

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Unified Certification Program

COPY

Arkansas Unified DBE Certification Program

Table of Contents

UNIFIED CERTIFICATION PROGRAM	1
DEFINITIONS	1
RATIFICATION PROCESS	2
COMMUNICATION	3
INITIAL CONSOLIDATION (GRANDFATHER)	3
CERTIFICATION PROCESS	4
REVIEWING ENTITY DESIGNATION	4
SIC / NAIC CODES	4
RECIPROCITY	5
THIRD PARTY CHALLENGES	5
APPEALS PROCESS	6
DBE DIRECTORY	7
AGENCY COMPLIANCE	7
TRAINING	9
REVISIONS TO ACP DOCUMENT	9

Unified Certification Program

The Disadvantaged Business Enterprise (DBE) requirements contained in 49 Code of Federal Regulations (CFR) Part 26 published in February 1999 (see Attachment) include a provision for a "one-stop" certification process. The process must be defined and submitted to the Secretary of Transportation for approval by March 2002. Failure to develop and execute a Unified Certification Program (UCP) agreement will result in a loss of United States Department of Transportation (USDOT) funding.

Arkansas entities receiving Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) and Federal Transit Administration (FTA) funding were identified and asked to participate in developing a UCP. A committee to oversee the development of the UCP statewide was formed that included FHWA, FAA and FTA funding recipients. The committee decided the Arkansas UCP would be called the Arkansas Unified Disadvantaged Business Enterprise Certification Program, or ACP.

Additionally, the Arkansas State Highway and Transportation Department (AHTD), Little Rock Municipal Airport Commission (LRMAC), and the Arkansas Airport Operators Association (AAOA) were designated as Primary Partners within the ACP and will oversee implementation of the ACP. Each Primary Partner entity will designate a representative.

The ACP will not establish, recommend, or alter any agency's overall DBE Program, other than to supplement an approved program submittal, DBE goal or goal methodology. DBE goal development, administration, monitoring, and reporting remains the sole responsibility of the agency with a USDOT approved DBE Program, in accordance with 49 CFR Part 26, subject to any oversight requirements of FHWA, FAA or FTA. All USDOT recipients will be required to ratify the ACP agreement and all DBE certifications by the ACP will be binding.

Definitions

The following definitions are provided to facilitate reading and comprehension of the UCP agreement:

ACP: The Arkansas Unified Disadvantaged Business Enterprise Certification Program, created to provide a "one-stop" statewide certification process for disadvantaged business owners.

Agency: department or organization involved in the certification review process.

DBE: Disadvantaged Business Enterprise - a for - profit small business that (1) is at least 51 percent owned by one or more individuals who are both socially and

economically disadvantaged (as defined by 49 CFR Part 26) or in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

MBE/WBE: Minority or Women Business Enterprise -a for-profit small business that is at least 51 percent owned by one or more minorities (as defined by 49 CFR Part 23A) or women, and whose management and daily business operations are controlled by one or more of the minorities or women who own it.

Partners: Arkansas recipients of funds from the U.S. Department of Transportation's Federal Aviation Administration (FAA), Federal Transit Administration (FTA) and Federal Highway Administration (FHWA).

Primary Partners: those partners that will oversee the implementation of the ACP, namely the Arkansas State Highway and Transportation Department (AHTD), Little Rock Municipal Airport Commission (LRMAC) and the Arkansas Airport Operators Association (AAOA).

SIC/NAIC: the Standard Industrial Classification and North American Industrial Classification system; four digit code designation which best describes the primary business of a firm.

UCP: Unified Certification Program, or the "one-stop" certification process for each state's DBE program as contained in 49 CFR Part 26.

49 CFR Part 26: the Department of Transportation's Rules and Regulations for the Disadvantaged Business Enterprise (DBE) program. (also see Attachment)

Ratification Process All recipients of more than \$250,000 in federal funds administered by the USDOT, either directly or indirectly, must ratify and comply with the ACP agreement. Failure to ratify the agreement may result in the loss of federal funds from the ACP partners and/or the USDOT.

