



CORPUS CHRISTI REGIONAL  
TRANSPORTATION AUTHORITY

**DISADVANTAGED BUSINESS ENTERPRISE  
SUBCOMMITTEE MEETING AGENDA**

**Wednesday, February 24, 2010  
RTA Board Room  
5658 Bear Lane  
Corpus Christi, Texas  
11:00 a.m.**

1. Review of Subcommittee Report – November 18, 2009 ..... Attachment 1
2. DBE Recertification Process..... Attachment 2
3. Update on the Texas Uniform Certification Process DBE Audit ..... Attachment 3
4. Adjournment

In compliance with the Americans Disability Act, individuals with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact the Assistant Secretary to the Board at 903-3561 at least 48 hours in advance so that appropriate arrangements can be made.

**Chair:** Gloria Perez  
**Members:** Mary Saenz, Crystal Lyons

On **Friday, February 19, 2010** this Notice was posted by **Beth Vidaurri** at the RTA Administrative Offices, 5658 Bear Lane, Corpus Christi, Texas.

**DBE SUBCOMMITTEE MEETING REPORT  
WEDNESDAY, NOVEMBER 18, 2009  
RTA Board Room  
5658 Bear Lane  
Corpus Christi, Texas**

**Subcommittee Members Present:** Gloria Perez (Chair), Crystal Lyons, Mary Saenz

**Subcommittee Members Absent:** None

**Board Members Present:** David Martinez

**Staff Members Present:** Eduardo Carrion (Chief Executive Officer), Jorge Cruz-Aedo, Twila Mouttet, Linda Socha

**Public Present:** Eloy Soza

Ms. Perez called the meeting to order at 11:07 a.m.

**Review of Subcommittee Report for May 27, 2009**

Ms. Perez asked if there were any changes or updates requested for the review of the Subcommittee Report for May 27, 2009.

**DBE Participation in RTA's American Recovery and Reinvestment Act of 2009 (ARRA) Projects**

Mr. Taylor reported since the ARRA was signed by the President of the United States in February 2009, and through the Grants for Transportation Investment Generating Economic Recovery (TIGER Discretionary Grants), RTA had received grant funding of approximately six million for Bus Replacement, Bus Equipment (ADP Hardware), and Rehabilitation/Renovation of Bus Passenger Shelters for ADA Improvements.

Mr. Taylor identified the RTA's Rehabilitation/Renovation of Bus Passenger Shelters project as meeting the intent of the ARRA funding to create and/or sustain jobs, as well as meeting RTA's DBE initiatives and goals.

In describing the Board approved project, Mr. Taylor detailed the involvement of four separate engineering firms working on bus stop improvement projects simultaneously, with oversight by AG/CM as project manager. He stated that DBE participation was 33 percent through Phase One and Phase Two of the four phase project.

## **ATTACHMENT 1**

Mr. Taylor said that the two successful bidders for the work involved in the Phase Three construction stage were both DBE certified, and that approval of the bids would be requested at the December Board Meeting.

Mr. Taylor continued, in response to questions from Ms. Saenz and Ms. Perez, stating that the ARRA funds would funnel money into the local economy, and would significantly expedite the ADA compliance plan timeline. He stated that due to lower than expected cost on bids received for ADA bus stop improvement contracts, ARRA funds remained available for additional bus stop improvement projects.

Mr. Taylor fielded questions from Ms. Perez, by responding that RTA staff had received training and would follow the requirements of ARRA reporting and tracking guidelines.

In response to Ms. Saenz, Mr. Taylor explained that the RTA utilized the standardized DBE Unified Certification process, and that an out-of-state bidder could be certified in their state and subsequently be certified in Texas under the certification requirements. He added that Historically Underutilized Business (HUB) certification was not relevant for RTA's DBE program, as HUB is a State certification only.

There being no further business, the meeting was adjourned at 11:31 a.m.

Submitted by: Linda Socha

## REGIONAL TRANSPORTATION AUTHORITY DBE SUBCOMMITTEE PRESENTATION DOCUMENT

**DATE:** February 24, 2010  
**SUBJECT:** DBE Recertification Process

### Background

The DBE Certification Program is designed as a gateway for minority, small and women-owned business to grow their business by using the opportunities afforded by the Department of Transportation.

