

FTA

F E D E R A L T R A N S I T A D M I N I S T R A T I O N

New Jersey Transit (NJT) Unified Certification Program (UCP) Compliance Review

Final Report
April 2021



U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

Objective and Methodology: This report details the results of a compliance review of New Jersey Transit's (NJT) Disadvantaged Business Enterprise (DBE) certification practices and procedures. The compliance review examined NJT's DBE certification procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA) and NJT. In addition, the following entities were interviewed as part of this review: NJT officials, NJT certification staff, DBE certified firms, and other stakeholders. The review included interviews, assessments of data collection systems, and review of program and relevant documents.

NJT's Certification Program has the following positive program elements:

Positive Program Elements

- NJT is using a database system for the receipt and processing of certification applications.
- NJT consistently conducted and documented the performance of on-site visits during the application process.

NJT's Certification Program had the following administrative deficiencies:

Administrative Deficiencies

- NJT did not provide 30-day notification letters.
- NJT did not meet the requirement to provide DOCR with the administrative record within 20 days when a firm filed an appeal with the USDOT.
- NJT did not consistently offer an informal hearing when it removed an existing certified firm.

NJT's Certification Program has the following substantive deficiencies:

Substantive Deficiencies

- All certification decisions were not made within 90 days of a completed application.
- NJT required interstate applicants to submit additional documentation beyond what is required in the regulations.
- NJT required certified firms to submit personal taxes and updated personal net worth statements (PNW) during its annual update.
- NJT did not consistently document that an applicant made a real, substantial, and continuing contribution of capital to acquire ownership interest in the applicant firm.
- NJT did not consistently document and/or analyze information provided on PNWs.

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I. General Information

This chapter provides basic information concerning this compliance review of New Jersey Transit. Information on NJT, the review team, and the dates of the review are presented below.

Recipient:	New Jersey Transit
City/State:	Newark, NJ
Recipient ID:	1414
Executive Official:	Kevin Corbett, Executive Director
On-site Liaison:	Leotis Sanders, Chief Civil Rights and Diversity Officer
Report Prepared By:	Milligan & Company, LLC 105 N. 22nd Street, 2nd Floor Philadelphia, PA 19103 (215) 496-9100
Dates of On-site Visit:	March 17-19, 2020*
Review Team Members:	Denise Bailey, Lead Reviewer Sandra Swiacki, Reviewer Habibatu Atta, Reviewer Francisco Morales, Reviewer

*The on-site portion of the review was conducted virtually due to the COVID-19 Public Health Emergency.

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2. Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of the U.S. Department of Transportation (USDOT) to conduct Civil Rights compliance reviews. The reviews are undertaken to ensure compliance by applicants, recipients, and subrecipients with FTA's Master Agreement and (b) 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs."

As direct or indirect recipients of FTA funding assistance, the UCP and its members (i.e., USDOT recipients within the state) must comply with the DBE regulations at 49 CFR Part 26 as a condition associated with the use of these funds. The DBE regulations formed the basis for this compliance review; those regulations define the certification eligibility requirements that must be addressed and incorporated in NJT's agreement.

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3. Purpose and Objectives

3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26. FTA has determined that a compliance review of NJT is necessary.

The DBE regulations require USDOT recipients to participate in a Unified Certification Program—as evidenced by a signed UCP agreement. The UCP provides “one-stop shopping” to applicants for DBE certification. An applicant is required to apply once for DBE certification, which will be honored by all recipients in the state.

The primary purpose of the compliance review is to determine the extent NJT has met its goal and objectives as represented to USDOT in its UCP agreement. This compliance review is intended to be a fact-finding process to (1) examine NJT and its certification practices and procedures, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

This compliance review is not to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its subrecipients, nor to adjudicate these issues on behalf of any party.

3.2 Objectives

The objectives of Unified Certification Programs, as specified in 49 CFR Part 26, are to:

- Adhere to the certification procedures and standards and the nondiscrimination requirements of 49 CFR Part 26.
- Cooperate fully with all oversight, review, and monitoring activities of USDOT and its operating administrations.
- Implement USDOT directives and guidance on DBE certification matters.
- Make all certification and decertification decisions on behalf of all UCP members with respect to participation in the USDOT DBE Program. Certification decisions by the UCP must be binding on all UCP members.
- Provide a single DBE certification that will be honored by all UCP members.
- Maintain a unified and current DBE directory containing at least the following information for each firm listed: address, phone number, and the types of work the firm has been certified to perform.
- Ensure the UCP agreement commits recipients to verify that the UCP has sufficient resources and expertise to carry out the requirements of 49 CFR Parts 26 and 23.

The objectives of this compliance review are to:

- Determine whether NJT is honoring the UCP agreement submitted to the Secretary of Transportation.
- Examine whether NJT is implementing the required certification procedures and standards of the regulations and official USDOT guidance, and to document the compliance status of each component.
- Gather information and data regarding the operation of NJT through interviews and certification file review.

4. Background Information

The purpose of this section is to provide an understanding of NJT's operations and scale. This section highlights NJT's services, budget, and the history of its DBE program.

4.1 Introduction to New Jersey Transit and Organizational Structure

New Jersey Transit (NJT) is New Jersey's statewide public transportation corporation, serving an area of more than 5,325 square miles and 10.5 million residents and providing more than 269 million unlinked passenger trips each year. NJT is the nation's third largest transit provider.

The New Jersey Public Transportation Act of 1979 established NJT in the executive branch of the state government. The Act constituted NJT as an instrumentality of the state exercising public and essential governmental functions and deemed the powers exercised by NJT as an essential state governmental function. The Act placed NJT within the New Jersey Department of Transportation but stated that the corporation should operate independently from the department. The governor designated NJT as the recipient for FTA funds, established to "acquire, operate and contract for transportation service in the public interest."

NJT is governed by a seven-member board of directors, comprising the Commissioner of the Department of Transportation, a representative from the Treasurer's Office, a representative from the Governor's Office, and four members from the public. The Governor appoints all seven board members. The Commissioner of the Department of Transportation serves as the board chair.

The Office of Business Development is responsible for NJT's DBE program and reports directly to the Chief Civil Rights and Diversity Officer, who has overall compliance with NJT's Title VI, DBE, SBE, ADA and Public Agency Compliance activities. The Office of Business Development is currently comprised of eight permanent staff members with certification responsibilities. These include:

- Senior Director, Business Development
- Director, Compliance Operations
- Director, Outreach and Operations Support
- Principal, Outreach and Operations Support*
- Manager, Outreach and Operations Support
- Senior Business Development Specialist (3)
- Business Development Specialist (1 of 2)*

Two positions noted above with an asterisk are currently vacant.

4.2 New Jersey Unified Certification Program

Establishment of the New Jersey Unified Certification Program (NJUCP)

The U.S. Department of Transportation conditionally approved New Jersey's Unified Certification Program on April 5, 2004. The NJUCP executed their Memorandum of Understanding (MOU) on March 19, 2004. The vision for the NJUCP is to share the common goal of creating a level playing field on which DBE firms can compete fairly for USDOT-assisted contracts awarded by the respective agencies, while enhancing the administration of the DBE Programs through the exchange of information and coordination of activities.

Currently, there are three certifying agencies: New Jersey Department of Transportation, New Jersey Transit Corporation, and Port Authority of New York / New Jersey.

According to the New Jersey Memorandum of Understanding (MOU), the cost of creating and establishing the NJUCP website and the electronic DBE Directory will be shared equally among all NJUCP Certifying Partners. Periodically, on-going maintenance costs will be examined and other UCP Partners may also be assessed costs equitably. All other costs related to the certification process are absorbed by the NJUCP Certifying Partners.

5. Scope and Methodology

5.1 Scope

The overall scope of this review is to determine whether NJT is (1) ensuring that only firms certified as eligible DBEs under 49 CFR §26.83 participate as DBEs on federally-assisted projects, (2) implementing DBE certification standards and procedures, and (3) maintaining proper certification records and reporting as required to FTA and USDOT in accordance with the DBE program regulation. Specific program elements reviewed include:

DBE Eligibility (Certification Standards):

1. The rebuttable presumption that members of the designated groups identified in §§26.5 and 26.67 are socially and economically disadvantaged (49 CFR §26.61).
2. Collecting additional evidence of group membership when there is a well-founded reason to question the individual's claim of membership in a group (49 CFR §26.63).
3. Determining whether the applicant firm and existing DBEs are considered "small businesses" as defined by (a) current Small Business Administration (SBA) business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, and (b) the Department's statutory gross receipts cap of \$23.98 million. All size determinations are made by assessing firms' gross receipts averaged over a 3-year period (49 CFR §26.65).
4. Requiring applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged (49 CFR §26.67).
5. Excluding commercially-useful function issues from certification decisions unless the firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program (49 CFR §26.73).
6. Evaluating the eligibility of a firm on the basis of present circumstances, assessing a firm's ownership and control (49 CFR §26.73, all sections of §§26.69 and 26.71).