Prior to submission of the ACP document to USDOT, recipients will be required to make an affirmative statement of intent to comply and will be subject to administrative review by the ACP, the lead agency, or any branch of the USDOT. If at any time a recipient of federal funds receives at least \$250,000 from any agency of USDOT, the recipient must accept and execute the ACP agreement and participate accordingly.

Communication Sharing information on any matter related to the operation of the ACP is important. All ACP partners agree to communicate openly with each other. Communication can take the form of, but is not limited to, telephone conversations, conference calls, meetings, written correspondence, electronic transmittals, and/or discussion.

If any ACP partner is in receipt of information that is necessary or critical to making a determination of DBE eligibility, the ACP partner shall notify and submit the appropriate information to the ACP. Each ACP partner shall be notified of all changes affecting current certifications, new certifications and denial actions.

All "media" contacts related to the ACP or its activities can be made by the agency contacted. The response should be appropriate and present an accurate representation of the facts. Such contacts shall be reported to all of the Primary Partners within 24 hours.

Initial Consolidation (Grandfather Clause) The ACP shall institute a limited "grandfather clause" that may grant DBE certification to firms currently certified by agencies that administer programs under the USDOT and 49 CFR Part 26. Those agencies are AHTD and LRMAC. This does not include firms certified as a DBE, MBE or WBE by any city, state, or federal agency, or any other entity who does not comply with 49 CFR Part 26, as determined by the ACP.

This grandfather clause is a one time only occurrence and is subject to approval of the ACP on a firm-by-firm basis. The Primary Partners will review all firms for which any ACP partner makes a written request, to determine eligibility under 49 CFR Part 26. The Primary Partners will review any investigative information, the certification file and any other documentation provided, as necessary. A determination will then be made as to whether or not the firm meets the eligibility requirements. If the Primary Partners determine the firm is ineligible to participate as a DBE, the firm will be advised of the intent to decertify. The firm may appeal this decision by submitting a written request within 14 days of the date of the notice of intent to decertify.

An appeals committee consisting of representatives of the Primary Partners will conduct the appeal hearing. The appeals committee will not include the agency making the original certification determination. A representative of Central Arkansas Transit Authority (CATA) will sit in as the third member. As provided in the DBE regulations, a firm may appeal directly to the USDOT; however, if they choose to appeal to the ACP, the firm does *not* forfeit the right to appeal to the USDOT, within the time frame provided in 49 CFR Part 26.

After the effective date of this UCP agreement, only firms certified based on guidelines prescribed in 49 CFR 26 and provisions under this agreement shall be recognized as certified by the ACP. Any ACP partner that has concerns regarding any "grandfathered" firm may file a Third Party Challenge. That challenge will be treated in the manner set out below in the section titled Third Party Challenges.

Certification Process The ACP shall review and make an eligibility determination on all firms applying for DBE certification whose business is located in the State of Arkansas, including those firms whose main headquarters is in another state but which maintain a branch office in the State of Arkansas. The ACP shall accept applications from firms located across state lines; however, the firm must be currently certified by its home state UCP in accordance with 49 CFR 26.

Reviewing Entity Designation The firm's primary type of work or industry will be ascertained by the agency receiving the firm's application. The ACP partners agree to divide the applicants in accordance with a firm's primary industry or market. Specifically the partners agree to divide application reviews in the following manner:

- Applicants that provide primarily transit oriented services or products will be reviewed by the AHTD. These may include, but are not limited to, transit services, maintenance services, maintenance products or transportation management services.
- Applicants that are primarily aviation oriented services or products, including concessionaires, will be reviewed by the Little Rock National Airport. These may include, but are not limited to, non-heavy highway construction products and services, food service firms, aviation specialty firms or structural construction firms.
- Applicants that are primarily heavy highway construction oriented services or products will be reviewed by AHTD. These may include, but are not limited to, heavy and bridge construction contractors, specialty contractors, planning and engineering consultants, specialty consultants, construction suppliers, and steel manufacturers or fabricators.

