

# FTA

FEDERAL TRANSIT ADMINISTRATION

## Illinois Unified Certification Program DBE Compliance Review Final Report

May 2013

PREPARED BY  
Milligan & Company, LLC



U.S. Department of Transportation  
Federal Transit Administration

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## **SECTION 1 – GENERAL INFORMATION**

Hosting Grant Recipient: Illinois Department of Transportation  
2300 S. Dirksen Parkway

City/State: Springfield, IL

Executive Official: Ann L. Schneider  
Secretary of Transportation

On Site Liaison: Debra Clark  
Certification Section Manager  
(217) 785-4490

Report Prepared by: MILLIGAN AND CO., LLC  
105 N. 22<sup>nd</sup> Street, 2<sup>nd</sup> Floor  
Philadelphia, PA 19103  
(215) 496-9100

Site Visit Dates: June 12–15, 2012

Compliance Review Team  
Members: Benjamin Sumpter, Lead Reviewer  
Habibatu Atta

## **SECTION 2 – JURISDICTION AND AUTHORITIES**

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct civil rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and subrecipients with Section 12 of the Master Agreement, Federal Transit Administration M.A. (18), October 1, 2011, and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

The Federal Transit Administration (FTA) of the U.S. Department of Transportation (DOT) provides financial assistance to transit agencies, Metropolitan Planning Organizations (MPOs) and State Departments of Transportation (State DOTs). These recipients are required to comply with Federal civil rights provisions. The FTA Office of Civil Rights (TCR) oversees grantee compliance with these provisions through compliance reviews, which are conducted at TCR’s discretion.

The Illinois Unified Certification Program (IL UCP) members, which are direct or indirect recipients of FTA funding assistance, are subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of these funds pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in IL UCP’s agreement and were the basis for the selection of compliance elements that were reviewed.

## **SECTION 3 – PURPOSE AND OBJECTIVES**

### **PURPOSE**

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with their responsibilities under 49 CFR Part 26. In keeping with its regulations and guidelines, FTA has determined that a compliance review of the Illinois Unified Certification Program (IL UCP) is necessary.

The primary purpose of the compliance review is to determine the extent to which the IL UCP has met its DBE certification program goals and objectives, as represented to DOT in its UCP agreement. This compliance review is intended to be a fact-finding process to (1) examine the IL UCP and its implementation, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

This compliance review is not to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its subrecipients, nor to adjudicate these issues in behalf of any party.

### **OBJECTIVES**

The objectives of Unified Certification Programs, as specified in 49 CFR Part 26, are to:

- follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Parts 26 and 23;
- cooperate fully with all oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations;
- implement USDOT directives and guidance on DBE certification matters;
- make all certification and decertification decisions on behalf of all UCP members with respect to participation in the USDOT DBE Program. Certification decisions by the UCP shall be binding on all UCP members. Certification decisions must be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE;
- provide a single DBE certification that will be honored by all UCP members;
- maintain a unified DBE directory containing at least the following information for each firm listed: address, phone number, and the types of work the firm has been certified to perform. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made; and
- ensure the UCP agreement shall commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of 49 CFR Parts 26 and 23.

The objectives of this compliance review are to:

- determine whether the IL UCP is honoring the UCP agreement submitted to the Secretary of Transportation;
- examine the required certification procedures and standards of the IL UCP against the Disadvantaged Business Enterprise program compliance standards set forth in the regulations and to document the compliance status of each component; and
- gather information and data regarding the operation of the IL UCP from certifying members through interviews and certification file review.

## SECTION 4 – BACKGROUND INFORMATION

Prior to the 1999 DBE Final Rule 49 CFR Part 26, applicants seeking participation on DOT-assisted projects as a Disadvantaged Business Enterprise (DBE) could be required to be certified by multiple DOT recipients in a state. Subpart E of 49 CFR Part 26.81 requires DOT recipients to participate in a Unified Certification Program (UCP) that shall provide “one-stop shopping” to applicants for DBE certification. An applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

An agreement establishing the UCP for the state was to be submitted to the Secretary of Transportation within three years of March 4, 1999. The agreement was to provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify the UCP will follow all certification procedures and standards of Part 26, on the same basis as recipients. The UCP is also required to cooperate fully with oversight, review, and monitoring activities of DOT and its operating administration.

### *Illinois Unified Certification (IL UCP) Program*

The IL UCP Certifying Partners are the Illinois Department of Transportation (IDOT), the Chicago Transit Authority (CTA), the City of Chicago, the Commuter Rail division of the Regional Transportation Authority (Metra), and the Suburban Bus Division of the Regional Transportation Authority (Pace). The IL UCP was approved by USDOT in 2002.

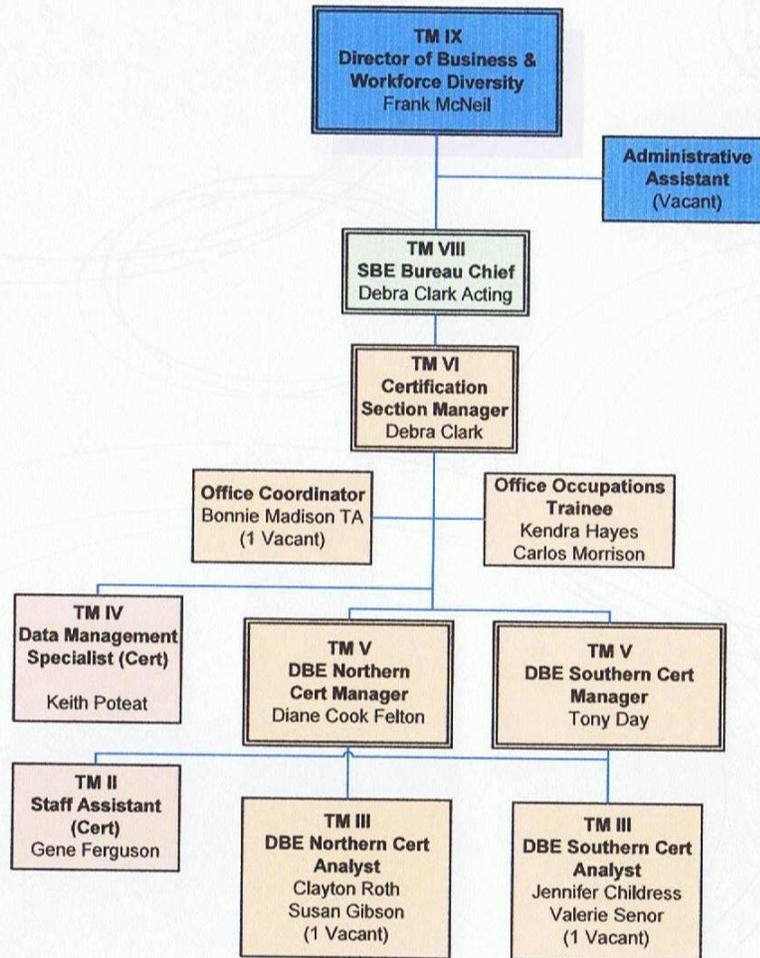
### *UCP Non-Certifying Participants*

The UCP participants are listed below. The asterisk (\*) denotes that the grantee did not sign the MOU:

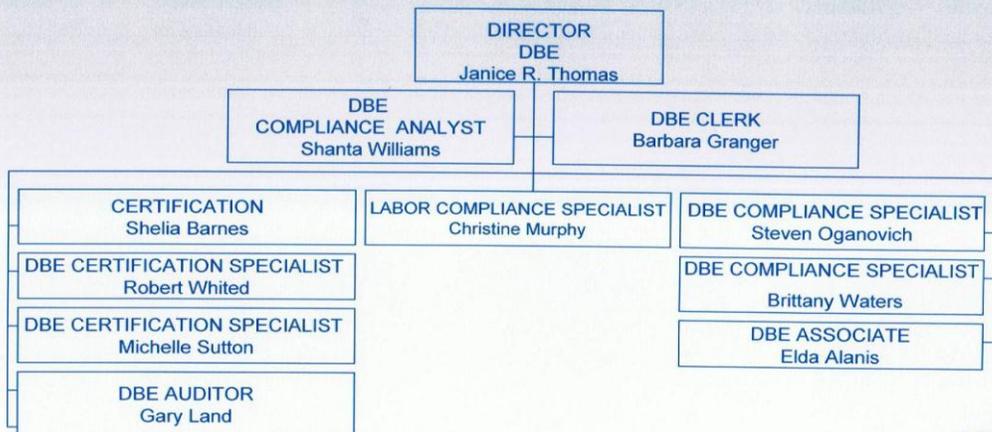
- Bloomington-Normal PTS
- Central Illinois Airport, Bloomington
- Champaign-Urbana MTD\*
- City of South Beloit
- Decatur Airport
- Decatur Public Transit
- Greater Peoria Airport
- Greater Peoria MTD
- Greater Rockford Airport
- Madison County Transit
- Pekin Municipal Bus Services
- Quad City Airport
- Quincy Municipal\*
- Regional Transportation Authority
- River Valley Metro MTD
- Rockford Mass Transit District
- Springfield MTD
- State of Illinois
- Town of Normal
- University of Willard\*
- Williamson County Airport

# Illinois Department of Transportation

Office of Business & Workforce Diversity  
Bureau of Small Business Enterprises  
Certification Section

