(REVISED 01/12/16)

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Unified Certification Agreement, Policies & Procedures

Missouri Regional Certification Committee

Unified Certification Partners

U.S. Department of Transportation Partners

Missouri Department of Transportation
Metro
City of Kansas City, Missouri
Lambert St. Louis Airport Authority
Kansas City Area Transportation Authority
Federal Highway Administration
Federal Transit Administration
Federal Aviation Administration

Sub-Recipient Partners

City Utilities of Springfield
City of St. Joseph
City of Springfield
City of Columbia
Mid America Regional Council
East West Gateway Coordinating Council

U.S. Department of Transportation Recipients

Bootheel Regional Planning & Economic Dev. Comm.
Burlington Northern Railroad
Cape County Transit Inc
City Of Ballwin
City Of Berkeley
City Of Blue Springs
City Of Bolivar
City Of Boonville
City Of Branson
City Of Breckenridge Hills
City Of Butler
City Of Camdenton
City Of Cape Girardeau
City Of Carthage
City Of Cassville
City Of Chillicothe
City Of Clayton
City Of Clinton
City Of Columbia
City Of Cool Valley
City Of Cottleville
City Of Crane
City Of Creve Coeur
City Of Cuba
City Of Dexter
City Of Eldorado Springs
City Of Ellisville
City Of Excelsior Springs
City Of Farmington
City Of Ferguson
City Of Florissant
City Of Fredericktown
City Of Fulton
City Of Gladstone
City Of Grant City
City Of Hannibal
City Of Houston
City Of Independence
City Of Jackson
City Of Jefferson
City Of Jefferson City
City Of Joplin
City Of Kansas City
City Of Kearney
City Of Kennett
City Of Kirksville
City Of Lamar
City Of Lee's Summit
City Of Liberty
City Of Maplewood
City Of Marshall
City Of Marshfield
City Of Mexico
City Of Moberly
City Of Monett
City Of Neosho
City Of Nevada
City Of New Madrid - Transit
City Of New Madrid Light & Power
City Of North Kansas City
City Of Overland
City Of Ozark
City Of Pacific
City Of Pagedale
City Of Palmyra
City Of Paris
City Of Parkville
City Of Poplar Bluff
City Of Raymore
City Of Republic
City Of Republic - WPCP
City Of Rolla
City Of Sikeston
City Of Springfield
City Of St. Charles
City Of St. John
City Of St. Joseph
City Of St. Louis
City Of St. Peters
City Of St. Robert
City Of Sullivan
City Of Warsaw
City Of Washington
City Of Webster Groves
City Of West Plains
City Of Weston
City Of Wildwood
City Of Willow Springs
City Utilities Of Springfield
County Of Macon Commission
County Of Adair
County Of Andrew
County Of Atchison
County Of Barry
County Of Barton
County Of Bates
County Of Benton
County Of Boone
County Of Butler
County Of Caldwell
County Of Callaway
County Of Callaway-Bridge Fund
County Of Cape Girardeau
County Of Carroll
County Of Cass
County Of Cedar
County Of Christian
County Of Clark
County Of Clay-Highway Dept
County Of Crawford
County Of Dade
County Of Daviess
County Of Dekalb
County Of Douglas
County Of Dunklin
County Of Franklin
County Of Gasconade
County Of Gentry
County Of Greene
County Of Grundy
County Of Harrison
County Of Henry
County Of Holt
County Of Howard
County Of Iron
County Of Jackson
County Of Jackson-Public Works
County Of Jasper
County Of Jefferson
County Of Johnson
County Of Knox
County Of Laclede
County Of Lawrence
County Of Lewis Commission
County Of Lincoln
County of Linn
County Of Livingston
County Of Macon
County Of Madison
County Of Mercer
County Of Miller
County Of Mississippi
County Of Mississippi - Transit
County Of Moniteau
County Of Monroe

U.S. Department of Transportation Recipients

County Of Montgomery
County Of New Madrid
County Of Newton
County Of Nodaway
County Of Osage
County Of Ozark
County Of Pemiscot
County Of Pemiscot - Port
County Of Perry
County Of Pettis
County Of Phelps
County Of Pike
County Of Platte
County Of Polk
County Of Polk
County Of Putnam
County Of Ray
County Of Ripley
County Of Saline
County Of Schuyler
County Of Scotland
County Of Shelby
County Of St. Charles
County Of St. Clair
County Of St. Louis
County Of Stoddard
County Of Stone-Courthouse
County Of Sullivan
County Of Texas
County Of Vernon
County Of Vernon
County Of Warren
County Of Washington
County Of Wayne
County Of Worth
County Of Wright
Dept. Of Natural Resources
Division Of Environmental
Dunklin County Transit Service
E/W Gateway Coord. Council
Franklin County Transportation
Gateway Western Railway
Green Hills Rural Development
Greene County Highway Dept.
Jackson Co. Parks & Rec.
Kansas City Southern Railway
Lamar City Utilities
Macon Chamber Of Commerce
Madison County Transit District
Marion County Commission
Meramec Community Enhancement
Mississippi County Port Authority
Missouri Public Transit Assoc.
Missouri Transportation Finance Corp.
Missouri Vocational Enterprise
Mo & Northern Area RR Co Inc
Norfolk Southern Railroad Co
Oats Inc
Platte County Public Works Dept.
Ray County Transportation
Ripley County Transit Inc
Scott County Transit System
Southeast Missouri State Univ.
Southeast Missouri Transp. Service
Southeast Mo Reg. Port Auth.
Spirit Of St Louis Airport
Springfield Branson Regional
Springfield-Greene County
St Louis City
St Louis Community College
St Louis County-Parks & Recreation
Stoddard County Transit Service
Town Of Old Appleton
Union Pacific Railroad Company

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Unified Certification Process

The Disadvantaged Business Enterprise (DBE) requirements contained in 49 CFR Part 26 include a provision for a "one-stop" certification process. The process must be well defined and include all agencies that are recipients of federal funds from the U. S. Department of Transportation (USDOT).

Development of the UCP

The five agencies that receive direct USDOT funds and currently operate a USDOT approved DBE program are Missouri Department of Transportation (MoDOT), City of St. Louis, Missouri, Metro, Kansas City Area Transportation Authority (KCATA), and the City of Kansas City, Missouri and shall hereinafter be referred to as the "Direct Partners," and shall constitute the members of the Missouri Regional Certification Committee (MRCC). All other Missouri agencies that receive indirect funding from the USDOT shall be referred to as "Sub-recipient Partners."

The cooperation and efforts of all of the team members was key in the development of a UCP that all agencies could endorse. From the beginning, all participants actively worked to ensure cooperation and acknowledged that achieving the common goal was foremost. Participation of Metropolitan Planning Organizations (MPO) and Sub-recipients was essential for the successful implementation of any UCP developed. Several of those entities also volunteered to act as local assistance agencies in certifications, including availability for on-site reviews and firm contacts. The Sub-recipients who have agreed to assist in this process are:

- City of Columbia
- City of Springfield
- City Utilities of Springfield
- Mid America Regional Council
- East/West Gateway Council of Governments
- Springfield Branson Regional Airport
- County Of Andrew
- County Of Putnam
- City Of Breckenridge Hills
- City Of Branson
- City Of West Plains
- City of St. Joseph

The specific Sub-recipients of highway and enhancement funds, which are administered by MoDOT, were identified. All Sub-recipients were contacted by mail and asked to submit a DBE plan or as an alternative, adopt MoDOT's DBE program. The program was available for review on MoDOT's website and was provided to any entity requesting a hard copy. By adopting MoDOT's program, the Sub-recipients also agreed to accept the UCP developed.

The Direct and Sub-recipient Partners developed the Unified Certification Program (UCP) agreement, agreed to all of the terms contained in this document, and made a commitment to implementation. In order to accomplish the goals of the regulations and the MRCC, policies and procedures are required. Policies and procedures have been

established and incorporated herein as Attachment A. During the ratification process with the USDOT, MoDOT will act as the lead agency and has the ability to make revisions to the UCP proposal in order to meet any USDOT requirements or requested revisions. MoDOT will update and communicate with the MRCC Partners throughout this process.

Upon approval by the USDOT of this document, all parties agree to execute this agreement. While there are a large number of "Sub-recipients" within the state, including counties, cities, airports and other entities, it was not necessary to include all of those Sub-recipients in the development of the UCP. MoDOT will update and communicate with the MRCC Partners throughout this process.

Upon approval of the UCP process and agreement, all other recipients of any of the Partners will be asked to review and ratify the agreement, as well as make an affirmative statement of intent to comply. The recipients will be subject to administrative review by the MRCC, their lead agency, or any branch of the USDOT.

Joint certification documents were developed, including an application letter, notification correspondence and certificates for approvals of eligibility. The MRCC agrees to use the joint documents as well as the Uniform DBE Application mandated by USDOT on July 17, 2003. Due to certain MoDOT constitutional limitations related to funding, it was agreed that a "Reciprocity" process would be the most effective way to accomplish the UCP. It was also agreed that the process would go beyond a mere reciprocity agreement. This solution allows each agency to maintain their staff and resources while achieving the requirements.

The Partners agreed on a process for assigning responsibility for certification to the participating Direct and Sub-recipients. While the Direct USDOT recipients will accept and process applications in their respective metropolitan areas, it may be burdensome for some recipients to travel to more rural sections of the state to conduct the required on-site visits. Therefore, rural certifications, certifications would remain the responsibility of MoDOT. However, it was decided that applicants in the transit or aviation services would be better served by an entity more familiar with their particular work type such as KCATA, Metro, City of St. Louis or City of Kansas City.