There may be exceptions to assignments based upon familiarity with the firm, historical knowledge, or resources. Such exceptions must be agreed to by the Primary Partners prior to a review of the application.

The certification process must include an on-site review at the firm's headquarters and a project site review. In order to expedite the certification process and efficiently utilize resources, ACP partners other than the AHTD and LRMAC may perform on-site or project reviews for the reviewing entity.

Standard Industrial Classification (SIC) / North American Industry Classification System (NAICS) Codes The ACP agrees to certify all firms in compliance with 49 CFR Part 26, including designating specific work types. The partners agree to use the SIC/NAIC codes for those designations. All firms will be informed of the specific codes and a short narrative description of that designation.

Any firm may request modification and/or additions to their approved codes by making a written request to the certifying partner. That request must include the equipment and experience indicating the firm's ability to perform the particular work type. In addition, the firm must submit documentation of past contracts on which the firm has performed the specific type of work.

Reciprocity The ACP may elect to enter into a limited written reciprocity agreement with UCPs in other states or regions to share information. The reciprocity agreement will require that, at the request of the applicant firm, the home state UCP provide a complete copy of the firm's file. The certifying agency (AHTD or LRMAC) will review the file and on-site review prior to making a determination of eligibility. All partners agree that they will not individually execute any reciprocity agreements with any other agency or entity, including city, county, state or federal agencies, binding that partner, and subsequently the ACP, to a reciprocity agreement.

3rd Party Challenges The ACP shall accept written complaints from any person, including ACP partners, alleging that a currently certified firm is ineligible. The complainant must state specific reasons for ineligibility and submit any documentation in support of the complaint. The ACP partner originally responsible for the certification shall thoroughly investigate the complaint within 60 days. The firm being challenged will be notified by the original certifying partner, in writing, of the challenge, the basic grounds, and the relevant regulations. At the conclusion of the review, the partner shall notify the DBE in writing, by certified mail, of the findings. If reasonable cause to remove certification eligibility is found, the ACP partner will notify the complainant of the specific grounds and inform the firm of the intent to decertify and right to appeal to the ACP.

The firm may submit an appeal, in writing, of the intent to remove certification eligibility within 14 days of the date of the notice. The appeal must be made to the initial certifying partner and state if the firm wishes to file a written appeal or appear in person. If the firm requests the opportunity to appear before the ACP hearing board, the request for appeal must state whether the firm is to be represented by counsel. That partner must notify the ACP partners within 2 days of receipt of the request. If the firm requests an appeal in person, the chair of the ACP will contact the appellant and ACP partners to set a date.

The ACP Primary Partners will hear all challenges to currently certified firms. The entity completing the investigation and making the preliminary determination for eligibility removal will not act as a voting member on the board. A representative of CATA will vote in place of that entity.

The USDOT may notify the ACP of reasonable cause to find a certified DBE firm to be ineligible and the ACP shall immediately remove the certification eligibility of that firm.

Appeals Process The ACP established the following appeal processes for firms denied initial certification or re-certification, or notified of an intent to decertify. The firm may follow the appeal process set forth as follows and retain the right to appeal to the USDOT, or may appeal directly to the USDOT without utilizing appeals to the certifying agency or ACP.

Initial Certification Applicant Denials

The regulations do not require any appeal of certification denials for initial applicants; however, the partners indicated that it was preferred to have the opportunity to review denials prior to review by the USDOT. Therefore, it was agreed that any firm that received a denial of an initial request for certification would have the ability to make a written appeal to the entity that denied certification to the firm.

A firm denied certification will be advised of the right to file a written appeal with the ACP within 15 days of the date of denial. The appeal must be submitted to the denying agency within that time frame. The agency will then offer the firm the opportunity for an appeal hearing. After the hearing or review of the written appeal, the agency will make a final determination of eligibility. The firm will be notified in writing of the decision and right to appeal to the USDOT.