Certification Procedures

Before a firm is initially certified, the UCP must conduct an on-site visit to the firm's principal place of business and to job sites if there are any sites on which the firm is currently working at the time of the eligibility investigation. [49 CFR §26.83(c)(1)]. The on-site interview must include an interview of the firm's principal officers, and a review of their resumes and/or work histories.

1. Properly applying interstate certification requirements, timelines, and denial procedures (including stating good cause reason(s), and offering an opportunity for the firm to respond) (49 CFR §26.85).

2. Issuing denial letters, notices of intent to decertify, and final decisions that clearly explain the reasons for the action, including specific references to evidence in the record that supports each reason for the decision. In denial and decertification actions, the correspondence must inform the firm of the consequences of the decision and the availability of an appeal to USDOT (49 CFR §§26.86–26.89).
3. Maintaining proper records (i.e., application package for each certified firm, signed, notarized certification of social and economic disadvantage (49 CFR §26.67), affidavits of no-change and documentation supporting firm size and gross receipts (e.g. submission of Federal tax returns), change notices, and on-site reviews) according to the recipient's financial assistance agreement (49 CFR § 26.11, 26.83(j)).

General Reporting Requirements

1. Participation as a certifying or non-certifying UCP member—as evidenced by signing the UCP agreement (49 CFR 26.81 and 26.31). Agreements reflect and reference current certification practices and procedures, and amendments were approved by USDOT.
2. Maintaining a DBE directory of firms eligible to participate as DBEs in the UCP program. In the listing of each firm, the directory must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. The UCP must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work (49 CFR 26.31).
3. Submitting to USDOT's Departmental Office of Civil Rights the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following: (1) women; (2) socially and economically disadvantaged individuals (other than women); and (3) individuals who are women and are otherwise socially and economically disadvantaged individuals (49 CFR §26.11).
4. Entering certification denials and decertification data in USDOT's Departmental Office of Civil Rights ineligibility database (49 CFR §26.85(f)(1)).

5.2 Methodology

The initial step of this compliance review consisted of consultation with the FTA Office of Civil Rights and a review of available information from the NJT website and other sources. After reviewing this information, potential dates for the site visit were coordinated.

The FTA Office of Civil Rights sent a notification letter dated November 25, 2019 (See Attachment A) to NJT that informed it of the upcoming visit, requested necessary review documents, and explained the areas that would be covered during the on-site visit. The letter also informed NJT of staff and other parties that would potentially be interviewed.

In preparation for the on-site visit, NJT was asked to provide the following documents:

1. Current Unified Certification Program Agreement.
2. Current Memorandum of Understanding, or similar documents forming the NJT's Unified Certification Program, signed by all members of the UCP.
3. The certification criteria/guidelines used in determining DBE eligibility.
4. Standard Operating Procedures or similar documents that explain the DBE certification process, including copies of the application used during certification, annual affidavits/updates, and personal net worth (PNW), etc.
5. A list of all firms certified, denied, and decertified or removed by the UCP from federal fiscal year 2017 to present. The list must include:
 - a. the firm's city and state
 - b. the firm's ethnicity
 - c. the firm's gender
 - d. the date of site visit
 - e. the reason for denial and/or decertification (e.g., size, PNW, control, etc.)
 - f. whether the denial decision was appealed to the UCP or USDOT
 - g. the result of the appeal
6. A description of NJT UCP appeals process(es). List the individuals involved in the appeals process and how they are selected.
7. Any third-party complaints regarding DBE firms certified by the NJT and actions taken to resolve the matter in the past three (3) years.
8. Any Freedom of Information or similar request for certification information in the past three (3) years.
9. Any enforcement action against a DBE firm (e.g., suspension, debarment, etc.) regarding certification in the past three (3) years.
10. Other pertinent information determined by NJT's staff to illustrate its UCP operations and procedures.

In addition to the above information, NJT also provided the review team with DBE applications and other related certification documents for the following firms:

Status	Firm Name
New Certifications <1 Year	
	ACB Consulting Services, LLC
	Don Davis Electrolux
	PARA Engineers, LLC
Existing Certifications >1 Year	
	Ecoterra Consulting LLC
	Gibson Technology Solutions Corporation
	JNA Construction Corp.
Interstate	
	Flynn Photography
Removals	

Status	Firm Name
	Arthur's Limo & Transportation Co.
	Chemtech Consulting Group, Inc.
	Nika Construction Group, LLC
	PARS Environmental, Inc.
	UTCRA Inc.

The on-site portion of the UCP review, originally scheduled for March 17-19, 2020, was postponed due to the health pandemic. The review team examined NJT certification files and other documents that were provided in preparation for the on-site visit. Based on the results of the review, a follow-up request for additional information and or clarification from NJT staff was also conducted. On March 2, 2021, preliminary observations were shared with NJT staff.

FTA provided NJT with a draft copy of the report for review and response. NJT did not provide any comments.

5.3 Stakeholder Interviews

The review team contacted the following stakeholders regarding their interaction with NJT.

DBE Firms

Six certified DBE firms were contacted for an interview to gain insight into how NJT works with the small, minority, and women-owned business communities and to learn about their experiences with the certification process. The firms contacted were:

- ACB Consulting Services, LLC
- CID Construction Services, LLC
- Citadel Information Services, Inc.
- Skytel LLC
- Don Davis Electrolux
- Wernger Kois Architecture & Design

Four firms responded to the interview request.

The interview questions included:

1. Is your firm currently certified in the State UCP?
2. How did you learn about the UCP?
3. To which UCP certifying entity was your firm's certification application?
4. Did the UCP acknowledge receipt of your application?
5. Did the UCP communicate the status of your firm's certification application review?
6. Was an on-site visit conducted with your firm?
7. Approximately how long did your firm's certification review and approval process take?
8. Have you visited the UCP DBE Directory website to verify the accuracy of your firm's profile and the types of work your firm has been certified to perform?

9. Are you familiar with the requirements for continued certification eligibility (such as annual updates, notification of change, personal net worth statements, current tax returns, etc.)?
10. Do you have any concern(s) about the UCP or the certification process?

Three of the firms were certified by NJT in 2019, and one was certified in 2018. Two of the firms learned about the UCP program through business contacts, one through a Federal contracting information session, and one through the African America Chamber of Commerce of New Jersey. One of the firms stated that NJT did not acknowledge receipt of its application for at least two months, while the other three firms remember being contacted but were unsure how long it took NJT to respond. Three of the firms indicated that NJT proactively communicated the status of their application, while one firm indicated that the status was only communicated if requested. NJT conducted an on-site visit for all four firms.

Two of the firms stated that the certification review and approval process took about one year, one firm stated it took about four months, and one firm was unsure. Two of the firms indicated they have visited the UCP DBE Directory website to verify the accuracy of their firm's profile and the types of work their firm has been certified to perform. All four firms indicated that they are familiar with the requirements for continued certification eligibility. One firm expressed concern about NJT's timeliness in the certification approval and communication regarding the status of the annual certification process.

Stakeholder Groups

Eight stakeholder organizations were contacted for an interview to gain insight into how NJT works with external organizations and the small, minority, and women-owned business communities. The organizations contacted were:

- African American Chamber of Commerce of New Jersey
- Statewide Hispanic Chamber of Commerce of New Jersey
- New Jersey Association of Women Business Owners
- Capital Region Minority Chamber of Commerce
- Asian Indian Chamber of Commerce
- Women's Center for Entrepreneurship
- New Jersey Chinese American Chamber of Commerce
- Korean American Association of New Jersey

Efforts to contact the organizations included multiple phone calls, voicemail messages, and/or email messages or messages via the organization's website. None of the organizations responded to the interview requests.

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6. Findings and Advisory Comments

This chapter details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to NJT is provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub-requirements are also presented below.

For the purposes of this section, the term “UCP” refers to the certifying members and/or other certification committees/entities associated with the New Jersey Unified Certification Program.

Findings are expressed in terms of “deficiency” or “no deficiency.” Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review.
- A statement concerning the DBE requirements being violated or potentially being violated.
- A statement concerning the required corrective action to resolve the issue.

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

6.1 Group Membership

(A) Burden of Proof

Basic Requirement (49 CFR §26.61(b))

The applicant firm bears the burden of proving, by a preponderance of the evidence, i.e., more likely than not, that it meets all DBE program certification requirements including group membership, disadvantage, ownership, control, and business size. A certifier is not required to prove that a firm is ineligible. A certifier can properly deny certification on the basis that an applicant did not submit sufficient evidence that it meets eligibility criteria.

The more stringent evidentiary standard of clear and convincing evidence applies in situations addressed by §26.69(h) (transfer of ownership from non-socially and economically (non-SED) individual to SED individual and §26.71(l) (transfer of control from non-SED individual to SED individual).