According to the previously stated federal regulations, the Missouri UCP was fully implemented in January 2005.

Unified Certification Agreement

It is acknowledged that all Partners agree to the procedures, processes and requirements set out in this document. Further, it is agreed that all certification and non-discrimination obligations and requirements of 49 CFR Part 26 will be carried out by the MRCC and no recipient, direct or indirect, may accept any other DBE, MBE or WBE Certification for use on USDOT funded projects. All certification decisions within the state will be made and agreed to by the MRCC.

The UCP will not establish, recommend, or alter any agencies' overall DBE Program, DBE goal or methodology other than to supplement an approved program submittal process. 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 the lead agency. Any agency which elects not to establish a DBE Program as set forth in 49 CFR Part 26 will be required to adopt and implement the lead agency's program. The lead agency in Missouri is the Missouri Department of Transportation (MoDOT), which is the funding agency for the majority of the recipient's USDOT federal funds.

All recipients of federal funds administered by the USDOT, either directly or indirectly, must ratify and comply with the UCP agreement. Failure to do so may result in the loss of federal funds from the MRCC Partners and/or the USDOT.

Communication

Sharing information on any matter related to the operation of the UCP is a core element of the process. All MRCC Partners agree to continue to communicate openly amongst each other. Communication can take the form of, but is not limited to, telephone conversations, conference calls, meetings, correspondence, electronic transmittals, and/or discussion databases.

If any MRCC Partner is in receipt of information that is necessary or critical to making a determination of DBE eligibility, the MRCC Partner shall notify and submit the appropriate information to the MRCC or any individual Partner agency. Each MRCC Partner shall be notified of all status changes affecting certifications. All MRCC Partners shall be notified in advance of all certification and denial actions of each MRCC Partner.

Response to any "media" queries related to the MRCC or its activities may be made by the agency contacted. That agency will respond in a manner that will not subject any individual Partner agency or the UCP to criticism. Such queries shall be reported to all of the Partner agencies within 24 hours.

Reciprocity

All Partners agree that they will not execute any reciprocity agreements with any other agency or entity, including city, county, state or federal agencies, binding that Partner, and subsequently the UCP, to a reciprocity agreement. The MRCC may elect to enter into a written reciprocity agreement with UCPs in other states or regions. The decision to execute such an agreement will be made by a majority vote of the Direct Partners of the MRCC – MoDOT, Kansas City Area Transportation Authority (KCATA), Metro, City of St. Louis and City of Kansas City.

Agency Compliance

The Partners acknowledge there are many agency specific issues related to their agency's certification processes. The primary areas of concern are:

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

All Partners further acknowledge that in order for the UCP 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. All partners agree that the specific minimum requirements are:

- All decisions related to certification ***must*** be and will be made in compliance with 49 CFR Part 26. All partners and parties acknowledge that this requires the political independence to make decisions based upon the specific eligibility requirements.

- All Partners, members and participants agree to cooperate fully with oversight, review and monitoring activities of the U. S. Department of Transportation and its operating administrations.

- All appeals or hearings ***must*** be decided by the MRCC, a third party who was not involved in the determination.

- Outside entities such as construction boards or other politically mandated organizations cannot, and will not, be involved in the certification determinations, investigations of third party challenges, or any administrative reconsideration or appeals.

- The MRCC Partners must have an approved DBE Program in place that clearly defines the role of the administrative staff. In addition, each Partner must have clearly defined written 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 must have the procedures and policies for the DBE program clearly separated and defined in writing. 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 other 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 49 CFR Part 26.

- All Partners agree to implement all USDOT directives and guidance.

If any MRCC Partner feels that a particular agency is not complying with the requirements of 49 CFR Part 26, it may make a written complaint to the MRCC. The MRCC will review the complaint and circumstances. If a majority of the MRCC 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 MRCC 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 MRCC 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 MRCC concurrence in certification determinations for a specific period of time. Depending upon the situation, the MRCC may choose to "pair" the agency with another MRCC Partner or it may choose to require concurrence by a majority of the MRCC Partners. If an agency is paired with another agency and a dispute continues to exist, the MRCC will make the final determination.

- **Non-Compliance** – Should the MRCC make every effort to correct the deficiencies in an agency's certification process, extreme measures may be necessary. The MRCC 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 MRCC recognizes that this is a method of last resort and would not apply this remedy liberally. In addition, the MRCC would not proceed with this remedy without notification to the USDOT, as well as the lead federal agency for the Partner agency. The MRCC further agrees that should the USDOT or the lead federal agency wish to assist or provide guidance on resolution, the MRCC would make every effort to resolve the situation prior to implementing this remedy.

Resources

All MRCC Partners agree that the resources necessary to accomplish the goals of 49 CFR Part 26, as well as those of the UCP agreement, must be present. It is not within the scope of this committee's responsibility or charge to dictate to the individual agencies the level of funding or resources necessary. All parties agree that an adequate level of funds, personnel, equipment and other resources must be in place to comply with the requirements contained in 49 CFR Part 26; however the individual agency processes will not change therefore we do not expect funding to be a problem. If at any time, the MRCC, any Partner, the Federal Highway Administration, the Federal Transit Administration, the Federal Aviation Administration or the U.S. Department of Transportation conclude that one or more of the Partners does not have sufficient resources in place to ensure compliance, a written notification should be sent to the Direct partners, as well as the Office of Civil Rights for the FHWA, FTA, FAA and USDOT.

Training

All MRCC Partners recognize the need for continued training for staff members, as well as recipients and agency management personnel. The MRCC Partners will embark upon ongoing in-service opportunities in order to update the Partners, as well as the staff members. Many of these opportunities may be in conjunction with other UCPs, states, or entities.

The Partners agree that all agencies and staff members must complete a minimum of one training session within one year of the UCP ratification. In addition, any new staff members will complete training within a reasonable time from date of hire, not to exceed one year. The training session must be specifically aimed at DBE certification in compliance with 49 CFR Part 26 and sponsored by an agency that administers a program in compliance with those regulations. The training can also be sponsored by any USDOT agency including FHWA, FTA or FAA. If new DBE regulations or revisions are published, the MRCC Partners agree to sponsor a joint training session to update the agencies and staff members.

The Partners agree to develop and maintain a series of training sessions aimed at improving the certification processes of the various Partners, as well as provide for consistent eligibility determinations. The MRCC will seek the assistance of the USDOT, FTA, FHWA, FAA and any other agency to provide guidance and training. The MRCC will seek continued training sponsorship from the Partners in conjunction with any contracts that may be in place. If there are no contracts in place, the Partners agree to rotate the duties for planning and conducting the yearly training session.

Supportive Services

The MRCC Partners agree that the efforts of all of the agencies could be combined to provide additional and meaningful training to all of the DBE firms. The Partners agree to develop a communication effort to ensure that all agencies are notified of the upcoming training and given an opportunity to assist in the training and development activities.

Joint efforts to improve the viability of DBE firms are encouraged. The Partners agree that combined resources and joint opportunities to provide technical assistance benefit the DBE firms and all agencies. In addition, the Partners agree to seek out opportunities to “pilot” or develop innovative ideas to increase the success of DBE firms.

Data Requirements

One of the major issues necessary for detailing the certification status, DBE Directory development and maintaining communication between the Partners is the data requirements and facilities. MoDOT agreed to place the tracking and reporting DBE certification requests database outside of its external firewall on a separate server. The Direct Partners will then be responsible for maintaining the data related to the firms they certify and maintain. Those agencies will be granted database access through the Internet to make updates, revisions and additions. It is agreed that the database will also generate notices to each agency, create the DBE Directory, include a discussion database and notify the agencies of upcoming action needed.

MoDOT will be the database manager and continue to work to develop the common database, including agency specific reporting needs and download capabilities. The MRCC Partners agree that all changes, updates, additions or deletions to a specific firm’s record

would be made in a timely manner. Specifically all changes will be made within two working days of the action.

The DBE Directory will be available in real time online through this system, as well as available for printing, as necessary, by each agency.

MRCC Meetings

The MRCC shall hold a meeting each month. Frequency of the MRCC meetings is subject to change upon action by the committee. Notification of any such changes will be made in advance. The MRCC's meetings are "open" meetings within the requirements of state law. Each agency shall post advance notice of meetings in a location open to the public. The meetings will not be advertised in any publication or other medium. The meeting agenda will be set 30 days prior to a regularly scheduled meeting and will be posted by each agency at least 24 hours in advance of the scheduled meeting. The meeting notice will include a contact person and telephone number.

A majority of the Direct Partners is needed for a quorum. Only the official designated representative, or an approved alternate, from each Direct Partner agency may vote. All votes will be recorded. If the vote is not unanimous, each member's specific name and vote will be recorded. Minutes may be available for public viewing upon request.

Initial Consolidation

The MRCC shall institute a limited, one time only "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 MoDOT, City of St. Louis, KCATA, and the City of Kansas City. This does not include firms certified as a DBE, MBE or WBE by any city, state, federal agency, or any other entity who does not comply with 49 CFR Part 26, as determined by the MRCC. If any agency that does not currently certify DBE firms under 49 CFR Part 26 or any other program, wishes to participate in the MRCC, the MRCC Partners must approve its participation in the same manner as required for reciprocity with other regional UCPs. The agreement must be amended to reflect the addition of the agency and the responsibilities.