Denial of Re-Certification and De-Certifications

If a certifying agency becomes aware of reasons that a currently certified firm should be denied re-certification or be de-certified, the firm will be advised of the intent to decertify, the reasons and applicable federal regulations cited. Firms will be advised of the right to file a written appeal with the certifying agency within 15 days of the date of the notice of intent. The firm may request a hearing with the ACP in addition to providing a written appeal. The agency will then forward the appeal to the ACP for scheduling of a hearing.

The Primary Partners will conduct a hearing or review the written appeal, and make a final determination of eligibility. The Primary Partner responsible for making the initial determination of ineligibility will not participate. CATA will sit in place of that partner. The firm will be notified in writing of the decision and right to appeal to the USDOT.

Administrative Removal of Eligibility

In circumstances where a certified firm, or a new applicant firm, has failed to submit required documentation or exceeded Personal Net Worth thresholds, there will be no administrative re-consideration. Those circumstances include:

- ❖ Any certified firm that does not submit the annual affidavit required in 49 CFR Part 26 will have certification removed for failure to comply after 60 days from the date the affidavit was due. The affidavit is due at the 1st and 2nd year anniversary dates of a firm's certification. Failure to submit the affidavit cannot be appealed to the partner agency or ACP.
- ❖ Any firm not previously certified and denied certification due to exceeding the Personal Net Worth cap by the disadvantaged owner cannot appeal to the partner agency or ACP.
- ❖ If any certified firm's disadvantaged owner's Personal Net Worth exceeds the cap within the 3 year period of certification, the eligibility of the firm will be removed. Removal of certification for exceeding Personal Net Worth cannot be appealed to the partner agency or ACP.

DBE Directory The UCP must provide for a single directory to include firms certified by the ACP. AHTD agrees to maintain and update a directory which will be available electronically on the AHTD website (www.ArkansasHighways.com). Links from the partners' websites will be accessible.

The ACP agreed that this is the most beneficial and effective means of implementing the data requirements of the UCP. The data and format currently used for the AHTD DBE directory will be utilized. ACP entities will be responsible for transmitting certification information to the AHTD for inclusion and updating of the Directory database.

Agency Compliance The partners agree there are many agency specific issues related to their agency's certification processes. The primary areas of concern are:

- Interference In Certification Decisions
- Incomplete Or Inadequate Definition Of Processes
- Non-Compliance With 49 CFR Part 26
- Quality Of Decisions

In order for the ACP to succeed and the partners to maintain the level of trust needed to effectively comply with the UCP requirements it is necessary to implement minimum requirements for compliance, as well as a process for dealing with any agency that is found to be in non-compliance. The specific minimum requirements are:

- All decisions related to certification must be made in compliance with 49 CFR Part 26. This requires the independence to make decisions based solely upon the specific eligibility requirements.

- All de-certification appeals or hearings *must* be decided by a third party who was not involved in the determination, nor was a direct or indirect supervisor of the party involved in the decision.
- Outside entities such as construction boards or other politically mandated organizations cannot be involved in the certification determination, investigations of 3rd party challenges, or any administrative reconsideration.
- The ACP Partners must have an approved DBE Program in place, if required under 49 CFR Part 26, that clearly defines the role of the administrative staff. In addition, each partner must have clearly defined processes and procedures related to administration of the DBE Program and certification decisions.
- Any partner with a DBE Program administered in conjunction with an MBE/WBE program of another entity must have the procedures and policies for the DBE program clearly defined and separated. This includes eligibility requirements, data tracking, and removal/denial of certification.
- All partners agree to make all decisions and recommendations on certification based purely upon the eligibility requirements, without consideration of political influence or factors.
- All partners agree that there is no "emergency" certification, nor is there a provision within 49 CFR Part 26 for "conditional" certification. The eligibility requirements are to be determined with the factors present at the time of application and the decision is to be made in compliance with Part 26.