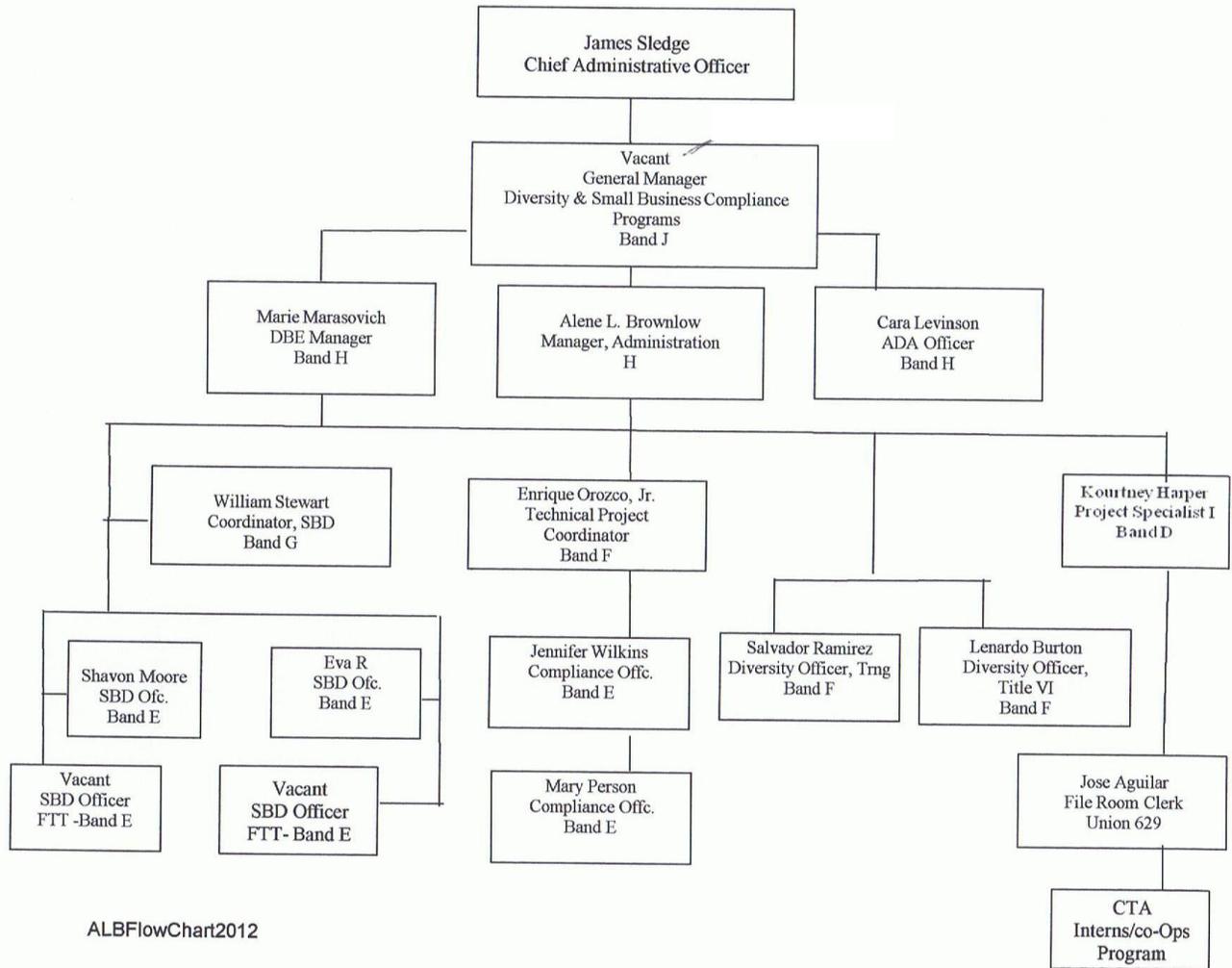


# ORGANIZATIONAL CHART



# Diversity & Small Business Compliance

## CTA



ALBFlowChart2012

## SECTION 5 – SCOPE AND METHODOLOGY

### SCOPE

Implementation of the following 12 required DBE UCP program components specified by the FTA are reviewed in this report.

1. You must rebuttably presume that members of the designated groups identified in 26.67 are socially and economically disadvantaged [49 CFR 26.61].
2. If you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group [49 CFR 26.63].
3. You must apply current Small Business Administration (SBA) business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts [49 CFR 26.65].
4. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged [49 CFR 26.67].
5. In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole [49 CFR 26.69].
6. In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole [49 CFR 26.71].
7. Other rules affecting certification include not considering commercially useful function issues, evaluating the eligibility of a firm on the basis of present circumstances, and making sure only firms organized for profit may be eligible DBEs [49 CFR 26.73].
8. You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP). You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program [49 CFR 26.81 and 26.31].
9. You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program [49 CFR 26.83].
10. When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. In any situation in which State B chooses not to accept State A's certification of a firm additional procedures must be followed. [49 CFR 26.85].

11. When you deny a request by a firm to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial [49 CFR 26.86 – 26.89].
12. If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied [49 CFR 26.101 – 26.109].

## **METHODOLOGY**

The initial step in the scope of this Compliance Review consisted of consultation with the FTA Office of Civil Rights and a review of available information from the Unified Certification Program websites and other sources. Subsequent to this review, potential dates for the site visit were coordinated.

An agenda letter was then compiled and sent to the IL UCP by FTA’s Office of Civil Rights. The agenda letter notified the IL UCP of the planned site visit, requested preliminary documents, and informed the IL UCP of additional documents needed and areas that would be covered during the on-site portion of the review.

The documents received prior to the on-site portion of the review were examined and an itinerary for the site visit was developed.

An entrance conference was conducted at the beginning of the Compliance Review with the IL UCP Certifying Members and the review team. Subsequent to the entrance conference, a review was conducted of the IL UCP agreement and other documents submitted to the review team by the IL UCP representative. Interviews were also conducted with IL UCP Certifying Member representatives regarding DBE program certification standards and certification procedures. A sample of certification files was then selected and reviewed for the DBE required elements.

At the end of the review, an exit conference was held with the IL UCP Certifying Member representatives and the review team. A list of participants is included at the end of this report. At the exit conference, initial findings and corrective actions were discussed with the representatives.

Following the site visit a draft report was compiled and transmitted to IL UCP for comments. This final report incorporates the responses to the draft report and identifies the remaining corrective actions.

NOTE: Materials and information to address the findings and corrective actions in the report should be sent to the attention of:

Monica McCallum  
FTA Region X, Civil Rights  
915 Second Ave, Suite 3142  
Seattle, WA 98174  
[monica.mccallum@dot.gov](mailto:monica.mccallum@dot.gov)

### Illinois Department of Transportation

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Redacted	Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	Y	Y	N/A	N/A	N/A
File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Redacted	Y	N	N	N	No/No Incomplete	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	N	Y	Y	Y	N/A	N/A	N/A

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Redacted	Y	N/A	Y	N/A	Y/Y	N/A	N	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	N/A	N/A	Y	Y	N/A	N/A	N/A

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Redacted	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	Y	Y	Y	N	N/A
File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Redacted	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	Y	Y	N	N	N/A

### Chicago Transit Authority

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Redacted	Y	Y	N	N/A	Y/N	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Redacted	Y	Y	N	N	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	N	Y	N/A	N/A	N/A
						Concession Business	ACDBE Size Standards	PNW Exclus.	ACDBE Dir.
						Y	N/A	N/A	N

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Redacted	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N	N	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Redacted	Y	N	Y	N/A	No/No	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N	Y	N/A

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Redacted	Y	N/A	N	N/A	Y/Y	N/A	N	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	N/A	N/A	N	Y	N/A	N/A	N/A

**City of Chicago**

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Redacted	Y	Y	N	N	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Redacted	Y	Y	Y	Y	N/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	Y	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Redacted	Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	N	N	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Redacted	Y	Y	N	N/A	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N/A	N/A	N/A
						Concession Business	ACDBE Size Standards	PNW Exclus.	ACDBE Dir.
						Y	N	N/A	Y
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Redacted	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	Y	Y	Y	N/A	N/A	N/A

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Redacted	Y	Y	Y	N/A	Y/Y	N/A	N	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	N/A	N/A	Y	Y	N/A	N/A	N/A

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Redacted	Y	Y	Y	Y	N/N	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N/A	Y	N/A	Y	Y	N	N	N/A

### Metropolitan Rail (Metra)

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Redacted	Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Redacted	Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	Y	Y	Y	N/A	N/A	N/A

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Redacted	Y	N	Y	Y	N/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
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		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Redacted	Y	Y	Y	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N/A	Y	Y	N	N	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Redacted	Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
		Cert.	SBA	Inter.	Control	Ownership	Removal	Notice	Notice

		Decision	Size	Cert.	Review	Review	Process Followed	of Hearing	of Decision
		Y	N/A	N/A	Y	Y	Y	N/A	N/A

### PACE Bus

File Type	Firm	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Redacted	Y	Y	Y	N	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	N	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Redacted	Y	Y	Y	Y	N/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	Y	Y	Y	N/A	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Redacted	Y	Y	Y	N/A	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	Y	N	N/A	N/A	N/A

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Redacted	Y	Y	Y	N/A	N/A	N/A	Y	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	N/A	Y	N/A	N/A	N/A

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal	Redacted	Y	Y	N	Y	Y/Y	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N/A	N	N	N	N	N/A

## SECTION 6 – ISSUES AND RECOMMENDATIONS

### 1. **Burden of Proof**

Basic Requirement (49 CFR Part 26.61): UCPs must rebuttably presume that members of the designated groups identified in 26.67(a) are socially and economically disadvantaged. Individuals must submit a signed, notarized statement that they are a member of one of the groups in 26.67.

