



FY 2015

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

AND

**AIRPORT CONCESSION DISADVANTAGED BUSINESS
ENTERPRISE (ACDBE) PROGRAM**

CERTIFICATION COMPLIANCE REVIEW REPORT

OF THE

MARYLAND DEPARTMENT OF TRANSPORTATION

HANOVER, MARYLAND

REPORT ISSUED: August 6, 2015
PREPARED BY THE
US DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
CIVIL RIGHTS OFFICE

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)

SCOPE OF REVIEW

The review process is a top-level examination of certifying agency's compliance with certification procedures. Unlike an audit where testing and extensive examination of records are normal procedures, the compliance review is designed where oversight funding is limited. A review provides a cost effective means of assessing an organization's general understanding and implementation of procedures to meet requirements. The primary purpose of the compliance review is to determine the extent to which the certifying agency has met its DBE certification program goals and objectives as required by regulation and guidance. This compliance review is intended to be a fact-finding process to: (1) examine the certifying agency's certification files, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

With limited resources available for the review process, the breadth and depth of the examination in each area was restricted to what could be accomplished within the allotted review period. To improve the effectiveness of the review, FAA identified regulatory requirements prior to the review that had higher priorities in the review process. This compliance review is not to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its sub-recipients, nor to adjudicate these issues in behalf of any party.

REVIEW PROCESS

The review process began with an initial random selection of certification files and certification application files; additional files were requested as needed. MDOT provided a list of all DBE firms and ACDBE firms certified and the Lead Reviewer randomly selected 10 firms from each list to review. MDOT provided the FAA with the requested files on a thumb drive and additionally provided interstate approvals and a removal of eligibility. This review focused only on the files processed by this certifying agency. During a review, areas may receive more scrutiny as a result of information learned during the review. Also some areas may be examined in more detail based upon other information available to the FAA prior to and during the review. Interviews were held with certifying staff.

Certification Agency Staff:	Randy Reynolds, Director, Office of Minority Business Enterprise Louis Jones, Director Office of Diversity and Equity Tracie Watkins-Rhodes, Governor's Office of Minority Affairs other MDOT staff
Site Visit Date(s):	May 20, 2015
FAA Staff Conducting the Review:	Elizabeth Unrath, Lead Reviewer Keturah Pristell, Reviewer

DESCRIPTION OF THE CERTIFYING AGENCY

Subpart E – Certification Procedures of 49 CFR Part 26 requires DOT recipients to participate in a state Unified Certification Program (UCP) that shall provide “one-stop shopping” to applicants for DBE certification. The Maryland Department of Transportation (MDOT) is the State of Maryland’s sole UCP. As a certifying agency, MDOT’s staff is dedicated to certification, application and file maintenance, interstate certification, and policy/internal process development. MDOT also oversees MBE certification for the State of Maryland.

Maryland has certified 5,883 total firms. Maryland has certified 5,856 DBE/MBE eligible firms and 82 ACDBE firms.

FINDINGS PART I - PROCESS REVIEW

1. Uniform Application

Requirement: UCPs and their certifying agencies are required to use the Certification Application found in Appendix F of Part 26 without change.

Regulation Reference: 26.83(c)(7) and 26.83(c)(2)

26.83(c)(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. EXPIRED!

(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, supplementing the form by requesting additional information not inconsistent with this part. (ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. (iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

26.83(c)(2) You must take all the following steps in determining whether a firm meets the standards of subpart D of this part: (1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their resumes and/or work histories. You must also perform an onsite visit to job sites in your jurisdiction or local area if there are such sites on which the firm is working at the time of the eligibility investigation. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification; (2) If the firm is a corporation, analyze the ownership of stock in the firm.

Findings: During Certification Compliance Review, no deficiencies were found with the requirements for using the Uniform Certification Application Form in Appendix F.

On November 4, 2014, after the USDOT issued a final rule amending its DBE program (49 CFR Part 26), Office of Minority Business Enterprise implemented the use of the USDOT uniform certification application, found in Appendix F of Part 26, and reporting forms. The uniform personal net worth form is now also being used by applicant owners in accordance with USDOT's surface transportation reauthorization, Moving Ahead for Progress in the 21st Century Act (MAP-21).

Corrective Action: None Required

2. Processing of Applications

Requirement: A certification decision must be made within 90 days of receipt of all information. A one-time 60-day extension may be exercised upon written notice to the firm, explaining the reason for the extension.

Regulation reference: 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.

