



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

MIKE DEW
SECRETARY

TO: Julio Holness, President, JWH Consulting Services
Volusia County Transit Authority

FROM: Victoria Smith, Equal Opportunity Office Manager
Florida Department of Transportation

SUBJECT: Disadvantaged Business Enterprise
Unified Certification Program
Peer Review – DBE Certification

Peer Review Team: Sammy Febres, DBE Certification & Small Business Manager
Florida Department of Transportation

Peer Review Date: July 16-17, 2018

PURPOSE

The focus of the Disadvantaged Business Enterprise (DBE) Peer Review is to ensure regulatory compliance and accountability throughout Florida's Unified Certification Program (UCP). The review consisted of determining compliance with Title 49, Part 26, Code of Federal Regulations (CFR), the Florida Unified Certification Program Agreement (UCP Agreement), and the Florida Unified Certification Procedure Memorandum.

Florida's UCP Certifying Members developed a multiyear review schedule to include all UCP DBE Certifying Members. The schedule is established chronologically, dating from the last time a Certifying Member participated in a certification review. Volusia Transit Authority was the second certifying member selected for review for fiscal year 2018.

METHODOLOGY

The peer review team sought to examine twenty (20%) percent of Volusia's most recent three years of DBE certification files. Over the period of calendar years January 1, 2017 through June 2, 2018 Volusia's DBE Directory consisted of twenty-one (21) certified firms. Consequently, the review team examined four files, which equals twenty (20%) of the 21 certified firms.

As part of the review process, the review team examined the facilities used by the agency in providing protection of the files confidential information and to understand the level of staff competence. The review team interviewed Mr. Julio Holness, President, JWH Consulting Services, for an assessment of program competence, training, and professional development. The team also toured Volusia Transit Authority certification office for evaluation of confidentiality assessment. During the review, the team determined that Volusia Transit Authority staff is up-to-date in the professional training and development necessary for competent review and determination of applications received by the agency.

Second, the team determined that the agency is using a system of security that follows regulation requirements concerning protection of the files confidential information. In conclusion, the agency follows all major DBE certification processes required in Title 49, Part 26 Code of Federal Regulations, Florida's Unified Certification Program Agreement, and Florida Unified Certification Procedure Memorandum, specifically:

The files reviewed consisted of four (4) certified files. The team found the selected files included proper correspondence and all the supporting documentation, consistent with Title 49, Part 26, CFR, and the DBE application checklist. There were instances where the reviewer requested additional information from the applicant consistent with the requirement for a complete application (§26.83 (l)). These requests were not burdensome, and were made on a case-by-case basis.

SELECTED AND REVIEWED FILES:

Certified Files

SKY BLIEU TECHNOLOGIES, LLC
 KRISJAY AND ASSOCIATES, LLC
 BLUE BAND, LLC
 A & M BUSINESS SOLUTIONS, LLC

Title 49, Part 26 Code of Federal Regulations **§26.31 Directory**

Requirement As required under §26.81(g) UCPs must maintain an electronic list of all firms eligible to participate as DBEs that includes the address, telephone number, and the types of work the firm has been certified to perform as a DBE (DBE Directory). The Directory must list each type of work a firm is eligible to perform using the most specific North American Industry Classification System (NAICS) code available.

Discussion: No deficiencies found. The directory for all Volusia Transit Authority DBE certified firms reviewed, included all the required information including address, phone number, and the types of work performed, using the most recent NAICS codes.

§26.61 Burden of Proof

Requirement: UCPs must rebuttably presume all members identified in §26.67(a) as socially and economically disadvantaged. Applicant must submit a signed, notarized statement indicating their membership into one of the groups identified under §26.67.

Discussion: No deficiencies found. All four (4) applications reviewed were accompanied by the Affidavit of Certification from the individual(s) presumed to be socially and economically disadvantaged. The notarized Affidavit is part of the USDOT Uniform Certification

§26.63 Group Membership

Requirement: If a UCP has a well-founded reason to question an individual's claim of membership to a specific group they must request, in writing, additional documentation to support that claim.