Discussion: During this UCP Compliance Review, **no deficiencies** were found with requirements for burden of proof.

The IL UCP states that participants will follow all certification procedures (Subpart E) and standards (Subpart D) under 49 CFR Part 26. The DBE certification applications contained a signed, notarized statement from individuals presumed to be socially and economically disadvantaged.

### 2. **Group Membership**

Basic Requirement (49 CFR Part 26.63): If a UCP has a well-founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group. You must provide the individual a written explanation of your reasons for questioning his or her group membership. You must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group.

Discussion: During this UCP Compliance Review, **no deficiencies** were found with the requirement for Group Membership.

The IL UCP requested approval from USDOT to supplement the DBE Uniform Application in a letter dated July 15, 2003. The supplemental information included a statement that each applicant will be required to document group membership by the submittal of at least one piece of evidence, e.g., naturalization papers; Indian tribal roll cards; tribal voter registration certificate; a letter from a community group, educational institution, religious leader, or government agency stating that the individual is a member of the claimed group; or a letter from the individual setting forth specific reasons for believing himself/herself to be a member of the designated group. The request was approved by USDOT in a letter dated August 7, 2003.

### 3. **Business Size**

Basic Requirement (49 CFR Part 26.65): A UCP must apply current Small Business Administration (SBA) business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts. A firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years, in excess of \$22.41 million.

Discussion: During this UCP Compliance Review, **deficiencies** were found with the requirement for business size.

49 CFR Part 26.65 states:

*(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.*

*(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.*

The SBA defines annual receipts in 13 CFR Part 121 as *(a) Receipts means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms.*

The review team found that IDOT did not apply business size standards appropriately for the DBE certified firm of **Redacted**). According to IDOT’s certification status summary detail, **Redacted** was certified as a DBE in 1996. **Redacted** is DBE certified in the following NAICS codes (applicable SBA size standard shown): 237310–Highway, Street, & Bridge Construction–\$33.5 million; 237990–Other Heavy and Civil Engineering Construction–\$33.5 million; and 238910–Site Preparation Contractors–\$14 million.

As part of continuing eligibility in the DBE program, the **Redacted** submitted No Change Affidavits each year, which included tax returns. The certification records indicated that the firm submitted a No Change Affidavit on August 17, 2011, and the affidavit was approved on September 28, 2011. **Redacted** filed for an extension of its 2010 business 1120S tax returns and the 2009, 2008, and 2007 returns were used for the three-year average receipts.

IDOT used the gross receipts listed on line 1 of the 1120S tax returns to calculate business size. The 1120s tax returns for 2009 showed, on line 1, gross receipts of \$11,736,818; \$13,857,839 for 2008; and \$19,483,670 for 2007. The average for these three years using IDOT’s method was \$15,026,109. The review team advised IDOT that the firm had exceeded the industry size standard of \$14 million for 238910–Site Preparation Contractors.

The review team further explained that SBA defines annual receipts as total income plus cost of goods sold. Using this formula, **Redacted** exceeds the \$22.41 million DBE size standard and is currently not eligible for the DBE program. **Redacted** had normal income as reported on line 1 of the gross receipts on the tax returns, but also had affiliate income

listed on line 5 in “other income” from participation in numerous joint ventures with **Redacted** as **Redacted**. Calculating cost of goods sold (line 2) and total income (line 6) on the 1120S tax form captures all income generated by the firm. The annual receipts for **Redacted** are listed in the table below.

Year	Cost of Goods Sold	Total Income	Annual Receipts
2009	\$8,772,120	\$8,144,249	\$16,916,369
2008	\$9,311,254	\$18,270,035	\$27,581,289
2007	\$13,554,405	\$13,859,507	\$27,413,912
<b>Average</b>			<b>\$23,970,523</b>

The review team found worksheets in the City of Chicago certification records that indicated that annual receipts are calculated as total income plus cost of goods sold.

Corrective Action and Schedule: Submit to FTA’s Office of Civil Rights, within 60 days of the issuance of the final report:

- revised IL UCP procedures to reflect how gross receipts are to be calculated and processed to ensure that all certification participants are adhering to business size standards
- documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld
- documentation that IDOT has requested and received the most recent tax returns for **Redacted** for determination of eligibility

Illinois UCP Response:

- Revised IL UCP procedures to reflect how gross receipts are to be calculated and processed to ensure that all certification participants are adhering to business size standards  
*The IL UCP procedures will be revised to include the corrected process to be used when determining gross receipts.*
- Documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*
- Documentation that IDOT has requested and received the most recent tax returns for **Redacted**, for determination of eligibility  
*The tax returns for Reyes Group, Ltd for 2011 were submitted to IDOT. A subsequent review, using the revised calculation, determined the firm exceeded the business size standards of \$22,410,000. As a result, following removal procedures in accordance with 49 CFR Pt. 26, the firm was removed from the program. Documentation attached.*

*Implementation date: May 1, 2013*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report, revised UCP procedures to reflect how gross receipts are calculated and confirmation of certifying member adherence.

**4. Social and Economic Disadvantage**

**A) Presumption of Disadvantage**

Basic Requirement (49 CFR Part 26.67 (a)(1)): You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

Discussion: During this UCP Compliance Review, **no deficiencies** were found with the requirement for presumption of disadvantage.

Part 26.61 (c) states you must presume members of groups identified in Part 26.67(a) are socially disadvantaged. Part 26.67 (a)(1) requires the applicant to submit a signed, notarized certification that the disadvantaged owner is socially and economically disadvantaged. This notarized Affidavit of Certification is part of the Uniform Certification Application found in Appendix F of the DBE regulations. The certification files reviewed by the review team included the statement of disadvantage.

**B) Personal Net Worth**

Basic Requirement (49 CFR Part 26.67 (a)(2)): A UCP must require each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$1.32 million.

Discussion: During this UCP Compliance Review, **deficiencies** were found with the requirement for Personal Net Worth (PNW) statements. The review team found the following issues with the personal net worth statements listed below.

The following certification files contained incomplete PNW statements:

- **Redacted** (reviewed by CTA)
- **Redacted** (reviewed by Pace)

In all of the files listed above, the review team found instances where the applicant listed a substantial value under "Other Personal Property" or "Other Assets," yet failed to

provide a description of the assets in Section 5. It did not appear that further clarification was requested regarding the figures.

When this was discussed with the representatives of CTA, one of the certifying specialists mentioned that in all of the cases, the PNW threshold had not been exceeded. The review team advised that even though the PNW was well below the threshold, it was imperative that all of the sections are completed. In Section 5, in particular, it has been found that applicants sometimes use the section to describe ownership interests or equity in other companies or they may list information that may lend itself to further investigation.

The following certification files had omissions, duplicate data, and improper inclusions on PNW statements:

- [Redacted] (reviewed by Pace)
- [Redacted] (reviewed by CTA)
- [Redacted] (reviewed by City of Chicago)
- [Redacted] (reviewed by IDOT)

The review team found that information was not included on the PNW statements for [Redacted]. On the 2004 and 2005 personal taxes, a property was listed for the owner of [Redacted]. There was no documentation in the file that additional information was requested to find out whether the applicant still owned the property and if it should be included on the PNW statements. A commercial property listed on DND's 2010 tax return was not included on the July 2011 PNW statement. For [Redacted], equity in two other companies that were listed on the applicant's Schedule E tax form, [Redacted], were not listed on the PNW.

Duplicate data was found on multiple PNW statements provided by [Redacted], Inc. The applicant filled in the same figures for "Cash on Hand and In Banks," "Savings Accounts," "Accounts and Notes Receivable," and "Automobiles—Present Value" for the PNW statements that were submitted on January 2007, December 2008, December 2009, and July 2010. The figures that were submitted for "Accounts Payable" were also similar on all of the statements listed above, except for July 2010. There was no documentation in the file that the certifiers required the applicant to provide updated and complete PNW statements.

With [Redacted] and [Redacted] the review team found that assets and liabilities associated with the applicant's primary residence were not reported consistently in the net worth calculations. In the September 2007 PNW statement for DND, the value of the primary residence was not included in the net worth calculation; however, the mortgage on the primary residence was included as a liability. The 2006–2011 PNW statement from [Redacted] excluded the primary residence as an asset but included real estate taxes on the primary residence and other properties as liabilities. Since all of the properties had mortgages, real estate taxes are usually held in escrow by the financial institution and included with mortgage payments (listed in section 4). There was no documentation that IDOT questioned the real estate taxes or why the liabilities associated with the primary residence were included on the PNW form but not the assets.

The review team noted a best practice by Metra in regards to the analysis of the PNW forms. The Metra Audit Department reviews the PNW form and other financial information submitted by the applicant or DBE. Within the past year, the Metra DBE Department requested and was granted an individual from its Audit Department to be a part of the DBE staff. This individual completes a detailed analysis of the current PNW form compared with the prior year and makes adjustments or revisions where necessary. Notes to the PNW statements are also included in the analysis, similar to notes in financial statements prepared by accountants.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- revised IL UCP procedures addressing analysis of PNW forms for errors and omissions, documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld

Illinois UCP Response:

- Revised IL UCP procedures addressing analysis of PNW forms for errors and omission  
*The IL UCP procedures will be revised to include the following: "During the analysis of the PNW, all fields must be answered and completed. If any field is left unanswered or during the analysis additional information is needed to clarify an entry, a request for information letter shall be mailed out requesting the additional information."*
- Documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

*Implementation date: May 1, 2013*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency. IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report, revised UCP procedures for PNW analysis and confirmation of certifying member adherence.