Findings: During Certification Compliance Review, no deficiencies were found with the requirements to process federal applications within 90 days. Of the files reviewed by the FAA compliance team, the average process time for a new application was 30 days after all required documentation was received by MDOT Office of Minority Business Enterprise.

MDOT Office of Minority Business Enterprise has strived to complete new application processing with quality and timeliness. It is committed to complete new Federal applications within 90 days and Federal out-of-state new applications within 60 days. The timeframe to process new applications does not begin until MDOT Office of Minority Business Enterprise is in receipt of a complete application with all necessary supporting documentation.

Corrective Action: None Required

3. Annual Updates

Requirement: Firms must submit an annual affidavit (on the anniversary of their certification) affirming that there has been no change in circumstances that would affect the firm's ability to meet size, disadvantaged status, ownership, or control requirements of the regulation. Supporting documentation of the firm's gross receipts must be submitted with the affidavit.

Regulation reference: 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 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).

Findings: No deficiencies were found with this requirement. MDOT has a rigorous process for ensuring sufficient, timely submissions of each DBE/ACDBE's annual affidavit including an appeals process in the form of a public meeting where the DBE/ACDBE has the opportunity to rebut a proposed removal prior to actual removal.

Corrective Action: None Required

4. Certification reviews

Requirement: The agency may NOT require applicants to periodically reapply for certification or complete an application for "recertification." Agencies may conduct a

certification review that includes a new on-site review based on the circumstances described in 49 C.F.R. 26.83(h)(1).

Regulation Reference: 49 CFR 26.83(h)(1) 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 onsite review, three years from the date of the firm’s most recent certification, or sooner if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm’s eligibility. If you have grounds to question the firm’s eligibility, you may conduct an on-site review on an unannounced basis, at the firm’s offices and jobsites.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

Findings: No deficiencies were found with this requirement. MDOT Office of Minority Business Enterprise has established a three-year cycle to conduct DBE/ACDBE certification reviews to include a new on-site review as allowed by the regulations. All MDOT Office of Minority Business Enterprise management/staff has a clear understanding of the process for DBE/ACDBE certification reviews.

Corrective Action: None Required

5. Confidentiality

Requirement: Proprietary information contained in the certification file must be kept confidential. The location and security of files is an important component in safeguarding information submitted for purposes of certification.

Regulation reference: 49 CFR 26.83 (g)

(g) You must safeguard from disclosure to unauthorized persons 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 laws.

Findings: No deficiencies were found with requirements for MDOT Office of Minority Business Enterprise to maintain confidential records.

Corrective Action: None required but we recommend that MDOT develop an electronic database for maintaining all certified files to include DBE/ACDBE firms. Automation would greatly assist MDOT’s large and very busy certification program as well as security and confidentiality.

6. Site Visit

Requirement: An on-site visit must be conducted at the applicant's place of business and job sites if there are any in the local area. For interstate certification, the home state on-site visit must be obtained if the agency is not accepting the home state certification without further procedures. If the agency is accepting the home state certification without further procedures, the agency is not required to obtain the home state site visit.

Regulation reference: 49 CFR 26.83 (c)(1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part: (1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their resume's and/or work histories. You must also perform an onsite 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;

Findings: No deficiencies were found with requirements for the agency to conduct on-site visits. MDOT Office of Minority Business Enterprise has established a well-documented process for conducting new on-site reviews for DBE/ACDBE firms prior to initial certification. Additional on-site reviews and certification reviews are subsequently conducted on a three-year schedule as allowed by the regulations.

All files reviewed during the FAA's certification review reflected that on-site visits were being conducted in a timely manner.

Corrective Action: None Required

7. Denials

Requirement: Firms being denied certification must be provided with a written explanation of the reasons for denial. Evidence from the record supporting the reason must be referenced. Documents and information on which the denial is based must be provided to the applicant upon request.

Regulation reference: 49 CFR 26.86(a)

(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.

Findings: No deficiencies were found with requirements for the agency to provide applicant firms with a written explanation of the reasons for denial. The denial files reviewed reflect that MDOT Office of Minority Business Enterprise provides the applicants with sufficient written explanation for the reason(s) for denial. The written explanations reviewed were detailed and also provided references to the section(s) of the relevant regulations which further clarified the cause for denial. MDOT Office of Minority Business

Enterprise has designed its denial letters to include information on the USDOT's appeal process for applicants.

