

Interstate Certification (§26.85)

Out-of-state firms must first obtain certification from the Unified Certification Program (UCP) in their home state. The applicant must submit the following to the Department:

- A complete copy of the application and all supporting documentation submitted to the home state.
- Any additional information submitted to the home state or any other state(s) pertaining to the firm's application.
- All annual affidavits submitted to the home state since the date of initial certification.
- All notices of change submitted to the home state since initial certification.
- All correspondence and documentation provided to the home state concerning the application or status as a DBE.
- All correspondence and documentation provided to a UCP other than the home state concerning the application or status as a DBE.
- If the firm appealed a certification denial or decertification to USDOT, a copy of the applicant's letter of appeal.
- If the firm appealed a certification denial or decertification to USDOT, a copy of the response to the appeal by USDOT.
- 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. The affidavit must affirm that the applicant has submitted all information required and the information is complete and identical to that submitted to the home state.

Interstate Application Affidavit

Within seven (7) days of receipt of all applicable information indicated above, the Department will request a copy of the site visit report from the home state including any updates to the site visit review, and any evaluation of the firm based on the site visit.

If the onsite review by the home state was conducted more than three (3) years prior to the date of the application to the Department, we may also require an affidavit to affirm that the facts in the onsite report remain true and correct or request the home state to conduct another onsite. If an onsite report is not received within fourteen (14) days, the applicant will be notified that there will be a delay in the decision due to unavailability of the report.

The Department will determine if there is cause to believe that the home state's certification is erroneous or should not apply in South Dakota. Some of the reasons for this determine may include:

- Evidence that the home state's certification was obtained by fraud;
- New information, not available to the home state at the time of its certification, showing that the firm does not meet all eligibility criteria;
- The home state's certification was factually erroneous or was inconsistent with the requirements of this part;
- South Dakota State law requires a result different from that of the home State;
- The applicant failed to cooperate in providing all requested information or documentation indicated above.

If the Department determines the firm to be certifiable, the firm will be sent a letter of certification and placed on the DBE directory within 60 days of the date all required information was received.

If the Department disagrees with the home state's certification decision, the applicant firm will be sent a letter stating that certification is denied. The denial letter will be sent to the applicant within 60 days from the date that all required information was received; and will state the specific reasons why the firm does not meet the requirements of Part 26 for DBE eligibility. The firm will be provided an opportunity to respond to the denial.

The firm may respond in writing or request to an in-person meeting with the DBE compliance officer to discuss the Department's objection to the home state's certification approval. If the firm requests a meeting, the Department will schedule the meeting to take place within 30 days of receiving the firm's request. The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of Part 26 with respect to the particular issues raised in the Department's letter of denial.

The Department will issue a written decision within thirty (30) days of receipt of the written response from the firm or the meeting with the DBE compliance officer, whichever is later. The firm's application certification is stayed pending the outcome of this process.

The decision under this section may be appealed to the USDOT Office of Civil Rights under §26.89 of this part.

Annual Affidavits and Notices of Change (§26.83 (i) and (j))

The Department requires DBEs, on the anniversary date of their certification, to submit an Annual Affidavit to update information in the DBE directory and affirm that the company continues to meet all of the eligibility criteria. Instate DBEs are required to submit with the affidavit a Personal Financial Statements/Declarations of Social Disadvantaged, and the most current business tax return and personal tax return.

The Department requires DBEs to provide written notification of any change in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership or control criteria, or of any material change in the information provided in the Uniform Certification Application within thirty (30) days of the change.

Any firm failing to submit the Annual Affidavit or notice of change will have its certification removed following the procedures consistent with §26.109 (c).