



**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

Departmental Office of Civil Rights
1200 New Jersey Avenue, S.E., W76-401
Washington, DC 20590

Memorandum

To: Unified Certification Programs' Certifying Agencies

From: Charles E. James, Sr.

Director, Departmental Office of Civil Rights (DOCR)

Re: Curative Measures During ACDBE/DBE Certification Application Process

Date: August 7, 2019

The Disadvantaged Business Enterprise (DBE) and Airport Concession (ACDBE) programs are the Department's signature small business initiatives, each playing a critical role in small minority and women-owned firms' ability to participate in the nation's infrastructure redevelopment. In FY 2017, Federal Aviation Administration, Federal Highway Administration, and Federal Transit Administration recipients awarded more than 250,000 prime contracts, comprising over \$46 billion. DBE prime and subcontractors received approximately \$5 billion (11%) of that amount.

Each year we see the number of DBEs increase on average 3% nationally (surpassing 38,000 in 2017), and many are certified in more than one State. Although the Department took steps in 2011 to streamline certification procedures, the process to become certified can be a lengthy and intensive undertaking for certifiers and applicant firms. This is particularly true whenever an applicant firm is denied certification and reapplies at some point in the future. Certifiers then use their limited resources to recollect application checklist material, conduct a second on-site interview, and then reevaluate the firm's eligibility.

One way for certifiers to reduce redundancy and get eligible firms certified faster is by notifying applicants, in writing, of ineligibility concerns and allow them to rectify deficiencies prior to the certifier's denial of their application. In the 1999 final rule for example, the Department stated that it is appropriate to allow applicants to correct minor paperwork errors without invoking the 12-month reapplication waiting period. Also, you'll recall we added a requirement in the DBE Regulation in 2014 that certifiers advise applicant firms within 30 days from receiving the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. It is permissible during this time (or at any point before issuing a final decision) for certifiers to advise the applicant of any ineligibility concerns it has identified and give the applicant firm time to respond within your 90-day window for rendering a decision. If the applicant decides to take curative measures, it can provide the certifier evidence of having done so. For example, the applicant firm might have obtained proof of a financial contribution meeting the ownership requirements of the rule or revised a restrictive operating agreement. This

type of information is frequently submitted after the on-site interview or subsequent communication with the firm and should be considered in your eligibility review.

For initial applications, some certifiers also use a “proposed denial” or internal appeal process whereby applicants are notified in writing of an agency’s findings and given an opportunity to cure deficiencies prior to issuing a §26.86 compliant denial decision.

We encourage certifiers that have sufficient resources to work with your funding Operating Administration to implement these burden-reducing practices. As your agency does so, bear in mind that firms can take steps (except fraudulent acts) to become DBE-eligible and many firms choose to remedy deficiencies and become certified. It is not uncommon for firms to contact a certifier and offer to cure deficiencies within a period of time and request that you delay your decision. Such attempts are generally not an attempt to circumvent the rule.

We thank you for your dedication to the ACDBE and DBE programs and collaborating with our Operating Administrations to achieve our mission. The Department remains committed to improving both programs; our FY 2018–2022 strategic plan recognizes that small businesses are vital to our nation’s economic health, contribute significantly to our infrastructure redevelopment initiatives, and generate new employment opportunities in local communities.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.