Corrective Action: None Required

8. Certification Removal

Requirement: The certification of a firm may be removed if the agency determines that there is reasonable cause to believe that the firm is ineligible. Written notice providing the reasons and allowing the firm an opportunity to have an informal hearing must be given. Procedures detailed in 26.87 must be followed before removing a firm's eligibility.

Regulation reference: 49 CFR 26.87

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) *Ineligibility complaints.*

(1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion

that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

Findings: One ineligibility file was reviewed and no deficiencies were found in MDOT's actions.

Corrective Action: None Required

9. Interstate Certification

Requirement: If an agency accepts the certification of another state without further procedure, the agency must confirm the firm's certification in its home state. If an agency chooses not to accept the certification from another state, the state may review the

information submitted to the firm's home state. An agency may not require firms that are certified in their home state to complete a new application or submit additional documentation not requested by the home state.

Regulation reference: 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 a copy of its certification notice from State A. (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. (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.

Findings: No deficiencies were found with requirements of MDOT Office of Minority Business Enterprise concerning processing interstate certification.

Corrective Action: None Required

FINDINGS PART II - APPLICATION FILE REVIEWS

1. Reviewing Social Disadvantage (Notarized Statement)

Requirement: Each disadvantaged individual upon whom the certification is based must submit the standard Affidavit of Certification. The form must be signed and notarized. If there is a well-founded reason to question an individual's membership in one of the presumed disadvantaged groups, additional evidence must be required.

Regulation reference: 49 CFR 26.63(a)(1)

If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see §26.61(c)), you have a well-founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

Findings: During Certification Compliance Review, no deficiencies were found with the requirement of individual determinations. The MDOT Office of Minority Business Enterprise certifying staff was familiar with requirements regarding individual review and determinations of social disadvantage. No certification files reviewed were from individuals not presumed to be socially and economically disadvantaged.

Corrective Action: None Required

2. Review Size Standard

Requirement: For DBE applicants: To be considered a small business, firms must meet the SBA size standard applicable to the type of work they perform. The type of work must be defined by the narrowest NAICS code available to describe the firm's work. In addition, no firm may exceed the overall size cap of \$23.98 million (average annual gross receipts over a three-year period).

For ACDBE applicants: To be considered a small business, firms must meet the size standard from the regulation applicable to the type of work they perform. The agency must also assign an NAICS code to identify the type of work for which the firm is certified. The narrowest NAICS code available to describe the firm's work should be used.

Regulation Reference: 49 CFR 26.65

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part [121](#) appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR [121.402](#)), over the firm's previous three fiscal years, in excess of \$23.98 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

49 CFR 23.33

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$56.42 million. (b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

(1) *Banks and financial institutions:* \$1 billion in assets;

(2) *Car rental companies:* \$75.23 million average annual gross receipts over the firm's three previous fiscal years, as adjusted by the Department for inflation every two years from April 3, 2009.

(3) *Pay telephones:* 1,500 employees; (4) *Automobile dealers:* 350 employees.

Findings: No deficiencies were found with the requirement of individual size standard determinations. The MDOT Office of Minority Business Enterprise certifying staff was familiar with requirements regarding DBE and ACDBE firms meeting the required size standards. There were no certification files reviewed where a DBE or ACDBE failed to meet the size standards in accordance with 49 CFR Section 26.65 or 49 CFR Section 23.33.

Corrective Action: None Required

3. Review Economic Disadvantage

Requirement: Each disadvantaged individual relied upon for certification must submit a Statement of Personal Net Worth. Additional reasonable documentation may be requested on a case-by-case basis. The PNW Statement must be signed and notarized. The form should be properly completed and the math should be correct.

Regulation reference: 49 CFR 26.67 (a)(2)(ii)

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.*

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

Findings: No deficiencies were found with the requirement of individual determinations. The MDOT Office of Minority Business Enterprise certifying staff was familiar with requirements regarding individual determinations of economic disadvantage. No certification files reviewed were from individuals not presumed to be economically disadvantaged.

Corrective Action: None Required

4. Review Ownership

Requirement: Agencies must verify that a firm is 51% owned by disadvantaged individuals. The ownership must be real, substantial and continuing. The review should encompass the following:

- Did the agency verify that a disadvantaged individual(s) is a 51% owner? If the applicant firm is a corporation, is 51% of each stock type owned by the disadvantaged individual? If the applicant firm is a partnership, does the disadvantaged individual own 51% of each class of partnership interest? If applicant

firm is an LLC, does disadvantaged individual own at least 51% of each class of membership. Is the ownership properly documented?