Discussion: No deficiencies found. All certified DBE files reviewed had a signed and notarized Affidavit of Certification from the individual(s) presumed to be socially and economically disadvantaged. Upon request, applicants provided birth certificates and/or passports in support of the Affidavit of Certification.

§26.65 Business Size Determination

Requirement: UCP's must apply the Small Business Administration (SBA) small business standards found in 13 CFR Part 121 proper to the type(s) of work the firm seeks to perform in DOT-assisted contracts. A firm is not eligible if the three years average gross receipts, including affiliates, exceed \$23.98 million.

Discussion: No deficiencies found. Volusia Transit Authority applied the small business standards of 13 CFR Part 121 for all files reviewed. All certified DBEs were below the small business size cap of \$23.98 million.

§26.67 Social and Economic Disadvantage Presumption of Disadvantage

Requirement: §26.67(a)(1) CFR; You must rebuttably presume 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 individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

Discussion: No deficiencies found. All applications reviewed were accompanied by the Affidavit of Certification from the individual(s) presumed to meet the presumptive groups. The notarized Affidavit is part of the USDOT Uniform Certification Application and is in Appendix F of the DBE federal regulations.

Personal Net Worth

Requirement: §26.67(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.

Discussion: No deficiencies found. All certified DBE files reviewed included a completed personal net worth form in which qualifying owners did not exceed \$1.32 million cap.

Individual Determination of Social and Economic Disadvantage

Requirement: §26.67(d) Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged.

Discussion: No deficiencies found. This review did not contain any files that required Volusia Transit Authority to apply a case-by-case determination or Appendix E of the DBE federal regulations.

§26.69 Ownership

Requirement: In determining whether the socially and economically disadvantaged participants in a firm own the firm, UCPs must consider all the facts in the record in its entirety. This includes the origin of all assets and how and when they used in obtaining the firm. To be DBE eligible, a firm must be at least 51% owned by socially and economically disadvantaged individuals.

Discussion: No deficiencies found. All certified DBE files reviewed indicated the individual(s) presumed to be socially and economically disadvantaged owned a minimum of 51% of applicant firm.

§26.71 Control

Requirement: In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record in its entirety.

Discussion: No deficiencies found. The review team did not find one instance where a firm certified under a NAICS code was certified, without the owner's experience, education, and license requirements (Resumes not collected for all owners).

§26.73 Other Rules Affecting Certification

Requirement: UCPs must not consider whether a firm performs a commercially useful function or is a regular dealer in any way in making decisions about whether to certify a firm as a DBE. UCPs must not refuse to certify a firm solely on the basis that it is a new firm or has not completed projects. DBE firms and firms seeking certification shall cooperate fully with UCP requests for relevant information.

Discussion: No deficiencies found. All Volusia Transit Authority files reviewed did not appear to consider whether a firm performs a commercially useful function or is a regular dealer in the certification determination nor were firms considered ineligible solely based on being new or not having completed projects.

§26.83 UCP Procedures
On-Site Review

Requirement: §26.83(c) UCPs must conduct an on-site visit to the firm's principal place of business, interview the principal officers and perform an on-site visit to any job sites if applicable.

Discussion: No deficiencies found. All DBE certified files reviewed had an on-site review conducted at the principle place of operation with the individual(s) presumed to be socially and economically disadvantaged.

Application

Requirement: §26.83(c)(viii) UCPs must require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in §26.85 of this part. §26.83(m). If an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant may resubmit the application at any time.

Discussion: No deficiencies found. All certified DBE files reviewed had the USDOT Uniform Certification Application, and most supporting documentation from the checklist, found in Appendix F of the CFR. DBE applications voluntarily suspended by the applicant, and those not providing significant information to merit further processing by the recipient, were returned to the applicant.

