

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

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.