

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
Unified Certification Procedures

Illinois Unified Certification Program

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Illinois Unified Certification Program

Pursuant to the requirements of the federal regulations, 49 CFR part 26 all recipients of federal-aid must implement a "one-stop" certification process for Disadvantaged Business Enterprises (DBE) and Airport Concessions Disadvantaged Business Enterprises (ACDBE).

As a result of this requirement, the following five entities have established the Illinois Unified Certification Program (IL UCP). The five certifying Illinois United States Department of Transportation (US DOT) direct recipients (Participants) are:

- **Illinois Department of Transportation (IDOT)**
- **City of Chicago**
- **Chicago Transit Authority (CTA)**
- **Commuter Rail Division of the Regional Transportation Authority (Metra)**
- **Suburban Bus Division of the Regional Transportation Authority (Pace)**

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Introduction

The IL UCP is based on the concept of reciprocity among the Participants. Pursuant to 49 CFR 26.81(b)(2), "one-stop shopping" will be provided to applicants for Disadvantaged Business Enterprises (DBE) certification, such that an applicant need only to apply once for DBE certification that will be honored by all recipients in the state of Illinois.

In order for the IL UCP to succeed and the Participants to maintain the level of trust needed to effectively comply with the IL UCP requirements, it is necessary to implement minimum program requirements for compliance, as well as a process for dealing with any Participant that is found to be in non-compliance. The specific minimum requirements are:

- All decisions and recommendations related to certification must be made in compliance with 49 CFR Part 26.
- All Participants will abide by IL UCP determinations and use only IL UCP certified firms.
- All hearings *must* be decided by a third party who was not involved in the certification determination nor was a direct or indirect supervisor of the party involved in such decision.
- The IL UCP Participants must each have a US DOT-approved DBE program in place that clearly defines the role of the administrative staff. In addition, each Participant must have clearly defined processes and procedures related to administration of its DBE program and certification decisions.
- All IL UCP Participants agree to full disclosure of their complete applicant files and/or documentation when requested by any other IL UCP Participants.
- Any Participant with a DBE program administered in conjunction with a MBE/WBE program must have separate and clearly defined procedures and policies for the DBE program that comply with all requirements of 49 CFR Part 26. This includes, but is not limited to, eligibility requirements, data tracking, and removal/denial of certification.
- All Participants understand that there are no "emergency" or "conditional" certifications pursuant to 49 CFR Part 26. All certifications 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.
- All IL UCP Participants agree to safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may

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reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

Non-Compliance

If any IL UCP Participant believes that another Participant has failed to comply with its obligations under 49 CFR Part 26, the complaining Participant may file a written complaint with the concerned operating administration's Office of Civil Rights.

Illinois UCP Interstate Certification Procedures (Initial Applications/Continued Eligibility Affidavits)

A. Out of State Firm:

It is the policy of the IL UCP not to accept an out of state firm's certification for review until the firm provides:

- 1) A complete copy of its application form and all supporting documents and any other information submitted to any state related to its certification. This includes No Change Affidavits and any notices of changes the firm submitted to any recipient concerning its application or status as a DBE;
- 2) Any notices or correspondence from states other than the firm's home state concerning its status as an applicant or a DBE (e.g., denial of certification or subject to decertification action);
- 3) If the firm has filed a certification appeal with DOT, it must disclose this and provide its appeal letter and DOT's response;
- 4) An affidavit sworn to by the firm's owner before a person authorized by state law to administer such oaths or an unsworn declaration under penalty of perjury that the firm's owner has submitted all information required by 49 C.F.R. § 26.85(c) (above) and the information is correct and that the information in 1 (above) is identical to the information submitted to its home state. If the firm's home state on-site report is more than three years old as of the date of the firm's application to the IL UCP, the IL UCP will require that the affidavit also affirm that the facts in the on-site report remain true and correct. NOTE: If the on-site is more than three years old and the IL UCP agency has eligibility concerns, the firm's home state may be requested to conduct a courtesy on-site interview.

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Processing: The IL UCP will take the following actions when it receives all the information listed above:

- 1) Within 7 days, the IL UCP agency will request a copy of the site visit report from the firm's home state, any updates to the site review and any evaluation based on the site visit. The firm's home state must transmit this information to the requesting IL UCP agency within 7 days of receiving the request. If the IL UCP agency does not receive a copy of the site visit report from the firm's home state within 14 days after it has made a timely request, the certification review process will be in abeyance pending receipt of this report. In this event, the IL UCP agency will notify the firm of this delay and the reason for it no later than 30 days from receipt of all the required information from the firm. Noncompliance with this timeframe may result in application not being processed and returned to the applicant.

NOTE: When the firm's home state fails to provide a site visit report that is less than five years old or received within 45 days after all information is received from the firm, the application and all support information will be returned to the firm with an explanation as to why the IL UCP agency is unable to process the application.