The main objectives of the DBE Program are:

- \* To ensure that small DBE firms can compete fairly for federally funded transportation-related projects.
- \* To ensure that only eligible firms participate as a DBE firm.
- \* To assist DBE firms in competing outside of the DBE Program.

In order for small disadvantaged firms, including those owned by minorities and women, to participate as a DBE in DOT-assisted contracts, they must apply for and receive certification as a DBE. For the state of Texas, DBE certification is performed by the certifying agencies of the Texas Unified Certification Program (TUCP).

The certifying agencies are City of Houston, Corpus Christi Regional Transportation Authority, North Central Texas Regional Certification Agency, South Central Texas Regional Certification Agency, and Texas Department of Transportation.

### General Criteria for Certification as a DBE

In order to apply for certification as a Disadvantaged Business Enterprise (DBE), the firm *must* meet the following eligibility criteria stated in 49 CFR Part 26:

- A business that is 51% owned, controlled and managed by a socially and economically disadvantaged individual.
- 51% owner must be United States citizen or legal resident.
- Personal Net Worth (PNW) of the disadvantaged individual can not exceed \$750,000. Items excluded from a person's net worth calculation include an individual's ownership interest in the applicant firm, and his or her equity in their primary residence.

## ATTACHMENT 2

- Depending upon the nature of work performed, a firm must be a for-profit business and must not have annual gross receipts over \$22,410,000 in the previous three fiscal years. [This size standard is for construction related work. Depending on the type of work the business performs, other size standards may apply].

### **Annual Review Process**

Once a firm is DBE certified and pursuant to 49 CFR Part 26.83(j), DBE firms will update their certifications annually (on the anniversary date of their certification) using the TUCP Annual Update “No Change” Affidavit form. Failure to submit the required documentation may result in certification removal as outlined in 49 CFR Part 26.87. The annual review will be conducted by the responsible certifying TUCP certifying agency.

### **Recertification Process**

Another component of the Disadvantaged Business Enterprise (DBE) Program is the recertification process. In conjunction with 49 CFR Part 26.83(h) a DBE firm shall remain certified for a period of at least three years unless and until its certification has been removed.

The prescribed practice within the Texas Unified Certification Program (TUCP) prior to expiration of the certification is to request a “No Change” Affidavit form from each certified company to verify that the company is still eligible for the DBE Program. Other required documents like current or most recent federal income tax returns (both business and personal), minutes of last corporate organization meeting; and any agreements that amend or change ownership and/or control will need to be submitted together with the “No Change” Affidavit.

Additionally, a DBE on-site review will be conducted by the TUCP certifying agency to complete the recertification process.

The federal guidelines are specific in detailing procedures for recertifying DBEs. Below are some excerpts from the *Official Questions & Answers (Q &A's) DBE Program Regulation (49 CFR 26)* pertaining to Certification Procedures:

Section 26.83 (h)

#### **Q. MUST RECIPIENTS RECERTIFY FIRMS EVERY THREE YEARS?**

A. No. The rule does not say that recipients must recertify firms every three years. It says that recipients cannot require a firm to go through a recertification process (i.e., involving a reapplication for certification) more frequently than once every three years.

Once recipients have determined that a firm is eligible under part 26 standards (i.e., through an initial certification under part 26 or an eligibility review of a firm

certified under former part 23), the rule states that it remains certified for a period of at least three years, unless its eligibility has been removed through 26.87 procedures.

DBEs' "no change" affidavits and notices of change are intended to keep recipients current on the status of certified firms in the meanwhile. If the facts on which the firm's certification was based change, the recipient can take action, such as a 26.87 proceeding to remove eligibility.

Of course, a recipient can investigate a firm if there is reason to believe that its current information is incorrect or outdated, or that there are problems with the firm's status as an eligible DBE.