Each UCP Partner must present a list of their certified firms in alphabetical order that shall become part of the initial UCP database. Information on each firm should include address, telephone number, fax number, e-mail address, website address, and owner's name(s). This list must be submitted in hard copy format and via electronically on an Excel spreadsheet. A master list of all certified firms will be generated and electronic and hard copies distributed to each UCP Partner. Each UCP Partner shall also present a list of pending firms (firms that have submitted application for certification but the partner has not completed its certification review).

The MRCC shall hold the consolidation meeting, in which a majority of the MRCC members is needed for a quorum. The MRCC may elect a Chairperson to conduct the grandfathering process. The grandfathering process is not intended to be burdensome and any additional certification reviews shall be evenly distributed among the members.

Any firms that are not certified with all agencies, or any firm in which a MRCC Partner challenges in writing, will be reviewed in order to determine continued eligibility under 49 CFR Part 26. The MRCC operates as the entity to determine whether the challenging agency has met the burden of proof for removal of certification.

Any written challenge must be submitted to each MRCC representative and the firm being challenged within 10 working days of the consolidation meeting. The notice must include the specific grounds asserted for removal of DBE eligibility contained in 49 CFR Part 26. The notice to the challenged firm must be sent by certified mail. The MRCC will set a date to review the challenge. The challenged firm may appear in person at that time; however, they are not required to do so.

The challenging agency will have 30 days to review the firm and provide any additional documentation to the MRCC representatives and the challenged firm. The challenged firm will then have 30 days to submit a response and any documents necessary to rebut the assertions. The challenged firm must also notify the MRCC at that time if they intend to appear in person and if they are going to be represented by counsel. While legal counsel may accompany the firm during the MRCC hearing, only the controlling owner may speak on behalf of the firm, respond to questions from the MRCC members or otherwise make a presentation.

The hearing on certification eligibility is an open meeting and the challenged DBE firm shall be given an opportunity to present evidence. Each owner will be limited to a period of 5 minutes to address the MRCC committee. Reasonable accommodations will be made for those with disabilities.

The MRCC will review the written request of the challenging agency, any information submitted, the certification file, evidence or documentation submitted by the DBE firm, and any other documentation provided. A motion must first be made to accept the firm and a second to the motion is required. Discussion may be held regarding the firm, if warranted. A final vote will then be taken after discussion has ended in order to render the MRCC's final determination as to whether or not the firm meets the eligibility requirements. A majority of the affirmative vote is needed to approve the firm's eligibility as a DBE.

If the MRCC finds reasonable cause does not exist for removal of eligibility, the MRCC will notify the challenged firm, in writing, of this determination and will then grandfather the firm into the UCP. The final decision will be made in writing and rendered publicly. An administrative record will be developed and supplemented as necessary by the MRCC. Written action by the MRCC is final and the firm may appeal the determination to the USDOT, as set out in the section on appeals.

After the initial consolidation only those firms certified as meeting the eligibility requirements as set out in 49 CFR 26 shall be recognized as certified by the MRCC. Any MRCC Partner that has concerns regarding any firm may file a Third Party Challenge. That challenge will be treated in the manner set out in the section titled Third Party Challenges.

New Recipients

Any USDOT agency located in the state of Missouri, whether a direct or sub-recipient of DOT funds, and is not party to the initial consolidation process shall be considered a new recipient. New recipients must have a USDOT approved DBE program as specified in 49 CFR Part 26. All new recipients must become signatories to the Missouri UCP Agreement and comply with its provisions.

IN WITNESS WHEREOF, the parties have read and agreed to the terms contained herein. The parties have further caused this Unified Certification Proposal to be executed by their respective proper officials:

Missouri Department of Transportation	8.17.05 Date
Metro	6-6-05 Date
City of Kansas City, Missouri	03/25/2005 Date
Kansas City Area Transportation Authority	03/22/2005 Date
St. Louis Lambert Airport Authority	10/07/05 Date
City Utilities of Springfield	4/25/05 Date
City of Springfield	5-18-05 Date
City of Columbia	5/23/05 Date
Mid America Regional Council	3/31/05 Date
East West Gateway Council of Governments	6/7/05 Date
City of St. Joseph	4/4/05 Date
City of Joplin	4-14-05 Date

ATTACHMENT A

UCP POLICIES AND PROCEDURES

DBE Certification Determinations

Disadvantaged Business Enterprise (DBE) Certification is the process by which all firms seeking to participate in the Missouri Regional Certification Committee's (MRCC) DBE Program are determined to have met the requirements set forth in 49 CFR Part 26. This guidance provides the policies and procedures of the MRCC for certifying firms as DBE's. These policies and/or procedures are not all inclusive, and therefore, reference to 49 CFR Part 26 is required. The provisions of 49 CFR Part 26, or as amended, will control to the extent of any inconsistencies with these policies and/or procedures.

The MRCC shall review and make an eligibility determination on all firms applying for DBE certification. The decision of a MRCC Certifying Partner with regard to an eligibility determination on a firm applying for DBE certification shall be regarded as the decision of the MRCC. The MRCC Certifying Partners are Missouri Department of Transportation, City of St. Louis-Lambert Airport, Metro, City of Kansas City, Missouri, East-West Gateway Council of Governments, and Kansas City Area Transportation Authority.

The MRCC Partners in the St. Louis area shall review applicant firms that are located in the St. Louis Metropolitan Statistical Area (MSA), which includes St. Louis City, St. Louis County, Jefferson County, St. Charles County, Lincoln County, Warren County, and Franklin County.

The MRCC Partners in the Kansas City area shall review applicant firms that are located in the Kansas City MSA, which includes Kansas City, Jackson County, Cass County, Clay County, Platte County, and Ray County.

MoDOT will review applicant firms statewide.

The MRCC Partners agree that after the geographical area has been ascertained, the firm's primary type of work or industry will be ascertained by the agency reviewing the submission and the applications will be divided by industry or primary market.
Specifically, the Partners agree to industry designations in the following manner:

- Metro & KCATA will review applicants that are primarily transit oriented services or products. These may include, but are not limited to, transit services, maintenance services, maintenance products or transportation services.

All MRCC Partners agree that there may be exceptions to assignments based upon familiarity with the firm, historical knowledge or resources.

The MRCC recognizes that each Certifying Partner conducts certification reviews for DBE certification. The MRCC also recognizes that some Certifying Partners, in addition to administering a DBE Program, administer a local MBE/WBE Program that is separate from the DBE Program. Any firms certified under the local MBE/WBE program will not be included in Missouri's Unified Certification Program unless qualified and certified under 49 CFR Part 26. When a Certifying Partner obtains a firm's records and reviews that firm for certification eligibility (regardless of the firm's disposition), it then becomes the Agency of Record. Any future eligibility requests, reapplication, inquiries, etc., must be handled by the Agency of Record -- the MRCC Certifying Partner with whom the certification records reside.

Airport Concession Disadvantaged Business Enterprise (ACDBE) Designation

The MRCC shall review and make an eligibility determination on applicant firms in accordance with 49 CFR Parts 26 and 23 that are participating or seeking opportunities to participate as an ACDBE. The MRCC will perform the review of eligibility for ACDBE certification of applicant firms that are seeking airport concession opportunities or are participating in airport concession activities.

References to DBEs throughout this document are inclusive of ACDBEs unless expressly excluded.

NAICS Codes

The MRCC agrees to certify all firms in compliance with 49 CFR Part 26, including designating specific work types. The Partners agree to use the NAICS codes for those designations. All firms will be informed of the specific codes and a short narrative description of that designation.

Social Disadvantage Determinations

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 disadvantaged by the Small Business Administration will maintain the rebuttable presumption by the MRCC of being a socially disadvantaged individual. The definitions of those groups are set out in Appendix A, attached and incorporated by reference.

Pursuant to 49 CFR 26.63, if the MRCC has reason to question whether an individual is a member of a group presumed to be socially disadvantaged, the MRCC will require the individual to demonstrate, by a preponderance of the evidence, that he/she is a member of such group. In making that determination, the MRCC will consider whether or not the person has held himself/herself out to be a member of the group over a long period of time prior to application for certification and whether the relevant community regards the person as a member of the group.

The MRCC may require the applicant to produce appropriate documentation of group membership. If the MRCC determines an individual claiming to be a member of a group presumed disadvantaged is not a member of such group, the individual must demonstrate social and economic disadvantage on an individual basis. The MRCC's decision concerning membership in a designated group will be subject to the certification appeal procedures.

Economic Disadvantage Determinations

Economically disadvantaged individuals are those who have been determined to have an individual personal net worth below the $1.32 million cap set out in 49 CFR 26.67. The MRCC requires submission of financial information from each individual claiming economic disadvantage. The MRCC may attribute to any individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member or a trust, a beneficiary of which is an immediate family member, for less than fair market value within the prior 2 years of the application.

Pursuant to 49 CFR 26.67, the MRCC will require each individual owner of a firm applying to participate as a DBE and whose ownership interest is relied upon for DBE certification to submit a signed, notarized statement or affidavit that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

Pursuant to 49 CFR 26.67, the MRCC will require each individual owner of a firm applying to participate as a DBE and whose ownership interest is relied upon for DBE certification to submit a signed, notarized Statement of Personal Net Worth with appropriate supporting documentation that each presumptively disadvantaged owner is, in fact, economically disadvantaged. In determining net worth, the MRCC will exclude an individual's ownership interest in the applicant firm and the individual's equity in his/her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

If an individual's Statement of Personal Net Worth shows the individual's personal net worth to exceed $1.32 million, the individual's presumption of economic disadvantage will be rebutted. The MRCC is not required to have a proceeding in order to rebut the presumption of economic disadvantage.