If any ACP partner feels that a particular agency is not complying with the requirements of 49 CFR Part 26, they may make a written complaint to the ACP. The ACP will review the complaint and circumstances. If a majority of the ACP partners, not including the complaining agency or the agency in question, agrees that the agency is not complying with the requirements, remedial action will be taken. The remedial action can take the form of one of the following:

- **Written Findings** – The ACP may issue a formal written determination of the issues regarding that agency's certification, procedures, or practices. This determination will be sent to the senior management official or chief operating officer of the agency in question, the program administrator, and USDOT. It is hoped that the agency will review the procedures at issue and make improvements to the process in order to meet 49 CFR Part 26.
- **Monitoring & Concurrence** – The ACP may issue a formal written determination as set out above, as well as provide a procedural review and concurrence process. It is the hope of the partners that the agency in question will take this opportunity to gain additional knowledge and education of the regulations and requirements.

The agency in question will be required to gain ACP concurrence in certification determinations for a specific period of time. Depending upon the situation, the ACP may choose to "pair" the agency with another ACP partner or it may choose to require concurrence by a majority of the ACP

partners. If an agency is paired with another agency and a dispute continues to exist, the ACP will make the final determination.

- o **Non-Compliance** – Should the ACP make every effort to correct the deficiencies in an agency's certification process without success, extreme measures may be necessary. The ACP may find that an agency is not acting in good faith and determine that the UCP will not accept firms certified by that agency until the required changes are implemented.

The ACP recognizes that this is a method of last resort and would not apply this remedy liberally. In addition, the ACP would not proceed with this remedy without notification to the USDOT, as well as the lead federal agency for the partner agency. The ACP further agrees that should the USDOT or the lead federal agency wish to assist or provide guidance on resolution, the ACP would make every effort to resolve the situation prior to implementing this remedy.

Training Training will be provided to ACP partners as needs are identified. The ACP will seek the assistance of the USDOT, FHWA, FAA, FTA and any other agency to provide guidance and training. The ACP may also utilize in-service opportunities to provide updated information to the partners. These opportunities may be in conjunction with other UCPs, states, or entities.

Revisions to ACP Document Revisions or changes to this ACP document can be proposed by any ACP partner. The revision must be submitted in writing to any Primary Partner and include reasons why the change is necessary. The Primary Partners will review and discuss the suggested change prior to voting on whether to adopt the revision. Revisions to the program document must be submitted to USDOT for approval prior to implementation by the ACP.

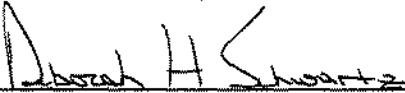
The following entities agree to implement and administer Disadvantaged Business Enterprise certification activities in accordance with this agreement, the Arkansas Unified DBE Certification Program (ACP). Additionally, the agencies of the United States Department of Transportation noted below have reviewed and concur in the ACP.

Signatures

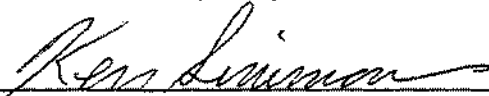
Primary Partners



Arkansas State Highway and Transportation Department



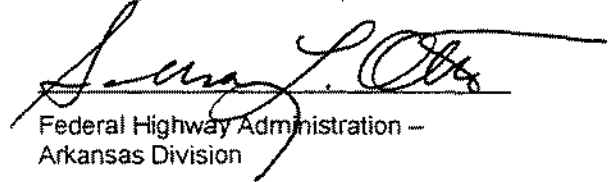
Little Rock Municipal Airport Commission



Arkansas Airport Operators Association

Operating Administrations

U. S. Department of Transportation



Federal Highway Administration –
Arkansas Division

Federal Aviation Administration –
Regional Office of Civil Rights

Federal Transit Administration –
Regional Office of Civil Rights