### **C) Individual determinations of social and economic disadvantage**

Basic Requirement (49 CFR Part 26.67 (d)): Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for DBE certification. UCPs must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged.

Discussion: During the UCP Compliance Review, **no deficiencies** were found with the requirement of individual determinations.

The IL UCP certifying members were familiar with requirements regarding individual determinations of social and economic disadvantage. No certification files reviewed were from individuals not presumed to be socially and economically disadvantaged.

## 5. Ownership

Basic Requirement (49 CFR Part 26.69): In determining whether the socially and economically disadvantaged participants in a firm own the firm, UCPs must consider all the facts in the record, viewed as a whole. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

Discussion: During this UCP Compliance Review, **deficiencies** were found with the requirement of ownership.

**Redacted** (reviewed by Pace)

The firm is 100% owned by a woman. On the application, she wrote that the company was started with an initial investment of \$100,000. She listed it as a cash contribution from **Redacted** on August 2009. On the January 2010 PNW statement, the applicant wrote, "I received \$100,000 from a very good friend.... She is my sole investor.... There is no firm repayment schedule."

*According to the regulations, "The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan."*

There was no documentation of a promissory note or any other written documentation in the file to substantiate the claim and to discuss the investor's role, if any, in the company. The firm was denied on October 14, 2010, for lack of cooperation; however, of the documents requested to continue the review of application, information regarding this investment was not included.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- revised IL UCP procedures addressing thorough review and documentation of ownership requirement determinations in the certification record, documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld

Illinois UCP Response:

- Revised IL UCP procedures addressing thorough review and documentation of ownership requirement determinations in the certification record

*As stated in the IL UCP procedures, “evidence of the equity contribution by the disadvantaged owners must be examined closely.” All agencies will commit to adhering to established procedures.*

Documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld

*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

*Implementation date: May 1, 2013*

FTA Response:

FTA agrees with IL UCP’s response to the noted deficiency. IL UCP shall submit to FTA’s Office of Civil Rights, within 60 days of issuance of the final report, revised UCP procedures addressing thorough review and documentation of ownership requirement determinations in the certification record and confirmation of certifying member adherence.

**6. Control**

Basic Requirement (49 CFR Part 26.71): In determining whether socially and economically disadvantaged owners control a firm, UCPs must consider all the facts in the record, viewed as a whole.

Discussion: During this UCP Compliance Review, **deficiencies** were noted with determining control.

**Redacted** (reviewed by CTA)

The company was formed on April 8, 2010, with 60% of the company owned by **Redacted** and 40% owned by **Redacted**, a 100% woman-owned company. CTA found that the majority owner worked for **Redacted** in 2010 and 2011, according to the W-2 statements found in his personal taxes. The majority owner responded to the question about his employment in a letter dated November 7, 2011, which said, “For 2010, my W-2 reflects payment for services from **Redacted** for surviving until the **Redacted** deals potentially go through. At this point, my employment has been terminated and I am no longer an employee of **Redacted** or any other entity of which I am not an owner.”

According to the regulations, “*You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm. (j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.*” This information presents an issue of control and independence; however,

when it was decided that the firm should be removed from the program during the period of their annual update, this was not included in the letter as a basis for removal.

**Redacted** (reviewed by Pace)

The applicant firm is an engineering company that is 100% owned by a disadvantaged male. The owner also owns 50% of a company with his wife. During the on-site interview dated May 10, 2010, the owner mentioned that he recently started another engineering company in which he owned 50%. There was no additional documentation in the files that discussed his responsibilities, office hours, or his support with regards to his ownership interest in these other firms, which could present an issue with control.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- revised IL UCP procedures for reviewing individual's involvement with outside firms (including prior ownership interests and/or employment) to ensure that owners can control the firm during times of operation, documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld

Illinois UCP Response:

- Revised IL UCP procedures for reviewing individual's involvement with outside firms (including prior ownership interests and/or employment) to ensure that owners can control the firm during times of operation  
*The Illinois UCP will adhere to established procedures when reviewing owners involvement with outside employment as a means of determining control*
- Documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency. IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report, revised UCP procedures for reviewing owners involvement with outside firms and confirmation of certifying member adherence.

## **7. Other Rules Affecting Certification**

Basic Requirement (49 CFR Part 26.73): UCPs must not consider commercially-useful function issues in any way in making decisions about whether to certify a firm as a DBE. You may consider, in making certification decisions, 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. DBE firms and firms seeking DBE certification shall cooperate fully with UCP requests for information relevant to the certification process.

Discussion: During this UCP Compliance Review, **deficiencies** were found with other rules affecting certification.

### *Commercially Useful Function*

The IL UCP directory includes the NAICS codes and description for each certified firm. The directory also lists the firm's "specialty," which gives more specifics for the selected NAICS code. The directory details the "category" for each firm, such as Construction, Architecture, Professional, Manufacturer, Supplier, etc. The UCP makes a determination if the firm is a regular dealer or broker at the time of the certification eligibility review. The UCP will review the inventory and other business-related activities to make a determination if the firm should be given 60% credit as a regular dealer or fees and commission as a broker of goods and services. Several firms listed in the "Supplier" category in the IL UCP directory had "fees and commissions" beside the specialty provided by the firm. For example, a building products company had an NAICS code of 238320–Painting and Wall Covering Contractors and a Specialty code of 238320–Paint, Fees and Commissions.

49 CFR Part 26.73 (a)(1) states, "*Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.*"

UCP representatives indicated that designation of whether DBE credit for a supplier should be counted at 60% or solely for fees and commissions is necessary for clarity purposes to primes, agencies, and DBEs as to the firm's capabilities towards an awarded contract. It was further stated that this clarification is a necessity due to the business climate in the Chicago area, with pass-through companies and other fraudulent activities. As a point of justification, the review team was given news articles about Chicago area businesses used as pass-through firms on public contracts commonly referred to as "2 percenters," wherein they would receive a percentage for passing payment to suppliers. The article attributed lack of agency oversight and the certification process as the problems.

The review team was also given an IDOT memorandum stating that the eligibility of a Metra-certified DBE firm ( **Redacted** ) participating on an IDOT contract was in question. The DBE firm was to supply reinforcing steel material to the prime contractor on an IDOT construction contract. The memo stated that the firm's supplier eligibility and commercially-useful function issues had been raised by the USDOT/OIG, and onsite visits were subsequently conducted by IDOT personnel in response to the USDOT/OIG review. The IDOT personnel recommended that Metra challenge continued eligibility of the firm's current category of steel supplier. It was also recommended that IDOT may need to review DBE goal credit issues on a number IDOT contracts.

The review team's meeting with Metra revealed that their certification process goes beyond socially and economically disadvantaged, ownership, control, and business size

eligibility determinations for firms that supply goods and services. The certification record for [REDACTED] contained a DBE certification letter from December 13, 2006, that stated that the firm's name would appear in the IL UCP directory under the category of "Supplier at 10% Credit specializing in Fees and Commissions for Supplying of All Kinds of Lubricants." Another certification letter from December 17, 2008, stated that the firm's name would appear in the directory as "Supplier at 60% Credit specializing in Supplier of All Types of Lubricants." The Metra representative indicated that recent modification to the certification letters had been made to remove the percentages but still indicates when fees and commissions should be credited to the DBE firm.

49 CFR Part 26.73 (a)(1) states that "... you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE." Rather, it is incumbent upon a recipient (when making good faith effort determinations to meet a contract goal) to make a preliminary determination about the function to be performed by the subcontractor (i.e., regular dealer or broker) subject to post-award monitoring compliance confirmation. The amount of credit awarded to a DBE is a contract-by-contract determination. A firm could participate as a regular dealer at 60% credit on one contract and only fees and commissions on another. The IL UCP certification letters includes an addendum that lists several disclaimers to include that, "This certification does not (attest) to your firm's abilities to perform in the approved work category(ies); Your certification may be revoked if your firm is found to be involved in bidding or contractual irregularities or has violated DBE program regulations pursuant to 49 CFR Part 26.107; and for work to count toward a DBE contract goal, the DBE firm must perform a 'commercially useful function' pursuant to 49 CFR Part 26.55." The inclusion of these disclaimers seems to be sufficient in expressing the role of the certification agency. Insertion of counting credit in the certification letter is unnecessary and contrary to Subparts D and E of the DBE regulations.

The IL UCP is referred to the Official USDOT Questions and Answers regarding, "Should firms be certified as regular dealers? Is a firm that acts as a regular dealer on one contract necessarily treated as a regular dealer on all contracts?" (posted 12/09/11):

- *No to both questions.*
- *Certification and counting are separate concepts in the DBE rule. Certification and counting matters should not be conflated or confused with one another.*
- *Firms are certified as DBEs if they are small business concerns owned and controlled by socially and economically disadvantaged individuals. DBE firms must be certified in the most specific NAICS code(s) for the type of work they perform. While a firm may be certified in a NAICS code related to performing supplier functions, it is not appropriate to certify any firm as a "regular dealer." In fact, there is no NAICS code for a "regular dealer." The only appropriate use of the term "regular dealer" concerns counting participation by DBE firms that have already been certified.*
- *If a certified firm acts as a "regular dealer" in a given transaction, it is awarded DBE credit equivalent to 60 percent of the value of the items it*

*supplies on that contract. This credit is awarded in recognition of the value the DBE adds to transaction and the risks that it takes. The rules provide that a firm the role of which is that of a broker or transaction expediter cannot receive DBE credit beyond the fee or commission it receives for its services. Such a firm adds less value and takes fewer risks than a regular dealer.*

- *Whether a DBE firm meets the criteria of §26.55(e)(2) for being treated as a regular dealer is a contract-by-contract determination to be made by the recipient. In evaluating whether a DBE firm should receive 60 percent credit for items it supplies on a particular contract, a recipient should answer two questions. If the answer to either question is “no,” then the firm should not receive 60 percent credit.*

#### *Prequalification Requirements*

The DBE regulations state in Part 26.73(g), “You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.” IDOT requires that all engineering firms participating on IDOT contracts are prequalified with the Bureau of Design and Environment. Vania Engineering requested certification in the areas of work for electrical engineering and mechanical engineering. IDOT certified the firm in the category of Research even though the disadvantaged owner had a professional engineer license with more than 37 years of experience in mechanical and electrical engineering. It appeared that, from the five certifying partners, only IDOT had a requirement for engineering firms to be prequalified prior to becoming certified in the work category of engineering. It was unclear if IDOT would consider non-IDOT DBE-certified engineering firms in its contracting activity absent this prequalification requirement. Additionally, it was unclear if IDOT’s prime contractors use the IL UCP directory to find engineering firms or an IDOT prequalification list to meet DBE contract goals.