If the MRCC has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged the MRCC may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. The MRCC must follow the procedures set forth in 49 CFR 26.87. The MRCC may require the individual to produce additional information relevant to the determination of his/her disadvantage.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his/her ownership and control of the firm cannot be used for purposes of DBE eligibility unless, and until, he/she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds $1.32 million, the individual is no longer eligible for participation in the DBE Program and cannot regain eligibility by making an individual showing of disadvantage.

Individual Determinations of Social and/or Economic Disadvantage

Pursuant to 49 CFR 26.67, 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 be certified by the MRCC as a DBE on a case-by-case basis. The MRCC will use guidance in Appendix E of 49 CFR Part 26, attached and incorporated by reference.

Business Size Determinations

In accordance with 49 CFR 26.65, in order to be an eligible DBE, a firm (including its affiliates) must be an existing small business as defined by SBA standards. The MRCC will apply current SBA business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform on federally funded contracts.

Although a firm may meet the SBA business size requirements, the firm may not be an eligible DBE. Any applicant, including its affiliates, may not have average annual gross receipts over the previous three fiscal years exceeding the current cap as defined by current USDOT regulations. The Secretary of Transportation may adjust the cap for inflation from

time to time. In any case the applicant firms' average annual gross receipts cannot exceed the lesser of either the SBA Size Standard for the work category or the current cap, as adjusted.

The above size standards do not apply to airport concessionaires, which are set forth in 49 CFR Part 23 Subpart C.

Ownership Determinations

In accordance with 49 CFR 26.69, in determining whether the socially and economically disadvantaged participants in a firm own the firm, the MRCC will consider all the facts in the record, viewed as a whole at the time of application.

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individual(s). The firm's ownership by socially and economically disadvantaged individual(s) must be real, substantial and continuing, going beyond pro forma ownership of the firm as reflected in the ownership documents. The disadvantaged owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

In the case of a corporation, such individual(s) must own at least 51 percent of each class of voting stock outstanding and at least 51 percent of the aggregate of all stock outstanding.

In the case of a partnership, at least 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individual(s) and must be reflected in the firm's partnership agreement.

In the case of a limited liability company, a socially and economically disadvantaged individual(s) must own at least 51 percent of each class of member interest.

All securities that constitute ownership must be held directly by the disadvantaged person(s). Except as provided in 49 CFR 26.69(d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by a disadvantaged person(s) in determining ownership of a firm.

Control Determinations

In accordance with 49 CFR 26.71, in determining whether socially and economically disadvantaged owners control a firm, the MRCC will consider all the facts in the record, viewed as a whole at the time of application.

Only an independent business may be certified as a DBE. An independent business is one in which viability does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, the MRCC will scrutinize relationships with non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. The MRCC will consider present or recent employer/employee relationships, the firm's relationship with prime contractors, and other factors related to the independence of a potential DBE firm.

Further, the MRCC will consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day, as well as long-term, decisions on matters of management, policy and operations.

In a corporation, disadvantaged owners must control the Board of Directors. In addition, the disadvantaged owner must hold the highest officer position in the company (e.g. chief executive officer or president). In a partnership, one or more disadvantaged individual must serve as general partner(s) with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm. The socially and economically disadvantaged owners may delegate various areas of management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated.

The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. This does not preclude such individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees, including responsibility for hiring, firing, training, assigning, and otherwise controlling on-the-job activities of the employees as well as ultimate responsibility for wage and tax obligations related to the employees.

The managerial role of the socially and economically disadvantaged owner(s) in the firm's overall affairs must be such that the MRCC can reasonably conclude that the socially and economically disadvantaged owner(s) actually exercise control over the firm's operations, management and policy.

The socially and economically disadvantaged owners must have an overall understanding of the business, as well as managerial and technical competence directly related to the type of business in which the firm is engaged, and the firm's operations.

If the state or local law requires the person(s) to have a particular license or other credential in order to own and/or control a certain type of firm, the socially and economically disadvantaged owner must possess the required license or credential.

The MRCC will consider differences in compensation between socially and economically disadvantaged owners and other participants in the firm, in the context of the duties involved, normal industry practices, and the firm's policies and practices.

In order to be viewed as controlling the firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests which conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm.

A socially and economically disadvantaged individual may control the firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm. If the MRCC cannot determine that the socially and economically disadvantaged owners, as distinct from the family as a whole, control the firm, then the socially and economically disadvantaged owner(s) have failed to carry the burden of proof concerning control even though they may participate significantly in the firm's activities.

Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member) and ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate by clear and convincing evidence that the transfer of ownership and/or control was made for reasons other than obtaining certification as a DBE. The disadvantaged individual must actually control the management, policy and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

In determining whether a firm is controlled by its socially and economically disadvantaged owner(s), the MRCC will consider whether the firm owns equipment necessary to perform its work. The MRCC will not determine that a firm has failed to demonstrate that it is controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

The MRCC may certify a business operating under a franchise or license agreement if it meets the standards in 49 CFR Part 26 Subparts D and E, and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the MRCC will generally not consider restraints relating to standardized quality, advertising, accounting format, and other provisions imposed by the franchise agreement or license, provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.

In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner, to contractually bind the partnership or subject the partnership to contract or tort liability.

Burdens of Proof

In accordance with 49 CFR 26.61, the firm seeking certification has the burden of demonstrating to the MRCC, by a preponderance of the evidence, that it meets the requirements concerning group membership or individual disadvantage, business size, ownership and control.

- The MRCC will make a rebuttable presumption that members of the designated groups identified in 49 CFR 26.67 are socially disadvantaged. Where the presumption does not apply or has been rebutted, the individuals have the burden of proving, by a preponderance of the evidence, that they are socially disadvantaged. The applicant also has the burden of proof to demonstrate

economic disadvantaged status based upon the requirement for personal net worth contained in 49 CFR Part 26.

- The MRCC will make determinations concerning whether individuals and firms have met the burden of demonstrating group membership, ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole.

Capital Contribution

The contributions of capital or expertise by the socially and economically disadvantaged individual(s) to acquire ownership interests must be real and substantial. In addition, the individual whose expertise is relied upon must have a significant financial investment in the firm.

In a situation in which an individual's expertise is relied upon as part of the individual(s) contribution to acquire ownership, the expertise must meet the following requirements:

- In a specialized field
- Of outstanding quality
- In area(s) critical to the firm's operations
- Indispensable to the firm's potential success
- Specific to the type of work the firm performs
- Documented in the records of the firm.

For purposes of determining ownership, the MRCC will deem as held by a socially and economically disadvantaged individual all interests in a business or other assets obtained by the individual in the following manner(s):

- As the result of a final property settlement or court order in a divorce or legal separation
- Through inheritance or otherwise because of the death of the former owner

The MRCC will presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift or transfer, without adequate consideration, from any non-disadvantaged individual or non-DBE firm which is:

- Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm

- Involved in the same or a similar line of business

- Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification

To overcome the foregoing presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate by clear and convincing evidence that:

- The gift or transfer was made for reasons other than obtaining certification as a Disadvantaged Business Enterprise

- The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer

The MRCC will apply all of the following rules in situations in which marital assets form a basis for ownership of a firm:

- When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interests asserted by one spouse, the MRCC will deem ownership interest in the firm to have been acquired by that spouse with his/her individual resources

- The other spouse must irrevocably renounce and transfer all rights in the ownership interest in applicant firm in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled

- The MRCC will not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged individual(s) of the firm

- A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification

The MRCC may consider the following factors in determining the ownership of a firm, but will not regard a contribution of capital as failing to be real and substantial nor find a firm ineligible <u>solely</u> because:

- A socially and economically disadvantaged individual acquired his or her ownership interests as the result of a gift or transfer without adequate consideration other than the types set forth above

- There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents

- Ownership of the firm in question or its assets is transferred for inadequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, the MRCC will give particularly close and careful scrutiny to the ownership and control of the firm to ensure that it is owned and controlled, in substance as well as in form, by the socially and economically disadvantaged individual

Other Considerations

Commercially Useful Function

Except as provided under Pattern of Conduct, the MRCC will not consider commercially useful function issues in making decisions about whether to certify a firm as a DBE. Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting any participation of firms that have already been certified as DBEs toward meeting DBE goals.

Pattern of Conduct

In making certification decisions, the MRCC will consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

Present Circumstances

The MRCC will evaluate the eligibility of a firm on the basis of present circumstances and will not refuse to certify a firm based solely on historical information indicating lack of ownership or control by socially and economically disadvantaged individual(s) at some time in the past, if the firm currently meets ownership and control standards. The MRCC will not refuse to certify a firm solely on the basis that it is a newly formed firm.

DBE Cooperation

The MRCC expects all participants in the MRCC's DBE Program, including DBE firms and firms seeking DBE certification, to cooperate fully with requests for information relevant to the certification process, as well as any other requests for information from the USDOT. Failure or refusal to provide such information is grounds for denial, removal of certification or any other remedies as may be provided by 49 CFR 26.109 (c).