***Q. WHEN IS IT APPROPRIATE FOR A RECIPIENT TO REQUIRE A FIRM CERTIFIED UNDER FORMER PART 23 TO REAPPLY FOR CERTIFICATION?***

A. The provision of 26.83(h) that firms may not be required to reapply for certification more than every three years applies to firms certified under former Part 23 as well as to those certified for the first time under Part 26. For example, if a firm was most recently certified in December 1998, it would not be appropriate for the recipient to ask it to reapply for certification before December 2001.

***Q. WHAT ACTIONS DOES A RECIPIENT TAKE AFTER IT REQUESTS A CURRENTLY CERTIFIED FIRM TO REAPPLY FOR CERTIFICATION?***

A. When a recipient requires a currently certified firm to reapply for certification, the recipient should not treat the firm as though it were a new applicant.

That is, while the firm must provide all requested information, the firm does not bear the burden of proving its eligibility, as it would upon initial application.

If the recipient determines, based on the information in the reapplication for certification, that there is reasonable cause to believe that the firm is no longer an eligible DBE, the recipient would begin a 26.87 proceeding to remove the firm's eligibility.

If the firm does not provide the requested information in a timely manner, the recipient could begin a 26.87 proceeding to remove the firm's eligibility on the ground of failure to cooperate (see 26.109(c)).

Section 26.83 (j)

***Q. WHAT IS A "NO CHANGE" AFFIDAVIT AND WHEN SHOULD RECIPIENTS REQUIRE DBE FIRMS TO SUBMIT ONE?***

## ATTACHMENT 2

A. A "no change" affidavit is an affidavit each DBE firm must provide to the recipient annually on the anniversary date of the firm's certification. The affidavit affirms that there have been no changes in the firm's circumstances affecting its ability to meet part 26 size, disadvantage, ownership, and control standards (except for changes about which the firm has submitted a "notice of change" to the recipient).

With a "no change" affidavit, the rule requires a firm to submit supporting documentation concerning its size and gross receipts.

The "no change" affidavit requirement became effective March 4, 1999, for all DBE firms.

All firms certified under former part 23 will have a certification anniversary date no later than March 3, 2000. Therefore, recipients should ensure that all such firms have submitted their initial "no change" affidavits in that time, each by its own certification anniversary date, and each year thereafter.

For purposes of this notice requirement, "no change" in the firm's circumstances means, among other things, that changes in the regulation (e.g., from former part 23 to part 26) have not affected the firm's eligibility. For example, part 26 includes a \$750,000 personal net worth cap that was not included in former part 23. By submitting a "no change" affidavit, the owner of a DBE firm is affirming that his or her personal net worth does not exceed \$750,000. Recipients should ensure that currently certified DBEs are aware of this obligation.

## REGIONAL TRANSPORTATION AUTHORITY DBE SUBCOMMITTEE PRESENTATION DOCUMENT

**DATE:** February 24, 2010

**SUBJECT:** Update on the Texas Uniform Certification Process DBE Audit

### **Background**

In January 2009 the Federal Transit Administration conducted an audit of State DOTs to determine the uniformity in which certification was being conducted throughout the nation. The Corpus Christi Regional Transportation Authority is a member of the Texas Unified Certification process and our agency was reviewed as a part of the Texas audit.

In accordance with 49 Code of Federal Regulations (CFR), Part 26 each recipient of federal fund receiving more than \$250,000 in capital or planning funds must have a DBE program.

### **Objectives**

The objectives of the compliance review are to:

- Determine whether the TUCP is honoring the Unified Certification Program agreement submitted to the Secretary of Transportation;
- Examine the required certification procedures and standards of the TUCP against the Disadvantaged Business Enterprise program compliance standards set forth in the regulations and to document the compliance status of each component; and
- Gather information and data regarding the operation of the TUCP from certifying members through interviews and certification file review.

### **Issues and Corrective Action**

#### **Burden of Proof**

1. Audit Finding – Deficiencies were found with requirements for burden of proof. The application package excluded the requirement for a signed, notarized statement from members presumed to be socially and economically disadvantaged.
2. Corrective Action – Developed supplemental form for group membership documentation and all TUCP certifiers are now using the prescribed Uniform Application Form.