The review team was concerned that an engineering firm seeking DBE certification through IDOT would not be given the engineering industry code unless it was prequalified; however, the firm could obtain the engineering designation in the UCP directory from one of the other certifying partners.

Corrective Action and Schedule: Submit to FTA’s Office of Civil Rights, within 60 days of the issuance of the final report:

- revised IL UCP procedures for removal of regular dealer/broker counting issues from certification determinations, the directory, and other correspondence material
- documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld
- evidence from IDOT that the prequalification requirement is disconnected from the certification process

#### Illinois UCP Response:

- Revised IL UCP procedures for removal of regular dealer/broker counting issues from certification determinations, the directory, and other correspondence material

*Eligibility determinations and counting issues are determined independent of one another. The IL UCP is working on terminology that will adequately reflect the services provided by non stocking suppliers/distributors. Metra, in accordance with revised IL UCP procedures, has removed the percentages, fees and commission language from its certification approval letters and IL UCP directory for Metra hosted firms certified as suppliers. Metra assures the IL UCP that certification determinations for suppliers will not include regular deal/broker counting issues.*

- Documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*
- Evidence from IDOT that the prequalification requirement is disconnected from the certification process  
*All architectural-engineering consultants desiring to provide services to IDOT, whether as a prime or subconsultant, must be prequalified. (See attached). This process is separate and distinct from DBE eligibility determinations.*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency. IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report,

- revised UCP procedures detailing that certification eligibility determinations are distinct from counting issues;
- attachment from IDOT regarding prequalification (attachment was not included in response); and
- confirmation of certifying member adherence.

## **8. UCP Requirements**

### **A) UCP Agreement**

Basic Requirements (49 CFR Part 26.81): All DOT recipients in a state must participate in a UCP. Recipients must sign an agreement establishing the UCP for the state and submit the agreement to the Secretary for approval.

Discussion: During this UCP Compliance Review, **deficiencies** were found regarding the IL UCP Agreement.

The UCP Memorandum of Understanding (MOU) was signed by all five of the certifying partners in the IL UCP. The MOU also included non-certifying partners consisting of approximately 22 airports, cities, municipalities, and townships. Signatures to the MOU were missing for Central Illinois Airport, Bloomington; Quincy Municipal, Quincy; University of Illinois Willard, Savoy; and Champaign-Urbana MTD.

The IL UCP was approved by USDOT via a letter dated December 2, 2002. The Unified Certification Procedures for the IL UCP was created on July 10, 2002, and updated on

June 8, 2005. The review team advised IL UCP to update its Unified Certification Procedures to reflect changes in the DBE regulations.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- updated Illinois UCP Unified Certification Procedures to reflect current DBE regulations and new or revised processes that result from deficiencies in this review
- documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld
- documentation or evidence confirming signatures were obtained from those recipients that have not signed the UCP agreement

Illinois UCP Response:

- Updated Illinois UCP Unified Certification Procedures to reflect current DBE regulations and new or revised processes that result from deficiencies in this review  
*The IL UCP procedures will be amended to include all revisions noted and any updated DBE regulations.*
- Documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld and documentation or evidence confirming signatures were obtained from those recipients that have not signed the UCP agreement  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

*Implementation date: May 1, 2013*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency. IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report:

- revised UCP procedures addressing all issues detailed in compliance report;
- missing MOU signatures from DOT recipients; and
- confirmation of certifying member adherence.

## **B) UCP Directory**

Basic Requirements (49 CFR Part 23.31, 26.31, and 26.81(g)): UCPs must maintain a unified DBE directory containing, for all firms certified by the UCP, the information required by 26.31. The directory must include if the firm is an ACDBE or DBE, or both. The listing shall include for each firm, its address, phone number, and the types of work the firm has been certified to perform as a DBE. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

Discussion: During this UCP Compliance Review, **deficiencies** were found with the requirements for the UCP directory.

The IL UCP directory is hosted by IDOT. The certifying partners submit certification updates/changes to IDOT on a monthly basis. The directory is then updated with the most current information. A portable document file (pdf) is posted monthly on IDOT's website with a specific date. The website also included separate files for specific industries such as airport concessionaires, architecture/engineering, construction, miscellaneous, etc.

The DBE regulations require that the electronic version of the directory must be updated as soon as changes are made. The review team advised the IL UCP to develop a mechanism to update the directory sooner than once per month to ensure that the most current information is reflected. For instance, [Redacted] was certified by the City of Chicago on May 17, 2012, but was not included in the May 21, 2012, directory. The firm was not included until the June 20, 2012, directory was posted on IDOT's website.

The UCP directory included an "Anniversary" date five years from the date of certification. For instance, [Redacted] had an anniversary date of May 1, 2017. The UCP representatives advised the review team that the "expiration" field name was replaced with the "anniversary" field name. The review team advised the IL UCP to remove the field because it is not reflective of a true anniversary date and, more importantly, serves no constructive purpose on the public side of the UCP DBE directory.

The review team also noted discrepancies between the airport concessionaire directory and the UCP directory. Several firms listed as airport concessionaires in the airport concessionaire directory were not reflected as such in the UCP directory. Inconsistencies were noted for [Redacted]. These firms were not identified as airport concessionaires in the UCP directory but were listed as such and included in the airport concessionaire directory. In other cases, firms were listed as airport concessionaires in both directories, such as [Redacted]. The regulations in 49 CFR Part 23 require that the directory reflect if a firm is certified as an ACDBE firm, DBE firm, or both.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- revised IL UCP Unified Certification Procedures to require that the UCP directory:
  - is updated as soon as changes are made
  - does not include the anniversary date field
  - is consistent in how airport concessionaires are listed
- documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld

Illinois UCP Response:

- Revised IL UCP Unified Certification Procedures to require that the UCP directory:
  - is updated as soon as changes are made

- does not include the anniversary date field
- is consistent in how airport concessionaires are listed

*The IL UCP is in discussions on the establishment of a “real time” directory and the significance of the anniversary date in the public version. Additionally, the IL UCP directory includes addendums that identify firms by specialty, such as airport concessionaire, etc. The addendums are updated in conjunction with the primary directory.*

- Documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

*Implementation date: December 1, 2013*

FTA Response:

FTA agrees with IL UCP’s response to the noted deficiency. IL UCP shall submit to FTA’s Office of Civil Rights, within 60 days of issuance of the final report:

- status of revised UCP procedures addressing updating of the directory as soon as changes are made;
- evidence that anniversary dates are removed from directory;
- evidence of airport addendum to the directory; and
- confirmation of certifying member adherence.

**9. UCP Procedures**

**A) On-site Visits**

Basic Requirements (49 CFR Part 26.83(c)): UCPs must perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their resumes and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area.

Discussion: During this UCP Compliance Review, **deficiencies** were found with the requirements for on-site visits.

The IL UCP procedures state that an on-site visit to the offices of the firm must be completed. The specialist will interview the principal officers of the firm and review their resumes and/or work histories. The procedures further state to conduct on-site/interviews at any job sites in the participant’s jurisdiction or local area at which the firm is working at the time of the eligibility investigation. The review team could not determine if job sites were visited from the files reviewed that the IL UCP provided. The review team advised IL UCP representatives that jobsite visits must be performed when applicable and that job site visits must be documented or included on the onsite questionnaire and made part of the certification record.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- updated Illinois UCP Unified Certification Procedures to ensure that job site visits are documented in the certification files, documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld.

Illinois UCP Response:

- Updated Illinois UCP Unified Certification Procedures to ensure that job site visits are documented in the certification files  
*The IL UCP onsite questionnaire will be revised to include a section applicable to interviews conducted at a jobsite.*
- Documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld.  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

*Implementation date: May 1, 2013*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency. IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report:

- revised UCP procedures ensuring that job site visits are conducted and documented;
- revised onsite questionnaire reflecting additional jobsite section; and
- confirmation of certifying member adherence.

## **B) Uniform Application**

Basic Requirements (49 CFR Part 26.83 (i)): UCPs must use the application form provided in Appendix F of the regulations without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

Discussion: During this UCP Compliance Review, **no deficiencies** were found with the requirements for using the Uniform Certification Application Form in Appendix F.

The certifying partners use the required Uniform Application Form. The IL UCP received approval from USDOT to supplement the DBE Uniform Application Form for additional information collection in four categories. Each applicant is required to document group membership by the submittal of at least one piece of evidence, proof of citizenship or lawfully admitted permanent resident status, and an IDOT work category list and to identify preferred work locations on the IDOT District map.