Annual Updates

Requirement: §26.83(j) DBEs must provide every year on the anniversary of the date of the certification, a No Change Declaration signed by the firm's DBE qualifying owner(s). This form must affirm that there have been no changes to the business that would affect the DBE eligibility in its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes.

Discussion: No deficiencies found. All certified DBE files contained affidavits/declarations at the anniversary date attesting to no changes in circumstances affecting eligibility accompanied by federal business taxes and affiliates, where appropriate.

§26.85 Interstate Certification

Requirement: When a firm certified in their respected home state applies to any other state, UCPs may accept the certification and certify the firm or require the firm to provide the following items:

- (1) A complete copy of the application form, all supporting documents, and any other information submitted to State A or any other state. This includes affidavits of no change (*see* §26.83(j)) and any notices of changes (§26.83(i), as well as any correspondence with the home state UCP.
- (2) Any notices or correspondence from states other than the home state relating to the status as an applicant or certified DBE in those states i.e., (denials).
- (3) Any appeals with DOT

(4) An affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

Discussion: No deficiencies found. All required supporting documents were sent to Volusia Transit Authority for certification.

§26.87 Removals

Requirement: §26.87 If a UCP determines there is reasonable cause to believe that a certified firm is ineligible, they must provide written notice to the firm, setting forth the reasons for the proposed determination. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

Discussion: No deficiencies found. All removed DBE files reviewed contained an Intent to Remove notice prior to agency action. Final removal notices were sent with USDOT appeal rights and instructions.

§26.89 USDOT Appeals

Requirement: §26.89 UCPs must provide the administrative record, including a hearing transcript, within 20 days of the Department's request.

Discussion: No deficiencies found. At the time of the review Volusia Transit Authority had not received any USDOT DBE appeals; however, they are aware of the requirements and timeframes to respond.

§26.109 Confidentiality & Cooperation

Requirement: §26.109 UCPs must not release any 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 applications for DBE certification and supporting information. All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information.

Discussion: No deficiencies found. All DBE files are secured in a locked filing cabinet within the Volusia Transit Authority office, assuring confidentiality is maintained.

Florida's DBE Unified Certification Program (UCP) Agreement **UCP Agreement Article 3.02 Responsible Certifying Member**

Requirement: Certifying members will be responsible for certifying DBEs who work in their respective fields of expertise (highway and bridge, aviation, and transit). Specifically, FDOT is responsible for certifying firms engaged in the delivery of highway, road and bridge related goods and services.

A Federal Aviation Administration (FAA) UCP Member is responsible for certifying those firms primarily engaged in the delivery of aviation related goods and services, including airport concessionaires. A Federal Transit Administration (FTA) UCP Member is responsible for certifying firms engaged in the delivery of transit related goods and services.

Discussion: No deficiencies found. Volusia Transit Authority's files are representative of DBEs engaged in the delivery of road, bridge, aviation, and transit related goods and services.

UCP Agreement Article 4.02 Certifying Member Rights and Responsibilities

Requirement: Certifying member will comply with the terms of the Agreement. Collect applications, conduct on-site reviews, make decisions in accordance with 49 CFR Part 26. Certifying member will enter information into DBE Directory, keep and maintain DBE files, make information available to USDOT and UCP recipients, process annual updates, perform file reviews, and make timely decisions.

Discussion: No deficiencies found. At the time of the review, Volusia Transit Authority followed all terms of the UCP Agreement.

Florida Unified Certification Procedure Memorandum Procedure Memorandum #2005-12 Member Training Requirement

Requirement: Certifying Members are required to attend UCP training by USDOT, or other DBE certification training as may be appropriate by Certifying Members.

Discussion: No deficiencies found. Current Volusia Transit Authority staff have attended training provided by USDOT, participated in UCP quarterly conference calls and annual UCP meetings.

RECOMMENDATION

Within the sample files reviewed, the peer review team did not identify any areas of concern.

CORRECTIVE ACTIONS

We found no areas requiring immediate corrective action.