Discussion

During this review, no deficiencies were found with this requirement.

The New Jersey Unified Certification Program Standard Operating Procedure (NJUCP SOP), executed on March 19, 2004, indicates that the NJUCP and its members will administer a DBE certification program and follow all certification procedures as required by 49 CFR Parts 23 and 26, to determine the eligibility of firms to participate as DBEs in USDOT- assisted contracts.

Additionally, the NJT DBE Program Plan states, “NJT will determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. The New Jersey UCP will meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.”

Certification files examined during the compliance review confirmed that the DBE certification application contains a signed, notarized statement that the presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(B) Additional Evidence of Group Membership**Basic Requirement (49 CFR §26.63)**

If a UCP has a “well-founded reason” to question the individual’s claim of membership in that group, it must require the individual to present additional evidence that he or she is a member of the group. The UCP must provide the individual with a *written explanation* of its reasons for questioning his or her group membership. The UCP must take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group.

Discussion

During this review, no deficiencies were found with this requirement.

As part of the application process, applicants are required to submit a signed, notarized statement that the applicant is a member of a presumptively socially and economically disadvantaged group. The review team did not observe any instances where additional evidence of group membership was requested.

6.2 Business Size**Basic Requirement (49 CFR §26.65)**

A UCP must apply current SBA business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in USDOT-assisted contracts. In addition, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts over the firm’s previous three fiscal years in excess of \$23.98 million. (*Dollar amount subject to change.*)

Discussion

During this review, deficiencies were found with this requirement.

The NJUCP SOP indicates that staff must reference 49 CFR 26.65 when determining whether the applicant firm meets the business size standard.

JNA Construction Corporation: The business taxes for 2016 were not found in the file. In addition, the personal taxes for 2013, 2014, and 2015 did not include any schedules. It appears that at least one schedule (for the 2014 return) should have been available based on itemized deductions.

It was also not clear how the other related company noted on the DBE application, Living in Comfort, was included in the gross receipts. Neither a Schedule E to 1040 nor a separate tax return was included in the file. NJT's Certification Eligibility Evaluation document noted the affiliated company, but there was no documentation provided that any receipts from that firm was evaluated or added to the gross receipts calculation.

Ecoterra Consulting, LLC: The file did not contain information regarding another company, Moksh Industries, LLC that was identified on Schedule C of the owner's 2015 tax return.

Gibson Technology Solutions Corporation: Personal taxes for 2013, 2014 and 2015 were not found in the file.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the FTA Office of Civil Rights a plan to ensure that the required business tax documents are collected and properly analyzed to make a determination regarding the business size standard.

6.3 Social and Economic Disadvantage

(A) Presumption of Disadvantage

Basic Requirements (49 CFR §§26.5, 26.61 and 26.67(a)(1))

There is a rebuttable presumption that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged (SED) individuals. The UCP must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, SED. Individuals who are not presumed to be a member of these groups, and individuals for whom the presumption has been rebutted, have the burden of proving by a preponderance of the evidence that they are SED. The UCP must ensure that its review process comports with this standard.

Discussion

During this review, deficiencies were found with this requirement.

The NJUCP SOP Plan states:

- (a) *“The processing staff will make a determination on each of the threshold requirements.*
- (b) *Social disadvantage - In making a determination of social disadvantage, processing staff must reference and adhere to 49 CFR 26.63 and 26.67.*
- (c) *Economic disadvantage - In making a determination of economic disadvantage processing staff must reference and adhere to 49 CFR 26.67.”*

The application in the certification file for ACB Consulting Services was not notarized. Instead the applicant's spouse signed the document as an attorney.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the FTA Office of Civil Rights procedures to ensure all applicants submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(B) Personal Net Worth

Basic Requirement (49 CFR § 26.67(a)(2))

A UCP 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 (PNW) that does not exceed \$1.32 million. All applicants must use the USDOT PNW form in Appendix G without change or revision. In determining an individual's net worth, a UCP must observe the following requirements:

1. Exclude the individual's ownership interest in the applicant firm;
2. Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's PNW form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.
3. Do not use a contingent liability to reduce an individual's net worth.

4. With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

Discussion

During this review, deficiencies were found with this requirement.

Para Engineering, LLC: Other than a car, no personal property was indicated on the form, and there does not appear to be any documentation that the certifiers questioned this.

JNA Construction Corporation: The PNW lists a mortgage on a rental property noted, but not the related value as an asset. Additionally, it is unclear whether the certifiers received documentation of the \$140,000 in private investor loans noted for the rental property in Section 4 of the PNW. In Section 1, the summary amount for 'Other Personal Property and Assets' is not supported by the detailed information in Section 6.

ACB Consulting Services, LLC: The PNW was witnessed by applicant's husband who is an attorney, but it does not appear that it is a notary seal. Detailed information in Section 6 does not match the amounts under assets or liabilities in the summary sheet of page one of the PNW. The applicant included the balance owed on their primary residence in Section 6, but it is unclear if this was factored into the total. It is also not clear if only the applicant's (minus spouse's) portions of assets were included. There does not appear to be an amount of mortgage for Property B in Section 4 of the PNW (although an account number was provided) to enable a reconciliation of the amount of mortgage entered under the Liabilities section of Section 1. The amount in Section 3 does not match the amount entered under retirement and brokerage accounts in Section 1.

Gibson Technology Solutions Corporation: It appears NJT corrected the error of the applicant entering the value of its primary residence and offsetting mortgage from its PNW; albeit only through a note on the front of the PNW that says \$12,100. The applicant did not include any personal property other than that related to a car. It is unclear whether the certifiers questioned this.

Ecoterra Consulting, LLC: There were math issues on the PNW form. The amounts of brokerage/investment accounts in the summary section (\$16,364) did not agree with the detail in Section 3 (which totaled \$34,467). There was a post-it note on the PNW (believed to be written by NJT) that stated "PNW 183,413". There was an affiliated firm noted on the tax returns, but the owners' equity did not appear on the PNW summary or under Section 7. Personal property and assets detailed in Section 6 (\$40,000) were not included in the Section 1 summary, nor were they calculated into the PNW; however loans against this property were accounted for as liabilities in both places.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the FTA Office of Civil Rights procedures to ensure that additional investigation is conducted into pertinent PNW omissions, and revisions are made, as necessary, and documented.

(C) Rebutting the Presumption of Economic Disadvantage**Basic Requirement** (49 CFR § 26.67(b))

A UCP may rebut the presumption of economic disadvantage in two ways:

1. If the applicant's PNW exceeds \$1.32 million. In this instance, the UCP is not required to conduct a proceeding to rebut the presumption.
2. If the applicant's PNW statement and supporting documentation demonstrate that the applicant is able to accumulate substantial wealth. In this instance, the UCP must conduct a proceeding under §26.67(b)(2). In making this determination, the UCP may consider factors that include, but are not limited to, the following: (1) whether the annual average adjusted gross income of the owner over the most recent three year period exceeds \$350,000; (2) whether the income was unusual and not likely to occur in the future; (3) whether the earnings were offset by losses; (4) whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm; (5) other evidence that income is not indicative of lack of economic disadvantage; and (6) whether the total fair market value of the owner's assets exceed \$6 million.

Discussion

During this review, no deficiencies were found with this requirement.

None of the certification files reviewed demonstrated that the NJT rebutted the PNW of any of the applicants reviewed.

(D) Individual Determinations of Social and Economic Disadvantage**Basic Requirement** (49 CFR §26.67(d) and Appendix E)

Firms owned and controlled by individuals who are not presumed to be SED may apply for DBE certification. UCPs must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is SED based on the requirements set forth in Appendix E.

Discussion

During this review, no deficiencies were found with this requirement.

The NJUCP SOP states:

“The processing staff will make a determination on each of the threshold requirements...”

c) Economic disadvantage - In making a determination of economic disadvantage processing staff must reference and adhere to 49 CFR 26.67.”

None of the certification files reviewed involved firms owned and controlled by individuals who were not presumed to be socially and economically disadvantaged.

6.4 Ownership

Basic Requirement (49 CFR § 26.69(a-j))

To be an eligible DBE, a firm must demonstrate, by a preponderance of the evidence, that it is at least 51 percent owned by SED individuals. Section 26.69(h) describes when the higher evidentiary standard of clear and convincing evidence applies.

(A) The owners upon whom the firm relies for DBE certification must have made a real, substantial, and continuing contribution of capital or expertise to acquire their ownership; the ownership must not be pro forma in nature. The applicant firm should submit proof of a capital contribution at the time it submits its DBE application; however, the firm is permitted to submit it any time before the UCP makes a final eligibility decision.

(B) When marital assets are used to acquire ownership, the non-disadvantaged spouse must irrevocably transfer and renounce his ownership rights in the firm.

