

U.S. Department of Transportation Federal Aviation Administration

CERTIFYING AGENCY COMPLIANCE REVIEW REPORT

JURISDICTION AND AUTHORITIES

The Federal Aviation Administration (FAA) Office of Civil Rights is authorized by the Secretary of the U.S. Department of Transportation (DOT) to conduct civil rights compliance reviews. Reviews are undertaken to ensure compliance of applicants, recipients, and sub-recipients with 49 CFR, Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and 49 CFR, Part 23 Participation by Disadvantaged Business Enterprises in Airport Concessions, referenced in this report as Part 26 and Part 23, respectively. Also, specific sections of the programs are referenced using the nomenclature (23.xx) and (26.xx) in this document.

Part 26 requirements apply to recipients of DOT funds under certain programs including airport funds under 49 U.S.C. 47101 et seq. The program is narrowly tailored under the law. It is designed to allow firms that meet certain eligibility standards to compete fairly, to remove barriers to DBE firms seeking to participate in DOT-funded programs, to assist in developing firms that can compete in the marketplace outside of the DBE program, and to provide flexibility to recipients of federal funds in creating opportunities for DBE firms.

Part 23 requirements apply to airports that had received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code. The requirements under this part apply to those airports classified as primary airports by the National Plan of Integrated Airport Systems (NPIAS). Part 23 is mandated by 49 U.S.C. 47107(e) and addresses the airport concessions disadvantaged business enterprises (ACDBEs) at airports receiving funds under the Airport Improvement Program (AIP). The requirements of this part became effective April 21, 2005 and have revised several times.

OBJECTIVES

The purposes of Part 26 and Part 23 as stated in the regulations are:

- To ensure nondiscrimination in the award and administration of airport concessions and DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs.
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law.
- To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in airport concessions and DOT-assisted contracts.
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program.
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

REVIEW PROCESS

The review process began with a request for PennDOT to randomly select 50 certification files. The selections focused on the following types of processed and pending certification files:

- 10 DBE Certification Files
- 10 ACDBE Certification Files
- 10 Interstate Certification Files
- Denials
- 5 De-certifications

Interviews were also held with certifying staff and actual procedures are compared to those documented by the certify entity.

Review Conducted By FAA Staff:	Keturah Pristell and Nancy Cibic	Site Visit Date:	May 21, 2014
Certifying Agency Staff Interviewed :	Trista Maurer & Jeannie Daniels		

DESCRIPTION OF THE CERTIFYING AGENCY & REVIEW

Subpart E – Certification Procedures of 49 CFR Part 26.81 requires DOT recipients to participate in a state Unified Certification Program (UCP) that shall provide “one-stop shopping” to applicants for DBE certification. PennDOT (Pennsylvania Department of Transportation) is a certifying partner with the PAUCP organization that is made up of 5 certifying partners including the Allegheny County Department of Minority, Women and Disadvantaged Business Enterprise; the Port Authority of Allegheny County; the City of Philadelphia; the Southeastern Pennsylvania Transportation Authority (SEPTA); & PennDOT , certifying small business firms in the state of PA. The PAUCP website can be found at the following website: www.paucp.com . As a certifying agency, we found that the PennDOT certification staff is very dedicated to maintaining the integrity of the certification process, and, despite challenges with small staff, processes and maintains a very large number of applications. The files reviewed were very thorough; for example, each file contained an in depth narrative summarizing events chronologically from application submission to decision letter. From reviewing the files and interviewing the staff, it is very apparent that PennDOT has a nicely structured process for processing applications and certifications that is consistently followed. The Office of Chief Council (OCC) maintains all the UCP/Certification files. DBE and ACDBE Certification is a collaborative effort between The Bureau of Aviation (BOA), and the Bureau of Equal Opportunity (BEO), and OCC offices of PennDOT. Last, but not least, staff members from all three of those offices was extremely accommodating and helpful during the entire review process.

Findings Codes: ND = No Deficiency Identified D = Deficient N/A = Not applicable I = Incomplete NR = Not Reviewed

FINDINGS PART I - PROCESS REVIEW

REQUIREMENT	REGULATION REFERENCE	FINDINGS / CORRECTIVE ACTION	CORRECTIVE ACTION / DUE DATE
1. Uniform Application	<p>26.83(c)(7) (7)Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU. (i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.</p>	<p>ND</p> <p>The standard application is being utilized and contains two basic addendums within the parameters of the regulatory requirements. The addendums were a) a county map of the state indicating where a firm is willing or likely to work within the state, and b) an optional form allowing a spouse to relinquish claim to joint bank account funds used for business purposes.</p>	<p>N/A</p>
2. Processing of Applications	<p>49 CFR 26.83 (k) (k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.</p>	<p>ND</p>	<p>N/A</p>
3. Annual Updates	<p>49 CFR 26.83 (j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, 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</p>	<p>D</p> <p>PennDOT's yearly renewal affidavit requests too much information from all firms. PennDOT is requiring both the</p>	<p>08-24-2014</p>

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	<p>perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).</p>	<p>personal and business tax returns, as well as PNW information, during the annual review process. While the regulations give the UCP flexibility to ask for additional information on a case-by-case basis, asking for more than what is required from all certified firms on an annual basis is not permitted and is considered a burden for the small, DBE & ACDBE firms. <u>Title 49 CFR 26.83(h)</u> does allow for more information to be requested every three years as part of the certification review. The form appears to be better suited for the certification review rather than the annual affidavit and gross receipts documentation.</p> <p>RECOMMENDED CORRECTIVE ACTION: PennDOT certifiers must stop requesting more information than allowed from all DBE and ACDBE firms as soon as possible.</p>	
4. Certification Reviews	<p>49 CFR 26.83 (h) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. You may not require DBEs to reapply for certification or require "recertification" of currently certified firms. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances...</p>	ND	N/A
5. Confidentiality	<p>49 CFR 26.83 (g) (g) You must safeguard from disclosure to unauthorized persons</p>	ND	N/A

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	information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law		
6. Site Visit	49 CFR 26.83 (c)(1) (1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;	ND	N/A
7. Denials	49 CFR 26.86 (a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request..	ND	N/A
8. Certification Removal	49 CFR 26.87 If a UCP (certifying agency) determines that there is reasonable cause to believe that a currently certified firm is ineligible, certifying agency review the record to determine whether there is reasonable cause to remove the firm's eligibility. Agency must provide written notice to the firm it proposes ineligible, setting forth the reasons for the proposed determination and follow specific process.	ND	N/A
9. Interstate Certification	49 CFR 26.85 (a) This section applies with respect to any firm that is currently certified in its home state. (b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. (1) To obtain certification in this manner, the firm must provide to State B	ND	N/A

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	<p>a copy of its certification notice from State A.</p> <p>(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.</p> <p>(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.</p>		