For-Profit Firms

Only firms organized for profit may be eligible as a DBE. Not-for-profit organizations, although controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

Subsidiaries and Affiliates

An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided by this policy and in 49 CFR 26.73 (e), a firm that is not owned by such individuals, but instead is owned by another firm, even a DBE firm, cannot be an eligible DBE. If a socially and economically disadvantaged individual(s) owns and controls a firm through a parent or holding company, established for tax, capitalization, or other purposes consistent with industry practice, and the parent or holding company, in turn, holds and controls an operating subsidiary, the MRCC may certify the subsidiary if it otherwise meets all requirements of 49 CFR Part 26. This

includes the requirement that there be cumulatively at least 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

Pre-qualification for Bidding

The MRCC will not require that a DBE firm be pre-qualified as a condition for certification unless the MRCC requires all firms that participate in its contracts and subcontracts, or in a particular contract or subcontract be pre-qualified.

Tribal Organizations

The MRCC recognizes that a firm owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification as long as such firm meets the size standards and is controlled by socially and economically disadvantaged individuals.

DBE Certification Procedures

In accordance with 49 CFR 26.83, the MRCC will ensure that only firms certified as eligible DBEs participate in the DBE Program. The MRCC will determine the eligibility of firms as DBEs consistent with the standards of 49 CFR Part 26, Subparts D and E.

Applicants are evaluated on the basis of documentation in existence at the time of application. Any changes in ownership and control after a determination of certification by the Certifying Partner will not be considered. These changes include, but are not limited to, execution of new agreements, board or shareholders' resolutions, memoranda of understanding, consolidation, liquidation, reorganization, merger, election of new officers or directors, appointment of new principals or key personnel or the purchase or sale of shares or issuance of new shares.

The MRCC Certifying Partner will require potential DBEs to complete and submit an appropriate application form. The Certifying Partner will assure that the applicant attests to the accuracy and truthfulness of the information on the application form. This will be done either in the form of an affidavit sworn to by the applicant before a person authorized by state law to administer oaths, or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. The Certifying Partner will review all information on the form prior to making a decision about the DBE eligibility of the firm.

Pursuant to 49 CFR 26.83(m), except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before the Certifying Partner has issued a decision on the application, the applicant firm can resubmit the application at any time. Should the applicant firm choose to resubmit its application to the MRCC, it must resubmit its application to the same Certifying Partner (Agency of Record) that initially obtained the firm’s records to review for certification eligibility. The Certifying Partner may not apply the twelve (12) month waiting period provided under 49 CFR

26.86(c) before allowing the applicant firm to resubmit its application. However, the Certifying Partner may place the reapplication at the ‘‘end of the line,’’ behind other applications that have been submitted to the Certifying Partner since the applicant firm’s previous application was withdrawn. The Certifying Partner may also apply the twelve (12) month waiting period provided under 49 CFR 26.86(c) to a firm that has established a pattern of frequently withdrawing applications before the Certifying Partner makes a decision.

The Certifying Partner may request additional information if there is insufficient evidence upon which to base a determination. No action will be taken on an application until all items have been submitted. Applicants who fail or refuse to submit information deemed necessary for certification review will not be certified. If any information requested is not available or applicable, the applicant must provide a written explanation.

If additional information is required, the Certifying Partner will notify the applicant and will allow the applicant 10 business days for submittal of the information. An extension of time may be granted if reasonable justification for delay is provided. If the complete information or justification is not received within 10 business days, the Certifying Partner will issue a final request by certified mail, e-mail or fax. The final request will provide for submission of the information within 5 business days. Failure to submit all of the requested information at the end of the 5 business days may result in denial of the firm’s DBE application. The firm may appeal this determination to the USDOT, as provided for in 49 CFR 26.89.

Any applicant who wishes to apply for certification whose file has been closed or denied must follow the procedures for initial application. The firm must re-apply to the original agency of record one year from the date of notification of denial from original certifying agency.

The Certifying Partner will take all of the following steps in determining whether a DBE firm meets the eligibility standards set forth in 49 CFR Part 26:

- Perform a desk audit where all of the applicant's submissions are reviewed for internal consistency, accuracy and conformity with the eligibility standards set forth in Federal Regulations, 49 CFR Part 26.

- Conduct an on-site visit to the office(s) of the firm, interview the principal(s) and review their resumes and/or work histories

- Conduct visits to job sites when possible

- In certain circumstances, may rely upon the site visit reports of any other USDOT funded agency or UCP

- Analyze the ownership of stock, partnership agreements, and/or operating agreements in the firm, as well as any other documents related to organizational structure

- Analyze the bonding and financial capacity of the firm

- Determine the work history of the firm, including contracts received, and work completed

- Determine the type of work for which the firm will receive DBE participation credit
- Verify the firm's preferred location(s) for performing the work
- Obtain a list of equipment owned by or available to the firm
- Obtain a copy of the firm's, and/or key personnel's, license(s) necessary to perform the work it seeks as part of the DBE Program
- Check the USDOT Office of Civil Rights' (DOCRs) Ineligibility Determination Online Database for ineligibility

The Certifying Partner will make decisions on applications for DBE certification within 90 days of receiving all required information from the applicant. The Certifying Partner may extend this time period once, for no more than an additional 60 days, upon written notice to the firm explaining the reasons for the extension. All firms certified by the Certifying Partners under 49 CFR Parts 26 and 23 will be included in the MRCC's DBE Directory and database.

The UCP must check the DOCR website at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list. For any such firm that is on the list you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within seven days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with regard to the certified DBE firm or application.

The MRCC will not impose an application fee for firms to participate in the DBE certification process.

Request for Information

When another USDOT funded agency or UCP makes a written request to the Certifying Partner for information related to an application for DBE certification, the Certifying Partner will make the information available within 7 days.

Certification Reviews

Once the Certifying Partner has certified a firm as a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of 49 CFR 26.87. Partners shall not require currently certified DBE firms to reapply for certification or require "recertification". However, partners may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under §26.83 (i) or relating to suspension of certification under §26.88), requiring notice under a complaint, or other information concerning the firm's eligibility. If information comes to the Certifying Partner's attention that leads you to question the firm's eligibility the partner may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites. Firms that have not shown any changes in the Annual No Change Affidavit or no other information received indicating changes have occurred, then those corporations or partnerships will be reviewed every five (5) years.

Confidentiality of Information

The MRCC and its Certifying Partners shall safeguard from disclosure to unauthorized persons all information gathered as part of the certification process that may be regarded as proprietary or other confidential business information, consistent with applicable federal, state and local laws, unless applicant authorizes such disclosure.

NAICS Code Addition and Removal

The MRCC will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have demonstrated the ability to control the firm. To become certified in an additional type of work, the firm must demonstrate only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. The MRCC will not require that the firm be renewed or submit a new application for certification but will verify the disadvantaged owner's control of the firm and the additional type of work. A firm may request modification and/or additions to their approved codes by completing the "Request for NAICS Expansion" form and submit to the appropriate Certifying Partner.

In circumstances where a Certifying Partner makes a preliminary determination to remove a NAICS code from a firm currently certified and holding NAICS code(s), the Certifying Partner will provide the firm a written explanation of the reasons for the preliminary decision specifically referencing the evidence in the record that supports the decision. The Certifying Partner who wishes to remove the NAICS code(s) has the burden to show, by a preponderance of the evidence, that the firm is no longer qualified to have a particular NAICS code(s). Removal of a NAICS code(s) shall follow the same procedures as removal of eligibility. Firms shall keep their respective NAICS codes from notice through appeal to MRCC.

ACDBE Certification Process

Eligibility determination on applicant firms that are participating in or seeking opportunities to participate as an ACDBE will be made in accordance with 49 CFR Parts 26 and 23. Either the City of St. Louis and/or Kansas City will assist the Certifying Partner in conducting an eligibility determination.

Firms that are currently certified as a Disadvantaged Business Enterprise (DBE) by the Missouri Regional Certification Committee (MRCC) who now request an ACDBE certification must follow the process below:

- The DBE firm shall provide in writing (e-mail or letter) to the MRCC Certifying Partner who maintains its DBE certification record that it is seeking the ACDBE designation because there is a concession opportunity available to the firm.

- The request for ACDBE will be reviewed by the MRCC Certifying Partner who maintains the firm's DBE record. Lambert-St. Louis International Airport (City of St. Louis) and City of Kansas City, both with ACDBE programs will assist the MRCC Certifying Partner with the eligibility review. Currently certified DBE firms are presumed to be eligible to participate as an ACDBE since by meeting the size, disadvantage (including personal net worth), ownership and control standards of 49 CFR Part 26, the firm will have also met the eligibility standards for 49 CFR Part 23.

- The MRCC Certifying Partner in conjunction with Lambert-St. Louis International Airport and City of Kansas City must ensure that the

disadvantaged owners of the DBE firm are able to control the firm with respect to its activity in the airport's concessions program. The MRCC is not required to certify a DBE as an ACDBE, if the firm does not do work relevant to the airport's concessions program. Work relevant to the airport's concession program can include operating a concession or providing goods and services to a concession.

- After reviewing the DBE firm and their control of the firm with work relevant to the airport concession program, the firm shall receive the ACDBE designation along with their ACDBE certificate. The firm's ACDBE designation shall be updated in the MRCC database of certified firms.

Interstate Certifications

The MRCC will not process an application for certification from a firm having its principal place of business outside the State of Missouri if the firm is not certified in its "home state". Pursuant to 49 CFR 26.85, a DBE firm that holds a current, valid certification from its home state may request certification to the MRCC and its Certifying Partners.

