACDBE certification as a result of an investigation, the information will be forwarded to an independent certifying partner or to FHWA-Texas Division for a final determination.
7. The TUCP Certifying Partner shall notify the challenged firm in writing via certified mail of the preliminary findings of the complaint.
8. The challenged firm may request reconsideration in writing, of the intent to remove certification eligibility, within fifteen (15) days of the date of the notice.
9. The request for an appeal 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 to be conducted by the certifying entity.
10. USDOT may also notify the TUCP of reasonable cause to find a certified DBE/ACDBE 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 §26.87.

O. Suspension of Certification

1. A TUCP Certifying Partner shall immediately suspend a DBE/ACDBE'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.
2. (a) A TUCP Certifying Partner may immediately suspend a DBE/ACDBE'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/ACDBE firm to remain certified, or when the DBE/ACDBE fails to notify the recipient or TUCP Certifying Partner in writing of any material change in circumstances as required by §26.83(i) or fails to timely file an affidavit of no change under §26.83(j).
(b) In determining the adequacy of the evidence to issue a suspension under paragraph b) of this section, the TUCP Certifying Partner shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.
3. The concerned operating administration may direct the TUCP Certifying Partner to take action pursuant to paragraph a) or b) of this section if it determines that information available to it is sufficient to warrant immediate suspension.
4. When a firm is suspended pursuant to paragraph a) or b) of this section, the TUCP Certifying Partner shall immediately notify the DBE/ACDBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE/ACDBE.
5. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of this part to determine whether the DBE/ACDBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE/ACDBE receives, or is deemed to have received, the Notice of Suspension.
6. Following receipt of the Notice of Suspension, if the DBE/ACDBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE/ACDBE believes that its eligibility should be reinstated, it must provide to the TUCP Certifying Partner information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the TUCP Certifying Partner must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87 of this part. All Certifying Partners agreed to establish a 30 day deadline for firms to respond to suspension notices prior to commencing decertification proceedings. If the TUCP Certifying Partner commences a

decertification proceeding, the suspension remains in effect during the proceeding.

7. The decision to immediately suspend a DBE/ACDBE under paragraph a) or b) of this section is not appealable to the US Department of Transportation. The failure of a TUCP Certifying Partner to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by this section, is appealable to the U.S. Department of Transportation under §26.89, as a constructive decertification.

P. Agency Compliance

1. 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 for review and issue a Corrective Action Plan (CAP) giving the TUCP Partner 90 days to correct findings.
2. If the Executive Committee finds that the CAP has not been resolved then a majority vote by the Executive Committee recommending removal of the TUCP Partner shall be taken and if agreed will be forwarded to FHWA, FAA and FTA.
3. If there is a disagreement by a single member of the TUCP regarding the recommendation, that entity may make a separate notification to FHWA, FAA and FTA as a single entity and notify the partners of such in writing.
4. 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 USDOT Intermodal Agency, e.g., FTA, FAA, FHWA etc.
5. TUCP Certifying Partners agree to comply with coordination procedures and timeliness of forwarding information and completing request within fifteen (15) business days.
6. TUCP Certifying Partners agree to participate in TUCP Partner Reviews to assure the quality and consistency of TUCP certification procedures. FHWA will take lead on the TUCP Partner reviews and identify a TUCP Partner to assist with the peer review.

Appendix A

TEXAS UNIFIED CERTIFICATION PROGRAM DBE INTERSTATE CERTIFICATION CHECKLIST

Applicant Firm from State A must provide the following information:

- **Complete copy of application form, all supporting documents, and any other information that was submitted to State A or any other State related to firm's certification.**

Includes, but is not limited to:

- Affidavits of no change
 - Any notices of change that have been submitted to State A
 - Any correspondence with State A's UCP or any other recipient concerning the Firm's application or status as a DBE firm
-
- **Notices or correspondence from states other than State A relating to status as a DBE applicant or DBE certification in those states.**

Example:

- Certification denials
 - Decertification actions
-
- **Discloser of any DOT certification appeals with copy of the letter of appeal and DOTs response.**

 - **An affidavit sworn to by the Firm's owners or an unsworn declaration executed under penalty of perjury of the laws of the United States.**

Affidavit must adhere to the following:

- a. Affidavit must affirm that firm has submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by 26.85 (c)(1), is an identical copy of the information submitted to State A
- b. If the on-site report from State A supporting firm's DBE certification in State A is more than three years old, as of the date of firm's application

to State B the affidavit also affirms that the facts in the on-site report remain true and correct.

Appendix B



**TEXAS UNIFIED CERTIFICATION PROGRAM (TUCP)
INTERSTATE DISADVANTAGED BUSINESS ENTERPRISE (DBE) AFFIDAVIT**

Name of Firm _____

I affirm, as evidenced by my signature below, I have provided all information required by 49 CFR 26.85(c) to TUCP Agency for inspection and review to determine eligibility for the Texas Unified Certification Program (TUCP).

I affirm the information is complete and, in the case of the information required by §26.85(c)(1), is an identical copy of the information submitted to _____ (home state agency).

I further affirm all information and statements I have provided are true and correct. I understand all documents may be subject to review at any time by representatives of the TUCP. If such a request is made, I understand these documents must be provided within 10 business days.

Printed Name of Eligible Applicant

Signature of Eligible Applicant

Subscribed and sworn to before me, the undersigned notary public, on this date:

Notary Public's Signature/ Seal

The Texas Unified Certification Program (TUCP) consists of six (6) certifying agencies and adheres to the Department of Transportation DBE standards set forth in 49 CFR Part 23 and Part 26. The following entities are members of the Texas Unified Certification Program (TUCP): City of Austin, City of Houston, Corpus Christi Regional Transportation Agency; North Central Texas Regional Certification Agency; South Central Texas Regional Certification Agency; and the Texas Department of Transportation, Office of Civil Rights. DBE certification is valid at any Texas entity that receives U.S. Department of Transportation (DOT) funds and has a DBE Program.

TUCP CERTIFYING PARTNERS

<u>City of Austin</u>	<u>Date</u>
Name	Title
Signature	

<u>City of Houston</u>	<u>Date</u>
Name	Title
Signature	

<u>Corpus Christi Regional Transportation Authority</u>	<u>Date</u>
Name	Title
Signature	

<u>North Central Texas Regional Certification Agency</u>	<u>Date</u>
Name	Title
Signature	

<u>South Central Texas Regional Certification Agency</u>	<u>Date</u>
Name	Title
Signature	

<u>Texas Department of Transportation</u>	<u>Date</u>
Name	Title
Signature	