Indicators of compliance: The applicant firm materials should include proof of the transfer and renunciation before the UCP makes a final eligibility decision. UCPs are encouraged to notify the applicant firm that proof of renunciation is missing from the DBE application and allow the firm to provide it within a reasonable timeframe.

Discussion

During this review, deficiencies were found with this requirement.

NJT does not consistently document that an applicant / applicants made a real, substantial, and continuing contribution of capital or expertise to acquire ownership interest in the applicant firm.

ACB Consulting Services, LLC: NJT accepted a signed letter witnessed by the applicant's husband (an attorney) that the company was started in 2009 with a loan from the owner's 401K. This letter was dated January 9, 2019 and was submitted to the Port Authority of NYNJ. NJT did request proof of contribution in their June 4, 2019 email request for additional documentation. There is a "PAI" account noted on the PNW for the owner with a current value of \$44,903 but it is unclear if NJT attempted to confirm the 401k loan beyond receipt of the signed letter.

Ecoterra Consulting, LLC: According to the original application dated August 9, 2016, the owner invested \$4,982 into the company. The site visit report, dated October 10, 2016, stated that the owner invested \$9,600 into the company. The bank statement for the period ending May 31, 2016 shows a \$4,982.87 "NJ TLR transfer" as the opening deposit. There was no other evidence in the file to substantiate the investment or a request from the certifier for the correct documentation of proof of contribution or the difference between the \$9,600 reported as the initial contribution and the \$4,982.87 opening balance.

Gibson Technology Solutions Corporation: According to the site visit report dated July 7, 2017, the owner invested \$35,000 into the company. There was no evidence in the file to substantiate the investment or a request from the certifier for proof of contribution.

PARA Engineers, LLC (PARA): The owner of the company contributed \$51,500 to start the company. One check for \$1,500 was made to the company on October 27, 2017 and a second check for \$50,000 was made to the company on August 31, 2019. Both checks came from a joint account with the applicant's wife. There was no documentation in the file of a letter renouncing the spouse's right to assets used to acquire ownership, nor was there evidence in the file that certifiers requested the letter.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the FTA Office of Civil Rights procedures to ensure that:

- all applicants applying for DBE certification submit documented proof of contributions, (and for each owner claiming disadvantage), used to acquire ownership interest in the firm; and
- all applicants submit a document that legally transfers and renounces the spouse's right to the assets used to acquire ownership in the firm when capital contributions come from joint accounts or assets.

6.5 Control

Basic Requirement (49 CFR § 26.71(a-q))

- (A) *Independence*: A DBE firm's viability must not depend on a relationship(s) with another firm(s); to make the determination, the UCP should consider the four factors in §26.71(b).
- (B) *Restrictions*: Formal or informal restrictions, such as a quorum provision in the firm's bylaws, must not limit the customary discretion of the SED owners (§26.71(c)). A SED owner must hold the highest officer position in the company. In a corporation, SED owners must control the board of directors. In a partnership, one or more SED owners must serve as general partners, with control over all partnership decisions (§26.71(d)).

- (C) *Involvement by non-SED individuals and Delegations*: Individuals who are not SED or immediate family members may be involved in a DBE firm; however, they must not possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm. [§26.71(e)]. The SED owners may delegate authority as long as such delegations are revocable, and the SED owners retain the power to hire and fire any person to whom such authority is delegated. UCPs must be able to reasonably conclude that the SED owners actually control all aspects of the firm (§26.71(f)).
- (D) *Overall Understanding, Technical, and Managerial Competence*: SED owners must have an overall understanding of the firm's principal business activities. They are *not* required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees (§26.71(g)).
- (E) *Licensure*: If State or local law does not require owners to have a license or credential to own and/or control a firm, UCPs must not deny certification solely on the ground that the person lacks the license or credential. However, the UCP may consider the absence of the license or credential as *one factor* in determining whether the SED owners actually control the firm (§26.71(h)).
- (F) *Remuneration*: Differences in remuneration do not necessarily indicate that SED owners do not control the firm. UCPs should consider the differences in remuneration in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. Remuneration differences between a former non-SED owner and current SED owner is a factor in determining who controls the firm, particularly when the non-SED individual remains involved with the firm and continues to receive greater compensation than the SED individual (§26.71(i)).
- (G) *Outside Employment or Business Interests (Time and Attention)*: Having outside employment does not automatically mean that the SED owners do not control the firm. UCPs should consider whether the outside employment or other business interest conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. An individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating (§26.71(j)).
- (H) *Involvement of Immediate Family Members*: A SED individual may control a firm even though one or more of the individual's immediate family members, even if they are not SED, participate in the firm. If a UCP cannot determine that the SED owners—as distinct from the family as a whole—control the firm, then the SED owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities (§26.71(k)).

- (I) *The Higher Burden of Proof Standard:* Where a firm was formerly owned and/or controlled by a non-SED individual (whether or not an immediate family member), ownership and/or control were transferred to an SED individual, and the non-SED individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-SED individual unless the SED individual now owning the firm demonstrates, by clear and convincing evidence, that (1) the transfer of ownership and/or control to the SED individual was made for reasons other than obtaining certification as a DBE; and (2) the SED individual controls the firm, notwithstanding the continuing participation of a non-SED individual who formerly owned and/or controlled the firm (§26.71(l)).
- (J) *Equipment:* A UCP must not determine that a firm is not controlled by SED individuals solely because the firm leases, rather than owns, equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the firm's independence (§26.71(m)). To become certified in an additional type of work, the firm need demonstrate only that its SED owners are able to control the firm with respect to that type of work (§26.71(n)).

Discussion

During this review, deficiencies were found with these requirements.

Ecoterra Consulting, LLC: The firm was originally certified as an engineering firm, but no one in the firm had a Professional Engineers license. This code, and others, were rescinded in 2018 after another agency denied this code; however there was no indication in the original certification that this state licensing requirement was reviewed by NJT. According to the NJ Division of Consumer Affairs requirements, "Firms may not use the word "engineers" or any derivative of that word or "land surveyors" or any derivative of that word unless at least one member is a New Jersey licensed engineer or land surveyor respectively."

Additionally, the requirement for documentation of control was not found in the NJ Memorandum of Understanding, the NJUCP Standard Operating Procedure, or DBE Program Plan.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the FTA Office of Civil Rights a plan to ensure that control determinations are appropriately addressed and documented in the file.

6.6 Interstate Certification

Basic Requirement (49 CFR §26.85)

The interstate certification rule applies when any firm that is currently certified in its home State ("State A") seeks DBE certification in another State ("State B"). The DBE regulations do not

permit State B to require the certified DBE to submit a new uniform certification application as if it were seeking certification for the first time. State B should process each application for interstate certification, on a case-by-case basis, using the two options described in §§26.85(b) or 26.85(c):

Option 1: Proceed under §26.85(b) to confirm current home-state certification and certify the firm. State B may verify by checking State A's directory (preferable) or obtaining State A's written confirmation.

Option 2: Proceed under §26.85(c) and notify the Applicant-DBE that it must provide all of the information required by §26.85(c)(1)-(4). State B may require the applicant-DBE to submit *only* the information described in section §26.85(c). The regulations require the applicant to submit an affidavit that all of the information it submitted to State B is a complete and identical copy of the information submitted to State A. If the on-site report from State A is more than three years old, as of the date of its application to State B, the regulations permit State B to require that the firm's affidavit to affirm that the facts in the on-site report remain true and correct.

Common indicators of noncompliance*:

- State B asked the DBE for information not listed in §26.85(c).
- State B denied the interstate certification application without giving the DBE written notification identifying and describing at least one of the five "good cause" reasons for the denial.
- State B denied the interstate certification application based on a mere interpretive disagreement with State A about a regulatory provision or factual conclusion.
- State B denied the interstate certification application because it thinks State A did not adequately evaluate the DBE's eligibility.
- State B asked the DBE for an updated PNW statement even though the DBE timely submitted to State A an annual affidavit(s) of no-change.
- State B, without new information previously unavailable to State A, re-evaluated a DBE owner's economic disadvantage based on a belief that the owner has the ability to accumulate substantial wealth.
- State B decertified a DBE solely because State A decertified it.
- State B received an interstate certification application from a Native American-owned firm and certified the firm without verifying whether the Federal government or State B recognize the tribe.

**This is not an exhaustive list of indicators of noncompliance. UCPs and reviewers should apply the subsections of §26.85 and also refer to USDOT's official guidance on interstate certification.*

Discussion

During this review, deficiencies were found with this requirement.

NJT's DBE Program Plan states:

"When a firm currently certified in its home state applies to NJT for DBE certification, NJT:

(1) Obtains a copy of its certification notice from the home State.

(2) Confirms that the firm has a current valid certification from their home by reviewing the home State's electronic directory or obtaining written confirmation."