- Did the agency verify capital contributions, including the source and determine if the ownership is real, substantial and continuing? For example, was the contribution sufficient in light of the value of the company?. Was the investment returned? Have loans been paid on schedule, etc.?)
- Was ownership gifted or funded through a gift from a non-disadvantaged individual who has ownership in the firm or is in a related business?
- Were marital assets used to acquire ownership or is the applicant residing in a community property state? If so, did a non-disadvantaged spouse renounce ownership in the firm to the degree that the disadvantaged owner actually owns 51%?
- Do the disadvantaged owners enjoy the customary incidents of ownership?
- Do the disadvantaged owners share in the risks and profits commensurate with their ownership interests?
- Review bank loans, living trusts, wills, lines of credit, loan agreements, bank signature cards, etc. for red flags. Were these caught and explained by the agency, if necessary?
- Was expertise relied upon as part of a disadvantaged owner's contribution to acquire ownership? If so, is the expertise: In a specialized field; of outstanding quality; in areas critical to the firm's operations; indispensable to the firm's potential success; specific to the type of work the firm performs; and documented in the records of the firm. In addition, does the individual whose expertise is relied upon have a significant financial investment in the firm?

Regulation reference: 49 CFR 26.69

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

Findings: No deficiencies were found with the requirement of individual determinations. The MDOT Office of Minority Business Enterprise certifying staff was familiar with requirements regarding individual determination for the 51% ownership of the applicant firm. No certification files reviewed determined that the disadvantaged owner(s) did not maintain at least 51% ownership in his/her firm.

Corrective Action: None Required

4. Review Control

Requirement: Agencies must verify that a firm is independent and that the firm is controlled by one of the disadvantaged owners. The review should encompass the following:

- Review company documents (i.e. by-laws, operating agreement, etc.) for any restrictions that limit the customary discretion of the disadvantaged owner(s).
- Verify disadvantaged owner(s) possess the power to direct the firm in terms of day-to-day and long-term decisions.
- Verify disadvantaged owner holds the highest officer position in the firm and controls the board.
- Disadvantaged owners, managers or employees of the firm may be involved in a DBE firm, but cannot control it or be disproportionately responsible for the firm's operation. Control of the firm and decisions to be made regarding the firm must lie in the hands of the disadvantaged owner(s).
- Delegations of authority – Authority may be delegated to others, but must be revocable. Disadvantaged owner(s) must retain the power to hire/fire any individual to whom such authority is delegated.
- Resumes - The disadvantaged owner(s) must have an understanding of managerial and technical competence, and experience directly related to the firm's business. Understanding the type of business in which a firm is engaged is key to controlling the firm.
- Professional License – If state or local law requirement is that owners have a particular license or credential to own and/or control a firm, the disadvantaged owner(s) must possess the required license or credential.
- Salaries & Benefits – Review differences between the disadvantaged owner(s) and other persons involved in the firm, consideration should be made for duties, normal industry practice, the firm's policy and practice with regard to reinvestment, etc.
- Outside Employment - The disadvantaged individual controlling the firm cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time to the firm's affairs.
- Non-disadvantaged family members participating in the firm - The disadvantaged owner(s) have the burden of proving that they, as distinct from the family as a whole, control the firm.
- Has there been a transfer of ownership from a non-disadvantaged owner? If so, does the non-disadvantaged owner remain involved? There is a higher burden of proof, "clear and convincing evidence" that the disadvantage owner controls the firm in such a case.
- Equipment – Is the equipment owned or leased? Is the leasing of equipment normal industry practice? Does the leasing of equipment involve a relationship with a prime contractor or other party compromising independence?
- Assignment of NAICS codes - Do the disadvantaged owners have the ability to control the firm for the specific types of work it is seeking to be certified in?
- In a partnership - Do non-disadvantaged individuals have the power to contractually bind the partnership without the written concurrence of the owner?
- An employee leasing company may be used by a firm, however the disadvantaged individual must maintain an employer-employee relationship.
- Review relationships with non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

Regulation reference: 49 CFR 26.71

- (a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.
- (b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

Findings: No deficiencies were found with the requirement of reviewing Control. The MDOT Office of Minority Business Enterprise certifying staff has a clear understanding of the requirements that the individual must have independent control of the firm; there are no restrictions in the operation of his/her firm; there is no outside employment or other business interests that conflict with the management of the firm; and the certifiers review relationships between the individual minority (applicant) and affiliated non-DBE firms.

Corrective Action: None Required