Applicant sends Home State A certification letter to State B, requesting certification

State B confirms with State A or on-line that applicant is certified in Home State A

State B may not ask applicant to complete a new application

State B has two choices (choice may be made on an application by application basis):

(1) State B may accept State A's certification without further action and certify DBE in State B.

(2) If State B does not choose to accept --

a. State B asks Applicant to send the following documents to State B:

- Copy of its Home State A application and all other supporting documents, affidavits of no change, notice of material change, correspondence
- Copy of notices from other States about application status, denials, decertifications, etc.
- Copy of any certification appeals with USDOT
- Affidavit that all information is true and correct

b. State B has seven days to request onsite report from Home State A.

c. After requested, Home State A has seven days to provide onsite report to State B.

d. If the on-site report from Home State A is more than three years old, State B may require that applicant's affidavit also affirm that the facts in the on-site report remain true and correct.

(3) If State B has not received from State A a copy of the site visit report within 14 days of its request, State B may hold action required, e.g. certification or "good cause" process; AND

(4) State B must, within 30 days of receiving the information from applicant, provide the applicant with written notification of the delay and the reason for the delay.

(5) State B must, no later than 60 days from the date on which it received all information from the applicant, send a notice that it is certified and place the firm on State B's directory of certified firms;

(6) OR

a. If, within 60 days of receipt of all applicant information, State B finds good cause to object to Home State A's certification, it must send notice to applicant of the specific reasons for this determination and offer applicant opportunity to respond in writing or in person.

b. State B must have meeting within 30 days of applicant's request before a decision maker.

(7) Good Cause to Reject

a. Evidence of fraud

b. New information not available to State A

c. Certification factually erroneous or inconsistent with regulations

d. Laws of State B require different result

e. Applicant did not submit required documentation

(8) Applicant firm has burden of proof

(9) Applicant need only address issues raised by State B

(10) State B must issue written decision within 30 days of applicant's written response or meeting with State B's decision maker (later of the two)

(11) Applicant may appeal to the Department of Transportation's Office of Civil Rights (DOCR)

(12) If State B rejects the application of a firm certified in Home State A, it must make an entry in DOCR's Ineligibility Determination Online Database

a. Name of the firm

b. Name(s) of the firm's owner(s)

c. The type and date of action

d. Reason for the action

Once DBE is certified in State B it is treated in the same manner as all other certified firms and has same responsibilities:

(1) Notification of change within 30 days (26.83(i))

(2) Annual Affidavit of no change (26.83(j))

DBE Certification Continuing Eligibility

The MRCC agrees that it is the responsibility of the Certifying Partners to notify DBE firms of the due date of the annual update. In addition, the Certifying Partner will update all data related to the annual update in the database designated by the MRCC. All Certifying Partners are responsible for monitoring the compliance of DBE firms, however, it is the primary responsibility of the Certifying Partner to ensure firms give the necessary notification of any change in circumstances affecting the firm's ability to meet the size, disadvantaged status, ownership, or control requirements or any material change in the information provided in the application. All Certifying Partners, recipients and sub-recipients agree to certify all firms in compliance with 49 CFR Parts 26 and 23, including designating specific work types. The Certifying Partners agree to use the NAICS codes for those designations.

Notice of Any Changes

Once certified, a DBE firm must inform the Certifying Partner, in writing, of any changes in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership, or control requirements, or any material change in the information provided in the certification application process as outlined in 49 CFR 26.83. The statement must include supporting documentation describing in detail the nature of such changes. Changes in management responsibility among members of a limited liability company are also covered by this requirement.

The notice of change from the DBE firm must take the form of an affidavit sworn to before a person authorized by state law to administer oaths, or of a declaration executed under penalty of perjury of the laws of the United States. The written notification must be provided by the DBE within 30 days of the date of the change(s). If the DBE fails to make timely notification of such change(s), it will be deemed to have failed to cooperate and certification may be removed as set forth in 49 CFR 26.109(c).

If a certified firm notifies the Certifying Partner of a change in its circumstances, and the Certifying Partner determines there is reasonable cause to believe the firm is ineligible, the Certifying Partner will provide written notice setting forth the reasons for the proposed determination. The findings must specifically reference the evidence in the record upon which the decision is based.

Annual No Change Affidavit

On the anniversary date of DBE certification, every firm must provide the Certifying Partner an affidavit sworn to by the firm's socially and economically disadvantaged owner(s) before a person who is authorized by state law to administer oaths or a declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26 or any material changes to the information provided in its original application, except for changes about which it has notified the Certifying Partner. The affidavit will specifically affirm that the DBE continues to meet SBA business size criteria and the overall gross receipts cap set forth in 49 CFR Part 26. This affirmation must include supporting documentation of the DBEs size and gross receipts. In addition, the owner(s) whose interest is relied upon for DBE certification must affirm that their personal net worth has not exceeded $1.32 million.

Cooperation

All participants in the DBE program are required to cooperate fully and promptly with DOT and Certifying Partner's compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment). If a DBE firm fails to provide this information in a timely manner, the DBE firm will be deemed to have failed to cooperate and certification may be removed as set forth in 49 CFR 26.109(c).

Summary Suspension of Certification

The Certifying Agency shall immediately suspend a DBE's certification without adhering to the requirements in 49 CFR Part 26.81(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

The Certifying Agency may immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when (i) there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or (ii) when the DBE fails to notify the certifying agency or UCP in writing of any material change in circumstances as required by §26.83(i) or fails to timely file an affidavit of no change under §26.83G.

In determining the adequacy of the evidence to issue a suspension under this paragraph, the certifying agency shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. The concerned operating administration may direct the certifying agency to take action if it determines that information available to it is sufficient to warrant immediate suspension.

When a firm is suspended pursuant to this paragraph the certifying agency shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding

under §26.87 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the certifying agency information demonstrating that the firm is eligible notwithstanding its changed circumstances.

Within 30 days of receiving this information, the certifying agency must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87. If the certifying agency commences a decertification proceeding, the suspension remains in effect during the proceeding.

The decision to immediately suspend a DBE under this paragraph is not appealable to the US Department of Transportation. The failure of the certifying agency to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by this paragraph, is appealable to the U.S. Department of Transportation under §26.89 of this Part, as a constructive decertification.

Small Business Enterprise (SBE) Certification

To facilitate competition by small business on projects funded in part by the DOT, the MRCC has implemented a Small Business Development Program as mandated in 49 CFR Part 26.39. This program fosters small business growth and competitive bidding on USDOT funded projects. The program operates in race and gender neutral manner and is designed to include all segment of the region's business community. The program is open to participation without regard to race, color, sex, religion, national or ethnic origin, age or disability. The MRCC uses the Small Business Administration's (SBA's) definition and size standards (as it may be amended from time to time) to define a small business as:

> "…a small business concerns is one that is independently owned and operated, is organized for profit, and is not dominant in its filed. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year-period."

The MRCC will ensure that Small Business Enterprises shall have an equal opportunity to participate in the performance of USDOT-funded contracts. By creating a level playing field

on which SBEs can complete fairly for those contracts and subcontracts, participating agencies will further:

(1) Help remove barriers to the participation of SBEs in USDOT funded contracts.

(2) Assist in the development of firms that can compete successfully in the market place outside the SBE program; and

(3) Develop and maintain a program in order to facilitate contracting opportunities for small business.

The MRCC's Small Business Enterprise Program will mirror the DBE Program. To be eligible as an SBE, firms must:

(1) Fall within the SBA's size guidelines; and

(2) The Owner's personal net worth (PNW) cannot exceed the cap determined by USDOT (as amended) which is currently $1.32 million.

(3) DBEs, by definition, are small businesses and will be automatically included in the SBE program.

In order to participate in the MRCC's SBE program, non-certified DBE firms must complete a "Small Business Enterprise Declaration of Certification Affidavit" developed by the MRCC. Firms that have a SBA 8(a) Business Development Certification, as described in 13 CFR Parts 121 and 124, may submit a copy of its certificate. Firms that are not certified as 8(a) firms by the SBA must submit:

(1) A copy of business tax returns for the most recent three-year period indicating the gross receipts; or

(2) If the SBA uses the number of employees to determine small business eligibility, a copy of the firm's payroll statement indicating the average annual employment for the most recent year.

(3) A Personal Net Worth Statement completed by the owner of the firm.

All firms that are SBE certified will be included in the MRCC database that is available to the public.

Minority and women-owned business enterprises which are awarded contracts under the Small Business Enterprise program will be strongly encouraged to seek DBE certification in order to be counted towards race neutral DBE participation.

Appeal/Hearing Process

The applicant and all parties present at the hearing shall conduct themselves in a manner consistent with the standards of judicial decorum accepted by the courts of Missouri. The Hearing Officer will have the authority to take any action necessary to enforce these standards during the course of the hearing

For Denial of Initial Certification

Pursuant to 49 CFR 26.86, when the Certifying Partner denies a request by a firm that is not currently certified, the denying Certifying Partner will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason. The Certifying Partner will enter the denial into the USDOT's Office of Civil Rights' Ineligibility online database.

All documents and other information on which the denial is based will be made available to the applicant firm upon request. When a firm is denied certification, it is required to wait 12 months before it may reapply for DBE certification with the MRCC Certifying Partner of record (agency of record). The time period for reapplication begins to run on the date the explanation for denial of certification is mailed to the applicant firm.