### **C) 30-day Notification**

Basic Requirements (49CFR Part 26.83(l)): As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

Discussion: During the UCP Compliance Review, **deficiencies** were found with the requirement to notify the applicant within 30 days of receipt whether the application is complete.

The review team conducted interviews with each certifying agency. When asked about the 30-day notification requirements, the agencies replied as follows:

- IDOT does send out the notification letter.
- CTA does not send out the notification letter.
- City of Chicago does send out the notification letter.
- PACE does send out the notification letter.
- Metra does not send out the notification letter unless the firm requests it. Most of the applications are hand-delivered or sent in via Certified Mail.

Some of the IL UCP partners did not have a mechanism in place to notify applicants within the 30-day requirement on a consistent basis. The review team advised the certification partners to include this new requirement in their IL UCP Procedures.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- updated Illinois UCP Unified Certification Procedures to ensure that the 30-day notification is performed, documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld

#### Illinois UCP Response:

- Updated Illinois UCP Unified Certification Procedures to ensure that the 30-day notification is performed  
*The Illinois UCP will adhere to established procedures regarding 30 day notifications to firms. METRA has implemented the 30 day notification procedure for initial applications, No Change Affidavits and Continued Eligibility Affidavits in accordance with (49 CFR Part 26.83 (l)).*
- Documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

*Implementation date: May 1, 2013*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency. IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report, revised UCP procedures ensuring the 30-day notification process is performed and confirmation of certifying member adherence.

**D) 90-day Determinations**

Basic Requirements (49CFR Part 26.83 (k)): If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

Discussion: During this UCP Compliance Review, **deficiencies** were found with the requirement for 90-day determinations.

Several certification files exceeded the 90-day determination requirements. The following table lists all of the findings.

<b>Firm</b>	<b>Timeframe</b>	<b>Certifying Agency</b>
Redacted	10 months	IDOT
Redacted	8 months	IDOT
Redacted	7 months	IDOT
Redacted	8 months	CTA
Redacted	11 months	City of Chicago
Redacted	11 months	Metra
Redacted	5 months	Pace

Redacted (reviewed by City of Chicago) submitted an application on August 27, 2009, under new ownership. A request for information went out on September 14, 2010. The prior owner submitted a letter withdrawing certification on October 25, 2011. The City of Chicago sent a response letter on February 2, 2012, along with a request for additional documentation, and then the firm was certified on April 13, 2012.

Redacted certification application was received by Metra, which conducted the review on March 24, 2011. The file was not assigned until October 24, 2011. The final certification approval date was listed as February 28, 2012. The Metra representative indicated that the file was assigned late because a staff person left and only one staff member was reviewing all the files. The file was assigned to the new specialist once hired.

Redacted (reviewed by Pace) submitted its application on August 22, 2011. A request for information was sent out on August 26, 2011, with a deadline of 20 days to provide the requested documentation. The information was received within the time frame; however, the firm was not approved until January 16, 2012. During the discussion with representatives of the agency, it was determined that the certifying specialist went on leave and there was no one in the office who could continue the certifying efforts.

The regulations require that UCPs make certification determinations within 90 days of receiving all the required information. Some of the applications reviewed extended past 90 days; however, a determination of when the application package was deemed to contain all of the requested information could not be determined in some cases. All agencies noted going through periods of limited or no certification staff, which contributed to the files going beyond the allotted 90-day determination period.

Additionally, the review team found that recent approval letters at the certifying agencies still included expiration dates or implied that certification is approved for a five-year period. The review team advised that the language should be changed to ensure that there is no implication that an applicant's certification expires or is approved for a limited time.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- updated Illinois UCP Unified Certification Procedures to ensure that the certification determinations are conducted within the 90-day time frame
- documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld
- create a uniform process to track the timeliness of certification decisions for all certifying members.

Illinois UCP Response:

- Updated Illinois UCP Unified Certification Procedures to ensure that the certification determinations are conducted within the 90-day time frame *Each participant shall utilize a documentation tracking system (i.e. calendar, software, etc.) to ensure that firms are processed within the allotted time as outlined throughout 49 CFR Part 26. The IL UCP procedures will be updated accordingly.*
- Documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld *The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*
- Create a uniform process to track the timeliness of certification decisions for all certifying members. *The IL UCP is in discussions on the establishment of a technology based system which will allow a proficient method of tracking certification decisions.*

*Implementation date: December 1, 2013*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency. IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report, status of revised UCP procedures ensuring the 90-day notification process is performed and confirmation of certifying member adherence.

### E) Annual Updates

Basic Requirements (49CFR Part 26.83): Once you have certified a DBE, it shall remain certified until and unless you have removed its certification. If you are a DBE, you must provide to the UCP, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths.

Discussion: During this UCP Compliance Review, **deficiencies** were found with the requirement for annual updates.

The review team found that the following firms did not include all of the annual update documentation in their certification files. Below is a table of all of the findings.

Firm	Missing No Change Affidavits	Certifying Agency
Redacted	Affidavits for 2009 and 2010	CTA
Redacted	Several years of personal and business taxes; affidavits for 2009, 2010, and 2011	City of Chicago
Redacted	Several years of personal taxes; affidavits for 2007, 2009, 2010, and 2011	Metra

During the review, it was found that the annual update acceptance letters contained expiration language. The 2011 DBE final rule clarified that a firm is certified until removed and that certification does not expire.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- updated Illinois UCP Unified Certification Procedures to ensure:
  - annual updates are collected from DBEs and maintained in the certification files
  - the prohibition against any statements in correspondence that indicates or suggests that certifications expire or must be renewed, or that DBEs are subject to recertification
- documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld

Illinois UCP Response:

- Updated Illinois UCP Unified Certification Procedures to ensure:
  - annual updates are collected from DBEs and maintained in the certification files
  - the prohibition against any statements in correspondence that indicates or suggests that certifications expire or must be renewed, or that DBEs are subject to recertification

*The IL UCP procedures state that all DBE firms are required to submit, on the anniversary (annual) date of their certification a No Change Affidavit.*

*During the August 2012 IL UCP meeting, the partners determined the need to update any remaining correspondence that included language that implies expiration, renewal, or recertification.*

*Metra has taken internal measures to insure that annual updates/No Change Affidavits are received from DBE's and maintained in certification files. Metra also has removed language indicating that certifications expire, must be renewed, or that DBE's are subject to recertification from all correspondence.*

- Documentation that these procedures have been distributed to certifying entities, and their acknowledgement that the procedures will be upheld  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency. IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report, revised UCP procedures ensuring annual updates are collected and maintained in files and confirmation of certifying member adherence.

## 10. Interstate Certification

Basic Requirements (49 CFR Part 26.85): This section applies with respect to any firm that is currently certified in its home state. When a firm currently certified in its home State ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. In any situation in which State B chooses not to accept State A's certification of a firm, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of Part 26.85 to State B.

Discussion: During this UCP Compliance Review, **deficiencies** were found concerning the interstate certification process.

IDOT submitted the draft IL UCP procedures for Interstate Certification to the Federal Highway Administration (FHWA) on December 9, 2011. As of the UCP compliance review, IDOT had not received approval from FHWA regarding its Interstate Certification process. A draft of the IL UCP Interstate Certification Procedures was included in the review submittal. The IL UCP policy is not to accept an out-of-state firm's certification until the firm provides the information outlined in Part 26.85. The IL UCP had yet to implement the Interstate Certification process because it was awaiting an approval from FHWA. The DBE regulations state in Part 26.85(g) that you must implement the requirements in this section by January 1, 2012. The regulations did not specify that approval from the Operating Administration was required for implementation.

**Redacted** (a DBE certified by CTA) submitted an application for certification to an out-of-state agency. The agency made a request on January 18, 2012, for CTA to conduct the on-site interview. An email response by a certification specialist on February 24, 2012, stated that the file was currently under review. The email went on to say that, "There are some unresolved issues which must be resolved before any other

*action can be initiated. We expect that such issues should be resolved during the first or second week of March, 2012. At that point, we should be in a position to provide you with the request.”*

The applicant contacted CTA to remind them of the request on May 3, 2012. The on-site interview was faxed on the same day. Although there were issues that CTA and the applicant firm were working on at the time of the request, there were on-site reviews that had been conducted on July 26, 2010 and August 18, 2011 that were available to be sent. The 2011 DBE final rule states that once a request for a site visit review, updates to the review, and/or any evaluation of the firm based on the review is made, the home state agency “*must transmit this information to State B within seven days of receiving the request. A pattern by ... ‘State A’ or any other State of not complying with such requests in a timely manner is in noncompliance with this Part.*”

Corrective Action and Schedule: Submit to FTA’s Office of Civil Rights, within 60 days of the issuance of the final report:

- updated Illinois UCP Unified Certification Procedures addressing the Interstate Certification requirements in the DBE regulations
- documentation that these procedures have been distributed to certifying entities
- their acknowledgement that the procedures will be upheld

Illinois UCP Response:

- Updated Illinois UCP Unified Certification Procedures addressing the Interstate Certification requirements in the DBE regulations  
*The IL UCP Procedures were revised in October 2012 to include Interstate Certification Procedures.*
- Documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

FTA Response:

FTA agrees with IL UCP’s response to the noted deficiency. IL UCP shall submit to FTA’s Office of Civil Rights, within 60 days of issuance of the final report, revised UCP procedures detailing the interstate certification process and confirmation of certifying member adherence.