Flynn Photography is an interstate firm certified in the state of Pennsylvania on February 16, 2009. In an email dated September 28, 2016 and a subsequent email dated November 4, 2016, NJT requested sole proprietorship registrations, proof of capital contribution, tax returns and proof of citizenship. In a letter dated, December 15, 2016, NJT requested an updated PNW. There was also a 10-page application in the file that Flynn completed. There was no reason stated in the file for the additional information requested.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the FTA Office of Civil Rights a procedure to ensure that it does not routinely require interstate applicants to submit information beyond what is required by 49 C.F.R. §26.85(c).

6.7 Other Rules Affecting Certification

Basic Requirement (49 CFR §26.73)

UCPs must not consider commercially-useful function issues in any way in making decisions about whether to certify a firm as a DBE. However, the UCP may consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. DBE firms and firms seeking DBE certification must cooperate fully with UCP requests for information relevant to the certification process.

Discussion

During this review, no deficiencies were found with this requirement.

In the files reviewed, there was no documentation relating to commercially useful function issues, or a firm exhibiting a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. In addition, it was found that the DBE applicants cooperated fully with the NJT's request for additional information relevant to the certification process.

6.8 UCP Requirements

(A) UCP Agreement

Basic Requirement (*49 CFR §26.81*)

All USDOT recipients in a state must participate in a UCP. Recipients must sign an agreement establishing the UCP for the state and submit the agreement to the Secretary for approval.

Discussion

During this review, deficiencies were found with this requirement.

The NJUCP MOU was executed on March 19, 2004. Appendix A of the document includes a list of 79 Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and Federal Transit Administration subrecipients, direct recipients, and “grantees”. The MOU was only signed by the three certifying agencies, NJT, Port Authority of New York / New Jersey (Port Authority), and New Jersey Department of Transportation (NJ DOT). Non-certifying members did not sign the MOU.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the FTA Office of Civil Rights a MOU with signatures from the non-certifying members of the NJUCP.

(B) UCP Directory

Basic Requirement (*49 CFR §§23.31, 26.31, and 26.81(g)*)

UCPs must maintain a unified DBE directory containing, for all firms certified by the UCP, the information required by §26.31. The directory must include if the firm is an ACDBE, a DBE, or both. The listing must include for each firm its address, phone number, and types of work the firm has been certified to perform as a DBE. The UCP must update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

Discussion

During this review, no deficiencies were found with this requirement.

The NJUCP MOU states, “To maintain a unified DBE directory containing at least the following information for each firm listed: address, phone number and approved NAICS codes. The NJUCP shall make the directory available to the public electronically on the Internet as well as in print. The NJUCP shall update the electronic version of the directory by including additions, deletions and other changes upon notification by the DBE and/or Certifying Partner.” In addition, the NJUCP MOU states that the originating certifying organization is responsible for updating the UCP DBE directory by adding newly approved firms and removing recently decertified firms.

The directory identifies all firms eligible to participate as DBEs. The directory lists the firm's name, contact person, address, phone number, fax number, email, certification type (DBE/ACDBE), NAICS code, and description of work the firm is certified to perform. The directory is available electronically to the public, and searchable in HTML, PDF, and Excel report formats at: <https://njucp.dbesystem.com/>.

6.9 Entering Information into USDOT's Ineligibility Database

Basic Requirement (49 CFR §26.85(f))

If the UCP denies a firm's application, rejects the application of a firm certified in State A or any other State in which the firm is certified, or decertifies a firm, in whole or in part, you must make an entry in USDOT's Ineligibility Determination Online Database. The UCP must enter the following information:

- The name of the firm.
- The name(s) of the firm's owner(s).
- The type and date of the action.
- The reason for the action.

UCPs must check the DOCR website at least once every month to determine whether any firm that is applying to the UCP for certification, or that the UCP has already certified, is on the list.

For any such firm that is on the list, the UCP must promptly request a copy of the listed decision from the UCP that made it. The UCP receiving such a request must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. The UCP receiving the decision must then consider the information in the decision in determining what, if any, action to take with respect to the certified or applicant firm.

Discussion

During this review, no deficiencies were found with this requirement.

NJT has entered decertified firms into USDOT's Ineligibility Database, including the name of the firm; the names of the firm's owners; the type and date of the action; and the reason for the action. The following firms were entered in the USDOT's Ineligibility Database at the time of the file review:

- Arthur's Limo: Decertified on April 11, 2018
- Chemtech: Decertified on April 15, 2019
- Nika: Decertified on August 31, 2017
- PARS: Decertified on January 17, 2018
- UTCRAS, Inc. (UTCRA): Decertified on February 15, 2018

6.10 UCP Procedures

(A) Uniform Certification Application

Basic Requirement (49 CFR §26.83(c)(2))

UCPs must use the Uniform Certification Application (UCA) in Appendix F of 49 CFR Part 26 without change or revision. However, a UCP may, *with the approval of the concerned operating administration*, supplement the form by requesting additional information not inconsistent with the DBE regulations.

Discussion

During this review, no deficiencies were found with the requirement for Uniform Certification Application.

NJT's DBE Program Plan includes the Uniform Certification Application (UCA) in Appendix F of 49 CFR §26 as an attachment. A review of the certification files demonstrated that NJT has implemented the use of the required UCA.

(B) On-Site Visits

Basic Requirement (49 CFR §26.83(c)(1))

UCPs must perform an on-site visit to the principal office location of the applicant firm. The UCP must interview the principal officers of the firm and review their resumes and/or work histories. The UCP must also visit a job site, if there is one, at which the firm is working at the time of the eligibility evaluation in the UCP's jurisdiction or local area.

Discussion

During this review, no deficiencies were found with this requirement.

NJT's DBE Program Plan states that an on-site visit must be conducted in accordance with 49 CFR 26.83(c)(1). The DBE Program Plan defines the purpose of the on-site review as an opportunity to verify the firm's office location, operations, staff, and information contained in the certification file and review business and financial records.

A review of the certification files contained evidence of the required on-site visits, including the completion of the Field Visit Report and Interview form.

(C) 30-Day Notification**Basic Requirement** (49 CFR §26.83(l))

The UCP must advise each applicant firm within 30 days of receiving the UCA and accompanying documents whether the application package is complete and suitable for evaluation and, if not, what additional information or action is required.

Discussion

During this review, deficiencies were found with this requirement.

The NJUCP SOP states that once an application is received, within 15 days, it is reviewed for completeness. If the application is incomplete, it is returned to the applicant who “may have up to 30 days to submit missing information.” The NJ MOU, NJUCP SOP, or DBE Program Plan do not indicate that NJT will send a letter to acknowledge receipt of the application package within 30 days.

A review of the certification files demonstrated that NJT did not meet and/or document the 30-day notification requirement for the following files:

Ecoterra Consulting, LLC: The certification file did not contain evidence of a 30-day letter acknowledging the receipt of application. The application was dated August 10, 2016.

ACB Consulting Services, LLC: The DBE application was dated September 24, 2018. The letter acknowledging receipt of the application was dated December 13, 2018, 80 days after NJT received the application.

Gibson Technology Solutions Corporation: The DBE application was dated December 29, 2016. The letter acknowledging receipt of the application was dated May 17, 2017, 140 days after NJT received the application.

JNA Construction Corporation: The DBE application was dated January 20, 2017. The letter acknowledging receipt of the application was dated April 5, 2017, 75 days after NJT received the application.

Don Davis Electrolux: The DBE application was marked as received by NJT on May 25, 2019. On June 12, 2019, NJT acknowledged receipt of the application but did not indicate that the package was complete. On November 12, 2019, NJT sent an email requesting additional information to include: proof of citizenship, balance sheets, and proof of initial contribution. This information appeared to be sent on November 22, 2019. On December 12, 2019, the following additional documents were requested from applicant: list of product lines carried, list of distribution equipment, proof of warehouse facility, list of all employees, and schedule of salaries. On December 13, 2019, NJT acknowledged receipt of these items.

PARA Engineers, LLC: The DBE application was dated September 19, 2019. It is not clear from the file when the application was considered complete. There was a request for additional information on November 12, 2019 but no correspondence noting incompleteness of the file

prior to that time. There was also a letter dated November 13, 2019 that appears to be the letter acknowledging completeness but was not issued within 30 days of the receipt of the application.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the FTA Office of Civil Rights a plan to ensure that firms are notified of their application status within 30 days of receipt.

(D) 90-Day Determinations

Basic Requirement (49 CFR §26.83)

The UCP must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under the DBE regulations. The UCP 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.

Discussion

During this review, deficiencies were found with the requirement for 90-Day Determinations.

According to the NJUCP Standard Operating Procedure, all applications are to be processed within 90 days of receipt of a complete application.

