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## The South Dakota Unified Certification Program Agreement



700 Broadway Ave.  
Pierre, SD 57501-2586



## **South Dakota**

### **Unified Certification Program Agreement**

The United States Department of Transportation (USDOT) has issued regulations, 49 CFR 26.81 (Subpart E), requiring that all direct and indirect recipients of USDOT funding establish a Unified Certification Program (UCP). The purpose of the UCP is to provide a one-stop certification process for all businesses in each state seeking certification to participate in the USDOT Disadvantaged Business Enterprise (DBE) program. USDOT agencies requiring the UCP include: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA).

As a recipient of USDOT funds, the undersigned enters into this agreement with all other USDOT recipients within the State of South Dakota to form the South Dakota Unified Certification Program. The undersigned agrees that the UCP shall make all certification decisions on behalf of all USDOT recipients in South Dakota. The UCP will provide “one-stop shopping” to applicants for DBE certification so that an applicant is required to apply only once for DBE certification that will be honored by all recipients in South Dakota. All obligations of recipients with respect to certification and nondiscrimination will be carried out by the UCP and recipients may only use other UCPs that comply with the certification and nondiscrimination requirements of 49 CFR Part 26. The undersigned also agree to the following terms and conditions.

#### **1.1 UCP Location**

The South Dakota Department of Transportation, Becker-Hansen Building, 700 E Broadway Avenue, Pierre, South Dakota will serve as the centralized certification office location for the UCP.

#### **1.2 Certification Standards**

The UCP will follow the certification standards of 49 CFR Part 26 Subpart D and the certification procedures and standards of 49 CFR Part 26 Subpart E in determining the eligibility of firms to participate as a DBE in USDOT-assisted contracts. Firms must meet all certification eligibility standards as indicated in 49 CFR Part 26. All certifications made by the UCP are pre-certifications in accordance with 49 CFR 26.81 (c).

#### **1.3 Certification Appeals**

Any firm or complainant wishing to appeal the UCP’s administratively final denial of certification or decertification (under the provisions of 49 CFR 26.86, 26.87 and 26.89) may do so by writing to USDOT at:

United States Department of Transportation  
Office of Civil Rights  
Certification Appeals Branch  
400 7<sup>th</sup> St SW Rm 5414  
Washington DC 20590

The UCP will promptly implement any USDOT certification appeal decision affecting the eligibility of a DBE for USDOT-assisted contracting in South Dakota.

#### **1.4 DBE Application**

The UCP will use the application form provided in 49 CFR 26 Appendix F without change or revision as required in 49 CFR 26.83 (c) (7).

#### **1.5 Annual DBE Affidavit**

The UCP will require all DBEs to annually submit a written affidavit of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26, or of any material changes in the information provided with their application for certification as required by 49 CFR 26.83 (j).

The UCP will notify all currently certified firms of these obligations by mail annually.

#### **1.6 Denial of DBE Certification to New Applicants**

When a firm applying for certification as a DBE is found not to meet the eligibility standards, the firm's application will be denied. The firm will be provided a written explanation of the reasons for denial as required in 49 CFR 26.86. Any firm denied certification as a DBE may appeal this decision within 90 days to the USDOT at the address in section 1.3.

#### **1.7 Removal of DBE Certification**

When a DBE firm is found to no longer meet the minimum standards for DBE certification, a preliminary decision to remove their DBE certification will be sent to the firm. If the owner(s) of the DBE firm believe the SDDOT erred in its preliminary determination to remove its DBE certification, they may request an informal hearing in accordance with subsection 1.9 – Informal Hearing Process.