## **11. Denials of Certification**

### **A) Initial Request Denials**

Basic Requirement (49 CFR Part 26.86): When a UCP denies a request by a firm that is not currently certified with it, to be certified as a DBE the UCP must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that support each reason for the denial.

Discussion: During this UCP Compliance Review, **no deficiencies** were found with the requirement for denial of initial certification request. However, an advisory comment was made.

In the denial letter for **Redacted** (reviewed by CTA), the review team found the letter did not include that the firm was able to re-apply to the program a year from the date of the letter. The DBE regulation cites in 26.86 (c), *“When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification.... The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.”*

The IL UCP Procedures outline the process for denial of initial request for certification. The firm is provided a written explanation of the reasons for the denial that specifically references the regulation and evidence in the certification record. The IL UCP has a 12-month waiting period that must lapse before the applicant is eligible to re-apply. Applicants can appeal the IL UCP’s decision to USDOT.

## **B) Removing Existing Certification**

Basic Requirement (49 CFR Part 26.87): If a UCP determines that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination.

Discussion: During this UCP Compliance Review, **deficiencies** were found with the requirements for removing existing certification.

**Redacted** (reviewed by CTA)

On April 12, 2012, CTA sent out a letter of intent to remove DBE eligibility, citing that *“following a thorough review of your firm’s No Change Affidavit, the original Certification Application and the supporting documentation...,”* it did not believe that the firm was eligible for participation in the program. During the review of the initial certification, the applicant’s capital contribution was questioned. The firm was later certified in July 2010. The intent letter mentions that, *“in a letter dated February 17, 2012, we again inquired about the validity of the contribution to capital....”*

The review team determined that the reason for the decision to remove the firm was based upon information obtained and supporting documentation provided during the initial request for certification and not anything new that was provided with the Annual Update documentation that was received. The DBE Regulations state in 26.87(f) that, *“You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm.”* The applicant appealed the decision, and the DBE Reconsideration Hearing Committee found in favor of the applicant.

**Redacted** (reviewed by CTA)

A letter of intent to remove the firm dated April 6, 2010, was sent out for failure to cooperate with CTA's request for annual update documentation. The letter provided the applicant with an opportunity to appeal the decision at an informal hearing. On April 13, 2010, the applicant submitted all of the requested documentation to the certification specialist at CTA and requested an informal hearing on the same day. He attended the hearing on April 22, 2010, and a decision was rendered on April 26, 2010. The committee determined that because the applicant did not bring the requested documentation to the hearing, he failed to cooperate and was subsequently ineligible to participate in the program. However, the documentation had been provided 13 days before the hearing to the certifying specialist.

**Redacted** (reviewed by City of Chicago)

A letter of intent to remove was sent to the firm on October 24, 2006, for lack of cooperation. A final determination letter dated November 22, 2006, was also found in the file; however, there was a handwritten notation on the top of the letter that said, "12/27/06 – letter was voided per Lori's request." In this case, the City of Chicago did not follow the regulations set forth in 49 C.F.R. Part 26 with regard to the removal and appeals processes.

The firm remained certified in the program until February 22, 2012. According to the Intent to Remove letter dated January 6, 2012, the firm's corporation status was at issue with the Illinois Secretary of State, and an unannounced site visit revealed that the firm was no longer in operation.

Upon review, there was no documentation in the file to substantiate the findings of the unscheduled site visit. Also, the Secretary of State document referenced that the firm was "involuntarily dissolved" on February 10, 2012, almost a month after the intent to remove letter was sent. The regulations state that, "All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based." The review team noted that it is imperative to document all evidence and place it in the file.

**Redacted** (reviewed by Pace)

The Intent to Remove letter for **Redacted** was sent out on August 19, 2011. Pace sent out the final determination letter on January 17, 2012. The review team noted that the removal letter was sent roughly six months after the firm failed to respond to the intent letter. Pace was advised that removal letters should be sent soon after the Intent to Remove letters, so that an eligible firm is taken out of the directory in a timely manner.

**Redacted** (reviewed by IDOT)

The firm was initially certified by IDOT, then relocated to St. Louis, MO. IDOT sent a letter to the firm that its certification was based on Illinois being the home state. The letter stated that the firm was no longer eligible for DBE status and would be removed from the Illinois DBE directory. The firm was not granted an informal hearing or opportunity to appeal the removal decision to USDOT.

**Redacted**. (reviewed by Metra)

The firm was a previously Metra-certified firm from the state of Georgia. The firm's ownership changed, and Metra sent the new 100% owner a letter on April 3, 2012, stating that he was not the DBE owner of record in the certification files. Metra stated that, *"pursuant to federal regulations, you must qualify as a disadvantaged individual in your home state of Georgia before your firm can be certified as a DBE in another state."* The firm's certification was immediately "administratively removed." No intent letter with an opportunity for an informal hearing or appeal information was granted to the firm. The Official USDOT Questions and Answers states, *"If there is a change in the ownership of a DBE-certified firm, is the firm automatically decertified? (Posted 12/09/11). No. A certified DBE firm remains certified until and unless it is decertified. A recipient or UCP can decertify a firm only by using the procedures set forth in section 26.87."*

**Redacted**. (reviewed by Metra)

The firm had been certified by Metra for a number of years. In 2011, the firm was unable to renew its Illinois Department of Revenue reseller's license due to a past due sales tax balance. Metra subsequently initiated a removal proceeding following 26.87 for absence of a business license citing the following reasons: 26.71(a) consider all the facts in the record, viewed as a whole, and 26.71(h) regarding the disadvantaged owner having a required license to own and/or control a firm. The firm requested an informal hearing and the hearing committee noted that the firm failed to present a reseller license, *"which provides a regular dealer/supplier authorization to legally do business in Illinois."*

The 2011 DBE Federal Register states in the preamble, *"With respect to state requirements for business licenses, the Department believes that states should not erect a 'Catch 22' to prevent DBE firms from other states from becoming certified. That is, if a firm from State A wants to do business in State B as a DBE, it is unlikely to want to pay a fee to State B for a business license before it knows whether it will be certified. Making the firm get the business license and pay the fee before the certification process takes place would be an unnecessary barrier to the firm's participation that would be contrary to this regulation."* Having a business license is not a prerequisite for certification and determinations of eligibility should be made on matters of social and economic disadvantage, business size, ownership, and control.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- updated Illinois UCP Unified Certification Procedures to ensure adherence to the removal process outlined in 26.87 and that reasons for removal are supported by DBE regulations
- documentation that these procedures have been distributed to certifying entities
- their acknowledgement that the procedures will be upheld

Illinois UCP Response:

- Updated Illinois UCP Unified Certification Procedures to ensure adherence to the removal process outlined in 26.87 and that reasons for removal are supported by DBE regulations.  
*During the August 2012 UCP meeting, the partners discussed and incorporated the appropriate removal of process outlined in 26.87.*

*Metra Responses-*

*The new owner of [Redacted] was given the opportunity to apply for DBE certification on December 14, 2012. The firm was decertified on January 31, 2013 in accordance to procedures in section (49 CFR Part 26.87).*

*Metra contends that the [Redacted] eligibility removal is not a State A, State B circumstance and the owner, [Redacted], lost control to legally operate his business due to lack of reseller's license and the State of Illinois dissolving the firm.*

- Documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency. IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report, revised UCP procedures detailing the appropriate removal of certification process and confirmation of certifying member adherence.

**C) Appeals to USDOT**

Basic Requirement (49 CFR Part 26.89): When the Department receives an appeal and requests a copy of the recipient's administrative record, the UCP must provide the administrative record, including a hearing transcript, within 20 days of the Department's request.

Discussion: During this UCP Compliance Review, **no deficiencies** were made with the Appeals to the USDOT. However, an advisory comment was made regarding USDOT appeal information.

IDOT sent a final removal determination letter to [Redacted] on October 28, 2011. The USDOT appeal information was included in the letter; however, the address was listed as 400 Seventh Street, SW, Room 5414, Washington, DC 20590, instead of the current address located at 1200 New Jersey Avenue. The review team advised all UCP partners to update information to the current USDOT address.

**12. Compliance and Enforcement**

**A) DBE Enforcement Actions**

Basic Requirement (49 CFR Part 26.107): If a firm does not meet the eligibility criteria of subpart D and attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 49 CFR Part 29.

Discussion: During this UCP Compliance Review, **no deficiencies** were found with DBE Enforcement Actions.

IDOT provided information concerning enforcement actions taken regarding the DBE program. [Redacted] DBE certification was recommended to be removed as a result of untruthful statements in the certification package that were discovered during DBE project monitoring. [Redacted] DBE certification was proposed to be removed based on information collected through field interviews on an IDOT project. IDOT monitoring personnel also recommended that [Redacted] DBE certification be removed based on activities noted during field review.

Two non-certification-related documents were also provided to the review team. A Notice of Interim Suspension for [Redacted] and another for [Redacted] were initiated by IDOT in February 2012. [Redacted] was indicted in U.S. District Court for falsified wage records. [Redacted] had a criminal complaint filed against them in U.S. District Court for mail fraud.

## **B) Confidentiality**

Basic Requirement (49 CFR Part 26.109 (a)): Notwithstanding any provision of Federal or state law, UCPs must not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes DBE certification and supporting documentation.

Discussion: During this UCP Compliance Review, **deficiencies** were found with the confidentiality issues in the Illinois UCP.

The City of Chicago noted that the City receives numerous requests under the Freedom of Information Act (FOIA) and need additional time to research and compile this information. Metra noted that it is awaiting receipt of information from the FOIA department. Pace stated they did not have any FOIA requests. This item was not addressed by CTA. The IL UCP partners expressed that there was a short time frame from when IDOT shared the UCP review notification letter with the other partners and the due date to submit the information to the review team. IDOT mentioned that it was awaiting guidance from FHWA, since the UCP notification letter came from FTA.

IDOT did provide FOIA information as requested. [Redacted], made a request to IDOT on February 9, 2010, of all documents for all DBEs certified in pavement marking since February 9, 2009. The Freedom of Information Act Coordinator sent an approximate 80-page document to the firm with names or other information identifying the applicants for certification redacted from the document.

[Redacted], requested documents relating to [Redacted] and their participation in the New Mississippi River Bridge Project on September 28, 2011. No information was provided by IDOT because the four firms were not part of the program referenced by the requesting party.

Redacted filed a FOIA request with IDOT on August 24, 2011, for copies of all DBE records with the words Redacted in its name during the past 10 years. The request was denied by IDOT because the firm was denied DBE certification in 1995 and 1998, and those files were destroyed in 2005 and 2008.

Redacted filed a FOIA request with IDOT for all information used to determine that Redacted did not qualify for certification. IDOT sent 183 pages to Redacted on September 28, 2011. No information was redacted from the document since the requesting firm requested information contained in their certification record.

Corrective Action and Schedule: Submit to FTA's Office of Civil Rights, within 60 days of the issuance of the final report:

- updated Illinois UCP Unified Certification Procedures requiring that all UCP partners follow part 26.109 rules governing release of confidential information
- documentation that these procedures have been distributed to certifying entities
- their acknowledgement that the procedures will be upheld

Illinois UCP Response:

- Updated Illinois UCP Unified Certification Procedures requiring that all UCP partners follow part 26.109 rules governing release of confidential information  
*All UCP agencies have internal FOIA processes in place.*
- Documentation that these procedures have been distributed to certifying entities and their acknowledgement that the procedures will be upheld  
*The revised IL UCP procedures will be distributed to all certifying agencies and will include a signature page acknowledging receipt of and adherence to said procedures.*

FTA Response:

FTA agrees with IL UCP's response to the noted deficiency. IL UCP shall submit to FTA's Office of Civil Rights, within 60 days of issuance of the final report, revised UCP procedures requiring all Illinois certifying members to have FOIA procedures in accordance with DBE regulations and confirmation of certifying member adherence.

### **C) Cooperation**

Basic Requirement (49 CFR Part 26.109 (c)): All participants in the Department's DBE program are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. (49 CFR Part 26.73 (c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is grounds for a denial or removal of certification.)

Discussion: During this UCP Compliance Review, **no deficiencies** were made with cooperation.

The IL UCP partners initiated removal proceedings and denied firms that failed to cooperate with their requests for information. IL DOT and the UCP certifying partners cooperated fully with requests for information during the compliance review.

## SECTION 7 – SUMMARY OF FINDINGS

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Description of Deficiencies	Corrective Action	Response Days/Date
1. Burden of Proof	26.61	ND	NA	None	NA
2. Group Membership	26.63	ND	NA	None	NA
3. Business Size	26.65	D	Incorrect / incomplete calculation of gross receipts (should use total income + cost of goods sold)  Over NAICS code size limit	Submit revised IL UCP procedures to reflect how gross receipts are to be calculated and processed to ensure that all certification participants are adhering to policy	July 20, 2013
4. Social and Economic Disadvantage					
a) Presumption of Disadvantage	26.67	ND	NA	None	NA
Personal Net Worth	26.67	D	Incomplete sections of the PNW form (other/ personal property)  Some real property found in tax returns missing on PNW forms.	Submit revised IL UCP procedures addressing analysis of PNW forms and confirmation of certifying member adherence.	July 20, 2013
b) Individual determination	26.67	ND	NA	None	NA
5. Ownership	26.69	D	Capital contributions questions/issues	Submit revised IL UCP procedures addressing thorough review and documentation of ownership requirement determinations in the certification record and confirmation of certifying member adherence.	July 20, 2013
6. Control	26.71	D	Outside employment/ ownership in other companies. Questions on time devoted to firm.	Submit revised IL UCP procedures for reviewing individual's involvement with outside firms and confirmation of certifying member adherence.	July 20, 2013
7. Other Certification Rules	26.73	D	Commercially useful function issues in certification process  Prequalification requirements for engineers	Submit: <ul style="list-style-type: none"> <li>• Revised UCP procedures detailing distinction between eligibility and counting determinations</li> <li>• IDOT prequalification attachment</li> <li>• Confirmation of certifying member adherence.</li> </ul>	July 20, 2013
8. UCP Requirements					
a) UCP agreement	26.81	D	Outdated certification procedures	Submit: <ul style="list-style-type: none"> <li>• revised UCP procedures</li> </ul>	July 20, 2013

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Description of Deficiencies	Corrective Action	Response Days/Date
			Missing signed MOUs	addressing all issues in compliance report <ul style="list-style-type: none"> <li>missing MOU signatures from DOT recipients</li> <li>confirmation of certifying member adherence</li> </ul>	
b) UCP directory	26.31	D	Only updating directory once per month. Certified firm not found in the directory (Seal Tight) due to 1x per month updates  ACDBE designation needs improvement. ACDBE not identified as such in some cases.  Remove 5 year "anniversary date" from directory	Submit: <ul style="list-style-type: none"> <li>revised UCP procedures to require that the UCP directory: <ul style="list-style-type: none"> <li>is updated as soon as changes are made</li> <li>does not include the anniversary date field</li> <li>is consistent in how airport concessionaires are listed</li> </ul> </li> <li>confirmation of certifying member adherence</li> </ul>	July 20, 2013
9. UCP Procedures					
a) On-site visits	26.83	D	Could not determine if job site were conducted in certification files	Submit revised UCP procedures ensuring job site visits are conducted and documented in the certification files, revised onsite questionnaire reflecting additional jobsite section, and confirmation of certifying member adherence.	July 20, 2013
b) Uniform Application	26.83	ND	NA	None	NA
c) 30-Day Notification	26.83	D	Need process to notify applicant w/n 30 days	Submit revised UCP procedures ensuring the 30-day notification process is performed and confirmation of certifying member adherence.	July 20, 2013
d) 90-Day Processing	26.83	D	No document when package complete and tracking number of days to make 90 day determination	Submit status of revised UCP procedures ensuring the 90-day notification process is performed and confirmation of certifying member adherence.	July 20, 2013
e) Annual Updates	26.83	D	Missing annual updates  Remove expiration date and recertification process.	Submit revised UCP procedures ensuring annual updates are collected and maintained in files and confirmation of certifying member adherence.	July 20, 2013
10. Interstate Certification	26.85	D	All not following Interstate procedures.  Send onsite request to other UCPs within 7 days. Agency took 4 months to send onsite to out-of-state UCP	Submit revised UCP procedures detailing the interstate certification process and confirmation of certifying member adherence.	July 20, 2013

<b>Requirement of 49 CFR Part 26</b>	<b>Ref.</b>	<b>Site Visit Finding</b>	<b>Description of Deficiencies</b>	<b>Corrective Action</b>	<b>Response Days/Date</b>
11. Denials					
a) Initial Request	26.86	AC	Additional reasons for denial should have been added to letters		
b) Remove Existing	26.87	D	No administrative removals w/o due process for ownership change, moved from home state. Must follow 26.87.	Submit revised UCP procedures detailing the appropriate removal of certification process and confirmation of certifying member adherence.	July 20, 2013
c) Appeals	26.89	AC	USDOT appeal address wrong in letters		
12. Compliance and Enforcement					
a) DBE Enforcement Actions	26.107	ND	NA	None	NA
b) Confidentiality	26.109	D	Certification partners gathering FOIA request information	Submit revised UCP procedures requiring all Illinois certifying members to have FOIA procedures in accordance with DBE regulations and confirmation of certifying member adherence.	July 20, 2013
c) Cooperation	26.109	ND	NA	None	NA

Findings at the time of the site visit: ND = No deficiencies found; D = Deficiency; NA = Not Applicable; NR = Not Reviewed

## SECTION 8 – LIST OF ATTENDEES

Name	Organization	Title	Phone	Email
<b>FTA Members</b>				
Randelle Ripton	FTA - Office of Civil Rights	EO Specialist, DBE Technical Lead	(202) 366-5086	Randelle.ripton@dot.gov
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<b>FHWA Members</b>				
Traci Baker	FHWA	Civil Rights Specialist	(217) 492-4732	Traci.baker@dot.gov
<b>Illinois UCP Members</b>				
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Tony Day	IDOT	Certification Specialist		Tony.day@illinois.gov
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Eva Russi	CTA	Certification Officer	(312) 631-2628	Erussi@transitchicago.com
Shavon Moore	CTA	Certification Officer	(312) 681-2628	Smooore@transitchicago.com
William Stewart	CTA	Coordinator	(312) 681-2614	Wstewart@transitchicago.com
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Janice Thomas	Metra	DBE Director	(312) 322-6323	Jrthomas@metrarr.com
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Christina Perez	Pace	DBE Liaison Officer	(847) 228-4257	Christina.perez@pacebus.com
<b>Milligan &amp; Co., LLC</b>				
Benjamin Sumpter	Milligan & Co., LLC	Lead Reviewer	(215) 496-9100	Bsumpter@milligancpa.com
Habibatu Atta	Milligan & Co., LLC	Reviewer	(215) 496-9100	Hatta@milligancpa.com