A review of the certification files demonstrated that NJT did not meet the 90-day determination requirement for the following files:

ACB Consulting Services, LLC: The DBE application was dated September 24, 2018. NJT provided ACB an application acknowledgement letter dated December 13, 2018 that indicated that it was issuing a 60-day extension on making a certification determination. The letter added that the reason for issuing the extension was due to the high volume of certification applications to NJT and that it expected the determination to be made by January 18, 2019. The certification decision was made by NJT on October 4, 2019 which was outside of the 60-day extension period.

Gibson Technology Solutions Corporation: The DBE application was dated December 29, 2016. NJT provided Gibson an application acknowledgement letter dated May 17, 2017 that indicated that it was issuing a 60-day extension on making a certification determination. The letter added that the reason for issuing the extension was due to the high volume of certification applications to NJT and that it expected the determination to be made by July 24, 2017. The certification decision was made by NJT on October 4, 2017 which was outside of the 60-day extension period.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the FTA Office of Civil Rights a plan to ensure that certification decisions are made within 90 days of receiving all

required information from the applicant firm or within no more than 60 additional days if an extension is granted.

(E) Annual Updates

Basic Requirement (49 CFR §26.83(h)-(j))

Once the UCP has certified a DBE, it must remain certified until and unless the UCP removes its certification. The UCP may not require DBEs to reapply for certification or undergo a recertification process. The certified DBE must provide to the UCP, every year on the anniversary of the date of its certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths. If the certified firm fails to comply with the annual submission requirement, it will be deemed to have failed to cooperate under §26.109(c). Failure or refusal to cooperate is grounds for removing a firm's certification under §26.87.

Discussion

During this review, deficiencies were found with the requirement for Annual Updates.

NJT's DBE Program Plan states, "*Firms certified or reviewed and found eligible under part 26, will again be reviewed annually. These reviews will include the following components:*

- *Corporate Federal Tax Returns*
- *Sworn Annual "No Change" Affidavit*
- *Current Company Balance Sheet*
- *NAICS Codes size standards in comparison to average three year gross receipts totals*
- *Updated on-site visit report if applicable."*

A review of the certification files demonstrated that NJT, at times, has required firms to submit personal taxes and updated PNWs in addition to the Annual Update Affidavit. This practice was observed in the review of the certification files for Arthur's Limo, Chemtech, and UTCRAS. The standard request for personal taxes and updated PNWs to be provided during an annual update goes beyond the requirements of 49 CFR §26.83(h)-(j).

The review team also found that the following certification files did not include all required annual update documentation. Below is a table of the findings:

Firm	Missing Annual Updates
Ecoterra Consulting, LLC	2018
GibsonTechnology Solutions Corporation	2018, 2019

Reviewers noted that the approval letter for Gibson dated October 4, 2017 stated, “In addition, every three years from the anniversary of your certification date, you will need to provide this office detailed information on the status of your company for full review and recertification.”

Additionally, although Ecoterra was certified on October 26, 2016, NJT started to request documents of the firm on July 13, 2017. It was also noted that correspondence in the file indicated that the firm’s certification expires on October 26, 2019.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the FTA Office of Civil Rights a procedure to ensure that:

- annual updates are collected from DBEs and maintained in the certification files
- Personal tax returns and PNWs are no longer required with submission of the Annual Updates
- Certified DBEs are not required to undergo a recertification process

6.11 Denials of Applications for Certification

(A) Initial Request Denials

Basic Requirement (49 CFR §26.86(a))

When a UCP denies a request by a firm that is not currently certified with it, to be certified as a DBE, the UCP 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. When a firm is denied certification, the UCP must establish a timeframe of no more than 12 months before the firm may reapply for certification.

Discussion

During this review, no deficiencies were found with this requirement.

NJUCP’s SOP states that when a firm is denied, a letter will be sent to the firm advising it is not eligible for certification and stating the reasons for denial and communicate that the vendor cannot reapply for 12 months.

In a letter dated January 17, 2020, NJT indicated that no firms had been denied during the review period specified in the Notification Letter.

(B) Removing Existing Certification (Decertification)

Basic Requirement (49 CFR § 26.87)

If a UCP determines that there is reasonable cause to believe that the firm is ineligible, the UCP must provide written notice to the firm that the UCP proposes to find the firm ineligible, setting

forth the reasons for the proposed determination. When the UCP notifies the firm that there is reasonable cause to remove its certification, the UCP must offer the firm an opportunity for an informal hearing or to submit additional information to rebut the UCP's findings. In a proceeding to remove a firm's certification under §26.87, the UCP must prove, by a preponderance of the evidence, that the firm no longer meets certification standards. Following the final decision, the UCP must provide written notice of the final decision and the reasons for that decision and reference specific evidence in the record to support each reason.

Discussion

During this review, deficiencies were found with the requirement for Removing Existing Certification.

NJT's DBE Program Plan states, "Removals due to ineligibility or noncompliance during the Annual Review Process are addressed using written notification. NJT provides written notification of intent to remove DBE certification status and their appeal rights. DBE firms may request an informal hearing with the NJUCP committee members within 30 days of the date on the written notification. If a DBE does not request an appeal or fails to respond before the effective date of removal indicated in the written notification, the DBE is considered to have waived its right to an informal appeal and a final letter of decertification will be issued."

UTCRAAS is an interstate firm that was certified in Pennsylvania. The company later became certified by NJT on September 30, 2001. On June 9, 2015, SEPTA, a certifying agency in the PA UCP, removed the firm from the DBE program. NJT removed UTCRAAS from the NJUCP on the basis that the firm no longer met eligibility requirements. The intent to remove letter dated February 8, 2018 did not offer an opportunity for a hearing nor did it provide USDOT appeal information. According to the DOCR database, the firm was removed on February 15, 2018. It was noted that the final determination letter was dated July 10, 2020, two years after the intent and removal action.

Chemtech notified NJT of a change in ownership and provided additional documents to include the resume and PNW for the new majority owner. Based on the review of information, NJT issued the firm with a final determination letter dated June 19, 2018 that it was decertified for failing to meet the DBE program requirement of ownership and control. It appears the firm was removed from the database shortly thereafter. The letter provided the address for the USDOT to appeal the decision but not the opportunity for an informal hearing. The intent to remove letter was not found in the file. NJT's decision was appealed to USDOT, as noted below in Section 6.11(E) of this report

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the Office of Civil Rights a procedure to ensure that:

- the right to an informal hearing is consistently communicated to firms that it seeks to decertify; and
- the removal process is followed in accordance with 49 CFR 26.87.

(C) Mandatory Summary Suspension**Basic Requirement (49 CFR §26.88(a))**

The UCP must immediately suspend a DBE'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.

Discussion

During this review, no deficiencies were found with this requirement.

NJT did not perform a Mandatory Summary Suspension during the review period.

(D) Optional Summary Suspension**Basic Requirement (49 CFR §26.88(b))**

The UCP may immediately suspend a DBE'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 firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances that may affect the eligibility of the DBE firm to remain certified as required by §26.83(i) or fails to timely file an affidavit of no change under §26.83(j).

Discussion

During this review, no deficiencies were found with this requirement.

NJT did not perform an Optional Summary Suspension during the review period.

(E) Appeals to USDOT**Basic Requirement (49 CFR §26.89)**

When DOCR receives an appeal and requests a copy of the administrative record, the UCP must provide the administrative record, including a hearing transcript, within 20 days of the request.

Discussion

During this review, deficiencies were found with this requirement.

In a letter dated September 12, 2018, Chemtech filed an appeal with DOCR regarding NJT's decision to remove the firm from the DBE Program. DOCR contacted NJT in a letter dated September 17, 2018 requesting that the full administrative record be provided within 20

calendar days of their request. There was documentation in the file that NJT sent the administrative record to a representative of NJDOT's Division of Civil Rights and Affirmative Action on November 14, 2018, 40 business days after the request was made.

The NJUCP SOP outlines the procedure for appeals to the USDOT, and states:

“Upon notification by USDOT, the NJUCP Certifying Partner will forward a copy of the complete administrative record for review. USDOT will make a determination based solely on the administrative record.”

The procedure does not specify that the requested documentation must be provided within 20 days.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the Office of Civil Rights a revised procedure to ensure that NJT will provide the administrative record within 20 days of the request from DOCR.

6.12 Compliance and Enforcement

(A) DBE Enforcement Actions

Basic Requirement (49 CFR §26.107)

If a firm does not meet the eligibility criteria of subpart D and attempts to participate in a USDOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations, or under circumstances indicating a serious lack of business integrity or honesty, USDOT may initiate suspension or debarment proceedings against the firm under 49 CFR parts 180 and 1200.

Discussion

During this review, no deficiencies were found with this requirement.

The reviewers observed that all certification files reviewed utilized the Uniform DBE Certification Application, which includes penalties for fraudulent or false statements.

(B) Confidentiality

Basic Requirement (49 CFR §§26.83(g) and 26.109 (a))

Notwithstanding any provision of Federal or State law, UCPs must not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes DBE certification and supporting documentation.