If a DBE firm chooses not to request an informal hearing, the determination will be made final and DBE certification will be removed. The DBE firm in question will not be eligible to participate as a DBE on federally funded projects, and may not reapply for DBE certification for at least one year from the date of the final

decision by either SDDOT or USDOT, whichever is later. DBE firms may be subject to removal of DBE certification for various reasons including, but not limited to:

- a. The DBE firm no longer meets the eligibility requirements of 49 CFR 26.
- b. The DBE firm failed to provide a current annual affidavit about the personal net worth of the DBE owners and/or changes that would affect the eligibility of the firm as a DBE under 49 CFR 26.
- c. The DBE firm at any time refuses to cooperate with requests by the SDDOT for information and/or documentation required by 49 CFR 26.
- d. The DBE firm is debarred or suspended by the State or USDOT.
- e. The SDDOT determines that the DBE eligibility was based on “pro forma” practices, procedures or changes.

## **1.8 Due Process**

When allegations or concerns arise which can result in the removal of certification of a DBE firm, SDDOT will review and consider the allegations and/or concerns. If the allegations/concerns are found to be true, SDDOT will provide written notice to the DBE firm identifying the problems, and providing a timeframe within which the DBE firm must respond to the allegations/concerns. A DBE firm so notified is entitled to an informal hearing as described in subsection 1.9, except for an SDDOT determination that concludes the DBE firm owner(s) exceed the personal net worth standards and the determination is not disputed by the DBE firm.

Should the DBE firm fail to exercise its right to an informal hearing within the time limit specified, DBE certification will be removed for that firm effective the day after the expiration of their right to an informal hearing.

## **1.9 Informal Hearing Process**

A DBE firm notified of the intent to remove its DBE certification is entitled to an informal hearing in accordance with 49 CFR 26.87 (d). The firm may elect to present information and arguments in writing or by telephone without being present at a hearing. To ensure separation of functions in the informal hearing, the final decision will be made by a committee of individuals who did not participate in the intended decertification decision.

While an informal hearing decision is pending, the DBE in question is eligible to participate as a DBE on federally funded projects. Once the informal hearing decision is issued, and the preliminary decision of SDDOT is made final, the firm may not reapply for DBE certification for at least one year from the date of the decision, or one year from final appeal decision by USDOT.

A firm may appeal the informal hearing decision in writing to USDOT within 90 days from the date of the final decision by the committee.

## **2.0 Processing SBA-certified Firms**

When an SBA-certified firm applies for DBE certification, the UCP will accept the certification application submitted by that firm to the SBA for either the 8(a) of SDB programs. In processing the application, the UCP will follow the criteria set forth in 49 CFR 26.84.

## **3.0 Submitting DBE Applications to SBA**

Upon receipt of a signed, written request from a DBE-certified firm, the UCP will transfer to the SBA a copy of the firm's application package within 30 days of the request. In responding to requests for additional information from the SBA, the UCP will follow the criteria set forth in 49 CFR 26.85.

## **4.0 Third Party Complaints Regarding DBE Certification**

Any third party may file a written complaint with SDDOT regarding the certification of a DBE firm. The complaint must include all factual information relevant to the DBE firm's qualifications. SDDOT will review the information and determine whether there is reason to believe that the firm in question continues to qualify for the DBE Program under the provisions of 49 CFR 26.

If SDDOT determines there is no reason to believe that the firm in question is not eligible for the DBE Program, the complainant will be informed of this finding in writing and the complaint will be closed. SDDOT will provide the complainant with reasons for a finding of no reasonable cause to believe the firm is ineligible for the DBE Program. SDDOT will provide notice to both the complainant and the firm of this finding, and will notify the complainant of the right to appeal this decision to USDOT.

If SDDOT determines that there is reason to believe that the firm in question is not qualified, and makes a preliminary determination that the firm no longer qualifies for the DBE program, SDDOT will:

Follow the procedures to deny certification for new applicants specified in subsection 1.6 of this program; or

Follow the procedures to remove a DBE firm's certification specified in subsection 1.7 of this program.

The identity of the complainant shall remain confidential, in accordance with 49 CFR 26.109(b). In cases where the DBE firm in question may be able to discern the identity of the complainant based on the nature of the complaint, then the

SDDOT shall request written permission of the complainant to disclose their identity should it become necessary during the course of the investigation.