When the Certifying Partner notifies a firm that its initial application for certification is denied, the applicant firm must appeal the decision directly to the U.S. Department of Transportation within 90 days of the date of the final decision at:

U.S. Department of Transportation
Office of Civil Rights
1200 New Jersey Avenue, S.E., W-76-101
Washington D.C. 20590

The grounds of the appeal are limited to the issues raised in the denial letter, and any new information submitted must be specifically in support of the applicant firm's appeal.

For Removal of Eligibility

In circumstances where a certified firm, or a new applicant firm, has submitted a personal net worth statement that shows that an individual's personal net worth exceeds $1.32 million there will be no administrative re-consideration of the decision to decertify the firm.

In circumstances where a certified firm fails to cooperate fully and promptly as required in 49 CFR Part 26 its certification will be removed pursuant to 49 CFR 26.87. The MRCC will hold an administrative hearing to determine removal of eligibility. The MRCC decisions are appealable to the USDOT. A firm may be removed from the group hearings if the required information is submitted to the certifying agency a week prior to the scheduled hearing date.

Pursuant to 49 CFR Part 26, when a Certifying Partner makes a preliminary determination to remove the eligibility of a firm currently certified, the Certifying Partner will provide the firm a written explanation of the reasons for the preliminary decision specifically referencing the evidence in the record that supports the decision. The denying Certifying Partner has the burden to show, by a preponderance of the evidence, that the firm does not meet the eligibility requirements set forth in 49 CFR Part 26. These procedures for removal of eligibility also apply to a firm which exceeds business size standards, as determined by the Certifying Partner.

The denying Certifying Partner will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the Certifying Partner at the time of its certification of the firm. The Certifying Partner will base such decision only on one or more of the following:

- Changes in the firm's circumstances since the certification

- Information or evidence not available at the time of certification
- Information that was concealed or misrepresented by the firm in previous certification actions
- Change in the certification standards or requirements of USDOT since the firm was certified
- A documented finding that the agency's determination to certify the firm was factually erroneous
- Violation of any provision of 49 CFR Part 26 that specifically authorizes removal of eligibility

The Certifying Partner will provide the firm written notice of the decision and the reasons, including specific references to the evidence in the record that supports the decision. The notice will inform the firm of the consequences of the Certifying Partner's decision and of the availability of an appeal to the MRCC. The firm must exhaust all administrative avenues at the local level prior to appeal to the USDOT. Therefore, if the firm chooses to appeal to the MRCC it maintains the right to appeal to the USDOT, however, if the firm chooses not to appeal to the MRCC, it cannot appeal to the USDOT.

Legal counsel may accompany the firm during the MRCC hearing, however the controlling owner shall be prepared to speak on behalf of the firm, respond to questions or otherwise make a presentation. Reasonable accommodations will be made for those with disabilities with 48 hour notice to the MRCC. A written decision by the MRCC setting forth the grounds and reasoning for the decision will be mailed to the applicant firm within a reasonable time from the date the MRCC considered the appeal. The Decertifying Partner will enter the decertification into the USDOT's Office of Civil Rights' Ineligibility online database.

When a firm is decertified, it is required to wait one (1) year before it may reapply for DBE certification with the MRCC Certifying Partner of record (agency of record). The time period for reapplication begins to run on the date the explanation for decertification is mailed to the applicant firm. A firm remains an eligible DBE during an appeal to the MRCC. If the MRCC makes a final decision to remove the firm's eligibility, that firm is no longer eligible as a DBE firm. The effective date of the MRCC's decision, or expiration of the time period to appeal to the MRCC, is the date the firm's eligibility is removed. The Certifying Partner will enter the denial into the USDOT's Office of Civil Rights' Ineligibility online database.

The firm must submit a written request for appeal to the decertifying Partner within 15 days of the preliminary decision. The letter must specify whether the firm wishes to appeal in writing or appear personally before the MRCC and if they intend to be accompanied by counsel. The MRCC will notify the appellant of the date of the next available MRCC hearing date and the deadline for submission of supporting documentation. Any firm requesting an appeal must submit all supporting documentation to be considered by the MRCC no later than 45 days prior to the scheduled MRCC hearing date. No appeal will be considered unless included on the agenda for the meeting and all agenda items must be finalized 30 days prior to the meeting.

The MRCC will consider written submissions by the applicant firm, including but not limited to, the certification application, the original denial letter, file memoranda prepared by the Certifying Partner, the appeal letter and any other relevant documentation. The information or documentation submitted is limited to the issues raised in the denial letter. No new or additional documentation or information shall be considered by the MRCC without a showing by the appellant that it was not available or, through due diligence, could not have been made available.

The decision by MRCC is final and no further appeals will be heard by the MRCC. The firm may appeal the decision of the MRCC to the Office of the Secretary of Transportation, U.S. Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, S.E., W-35, Washington DC, 20590 within 90 days after receipt of the original denial letter.

Third Party Challenge Ineligibility Complaints

Any person or agency may file a written complaint with the Certifying Partner with notice to the MRCC Partners challenging the eligibility status of a certified firm and specifying the alleged reasons why the firm is allegedly ineligible. The Certifying Partner is not required to accept a general allegation that a firm is ineligible, or an anonymous complaint. The complaint must include supporting information or documentation of the assertion that the firm is ineligible. The Certifying Partner will make every effort to maintain the confidentiality of the complainants' identities, however, in some cases, it may be necessary to divulge the identity of the complainant in order to continue review of the challenge. If the complainant does not wish to waive confidentiality, it may be necessary to close the case, review or investigation with no further action.

Within 60 days of receiving the information, the Certifying Partner must review its records concerning the firm and any material provided by the firm and the complainant to reach a preliminary decision. If the Certifying Partner determines there is reasonable cause to believe the firm is ineligible, the Certifying Partner will provide written notice, including reasons for determination, to the challenged firm and the complaint of the preliminary decision to find the firm ineligible and immediately initiate a section 26.87 proceeding.

If the Certifying Partner finds reasonable cause does not exist for removal of eligibility, the Certifying Partner will notify the complainant and the challenged firm, in writing, of this determination and the basis for the decision. The Certifying Partner has the burden to show, by a preponderance of the evidence, that the firm does not meet the eligibility requirements set forth in 49 CFR Part 26.

A Certifying Partner's recommendation to remove eligibility does not become final until the completion of the appeal to the MRCC or expiration of the 15-day period for requesting an appeal.

Either party may appeal the decision to the MRCC using the same process as set out in the section on Appeals or Hearing Process for Removal of Eligibility.

This process also includes internal MRCC Partner disputes.

Recipient-initiated Proceeding

If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, the Certifying Partner determines that this is reasonable cause to believe that a currently certified firm is ineligible, the Certifying Partner will provide written notice to the firm setting forth the reasons for the proposed determination and that it proposes to find the firm ineligible and immediately initiate a section 26.87 proceeding. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

USDOT Initiated Challenge

If a USDOT agency determines that information in the certification records or other information available provides reasonable cause to believe that a firm certified by the MRCC does not meet eligibility criteria, the USDOT may direct the MRCC via the Certifying Partner to initiate a proceeding to remove the firm's certification pursuant to 49 CFR 26.87 (c).

Appeals to USDOT

A firm, which has been denied initial certification, must appeal directly to the USDOT. Any certified firm who has been notified by an MRCC Certifying Partner of intent to remove eligibility must make an administrative appeal to the MRCC before appealing to the USDOT pursuant to 49 CFR 26.89.

A complainant in an ineligibility complaint to the MRCC may appeal to USDOT if the MRCC does not find reasonable cause to propose removing the firm's eligibility. Pending the USDOT decision, the MRCC's decision remains in effect. If a firm wants to file an appeal, it must send a letter to USDOT within 90 days of the date of the MRCC's final decision, including information concerning why the MRCC's decision should be reversed.

An appellant firm challenging certification denial or removal by the MRCC must submit a letter with the name and address of any other USDOT grantee that currently certifies the firm, of any other grantees that may have rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or of any other grantee with which an application for certification or action to remove eligibility is pending.

The MRCC will maintain a complete verbatim record of the hearing. If there is an appeal to USDOT, the MRCC will provide a transcript of the hearing to USDOT and, on request, to the firm at a reasonable cost to cover MRCC’s expenses. The MRCC will retain the original record of the hearing.

Any party that appeals the MRCC's decision to USDOT will be requested by USDOT to promptly provide all information requested. The MRCC agrees to provide to USDOT the complete administrative record within 20 days of its request unless USDOT extends this time period. USDOT will make its decision based solely on the entire administrative record without conducting a hearing. When the MRCC provides information to USDOT, the same information will be made available to the firm and to any third-party complainant involved, consistent with applicable law.

USDOT may affirm the MRCC's decision unless it determines, based on the entire administrative record, that the decision is not supported by substantial evidence or is inconsistent with the substantive or procedural provisions concerning certification. If

USDOT determines that the MRCC's decision was unsupported, USDOT may reverse the MRCC's decision and direct the MRCC to certify the firm or to remove its eligibility. The MRCC will take the action directed by USDOT immediately upon receiving written notice. USDOT is not required to reverse the MRCC's decision if it determines a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

If it appears that the record is incomplete or unclear, USDOT may remand the record to the MRCC with instructions seeking clarification or augmentation of the record before making a finding.

USDOT will not uphold the MRCC's decision based on grounds not specified in the MRCC's decision. USDOT's decision will be based on the status and circumstances of the firm on the date of the decision, which was appealed. USDOT will provide written notice of its decision to the MRCC, the firm, and the complainant in an ineligibility complaint. The notice will include the reasons for USDOT's decision. It is USDOT's policy to make a decision within 180 days of receiving the complete administrative record. All decisions by USDOT are administratively final and are not subject to petitions for reconsideration.