- 2) The IL UCP agency will review all submitted information to determine whether it believes the home state's certification is erroneous or should not apply in Illinois. This determination will be based upon:
 - a) Fraud is involved in the certification;
 - b) Information not available when the home state certified the firm showing that the firm is not eligible;
 - c) The home state's certification is erroneous or was inconsistent with the requirements;
 - d) The state law of Illinois requires a different result than the home state's law.
 - e) The information provided by the firm does not meet the requirements listed in 1 through 4 above.
- Should the IL UCP agency determine that the home state's certification is not erroneous or applies in Illinois; no later than 60 days from receipt of all the information required from the firm, send notification to the firm that it is certified and its information will be listed in the next issuance of the IL UCP DBE Directory.

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- Should the IL UCP agency determine the firm's home state certification is erroneous or should not apply in Illinois, no later than 60 days from receipt of all the required information from the firm, send written notification to the firm stating the reasons for the determination and offer the firm an opportunity to respond. The firm will be given 20 days from receipt of the notification to respond, either may in writing, request an in person meeting with the IL UCP agency hearing officer, or both. The IL UCP agency hearing officer must be thoroughly familiar with the DBE certification requirements. If a meeting is requested, the IL UCP agency must schedule a meeting to take place within 30 days of receipt of the firm's request, and notify the home state of determination.

The firm bears the burden of proof based upon a preponderance of the evidence with respect to the particular issues raised by the IL UCP agency. The IL UCP agency must issue a written decision within 30 days of receipt of the written response from the firm or meeting with the IL UCP agency hearing officer, whichever is later. The firm's certification application is stayed pending the outcome of this process. The decision by the IL UCP may be appealed to the US DOT Department of Civil Rights under § 26.89.

B. IL UCP certified firm seeking DBE status outside Illinois:

It is the policy of the IL UCP to cooperate fully and timely to process IL UCP certified firm's request for certification outside Illinois within 14 days receipt of the firm's written request.

- 1) Copy firm's application and all supporting documentation and provide to firm.
- 2) Provide a copy of the site visit report to the requesting state within 7 days of receipt of the request.

NOTE: If the site visit report is more than three years old and the requesting state requires more current information, the IL UCP agency will conduct a courtesy review within 14 days after receipt of this notification from the requesting state.

C. Ineligibility Determinations:

When an IL UCP agency denies a firm's application, rejects a firm certified in another state or removes a firm's eligibility in whole or in part, it must make an entry in the Department of Transportation Office of Civil Rights' Ineligibility Determination Online Database. The entry shall include:

- i) Firm's name;

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- ii) Firm's owner(s) name(s);
- iii) Type and date of the action; and
- iv) Reason for the action.

The IL UCP agencies will check the DOCR website at least monthly to determine whether any firm that is applying to it for certification or has already been certified, is on the list. If such a firm is on the list, the IL UCP will promptly request a copy of the listed decision from the UCP that made it. The information will be considered in determining what action to take with respect to a DBE or applicant. A UCP receiving the request will provide a copy of the decision to the requesting UCP within 7 days.

Certification Process

The Participants must ensure that all certification procedures (Subpart E) and standards (Subpart D) under 49 CFR part 26 are followed in making eligibility decisions. **Note:** Each Participant will ensure that adequate training will be provided to their staff.

The certification process by each Participant includes the following:

A thorough, detailed and complete analysis of the application and supporting documentation must be performed, and an on-site visit at the offices and/or job site(s) of each applicant must be conducted by the certifying Participant. Following completion of the file analysis and on-site questionnaire (attached), a summary report is written by a certification analyst. The summary report provides the recommendation regarding the applicant's certification eligibility. The recommendation is presented to the analyst's supervisor, and then to the Participant's DBE Liaison Officer (DBELO) or designated individual, who makes the final decision regarding the firm's DBE program eligibility.

The certifying Participants have the responsibility to ensure a standardized approach to all certification decisions. The procedures outlined herein provide guidance and direction for completing the certification process. Additional information and regulatory requirements pertaining to the DBE program are contained in 49 CFR Part 26, as well as 13 CFR Part 121 and 49 CFR Part 23.

Decisions on applications for certification must be made by the certifying Participant within ninety (90) days of receiving all required information from the applicant firm. This time period may be extended once, for no more than an additional sixty (60) days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. Failure to make a decision by the applicable deadline shall be deemed a constructive denial of the application, on the basis of which the firm may appeal to US DOT under 49 CFR 26.89.