## **ATTACHMENT 3**

### **Group Membership**

1. Audit Finding – A deficiency was found with the requirement for group membership.
2. Corrective Action – Added proof of ethnicity and citizenship as part of the group membership documentation

### **Social and Economic Disadvantage**

1. Audit Finding – There was inconsistency among UCP members collecting Person Net Worth (PNW) from owners claiming disadvantage and inaccurately calculating PNW
2. Corrective Action – Ensure that UCP members were collecting PNW as required by regulations and ensure that proper calculations of PNW occur with all agencies. Also, attend certification training on PNW.

### **UCP Requirements**

1. Audit Finding – Unified Certification Program (UCP) certification members should have sufficient resources to carry out the requirements of this part
2. Corrective Action – Address staffing issues of TUCP members

### **UCP Procedures**

#### **On-Site Visits**

1. Audit Finding – UCP certification members not visiting the work sites of applicants. They were inconsistent with conducting site visits on SBA firms.
2. Corrective Action – Visit worksites in local jurisdiction for future applicants and conduct on-site visits on all firms that have not been visited.

#### **Uniform Application**

1. Audit Finding – All UCP certification members not using Uniform Application Form in Appendix F
2. Corrective Action – All TUCP certification members must use the TUCP application which is consistent with the USDOT Uniform Application Form in Appendix F.

### **DOT/SBA Memorandum of Understanding (MOU)**

1. Audit Finding – Not following SBA MOU
2. Corrective Action – Develop procedures for certifying SBA firms

Denials of Certification

1. Audit Finding – Removal letters were not issued notifying firms of final removal
2. Corrective Action – All TUCP agencies have agreed to follow Federal DBE Program regulations concerning the removal of currently certified firms. Some of the agencies will change internal procedures to meet this requirement.

Compliance and Enforcement

1. Audit Finding - DBE Enforcement Actions
2. Corrective Action - All TUCP members now utilizing the standard USDOT application for the DBE Program and placing the form on their websites.

A Summary of Findings table which identifies all audit requirement areas is attached as Exhibit A.

ATTACHMENT 3

EXHIBIT A – SUMMARY OF FINDINGS

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action (s)	Response Days/Date
1. Burden of Proof	26.61	D	Not providing applicant written reasons to question group membership.	Develop supplemental form for group membership documentation	90 days
2. Group Membership	26.63	D	Causing disproportionate burden on particular group members	Develop supplemental form for group membership documentation	90 days
3. Business Size	26.65	ND			
4. Social and Economic Disadvantage	26.67	D	Inconsistency among UCP members collecting PNW from owners claiming disadvantage.	Ensure that UCP members are collecting PNW as required by regulations.	60 days
a) Personal Net Worth			Inaccurately calculating PNW	Ensure that proper calculations of PNW occur with all agencies. Attend certification training on PNW.	
b) Individual determination		ND			
5. Ownership	26.69	ND			
6. Control	26.71	ND			

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action (s)	Response Days/Date
7. Other Certification Rules	26.73	ND			
8. UCP Requirements					
a) UCP agreement	26.81	AC	UCP certification members should have sufficient resources to carry out the requirements of this part.	Address staffing issues of TUCP members	60 days
b) UCP directory	26.31	ND			
9. UCP Procedures					
a) on-site visits	26.83	D	UCP certification members not visiting the work sites of applicants. Inconsistent with conducting site visits on SBA firms.	Visit worksites in local jurisdiction for future applicants.	90 days
				Conduct on-site visits on all firms without one.	90 days
b) Uniform Application		D	All UCP certification members not using Uniform Application	All TUCP certification members must use Uniform Application	90 days
c) Annual Updates		ND			
10. DOT/SBA MOU	26.84 – 26.85	D	Not following SBA MOU	Develop procedures for certifying SBA firms	90 days
11. Denials					
a) Initial Request	26.86	ND	Removal letters not notifying of final removal	Revise intent to remove certification letters	60 days
b) Remove Existing	26.87	D			
c) Appeals	26.89	ND			