Discussion

During this review, deficiencies were found with this requirement.

NJT's DBE Program Plan states:

"NJT will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state and local law. The Office of Business Development has established a secured filing system for its certification information.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party without the written consent of the submitter."

In addition, the Uniform Certification Application includes a statement pertaining to the Federal Freedom of information and Privacy Acts.

NJT provided evidence of a record request from a third party for all documents related to Tomar Construction, LLC's application for DBE certification. There was no documentation that NJT secured written consent of the firm that submitted the information prior to its release.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the Office of Civil Rights a procedure to ensure that confidential business information including certification and supporting documentation to any third party is not released without the written consent of the firm that submitted the information.

(C) Cooperation**Basic Requirement (49 CFR §26.109(c))**

All participants in the DBE program are required to cooperate fully and promptly with USDOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Pursuant to 49 CFR §26.73(c), DBE firms and firms seeking DBE certification must cooperate fully with the UCP's requests (and USDOT requests) for information relevant to the certification process. Failure or refusal to provide such information is grounds for a denial or removal of certification.

Discussion

During this review, no deficiencies were found with this requirement.

The New Jersey MOU states that one of the objectives of the New Jersey UCP is to:

“To cooperate fully with an oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.”

Through the review of the certification files, reviewers found the DBE firms to be fully cooperative with all certification requirements and requests for information. In cases where a firm was not cooperative and did not respond to requests for information, NJT initiated proceedings to either administratively close the firm’s file or remove the firm from the DBE program.

6.13 Record Keeping

Basic Requirement (49 CFR §26.11(d))

The UCP must maintain records documenting a firm’s compliance with the DBE requirements. At a minimum, the UCP must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. Other certification or compliance related records must be retained for a minimum of 3 years unless otherwise provided by applicable record retention requirements for the recipient’s financial assistance agreement, whichever is longer.

Discussion

During this review, deficiencies were found with this requirement.

The following certification files examined were missing required personal tax returns or the returns were incomplete.

- Gibson Technology Solutions Corporation: Personal taxes for 2013-2015 were not found in the file.
- JNA Construction Corporation: Personal taxes for 2013-2015 did not include any schedules.

The review team also found that the following certification files did not include all required annual update documentation.

- Ecoterra Consulting, LLC: The annual update for 2018 was not found in the file.
- Gibson Technology Solutions Corporation: The annual updates for 2018 and 2019 were not found in the file.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, NJT must submit to the Office of Civil Rights a procedure to ensure that certification files are maintained, complete with all required documentation for each firm applying for DBE certification.

6.14 Submitting Reports to USDOT

Basic Requirement (49 CFR §26.11(e))

Each year, the State department of transportation in each UCP must report to DOCR the number of certified DBEs its DBE Directory that are (1) Women; (2) Socially and economically disadvantaged individuals (other than women); and (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals (49 CFR §26.11).

Discussion

During this review, no deficiencies were found with this requirement.

It is the responsibility of the New Jersey Department of Transportation to submit this report to the USDOT due annually on January 1. NJT provided evidence that the 2020 report was submitted on December 15, 2020, in compliance with the USDOT requirements.

6.15 Training of Certification Application Review Staff

Basic Requirement

On August 22, 2018, USDOT issued official guidance titled: "What steps should a UCP take to ensure that its DBE/ACDBE certification application-review staff are properly trained?" A UCP is responsible for ensuring and documenting the following:

1. The current certification application-review staff successfully complete all nine of the certification training modules provided by DOCR before they begin to review certification applications.
2. The current certification application-review staff view DOCR's "Recorded Presentation of the Rule," which describes changes to the DBE rules instituted through the DOT final rule issued October 2, 2014, (found at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-final-rule-and-program-activities>) before they begin to review certification applications.
3. The current certification application-review staff complete all new, revised, or updated training modules or materials when DOCR makes them available through its website.
4. Keeping accurate training records for all certification application-review staff.

UCP Staff who have not documented their completion of the mandatory training and viewing of the "Recorded Presentation of the Rule," should not be permitted to review certification applications.

Discussion

During this review, no deficiencies were found with this requirement.

The Office of Business Development is currently comprised of eight permanent staff members with certification responsibilities. All eight staff members and the Chief Civil Rights and Diversity Officer have completed certification training with the exception of two incumbents. Both the Business Development Specialist and the Director, Outreach and Operations Support are recent hires and are slated for completion of training in the first quarter of 2021.

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7. Summary of Files Review and Findings

File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Interstate Certification	Denial Letter	DOCR Listing
Initial Certification <1 year	ACB Consulting Services, LLC	Y	Y	N	N/A	Y/Y	N/A	N/A	N/A
-	-	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/N	Y	Y	Y	N	N/A	N/A	N/A
-	-	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Interstate Certification	Denial Letter	DOCR Listing
-	Don Davis Electrolux	Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
-	-	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/Y	Y	Y	Y	Y	N/A	N/A	N/A
-	-	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Interstate Certification	Denial Letter	DOCR Listing
-	PARA Engineers, LLC	Y	Y	N	N/A	Y/Y	N/A	N/A	N/A
-	-	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/Y	Y	Y	Y	N	N/A	N/A	N/A
-	-	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Interstate Certification	Denial Letter	DOCR Listing
Existing Certification >1 year	Ecoterra Consulting, LLC	Y	Y	N	N	Y/Y	N/A	N/A	N/A
-	-	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/Y	N	Y	N	N	N/A	N/A	N/A

File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Interstate Certification	Denial Letter	DOCR Listing
-	Gibson Technology Solutions Corporation	Y	Y	N	N	N/Y	N/A	N/A	N/A
-		30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/N	Y	Y	Y	N	N/A	N/A	N/A
-		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Interstate Certification	Denial Letter	DOCR Listing
-	JNA Construction Corporation	Y	Y	N	Y	N/N	N/A	N/A	N/A
-	-	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/Y	N	Y	Y	Y	N/A	N/A	N/A
Interstate Certification	Flynn Photography	N/A	N/A	N/A	N/A	N/A	N	N/A	N/A
-	-	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Removal/Decertification	Arthur's Limo & Transportation Co.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Y
-	-	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/A	N/A	N/A	N/A	N/A	Y	N/A	N/A
	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Interstate Certification	Denial Letter	DOCR Listing
-	Chemtech Consulting Group, Inc.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Y
-	-	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/A	N/A	N/A	N/A	N/A	N	N	Y

File Type		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Interstate Certification	Denial Letter	DOCR Listing
-	Nika Construction Group, LLC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Y
-	-	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/A	N/A	N/A	N/A	N/A	Y	Y	Y
-		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Interstate Certification	Denial Letter	DOCR Listing
-	-	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Y
-	PARS Environmental, Inc.	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/A	N/A	N/A	N/A	N/A	Y	N/A	N/A
-		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Interstate Certification	Denial Letter	DOCR Listing
-	UTCAS Inc.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Y
-	-	30 Day / 90 Day	SBA Size	NAICS	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
-	-	N/A	N/A	N/A	N/A	N/A	N	N	Y

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
1. Group Membership A) Burden of Proof	26.61	ND	-	-	-
B) Additional Evidence of Group Membership	26.63	ND	-	-	-
2. Business Size	26.65	D	Tax returns are missing in some files to accurately determine business size	Submit to the FTA Office of Civil Rights procedures to ensure that the required business tax documents are collected and properly analyzed to make a determination regarding the business size standard.	60 Days
3. Social and Economic Disadvantage A) Presumption of Disadvantage	26.67	D	Application not notarized	Submit to the FTA Office of Civil Rights procedures to ensure all applicants submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.	60 Days
B) Personal Net Worth	26.67	D	PNWs not adequately analyzed for omissions	Submit to the FTA Office of Civil Rights procedures to ensure that additional investigation is conducted into pertinent PNW omissions, and revisions are made, as necessary, and documented.	60 Days
C) Rebutting the Presumption of Economic Disadvantage	26.67	ND	-	-	-

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
D) Individual Determinations of Social and Economic Disadvantage	26.67	ND	-	-	-
4. Ownership	26.69	D	Not documentation that an applicant made a real, substantial, and continuing contribution of capital or expertise to acquire ownership interest in the applicant firm	Submit to the FTA Office of Civil Rights procedures to ensure that: <ul style="list-style-type: none"> • all applicants applying for DBE certification submit documented proof of contributions, (and for each owner claiming disadvantage), used to acquire ownership interest in the firm; and • all applicants submit a document that legally transfers and renounces the spouse's right to the assets used to acquire ownership in the firm when capital contributions come from joint accounts or assets. 	60 Days
5. Control	26.71	D	Applicant firm lacked appropriate licensure	Submit to the FTA Office of Civil Rights a plan to ensure that control determinations are appropriately addressed and documented in the file.	60 Days