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Once a firm is certified, it shall remain certified until its certification has been removed through the procedures set forth in 49 CFR 26.87. Unless there are changes in the factual basis on which the certification was made, a firm is not required to reapply for certification as a condition of continuing to participate in the program during this five-year period. However, a DBE-certified firm must provide a No Change Affidavit to the certifying IL UCP Participant every year on the anniversary of the date of its certification, and on the fifth year of a firm's anniversary date it must provide a Continued Eligibility Affidavit, sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

Any change in circumstances affecting a DBE firm's ability to meet size, disadvantaged status, ownership, or control requirements or any material change in the information previously provided must be provided by the DBE firm in writing to the certifying Participant within thirty (30) days of the occurrence of the change. Changes in management responsibility among members of a limited liability company are included in this requirement. Supporting documentation must be attached that describes in detail the nature of such changes. The notice must take the form of an *Affidavit* sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. If the DBE firm fails to make timely notification of such a change, it will be deemed to have failed to cooperate under 49 CFR 26.109(c).

Certification Procedures:

A. When a certification application is received:

1. Incoming certification application requests will be date/time stamped and logged.
2. The file is forwarded to the certification staff. Following receipt of the file, the certification staff will:
 - a) Perform a complete review of the application and supporting documentation against the completed checklist to ensure that all relevant documents have been submitted.

If there are questions/concerns, a Request for Information (RFI) letter is prepared within thirty days, documenting the need for additional information. The initial RFI shall capture all missing and/or incomplete

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documentation. The letter may be sent by certified mail, return receipt requested, to the applicant.

Applicants are given twenty (20) calendar days after receipt of the RFI letter to respond. If information is not received by the twentieth calendar day, a follow-up RFI letter will be sent giving the firm ten (10) additional calendar days to respond. If an applicant requests an extension, ten (10) calendar days may be granted by the analyst.

If, within the specified time period, no contact has been made with the applicant, the analyst submits a memorandum to his/her supervisor recommending denial based on 49 CFR 26.109(c) - failure to cooperate. The analyst prepares the denial letter and forwards it to the DBELO or designee for signature.

- b) Keep a record in the file of all contact with an applicant. This file information is a permanent record of activity with an applicant. The record should include the date of contact, contact person, questions asked and responses.
- c) Conduct an analysis to determine business size and personal net worth eligibility. In addition to submitting copies of their corporate tax returns or business tax returns and personal income tax returns, each individual owner of a firm applying to participate as a DBE must submit a signed, notarized statement of personal net worth, with personal income tax returns.

This step in the review process should precede all other document reviews. It will assist each agency to immediately render size determinations prior to expending unnecessary time and manpower for ineligible firms.

- 1) A firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. The Participant must apply current SBA business size standards and NAICS codes found in 13 CFR Part 121 and 49 CFR Part 26.71 (n)(1), appropriate to the type(s) of work the firm seeks to perform. Per 49 CFR Part 26.65, a firm is not an eligible DBE if it's (including its affiliates) average annual gross receipts over the previous three fiscal years have exceeded the DBE program cap of \$22, 410,000 or \$56,420,000 for ACDBE, 49 CFR Part 23. The US DOT Secretary adjusts the cap for inflation from time to time.
- 2) The personal net worth of each individual owner whose ownership and control are relied upon for DBE certification must be less than

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\$1,320,000 [see SBA regulation 13 CFR 124.104(c)(2)]. Personal net worth decisions will be based upon the standard accounting principal formula of *Assets - Liabilities = Net Worth*. Ownership interest in the applicant's firm and equity in the primary personal residence are excluded when determining personal net worth.

- d) Perform subsequent analysis and review of the file. A subsequent RFI letter maybe sent if necessary. This includes reviewing the information contained in the file, individually as well as collectively, and documenting the findings during the review.

Particular attention should be paid to the areas of special concern listed below while conducting the review of the file. **Note:** The first item listed below must be met before any consideration is given to an out-of-state firm's eligibility. The special concerns listed are not intended to be all-inclusive. They are meant to give direction and be a starting point for analysis and review of an application.

- The applicant, whose principal place of business is located in a state other than Illinois, must be certified by its home state US DOT-approved UCP, or certified as a DBE with a DOT recipient in the firm's home state, in accordance with 49 CFR Part 26 prior to applying for IL UCP DBE certification.
- The applicant seeking certification in the work category of trucking must obtain proper intra-state authorization from the Illinois Commerce Commission (ILCC).
- The authorized/registered legal name of the firm should be verified for accuracy.
- The main address of the firm should be the actual physical location of the main or corporate office. Post office box numbers are not acceptable by themselves.
- The contact person should be an individual(s) the analyst can contact for answers to questions regarding the certification application.
- Ethnicity should be resolved early. In cases where the ethnicity status cannot be determined, additional documentation is required. Copies of one or more documents evidencing ethnicity are necessary, e.g.:

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- Birth certificate
- Membership letter or certificate from an ethnic organization
- Tribal certificate
- Bureau of Indian Affairs card
- Driver's license
- Passport
- Armed service discharge papers (D.D. 214)
- Baptismal certificate
- Any other document that provides evidence of ethnicity

Note: Make sure copies of all of the following relevant business documents (depending on type of firm) are included:

- Sole Proprietorship - A copy of the assumed name certificate issued by the county clerk's office to provide evidence of registration;
- Partnership - Copies of the original and amended partnership agreements and the assumed name certificate issued by the county clerk's office;
- Limited Liability Company - Copies of the original and amended administrative agreements and the assumed name certificate issued by the county clerk's office;
- Corporation:
 - Articles of incorporation - this document confirms that the business is incorporated. Information contained in this document should include:
 - names of incorporators
 - date of incorporation
 - state of incorporation
 - type of business in which the firm is authorized to engage, and
 - information concerning voting and non-voting stock in the firm.
 - First organizational meeting minutes - this document is a record of the first organizational meeting. It is reviewed to verify information contained in other documents. Pertinent information which can be verified by this document includes:
 - election of officers,
 - identity of board of directors,
 - purchase and issuance of stock, and

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- adoption of by-laws.
- Corporate by-laws - this document explains how the corporation should function. Important information to be contained includes:
 - duties and responsibilities of the board of directors
 - the number of directors
 - duties and responsibilities of the officers
 - information concerning the voting stock of the firm
 - voting rights of the shareholders and directors
 - information about firm meetings, and
 - possible restrictive language affecting shareholders and directors.
- Stock certificate(s), signed on both sides, and documentation to substantiate stock purchases.
- Copy of the signed corporate bank resolution(s) and bank signature card(s).

Attention should be given to names appearing in the documents since the applicant's name may appear on different documents. Different names on different documents may indicate a relationship that affects the control of the firm by disadvantaged owners.

Also, evidence of the equity contribution by the disadvantaged owners must be examined closely. Among other documents, proof of contribution may be shown by copies of canceled checks (both sides), signed loan agreements, deposit slips, proofs of purchase and vehicle titles.

Tracing dates through the documentation is a good review technique. Conflicting dates/information must be resolved. Compare changes in financial position to check for possible effects on control.

Note: An organizational chart is helpful when there are changes or several companies with interlocking directors and/or officers. This will give a clearer picture of interlocking relationships (possible affiliations).

Reviews of equipment titles and registrations can be used to assist in determining ownership. Obtain or compile a list of the equipment owned by or available to the firm and the license(s) the firm and its key personnel possess to perform the requested work categories.

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Review the resume(s) of the owner(s), officer(s), member(s) of the board of directors and principal management and control personnel. Resumes may indicate technical competence based on experience in the industry and the degree of operational and/or managerial control to be exercised by the owner(s) and other principals within the firm. When reviewing the resumes, observe:

- present and prior occupations,
- length of time in the industry,
- areas of expertise, and
- relevant occupational licenses/certificates.

Operational and managerial control - "control" means that the disadvantaged owner(s) not only directs the management of the business, but also oversees its day-to-day operations.

Areas of consideration include:

- hiring and firing authority
- signature authority
- financial obligation authority
- contract negotiation authority
- bidding and estimating expertise
- firm policy development ability
- job selection authority, and
- day-to-day and long-term decision-making authority that affect the performance/operation of the firm.

Ownership (control) - means a firm must be at least 51 percent owned by socially and economically disadvantaged individuals

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

In the case of a partnership, socially and economically disadvantaged individuals must own 51 percent of each class of partnership interest. Such ownership must be reflected in the firm's partnership agreement.

Areas of consideration/concern include:

- previous employers, common to two or more principals of the firm
- previous employers who subcontract work with the firm
- interlocking directors/officers and the possible effect on control
- equipment/office/storage lease arrangements
- day-to-day operational decisions and responsibilities, and
- composition and responsibilities of the board of directors.

Note: Financial information - a close review of the financial statements is required to determine firm actions that may restrict or dilute the disadvantaged owner's effectiveness to control the business.

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Financial information is useful in resolving management, operational and ownership control concerns.

Areas of consideration include:

- Financial statements:
 - end-of-year balance sheets and profit and loss statements over a three-year period
 - accounts/notes payable
 - notes and loans payable/receivable to/from stockholders and officers
 - accrued expenses
 - purchases/loans, and
 - footnotes to the financial statement.

- Expense statements:
 - salaries
 - rent expenses
 - lease expenses
 - payment to subcontractors, and
 - changes in financial position.

- Corporate tax returns:
 - salaries paid to officers
 - dividends paid, and
 - names of officers and stock ownership.

- Partnership/Third party agreements:
 - terms/purpose of agreement
 - parties to the agreement
 - duties and responsibilities of each Party, and
 - dollar investment/division of profits.

These documents explain the terms and conditions of the arrangement(s). Check to see if the firm's control is diluted or restricted by the agreement(s). If it is determined that a firm's average annual gross receipts over the preceding three (3) fiscal years exceed the DBE program size cap, the firm is not an eligible DBE.

Bonding capacity - Attention should be paid to the bonding capacity of the firm. The dollar amount should be in line with the work history of the firm, including contracts it has received and work it has completed.

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Work Category(ies) and location(s) - The work category(ies) and location(s) the firm prefers should be denoted in the application.

Affiliates must be considered together in determining whether a firm meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

On-Site Interview/Visit

The federal regulations [49 CFR 26.83(c)(1)] require the performance of an on-site visit to the offices of the firm seeking DBE certification. The site visit report of a DBE applicant by any other US DOT federal fund recipient may be relied upon to meet this requirement.

Procedure:

The on-site visit allows the analyst to conduct an interview while observing the firm's owner(s) in his/her own principal place of business in an effort to substantiate and clarify submitted documentation, while ascertaining the general pattern of operation of the business. In addition to reconciling information/concerns, the on-site visit will assist in detecting and eliminating "fronts" and "shams" (applicants that do not meet the eligibility standards set forth in the federal regulations). The procedures outlined herein provide guidance and direction for completing the on-site interview and visit. A sample on-site questionnaire form is attached. See Appendix C.

The onsite procedures are listed below:

1. Prepare standardized and specific questions for the on-site visit/interview. Questions for the interview should be determined in advance by reviewing and analyzing the application and supporting documentation. Any conflicting information brought out during the review should be questioned and clarified by staff. Additional questions may be raised during the on-site interview. In addition, staff should discuss any concerns with his/her supervisor prior to the visit.

Questions should also be devised in a manner that will evoke a coherent response. Questions should not be leading and the applicant should not be able to answer the question in one or two words.

Examples of typical interview questions include:

- "Explain the process used to monitor job costs."
- "Describe your corporate duties and responsibilities."

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"Explain and describe the bidding and estimating process."

The above questions are typical examples only. The questions developed should be unique to the particular file being reviewed. They should be prepared and based on information derived from the applicant file.

2. Conduct an on-site visit/interview at the office(s) of the firm and any job site(s) in the Participant's jurisdiction or local area at which the firm is working at the time of the eligibility investigation. The principal officers and majority owners of the firm must be interviewed and their resumes and/or work histories reviewed. The interview is concluded after all questions/concerns have been addressed and the administrative process that follows the interview is explained.

Note: Depending on the circumstances, a firm may or may not be notified when an on-site visit/interview will be conducted.

3. Reconcile any concerns and questions regarding an application prior to making a recommendation.
4. Prepare the summary report following completion of the analysis and review of the file. The content of the summary report is very important. It must be accurate and complete and satisfy all areas addressed on the questionnaire form. See Appendix C.

The report should include the following:

- Name of the firm
- Date and location of the on-site visit/interview
- People present at the interview
- Information supplied to the applicant, and
- Questions asked and responses received.

A copy of the on-site questionnaire is attached to the summary report.

Summary reports written on "reapplication after denial" applications must include the issues and eligibility standards for which the firm was previously denied certification. In addition, the report should clearly indicate how the firm's operations/ownership/control have changed since the previous denial.

5. Forward the file and summary report to his/her supervisor, and then to the Participant's DBELO or designee, who makes the final decision regarding the firm's DBE program eligibility.

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Once an eligibility decision is rendered, the certifying Participant notifies the firm in writing. Information regarding approved DBE certifications is submitted for the IL UCP DBE Directory.

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The IL UCP Participants will maintain a unified DBE directory containing pertinent information on all firms certified by the IL UCP [including those from other states certified under the provisions of 49 CFR 26.81(d)]. The IL UCP Participants shall make the directory available to the public electronically on the Internet, as well as in print. The IL UCP Participants shall update both electronic and print versions by including additions, deletions, and other changes on a regular basis.

No Change Affidavits

To remain certified and in good standing, all DBE firms are required to submit an annual *No Change Affidavit*. The DBE firm is required to submit documentation of the firm's gross receipts and personal net worth of the qualifying owners with the *No Change Affidavit*.

In addition, the *No Change Affidavit* must affirm that there have been no changes in the firm's circumstances affecting its ability to meet:

- size,
- disadvantaged status,
- ownership, or
- control

and no material changes in the information provided. If the DBE fails to provide this *No Change Affidavit* in a timely manner, the DBE will be deemed to have failed to cooperate under 49 CFR 26.109(c).

No Change Affidavit Process

1. Sixty (60) days prior to the anniversary date of a firm's DBE certification, the *No Change Affidavit* and *Statement of Personal Net Worth* forms are sent to the firm. The forms will be sent with a cover letter explaining that the firm must complete the forms and file the requested supporting documentation in order to remain certified and in good standing with the IL UCP. If the firm has not responded after 30 calendar days, a follow up request is sent to the firm. If the firm fails to respond to the host agency's

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request for a No Change Affidavit by the firm's anniversary date, the firm's DBE certification will be removed through the procedures listed in 49 CFR 26.87 due to failing to cooperate as detailed in 49 CFR, Part 26.109(c).

2. Forms/Supporting Documentation Submitted Complete - When the completed forms and supporting documentation are submitted and reviewed/approved a document is prepared stating the firm remains in good standing. A notification of continued eligibility is sent to the DBE firm. The notification of continued eligibility, supporting documentation and the memo are placed in the firm's file.
3. Forms Submitted Incomplete - If the forms/supporting documentation have been submitted but are incomplete, a Request for Information letter that lists the deficiencies is sent to the firm. The firm is given **20 calendar days** upon receipt of the letter to submit the requested information. Once 20 calendar days has passed, a second request for the requested additional information is sent to the firm, giving them an additional **10 calendar days** upon receipt of the letter to submit the requested information. This second request will list the requested information and the date the firm will be denied if they do not respond to this request. If the firm does not respond in this time frame, or the firm's response is incomplete, the firm will be issued a notice of proposed removal of DBE certification due to a lack of cooperation pursuant to 49 CFR, Part 26.109(c). This proposed removal will be in accordance with the procedures listed in 49 CFR, Part 26.87.

Continued Eligibility Affidavit

To remain in good standing, all DBE firms are required to submit, a *Continued Eligibility Affidavit* (see Appendix F), on the fifth year of its anniversary date. The DBE firm is required to submit documentation of the firm's size and gross receipts, changes in ownership/management of the firm and updated corporate records with the *Continued Eligibility Affidavit*.

This *Continued Eligibility Affidavit* must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, control requirements or any material changes in the information provided in its application form. If changes do exist that the host UCP agency has not been made aware of, they should be submitted at this time as long as the firm is in compliance with 49 CFR, Part 26.83(i). The process for filing a *Continued Eligibility Affidavit* is set forth on page 17 hereof.

The *Continued Eligibility Affidavit* shall specifically affirm that the DBE continues to meet business size criteria as stated in the federal regulations and the overall

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gross receipts cap of 49 CFR 26.65; documenting this affirmation with supporting documentation of the firm's size and gross receipts. If the DBE fails to provide this *Continued Eligibility Affidavit* in a timely manner, the DBE will be deemed to have failed to cooperate under 49 CFR 26.109(c).

In addition, pursuant to 49 CFR 26.83(i), during the period that a firm is certified, it must inform the certifying Participant in writing of any change(s) in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or any material change in the information provided in the firm's application for certification within thirty (30) days of the occurrence of the change.

Continued Eligibility Process

1. Sixty (60) days prior to the five year anniversary date of a firm's DBE certification, the *Continued Eligibility Affidavit* and *Statement of Personal Net Worth* forms are sent to the firm. The forms will be sent with a cover letter explaining that the firm must complete the forms and file the requested supporting documentation in order to remain certified and in good standing with the IL UCP. If the firm has not responded within 30 calendar days, a follow up request is sent to the firm. If the firm fails to respond to the host agency's request for a *Continued Eligibility Affidavit* by the firm's anniversary date, the firm will be issued a notice of proposed removal of DBE certification due to a lack of cooperation pursuant to 49 CFR, Part 26.109(c). This proposed removal will be in accordance with the procedures listed in 49 CFR, Part 26.87.
2. Each firm seeking continued eligibility is required to have another site visit conducted. Out of state firms must submit a site visit that is less than five (5) years old, from their home state certifying agency to continue their participation in the IL UCP.
3. Forms/Supporting Documentation Submitted Complete - When the completed forms and supporting documentation are and reviewed/approved, a report is prepared stating the firm remains in good standing. A notification of continued eligibility is sent to the DBE firm. The notification of continued eligibility and supporting documentation are placed in the firm's file.
4. Forms Submitted Incomplete - If the forms/supporting documentation have been submitted but are incomplete, a Request for Information letter that lists the deficiencies is sent to the firm. The firm is given **20 calendar days** upon receipt of the letter to submit the requested information. Once 20 calendar days has passed, as second request for the requested additional information is sent to the firm, giving them an additional 10

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calendar days upon receipt of the letter to submit the requested information. If the firm does not respond in this time frame, or the firm's response is incomplete, the firm will be issued a notice of proposed removal of DBE certification due to a lack of cooperation pursuant to 49 CFR, Part 26.109(c). This proposed removal will be in accordance with the procedures listed in 49 CFR, Part 26.87.

Status of Firm during Reviews of Continued Eligibility Affidavits

A firm remains an eligible DBE during the review of its *Continued Eligibility Affidavit*. Upon completion of the review process, the firm will be sent a letter verifying their continued eligibility.

Eligibility Investigation / Removal Process

1. Third Party Challenge - the IL UCP Participants shall accept written complaints from any person alleging that a currently certified firm is ineligible (general allegations and anonymous complaints need not be considered). The complainant must state specific reasons for ineligibility, and any documentation in support of the complaint must be attached. The identity of the complainant will be kept confidential at all times.
2. US DOT Directive to Initiate Proceeding - if US DOT determines that information in certification records or other available information provides reasonable cause to believe that an IL UCP-certified DBE firm does not meet the eligibility criteria of 49 CFR part 26, US DOT may direct the certifying Participant to initiate a proceeding to remove the firm's certification.

The concerned operating administration must provide the certifying Participant and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. The certifying Participant must immediately commence and prosecute a proceeding to remove eligibility, following the procedures set forth in the following paragraphs.

3. IL UCP Partner Challenge - if based on sections 1 or 2 above, and/or notification by a firm of a change in its circumstances or other information that of which an IL UCP Participant becomes aware, it is determined that there is reasonable cause to believe that a currently certified IL UCP firm is ineligible, the IL UCP Participant originally responsible for the certification shall thoroughly investigate the complaint/inquiry within sixty (60) days. The

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certifying Participant shall also notify the challenged firm in writing, giving the stated reasons and the relevant regulations.

The IL UCP-certifying Participant will review the records concerning the firm, any material provided by the challenged firm and other available information. The certifying Participant may request additional information from the firm or conduct any other investigation that it deems necessary.

If the IL UCP-certifying Participant determines that such reasonable cause does not exist, the IL UCP-certifying Participant must notify the complainant and the firm in writing of this determination and the reasons for its decision.

If the IL UCP-certifying Participant finds reasonable cause to believe that the firm is ineligible, written notice must be provided to the firm that the IL UCP-certifying Participant proposes to find the firm ineligible, setting forth the reasons for the proposed determination. In this notice, the firm must be given an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified, or in the alternative, the firm may choose to file a written appeal. The firm is given twenty (20) calendar days from the date of the notice of proposed decertification to request an informal hearing or submit a written appeal (Request for Appeal), before the Hearing Officer. If the firm requests the opportunity to appeal in person the firm must also state whether the firm will be represented by counsel. The IL UCP-certifying Participant must notify all other Participants within two (2) calendar days of receipt of the request.

Pursuant to 49 CFR 26.87, the IL UCP-certifying Participant's Hearing Officer must maintain a complete record of the hearing, by any means acceptable under state law, for the retention of a verbatim record of an administrative hearing. If there is an appeal to US DOT under 49 CFR 26.89, the certifying Participant must provide the hearing transcript to US DOT; and on request to the firm. The original record of the hearing must be maintained. The firm may be charged only for the cost of copying the record.

The Hearing Officer must render a decision within sixty (60) days following receipt of the written appeal or informal hearing. The IL UCP-certifying Participant must provide the firm written notice of the decision in a timely manner, including the reasons for it and specific references to the evidence in the record that supports each reason for the decision. The IL UCP Participants are notified in writing within two (2) calendar days of the decision.

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<u>Participant</u>	<u>Address</u>
1. <u>IDOT</u>	<u>2300 S Dirksen Parkway, Springfield, IL</u>
2. <u>City of Chicago</u>	<u>121 N. LaSalle, Room 806 Chicago, IL</u>
3. <u>CTA</u>	<u>567 W. Lake St, 4th Floor, Chicago, IL</u>
4. <u>Metra</u>	<u>547 W. Jackson, 5W Chicago, IL</u>
5. <u>Pace</u>	<u>550 W. Algonquin Rd Arlington Hts., IL</u>

Grounds for Decision

A decision by any IL UCP Participant to remove eligibility must not be based on a reinterpretation or changed opinion of information available to the IL UCP-certifying Participant at the time of its certification of the firm. A decision may only be based on one or more of the following:

- Changes in the firm's circumstances since the certification of the firm that rendered the firm unable to meet the eligibility standards of 49 CFR part 26;
- Information or evidence not available at the time the firm was certified;
- Information that was concealed or misrepresented by the firm in previous certification actions;
- A change in US DOT's certification standards or requirements since the firm was certified; or
- A documented finding that the certifying Participant's determination to certify the firm was factually erroneous.

Status of Firm during Proceedings

A firm remains an eligible DBE during the pendency of proceedings to remove its eligibility. The firm does not become ineligible unless and until the notice removing its certification is issued.

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Availability of US DOT Appeal

After the IL UCP Participant makes its final decision to remove a firm's eligibility, the firm may appeal the removal to US DOT under 49 CFR 26.89. The firm must send a letter to US DOT within ninety (90) days of the date of the decision, attaching information and arguments concerning why the decision should be reversed. Pending US DOT's decision, the decision of the IL UCP Participant remains in effect.

The IL UCP will promptly implement any US DOT certification appeal decisions affecting the eligibility of DBEs for the IL UCP's US DOT-assisted contracting.

Appeals should be sent to:

U.S. Department of Transportation
Department of Civil Rights
1200 New Jersey Ave., SE W-35
Washington, D.C. 20590

Effects of Removal of Eligibility

If the certifying Participant removes a firm's eligibility, the firm may not reapply for certification within twelve (12) months from receipt of the certifying Participant's final denial decision.