MRCC Actions Following USDOT Decision

Pursuant to 49 CFR 26.91, the decisions of USDOT are binding on all agencies within the MRCC.

If USDOT determines that the MRCC erroneously certified a firm, the MRCC must remove the firm's eligibility on receipt of the determination without further proceedings. If USDOT determines that the MRCC erred in a finding of no reasonable cause to remove the firm's eligibility, the USDOT will remand the case to the MRCC to determine whether the firm's eligibility should be removed.

If USDOT determines that the MRCC erroneously declined to certify or erroneously removed eligibility of the firm, the MRCC must certify the firm effective on the date of receipt of the written notice from USDOT. If USDOT affirms the MRCC's determination, no further action is necessary.

If the MRCC receives information on a firm's eligibility decision made by USDOT, related to any other USDOT agency, UCP or recipient, the MRCC will take the USDOT decision into account in any certification action involving the firm.

APPENDIX A.

Definitions

Affiliation - the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121:

(1) Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:

a. One concern controls or has the power to control the other; or
b. A third party or parties controls or has the power to control both; or
c. An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native - a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

***Alaska Native Corporation (ANC)* -** any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Assets - All the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise - an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Certifying Partner (Agency of Record) – The MRCC recognizes that each Certifying Partner conducts certification reviews for DBE certification. The MRCC also recognizes that some Certifying Partners, in addition to administering a DBE Program, administer a local MBE/WBE Program that is separate from the DBE Program. Any firm certified under the local MBE/WBE program will not be included in Missouri's UCP unless qualified and certified under 49 CFR Part 26. When a Certifying Partner obtains a firm's

records and reviews that firm for certification eligibility (regardless of the firm's disposition), it then becomes the Agency of Record. Any future eligibility requests, reapplication, inquiries, etc., must be handled by the Agency of Record -- the MRCC Certifying Partner with whom the certification records reside.

Compliance - means that a recipient has correctly implemented the requirements of this part

Concession - a for-profit business enterprise, located on an airport subject to this subpart that is engaged in the sale of consumer goods or services to the public under an agreement with the sponsor, another concessionaire, or the owner of a terminal, if other than the sponsor. Businesses that conduct an aeronautical activity are not considered concessionaires for purposes of this subpart. Aeronautical activities include scheduled and nonscheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators, flight schools; and sky-diving, parachute-jumping, flying guide services, and helicopter or other air tours.

(1) Appendix A to 49 CFR Part 23 contains a listing of the types of businesses that are frequently operated as concessions.

(2) Examples of entities that do not meet the definition of a concession include suppliers, flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, individual taxis with permits, telephone and electric utilities, skycap services under contract with an air carrier, and management contracts.

(3) Concessions may be operated under the following types of agreements:

a. Leases
b. Subleases
c. Permits
d. Contracts
e. Other instruments or arrangements

Concessionaire - one who operates a concession.

Contract - a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor - one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

***Days* -** calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT - the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE - a for-profit small business concern --

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, 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.

DOT-Assisted Contract - any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU - agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) DB) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

Economic Disadvantage **-** Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business that are not socially disadvantaged.

Good Faith Efforts - efforts to achieve a DBE goal or other requirement of this part, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home State - the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate Family Member - father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian Tribe - any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint Venture - an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital

contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Liabilities - financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Material Amendment - a substantial change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope, of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

Native Hawaiian - any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization - any community service organization serving Native Hawaiians in the State of Hawaii, which is a not-for-profit organization, chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance - that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA - any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal Net Worth - the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary Airport - a commercial service airport, which is determined by the Secretary to have more than 10,000 passengers enplaned annually.

Primary Industry Classification - the North American Industrial Classification System (NAICS) designation, which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual - United States, 1977 which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161: by calling 1(800) 553-6847; or via the Internet at: http://www.ntis.gov/product/naics.htm.

Primary Recipient - a recipient, which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal Place Of Business - the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top

management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program - any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-Conscious Measure Or Program - focused specifically on assisting only DBEs, including women-owned DBEs.

Race-Neutral Measure Or Program - is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient - any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Regular Dealer - a firm that owns, operates, or maintains a store, warehouse or other establishment in which the material or supplies required for the performance of the contract are kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, stone, gravel, and petroleum products need not keep such product in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers.

Secretary - the Secretary of Transportation or his/her designee.

Set-aside - a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA - the United States Small Business Administration.

SBA Certified Firm - refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SBD programs.

Small Business Concern - means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Small Business Concern - Concessionaire - a firm, including all its domestic and foreign affiliates, that qualifies under the applicable size standard set forth in appendix A to this subpart. In making a size determination, all affiliates, regardless of whether organized for profit, must be included. A firm qualifying under this definition that exceeds the size standard after entering a concession agreement, but that otherwise remains eligible, may continue to be counted as DBE participation until the current agreement, including the exercise of options, expires.

(1) The Secretary may periodically adjust the size standards in appendix A to this subpart for inflation.

(2) A firm that was certified as a minority/woman/or disadvantaged business enterprise (MBE/WBE/DBE) prior to the effective date of this subpart, pursuant to a requirement in Sec. 23.43(d) or FAA guidance implementing section 511(a)(17) of the Airport and Airway Improvement Act of 1982, as amended, that has exceeded the size standard, may be counted as DBE participation until the current agreement, including the exercise of options, expires, provided that the firm remains otherwise eligible.

Social Disadvantage - Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(1) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(2) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

a. Education - Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures, which discouraged the individual from pursuing a professional or business education.

b. Employment - Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

c. Business History - The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by

potential customers and business associates, and exclusion from business or professional organizations.

Socially And Economically Disadvantaged Individual - means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttals presumed to be socially and economically disadvantaged:

a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

c. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

e. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

f. Women; or

g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Sponsor - the recipient of an FAA grant.

Spouse - a married person, including a person in a domestic partnership or a civil union recognized under State law.

Tribally-Owned Concern - any concern at least 51 percent owned by an Indian tribe as defined in this section.

You - refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

APPENDIX B.

Acronyms

ACDBE	Airport Concessionaire Disadvantaged Business Enterprise
DBE	Disadvantaged Business Enterprise
FAA	Federal Aviation Administration
FTA	Federal Transit Administration
FHWA	Federal Highway Administration
MIP	Mentor Protégé Program
MoDOT	Missouri Department of Transportation
MRCC	Missouri Regional Certification Committee
NAICS	North American Industry Classification Standards
SBA	Small Business Administration
SBE	Small Business Enterprise
UCP	Unified Certification Program
USDOT	United States Department of Transportation

APPENDIX C.

No Change Affidavit

I *insert name of DBE firm owner (s)*_____,swear[1] that there have been no changes in *insert name of DBE firm*_____circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26, and 13 CFR Part 121. I swear there have been no material changes in the information provided with *insert name of DBE firm*_____application for certification, except for any changes about which I have provided written notice to Metro pursuant to 49 CFR § 26.83(i).

I swear that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination because of my identity as a member of one or more of the groups identified in 49 CFR § 26.5, without regard to my individual qualities. I further swear that my personal net worth does not exceed $1,320,000.00, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I specifically swear that *insert name of DBE firm*_____continues to meet the small Business Administration (SBA) business size criteria and the overall gross receipts cap of 49 CFR Part 26. I have provided the attached size and gross receipts documentation to support this affidavit.

Signature_____ Date_____

State of _____, City/County of _____

On this ____ day of _____, 20___, before me appeared (*name)*_____, to me personally known, who, being duly sworn, did execute the foregoing affidavit and did state that he or she was properly authorized by *(name of firm)*_____ to execute the affidavit and did so as his or her free act and deed.

(SEAL/STAMP)

Notary Public_____

Commissions Expires_____

[1] Knowingly and willfully providing false information to the federal government is a violation of 18 U.S.C. section 1001 (False Statements) and could subject to fines, imprisonment or both.

APPENDIX D.

MISSOURI REGIONAL CERTIFICATION COMMITTEE (MRCC)
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
INTERSTATE AFFIDAVIT

Name of Firm _____

I affirm, as evidenced by my signature below, I have provided all information required by 49 CFR 26.85(c) to _____ (MRCC Agency Name) for inspection and review to determine eligibility for the Missouri Unified Certification Program/Missouri Regional Certification Committee (MRCC).

I affirm the information is complete and, in the case of the information required by §26.85(c)(1), is an identical copy of the information submitted to _____ (home state agency).

I further affirm all information and statements I have provided are true and correct. I understand all documents may be subject to review at any time by representatives of the MRCC.

_____ _____
Printed Name of Applicant Signature of Applicant

Subscribed and sworn to before me, the undersigned notary public, on this date:

_____.

_____
Notary Public's Signature/Seal

The Missouri Unified Certification Program known as the MRCC consists of five (5) certifying agencies and adheres to the Department of Transportation DBE standards set forth in 49 CFR Part 26. The following entities are members of the MRCC: City of Kansas City, City of St. Louis-Lambert Airport, Kansas City Area Transit Authority, Metro and Missouri Department of Transportation (MoDOT). DBE certification is valid at any Missouri entity that receives U.S. Department of Transportation (DOT) funds and has a DBE Program.

APPENDIX E.

Appendix E to 49 CFR Part 26—Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

SOCIAL DISADVANTAGE

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

ECONOMIC DISADVANTAGE

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* I n considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that

individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]