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
6. Interstate Certification	26.85	D	Interstate applicant required to submit additional information	Submit to the FTA Office of Civil Rights a procedure to ensure that it does not routinely require interstate applicants to submit information beyond what is required by 49 CFR §26.85(c).	60 Days
7. Other Rules Affecting Certification	26.73	ND	-	-	-
8. UCP Requirements A) UCP Agreement	26.81	D	Non-certifying members of the NJUCP did not sign the MOU	Submit to the FTA Office of Civil Rights a MOU with signatures from the non-certifying members of the NJUCP.	60 Days
B) UCP Directory	26.31	ND	-	-	-
9. Entering Information Into USDOT's Ineligibility Database	26.85	ND	-	-	-
10. UCP Procedures A) Uniform Certification Application	26.83	ND	-	-	-
B) On-Site Visits	26.83	ND	-	-	-
C) 30-Day Notification	26.83	D	30-day notification requirement not followed	Submit to the FTA Office of Civil Rights a procedure to ensure that firms are notified of their application status within 30 days of receipt.	60 Days
D) 90-Day Determinations	26.83	D	90-day determination requirement not followed	Submit to the FTA Office of Civil Rights a plan to ensure that certification decisions are made within 90 days of receiving all required information from the applicant firm or within no more than 60 additional days if an extension is granted.	60 Days

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
E) Annual Updates	26.83	D	Annual updates missing Additional information requested with the update	Submit to the FTA Office of Civil Rights a procedure to ensure that: <ul style="list-style-type: none"> • annual updates are collected from DBEs and maintained in the certification files • Personal tax returns and PNWs are no longer required with submission of the annual update • Certified DBEs are not required to undergo a recertification process 	60 Days
11. Denials of Applications for Certification A) Initial Request Denials	26.86	ND	-	-	-
B) Removing Existing Certification	26.87	D	Informal hearing not offered when it removes an existing certified firm	Submit to the Office of Civil Rights a procedure to ensure that: <ul style="list-style-type: none"> • the right to an informal hearing is consistently communicated to firms that it seeks to decertify • the removal process is followed in accordance with 49 CFR 26.87 	60 Days
C) Mandatory Summary Suspension	26.88	ND	-	-	-
D) Optional Summary Suspension	26.88	ND	-	-	-

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
E) Appeals to USDOT	26.89	D	Administrative record not provided timely	Submit to the Office of Civil Rights a procedure to ensure that NJT will provide the administrative record within 20 days of the request from DOCR.	60 Days
12. Compliance and Enforcement A) DBE Enforcement Actions	26.107	ND	-	-	-
B) Confidentiality	26.109	D	Third party release of information without firm consent	Submit to the Office of Civil Rights a procedure to ensure that confidential business information including certification and supporting documentation to any third party is not released without the written consent of the firm that submitted the information	-
C) Cooperation	26.109	ND	-	-	-
13. Record Keeping	26.11	D	Files do not contain all required information	Submit to the Office of Civil Rights a procedure to ensure that certification files are maintained, complete with all required documentation for each firm applying for DBE certification	60 Days
14. Submitting Reports to USDOT	26.11	ND	-	-	-
15. Training of Certification Application Review Staff	USDOT	ND	-	-	-

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment

Attachment A – FTA Notification Letter to NJT



U.S. Department
of Transportation
Federal Transit
Administration

Headquarters

East Building, 5th Floor, TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

November 25, 2019

Kevin Corbett
Executive Director
New Jersey Transit Corporation
One Penn Plaza East, 4th Floor
Newark, NJ 07105

Dear Mr. Corbett:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE specialized reviews of grant recipients. New Jersey Transit Corporation (NJ Transit) has been selected for a review of its Unified Certification Program (UCP) to take place March 17–19, 2020.

The purpose of this review will be to determine whether NJ Transit is meeting its obligations, as represented by certification to FTA, to comply with all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE certification procedures (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with UCP certifying and non-certifying members, DBE applicants, DBE certified firms, firms that were denied DBE certification, and other stakeholders, possible work-site visits, and an exit conference. The reviewers will complete the on-site portion of the review within a three-day period. FTA has engaged the services of Milligan & Company LLC of Philadelphia, PA to conduct this specialized review. Representatives of Milligan and FTA will participate in the opening and exit conferences, with FTA participating by telephone.

We request an opening conference at 9 a.m. on Tuesday, March 17, 2020, to introduce the Milligan team and FTA representatives to NJ Transit. Attendees should include you and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. The review team will need adequate working space and the use of privately controlled offices with internet access to conduct interviews and review documents. Please let us know if you will designate a member of your staff to serve as NJ Transit's liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in the enclosure, which consists of items that NJ Transit must submit to the review team within 30 calendar days of the date of this letter. Please forward these materials to the following contact person:

Sandra Swiacki
Milligan & Company LLC
105 N. 22nd Street
Philadelphia, PA 19103
215-496-9100 x5120
sswiacki@milligancpa.com

You also have the option of sending the documents via Milligan's secure file transfer protocol (FTP) site. Your reviewer will reach out to you concerning the use of the FTP site. Please be prepared to designate a point of contact for your agency, for which user access should be provided.

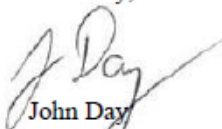
FTA requests your attendance at an exit conference scheduled for 3 p.m., on Thursday, March 19, 2020. The exit conference will afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to NJ Transit, will be considered public documents subject to release under the Freedom of Information Act, upon request.

NJ Transit representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact Scott Pichon at 202-366-8939 or via email at *scott.pichon@dot.gov*.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day
Program Manager
FTA Office of Civil Rights

Enclosure

cc: Stephen Goodman, Regional Administrator, FTA Region 2
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights

Enclosure

The following information must be submitted to Milligan within 30 calendar days from the date of this letter:

1. Current Unified Certification Program Agreement.
2. Current Memorandum of Understanding or similar documents forming the NJ Transit Unified Certification Program (which should be signed by all members of the UCP).
3. The certification criteria/guidelines used in determining DBE eligibility.
4. Standard Operating Procedures or similar documents that explain the DBE certification process, including copies of the application used during certification, annual affidavits/updates, and personal net worth (PNW), etc.
5. A list of all firms certified, denied, and decertified or removed by the UCP from federal fiscal year 2017 to present. The list must include:
 - a) the firm's city and state
 - b) the firm's ethnicity
 - c) the firm's gender
 - d) the date of site visit
 - e) the reasons for denial and/or decertification (e.g., size, PNW, control, etc.)
 - f) whether the denial decision was appealed to the UCP or USDOT
 - g) The result of the appeal
6. A description of NJ Transit UCP appeals process(es). List the individuals involved in the appeals process and how they are selected.
7. Any third-party complaints regarding DBE firms certified by the NJ Transit and actions taken to resolve the matter in the past three (3) years.
8. Any Freedom of Information or similar request for certification information in the past three (3) years.
9. Any enforcement action against a DBE firm (e.g., suspension, debarment, etc.) regarding certification in the past three (3) years.
10. Other pertinent information determined by NJ Transit's staff to illustrate its UCP operations and procedures.



U.S. Department
of Transportation
**Federal Transit
Administration**

Headquarters

5th Floor – East Bldg., TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

April 7, 2021

Kevin Corbett
Executive Director
New Jersey Transit Corporation
One Penn Plaza East, 4th Floor
Newark, NJ 07105

RE: Unified Certification Program (UCP) Compliance Review Final Report

Dear Mr. Corbett:

This letter concerns the Federal Transit Administration's (FTA) Disadvantaged Business Enterprise (DBE) Review of the New Jersey Transit Corporation's (NJT) Unified Certification Program (UCP) originally scheduled for March 17-19, 2020 and completed virtually. Enclosed is a copy of the Final Report, which will be posted on FTA's website on our DBE page.

The FTA Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of our ongoing oversight efforts, FTA conducts a number of onsite reviews to ensure compliance with the applicable provisions of 49 CFR Part 26. FTA uses the findings from these reviews to provide direction and technical assistance to transit agencies in order to achieve compliance with 49 CFR Part 26.

Unless otherwise noted, all corrective actions identified in the Final Report must be undertaken within 60 days of the date of this letter. Once we have reviewed your submissions, we will request either clarification or additional corrective action, or will close out the finding if your response sufficiently addresses the DBE requirements. Please submit your responses to me at john.day@dot.gov.

We appreciate the cooperation and assistance that you and your staff have provided us during this review, and we are confident NJT will take steps to correct the deficiencies. If you have any questions about this matter, please contact Ed Birce at 202-366-1943 or via email at guljed.birce@dot.gov.

Sincerely,

John R. Day
Program Manager
FTA Office of Civil Rights

Enclosure

cc: Stephen Goodman, Regional Administrator, FTA Region 2
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights