

## **Questions and Answers on Certification of Alaska Native Corporations (ANC)**

**September 2016**

### **Must Unified Certification Program (UCP) recipients that are certifying agencies accept for DBE certification firms owned by an Alaska Native Corporation's (ANC) that have self-certified as a small disadvantaged business (SDB)?**

- Yes, self-certification by ANC owned firms that are reviewed and accepted by the Small Business Administration (SBA) complies fully with and meets the statutory mandate of the US Department of Transportation Disadvantaged Business Enterprise (DBE) program for ANCs.
- Pursuant 43 U.S.C. 1623(e)(4)(C), DOT regulations require that an ANC meeting all of the following requirements must be certified as a DBE:
  - (i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represent a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
  - (ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
  - (iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

### **How do UCP recipients that are certifying agencies determine that an ANC firm is certified by the SBA?**

- An ANC firm is considered certified by the SBA if the certifying agency finds that the ANC firm meets the requirements of (i) and (ii) above, and the certifying agency finds that it satisfies any one of the following factors:
  1. The ANC firm provides documentation that it is a current participant in the SBA's 8(a) Business Development program;
  2. The ANC firm provides documentation that it has been certified by SBA as a SDB within three years of the date it self-certifies as an SDB;
  3. The ANC firm provides documentation that it has received certification from another Federal procuring agency that it qualifies as an SDB;

4. The ANC firm provides documentation that it has submitted an application for SDB certification to a Federal procuring agency and has not received a negative determination regarding that application;
5. The certifying agency has received correspondence from the SBA, pursuant to 13 CFR 121.1001(b)(6), that the ANC firm meets the SBA's applicable size standard for participation in the SBA SDB program; **or**
6. The ANC firm provides correspondence from the SBA, pursuant to 13 CFR 121.1001(b)(7), that the ANC firm meets the SBA's applicable size standard for participation in the SBA SDB program.

**What should certifying agencies advise potential ANC DBE program applicants who intend to apply for certification based on a SDB self-certification?**

- For ANC firms that self-certify under the SBA's SDB program, certifying agencies should advise ANC firms to first obtain a determination from the SBA, pursuant to 13 CFR 121.1001(b)(7), that the firm meets the applicable size standard from the SDB program before applying for DBE certification.
- ANC firms may also request that the certifying agency seek a size determination from the SBA pursuant to 13 CFR 121.1001(b)(6) as part of its DBE application.

**How does a certifying agency's request to SBA to review an ANC's SDB self-certification affect the period of time to review the ANC's DBE application?**

- Under DOT regulations, a certifying agency must make a determination on the application within 90-days of receiving all information necessary to make a determination. As such, in cases where the ANC firm requests that the certifying agency obtain a size determination from the SBA, the certifying agency's 90-day period of time will not begin until it receives such determination from the SBA.

The Acting General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.