



The Alaska Unified Certification Program Agreement

The United States Department of Transportation (USDOT) has issued regulations at 49 CFR 26.81 (Subpart E) requiring that all direct and indirect recipients of USDOT funding within a state establish a Unified Certification Program (UCP). The purpose of the UCP is to provide a one-stop certification process for all businesses within each state seeking certification to participate in the USDOT Disadvantaged Business Enterprise (DBE) Program. USDOT agencies requiring the UCP include: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA).

As a recipient of USDOT funds, all the undersigned USDOT recipients have entered into this Agreement to form an Alaska Unified Certification Program (AUCP). The AUCP will be administered by the Alaska Department of Transportation & Public Facilities (ADOT&PF). The undersigned agree the AUCP shall make all certification decisions on behalf of all USDOT recipients within Alaska. The AUCP will provide “one-stop shopping” to applicants for DBE certification so that an applicant is required to apply only once for a DBE certification which will be honored by all recipients in Alaska. All obligations of recipients with respect to certification and nondiscrimination will be carried out by the AUCP and recipients may only use other UCPs that comply with the certification and nondiscrimination requirements of 49 CFR Part 26. The undersigned also agree to the following terms and conditions:

1.0 AUCP Certification Location

The ADOT&PF, 2200 East 42nd Avenue, Anchorage, Alaska (mailing address is PO Box 196900, Anchorage, AK 99519-6900) will serve as the centralized certification location for the AUCP.

1.1 Certification Standards

The AUCP will follow the Certification Standards of 49 CFR Part 26, Subpart D and the Certification Procedures and Standards of 49 CFR Part 26 Subpart E in determining eligibility of firms to participate as a DBE in DOT-assisted contracts. Firms must meet all certification eligibility standards as indicated in the 49 CFR Part 26. Certification decisions are solely based on the minimum requirements indicated in 49 CFR Part 26. All certifications made by the AUCP are pre-certifications in accordance with 49 CFR 26.81(c).

1.2 Certification Appeals

Any firm or complainant wishing to appeal the AUCP’s administrative, final denial of certification or decertification (under the provisions of 49 CFR 26.85, 26.87 and 26.89) may do so in writing to USDOT:

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St., SW, Room 5414A
Washington, DC 20590

The AUCP will promptly implement any USDOT certification appeal decision affecting the eligibility of a DBE for USDOT-assisted contracting in Alaska.

1.3 Annual DBE Affidavits

The AUCP will require all DBEs to annually submit a written affidavit which will verify any change in circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with their application for certification as required by 49 CFR 26.83(j).

The AUCP will notify all currently certified DBE firms of these obligations annually by certified mail.

1.4 Denial of DBE Certification to New Applicants

When a firm not previously certified as a DBE is found to be ineligible at the time of the firm's application submission, the firm will be denied certification as a DBE. The firm will be provided a written explanation of the reasons for denial as required by 49 CFR 26.85. Any firm denied certification as a DBE may appeal this decision within 90 days to USDOT at the address listed in Section 1.2.

When DBE certification is denied, the firm in question is ineligible to participate as a DBE on federally funded USDOT projects and may not reapply for certification for at least one year from the date of the final decision by either the ADOT&PF Civil Rights Office or USDOT, whichever decision is the latter.

1.5.1 Removal of DBE Certification

When a DBE firm fails to continue to meet the minimum standards for DBE certification, a written preliminary determination by ADOT&PF to remove their DBE certification will be sent to the firm. When the owner(s) of a DBE firm believes the ADOT&PF has made an error in its preliminary determination to remove its DBE certification, they may request an informal hearing of this determination, in accordance with subsection 1.5.3, Informal Hearing Process.

If a DBE firm chooses not to request an informal hearing, the determination shall be made final and the DBE certification will be removed. The DBE firm in question is not eligible to participate as a DBE on federally funded USDOT projects and may not reapply for DBE certification for at least one year from the date of the final decision by either ADOT&PF or USDOT, whichever decision is the latter.

DBE firms may be subject to removal of DBE certification for various reasons including, but not limited to the following:

- a. The DBE firm no longer meets the eligibility requirements of 49 CFR Part 26;
- b. The DBE firm fails to provide current annual affidavits about the personal net worth of the DBE owners and/or changes that would affect the eligibility of the firm as a DBE under 49 CFR Part 26;
- c. The DBE firm at any time refuses to cooperate with requests by the ADOT&PF for information and/or documentation required by 49 CFR Part 26;
- d. The DBE firm is debarred or suspended by the ADOT&PF or USDOT;
- e. The ADOT&PF determines that DBE eligibility was based on "Pro Forma" practices, procedures, or changes;
- f. The DBE fails to cooperate with the ADOT&PF in accordance with 49 CFR Part 26.109(c).

1.5.2 Due Process

When allegations or concerns have arisen which could result in the removal of the DBE certification of a firm, ADOT&PF will assign a CRO Certification Officer to review and consider the allegations and/or concerns. The assigned CRO Certification Officer will evaluate the information that has been provided and identify those issues, which, if true, could impact the DBE firm's continued eligibility. If the allegations/concerns are found to be true, ADOT&PF will provide written notice to the DBE firm, Notice of Preliminary Determination to Remove DBE Certification, which identifies the problem areas and provides a timeframe within which the DBE firm must respond to the allegations/concerns. A DBE firm so notified is entitled to an informal hearing as described in subsection 1.5.3, except for an ADOT&PF determination that concludes the DBE firm owner(s) exceed the personal net worth standards and the determination is not disputed by the DBE firm.

Should the DBE firm fail to exercise its right to an informal hearing within the time limits specified, then the DBE certification shall be removed for that firm effective the day after the expiration of their right to an informal hearing.

1.5.3 Informal Hearing Process

A DBE firm that is notified of intent to remove its certification is entitled to an informal hearing in accordance with §26.87. The firm may elect to present information and arguments in person, writing or telephonically at a hearing. To ensure separation of functions in an informal hearing, we have determined that a member of the Western Region Executive Committee will serve as the knowledgeable decision-maker.

By utilizing the resources of the Western Region Executive Committee, the ADOT&PF has established an administrative firewall to ensure that the knowledgeable decision-maker will not have participated in any way in the preliminary determination to remove the certification of the DBE firm.

While an informal hearing decision is pending, the DBE in question is eligible to participate as a DBE on USDOT federally funded projects. Once the informal hearing decision is issued, and the preliminary decision of ADOT&PF is made final, the firm may not reapply for DBE certification for at least one year from the date of the decision by the member of the Western Region Executive Committee, or one year from final appeal decision by USDOT, whichever decision is the latter.

A firm may appeal the informal hearing decision in writing to USDOT within 90 days from the date of the final decision by the member of the Western Region Executive Committee.

2.0 Third Party Complaints Regarding DBE Certification

Any third party may file a written complaint with ADOT&PF regarding the qualification of a firm that is currently certified or have applied for certification as a DBE. The complaint must include all relevant and factual information, which addresses the firm's qualifications. ADOT&PF will provide written notice to both the complainant and the firm in question that a complaint has been received relative to the firm's DBE qualifications.

The identity of the complainant shall be maintained by ADOT&PF as confidential information, unless it hinders or prevents the investigation of the complaint (i.e., the nature and/or circumstances of the complaint would disclose the identity of the complainant to the DBE firm in question) in accordance with 49 CFR 26.109(b). In such cases where the DBE firm in question may know or be able to discern the identity of the complainant, or result in a denial of appropriate administrative due process to other parties, ADOT&PF will inform the complainant and request written permission from to disclose their identity should it become necessary during the course of the investigation.

The complaint will be investigated by ADOT&PF to determine whether the DBE firm is qualified for the DBE Program under the provisions of 49 CFR Part 26. If the investigation concludes that there is no validity, ADOT&PF will provide the findings with reasons for the finding of no reasonable cause in writing to both the complainant and the firm. Also, the complainant will be provided information of the right to appeal ADOT&PF's decision to USDOT.

If ADOT&PF determines there is reasonable cause to believe the firm in question is unqualified, ADOT&PF will:

- follow the procedures as outlined in 49 CFR Part 26 and subsection 1.4 of this agreement to deny certification for new applicants; or
- follow the procedures as outlined in 49 CFR Part 26 and subsection 1.5 of this agreement to remove a DBE firm's certification.

3.0 DBE Directory

The AUCP will maintain a directory identifying all firms certified as a DBE. The directory will include: firm's name, address, phone number, re-certification due date, and the type of work the firm has been certified to perform. The AUCP will make the Directory available as follows:

- The electronic directory will be updated when changes are made in accordance with 49 CFR 26.81(g) and will be the most current and accurate version available. The electronic directory should be used as the primary reference and is on the internet at: <http://www.dot.state.ak.us/cvlrts/directory.shtml>
- The hardcopy directory will be updated once every three months. Hardcopies will be available at ADOT&PF Civil Rights Office and all other AUCP participants' locations. The public may request a copy be sent by mail from the ADOT&PF Civil Rights or any other AUCP participant.

Firms Previously Certified By Alaska DOT Recipients

Incorporation of DBE firms certified by another USDOT recipient prior to the formation of the AUCP, will be accommodated based on a review by ADOT&PF on behalf of the AUCP of their eligibility for the DBE Program under 49 CFR Part 26. The review will consist of an analysis of the annual information required of all DBE firms and an on-site review to verify eligibility. Any DBE firm proposed for removal of DBE certification by the new AUCP will be offered an opportunity for an informal hearing as stated under 49 CFR Part 26 and subsection 1.5.3. Firms may reapply for certification within 12 months from the receipt of final determination. Firms that were previously denied certification by ADOT&PF and upheld on appeal by USDOT, but retained by other Alaska USDOT recipients will not be certified for listing in the AUCP DBE Directory and no additional hearing rights will be offered. This means that firms reviewed for eligibility by ADOT&PF and found ineligible (with verification of ineligibility by USDOT) will not be accepted for transfer to the AUCP DBE Directory. These firms may re-apply for certification if it has been 12 months since the last certification decision by ADOT&PF. Other Alaska USDOT recipients who performed certifications in the past will transfer all files to ADOT&PF within 60 days after the AUCP is approved by USDOT.

4.0 Cooperation, Oversight, Review and Monitoring Activities

The AUCP will fully cooperate with the oversight, review and monitoring activities of USDOT and its operating administrations (FHWA, FAA and FTA).

5.0 USDOT Directives and Guidance

The AUCP shall implement all required USDOT directives and guidance relative to DBE certification matters.

6.0 Resources and Expertise of the AUCP

All Alaska USDOT recipients are committed to insuring there are adequate resources to carry out the functions of the AUCP. The ADOT&PF has assured all USDOT recipients that currently they have received the necessary resources within their own operating budget and have the adequate staff to administer the AUCP. ADOT&PF will add an additional Certification Officer position to handle additional certification demands for the AUCP at no cost to the other recipients. However if in the future resources are no longer adequate, ADOT&PF will notify all other USDOT recipients to request assistance for program needs. One option, which ADOT&PF will pursue, if necessary, is to acquire a percentage off the top of all USDOT grants to cover AUCP administration.

ADOT&PF will also have a general email address and an in-state toll free telephone number for the AUCP DBE applicants. All Alaska USDOT recipients that are signatories to the AUCP Agreement affirm and concur that ADOT&PF has provided assurance that they have sufficient resources and expertise to carry out the certification requirements of 49 CFR Part 26.

7.0 Annual Meeting

At a minimum, normally during the month of January, ADOT&PF Civil Rights will host a meeting in Anchorage for all Alaska USDOT recipients. The purpose of the meeting will be to discuss the functionality and improvement of the AUCP and/or discuss any needed changes/amendments. For those unable to attend in person, ADOT&PF will provide teleconferencing as an option for participation. ADOT&PF will not provide travel or lodging for this meeting.

8.0 Disputes with Administration of the AUCP

Any Alaska USDOT recipient may dispute the administration of the AUCP. Such a dispute shall be stated in writing, specifying the alleged administrative error(s) committed by the AUCP and supported by evidence based on 49 CFR Part 26. The dispute shall be submitted to the ADOT&PF Civil Rights Manager for final resolution within 60 calendar days from date of receipt of the dispute. The Civil Rights Manager will: (1) acknowledge receipt and distribute immediately to all AUCP participants and (2) solicit and accept input from AUCP participants in addressing the concern(s). Once the fact gathering and input has concluded, the final outcome will be provided to all AUCP participants in writing.

9.0 Recipients - Direct and Indirect

Each Alaska USDOT direct recipient that is a signatory to the AUCP Agreement will ensure that all of its sub-recipients are bound by the terms and conditions of the AUCP. This will be done through a formal Transfer Of Responsibility Agreement or similar agreement. Any failure to do so will be subject to review by the USDOT.

10.0 Participation in Regional UCPs

The AUCP will not participate in a regional UCP with another State unless Agreement to do so is reviewed and approved by all Alaska USDOT recipients.

11.0 Amendment of the AUCP Agreement

This Agreement will not be amended unless agreed to by all signatories to the Agreement or if ordered to do so by USDOT. Any significant change, which affects or alters the intent of the Agreement, is subject to review by the AUCP membership and approval by USDOT.

12.0 Implementation Schedule

Upon approval of this Agreement by the US Secretary of Transportation this Agreement will be implemented. The AUCP agreement will be posted on the ADOT&PF website.

13.0 Entire Agreement

This Agreement represents the entire Agreement between the parties. Any previous statements, whether oral or written, are merged into this Agreement.

The undersigned Alaska USDOT recipients agree to and accept the terms and conditions of the AUCP.

14.0 Agreement Interpretation

The language of this Agreement is to be construed according to its fair meaning and is not to be construed with a bias in favor of or against ADOT&PF or the other signers of the Agreement.

15.0 Term of This Agreement

This agreement shall be valid as long as an AUCP is required by USDOT of its recipients for highway, airport and mass transit funding assistance.

The undersigned is authorized to execute the Alaska Unified Certification Program Agreement conditionally approved by USDOT on May 8, 2003 and to bind the named recipient to the terms and conditions set forth in this agreement.

Name of Recipient (Agency)

Date

**DBE Liaison Officer/Authorized Representative
(Printed)**

(Signature)