## **5.0 DBE Directory**

The UCP will maintain a directory identifying all firms certified as DBEs. The directory lists each DBE firm's name, address, fax number, phone number and type of work the firm has been certified to perform as a DBE. The UCP will make the directory available as follows:

An electronic directory on the internet that is updated when changes are made in accordance with 49 CFR 26.81(g). The electronic directory is the most current and accurate version available at <http://www.sddot.com>. This is the directory to be used by all recipients of FAA and FTA federal funds.

A hard copy of the directory is updated for each SDDOT bid letting, which occurs approximately once a month. Hard copies are available at the UCP office. The public and the construction industry may request that a copy be sent by mail or fax, or may access the directory on the DOT's website.

## **6.0 Cooperation, Oversight, Review and Monitoring Activities**

The UCP will fully cooperate with the oversight, review and monitoring activities of USDOT and its operation administrations (FWHA, FAA and FTA).

## **7.0 USDOT Directories and Guidance**

The UCP will implement USDOT directives and guidance concerning DBE certification matters.

## **8.0 Resources and Expertise of the UCP**

SDDOT will be the only agency certifying DBE firms under the UCP, and will be the "one-stop" certification agency. All South Dakota recipients that are signatories to the UCP agreement affirm and concur that SDDOT has sufficient resources and expertise to carry out the certification requirements of 49 CFR 26.

All South Dakota USDOT recipients are committed to ensuring there are adequate resources to carry out the functions of the UCP.

## **9.0 Disputes with Administration of the UCP**

Any South Dakota UCP recipient may informally dispute the administration of the UCP. Such a dispute shall be supported by evidence and shall state in writing the alleged administrative error(s) committed by the UCP. This written dispute shall be submitted to the South Dakota DOT Director of Operations for informal resolution within 60 calendar days from date of receipt of the written dispute.

## **10.0 Sub-recipients and Indirect Recipients**

Each South Dakota USDOT direct recipient that is a signatory to the UCP agreement will ensure that all of its sub-recipients are bound by the terms and conditions of the UCP.

## **11.0 Participation in Regional UCPS**

The UCP will not participate in a regional UCP with another state unless the agreement to do so is reviewed and approved by all South Dakota USDOT recipients.

## **12.0 Amendment of the UCP Agreement**

This agreement will not be amended unless agreed to by all signatories to the agreement, except if ordered to do so by USDOT. Any significant change in this agreement of the UCP is subject to review and approval by USDOT.

## **13.0 Implementation Schedule**

Upon approval of this agreement by the U S Secretary of Transportation this agreement will be implemented. The UCP agreement will be posted on the SDDOT web site.

## **14.0 Entire Agreement**

This agreement represents the entire agreement between the parties. Any previous statements, whether oral or written, are merged in to this agreement.

## **15.0 Agreement Interpretation**

The language of this agreement is to be construed according to its fair meaning and is not to be construed with a bias in favor of or against SDDOT or other signers of the agreement.

## **16.0 Term of this Agreement**

This agreement shall be in effect as long as a unified certification program is required by USDOT of its recipients for highway, airport and transit funding assistance.



South Dakota

Unified Certification Program Agreement

Signatures of Authorization and Acceptance

We the undersigned are authorized to execute the October 8, 2004 submittal of the South Dakota Unified Certification Program Agreement conditionally approved by USDOT on October 21, 2004, and to bind the named recipient to the terms and conditions set forth in that agreement.

Airport

Name \_\_\_\_\_  
Signature of Airport Authorized Representative Date

Name \_\_\_\_\_  
Hand written or typed name of above signature

\_\_\_\_\_  
Title of above authorized representative

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City of above authorized representative

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South Dakota Department of Transportation UCP Representative

Name \_\_\_\_\_ 10/21/2004  
Michael J. Durick, Director of Operations Date