When a firm's eligibility is removed, per 49 CFR 26.87(i)(1)(2)(3), the following action(s) must be taken:

When a prime contractor has made a commitment to use the ineligible firm, or the IL UCP Participant has made a commitment to use a prime contractor, but a subcontract or contract has not been executed before the decertification notice is issued, the ineligible firm does not count toward the contract goal or overall goal. The prime contractor must be directed to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.

If a prime contractor has executed a subcontract with the firm before the firm was notified of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where a prime contract was let to a DBE firm that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of its ineligibility was issued shall not count toward a Participant's overall goal, but may count toward the contract goal.

Exception: If the DBE firm's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, its participation may continue to be counted on that contract toward overall and contract goals.

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In Witness Whereof, the parties hereto have caused this Unified Certification Proposal to be executed by their respective authorized officials:

Illinois Department of Transportation

Date

City of Chicago

Date

Chicago Transit Authority

Date

Commuter Rail Division of the
Regional Transportation Authority (METRA)

Date

Suburban Bus Division of the
Regional Transportation Authority (PACE)

Date

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IL UCP Appendices

- A. DBE Certification Application
- B. No Change Affidavit
- C. On-Site Questionnaire
- D. Personal Net Worth
- E. Social and Economic Disadvantage Disclosure
- F. Continued Eligibility Affidavit

MEMORANDUM OF UNDERSTANDING

MISSION STATEMENT

The Illinois Unified Certification Program (IL UCP) provides a uniform process for the establishment and administration of the certification component of the Disadvantaged Business Enterprise (DBE) program for recipients of federal transportation funds in the state of Illinois which include Federal Highway Administration (FHWA), Federal Aviation Authority (FAA), and Federal Transit Authority (FTA), based on the philosophy of reciprocity with each agency operating under its own resources. Each of the certifying agencies commits to provide support for the IL UCP through human, technological and funding resources as necessary. Adequate resources to accomplish current needs have been committed by each participant and will be continued to support the IL UCP. Each agency retains the function of certification with a DBE liaison officer (DBELO) representing its interests.

PURPOSE

The IL UCP was established pursuant to the requirements of 49 CFR part 26 to provide "one-stop shopping" for applicants seeking DBE program certification in the state of Illinois.

TERMS AND CONDITIONS

- The IL UCP Participants will follow all requirements, certification procedures and standards of 49 CFR part 26, and shall cooperate fully with oversight, review, and monitoring activities of US DOT and its operating administrations. The IL UCP Participants shall implement US DOT directives and guidance concerning certification matters, and will implement all components of the IL UCP procedures. The IL UCP Participants also commit sufficient resources and expertise to carry out these requirements.
- The IL UCP Participants will use the US DOT unified certification application.
- The IL UCP Participants shall make all certification decisions on behalf of all US DOT recipients in the state of Illinois with respect to participation in the US DOT DBE program, and certification decisions by the IL UCP Participants shall be binding on all US DOT recipients within the state.
- All obligations of recipients with respect to the certification and nondiscrimination must be carried out by the IL UCP Participants, and recipients may use only UCP's that comply with the certification and nondiscrimination requirements of 49 CFR part 26.
- All certifications by the IL UCP Participants shall be pre-certifications, i.e., certifications that have been made final before the due date of bids or offers on a contract on which a firm seeks to participate as a DBE.

- The IL UCP Participants shall maintain a unified DBE directory for all firms certified by the IL UCP (including those from other states certified according to 49 CFR part 26). This directory shall be made available to the public electronically on the internet, as well as in print. The IL UCP shall update this directory regularly. The IL UCP Participants will submit its agreement on March 4, 2002. The IL UCP will be fully operational within 18 months following the approval of agreement by the Secretary. The timeline for implementation of the IL UCP is attached.

ORGANIZATION

The undersigned Illinois Department of Transportation (IDOT), City of Chicago, Chicago Transit Authority (CTA), Commuter Rail Division of the Regional Transportation Authority (Metra), and Suburban Bus Division of the Regional Transportation Authority (Pace), as IL UCP Participants and recipients of federal transportation funds in the state of Illinois, agree to a Memorandum of Understanding (MOU) regarding DBE certification for USDOT federal-assisted funds.

Entities that serve as primary recipients in the state will be incorporated as signatories, and sub-recipients are bound through project agreements and special provisions through which the primary recipients assert that they will use only IL UCP-certified DBEs on contracts containing federal transportation funds.

PROCEDURES

In accordance with 49 CFR part 26, attached are the procedures adopted by and binding on the IL UCP Participants.

IN WITNESS WHEREOF, the parties hereto have caused this Unified Certification Program to be executed by their respective authorized officials:

_____ Illinois Department of Transportation	_____ Date
_____ City of Chicago	_____ Date
_____ Chicago Transit Authority (CTA)	_____ Date
_____ Commuter Rail Division of the Regional Transportation Authority (Metra)	_____ Date
_____ Suburban Bus Division of the Regional Transportation Authority (Pace)	_____ Date