

**TEXAS**

**MEMORANDUM OF AGREEMENT**

**for a**

**DISADVANTAGED BUSINESS ENTERPRISE  
(DBE)  
UNIFIED CERTIFICATION PROGRAM**

**U.S. DEPARTMENT OF TRANSPORTATION  
PARTNERS**



**Texas Department of Transportation  
City of Houston  
City of Austin**

**Corpus Christi Regional Transportation Authority  
North Central Texas Regional Certification Agency  
South Central Texas Regional Certification Agency**

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# STATE OF TEXAS MEMORANDUM OF AGREEMENT

## **I. UNIFIED CERTIFICATION PROGRAM**

This Memorandum of Agreement (MOA) establishes a Disadvantaged Business Enterprise (DBE)/Airport Concessionaire DBE(ACDBE) Texas Unified Certification Program (TUCP) in the State of Texas in accordance with Title 49 Parts 23 and 26 of the Code of Federal Regulations (49 CFR Parts 23 and 26). The TUCP Certifying Partners are the Texas Department of Transportation, City of Houston, City of Austin, Corpus Christi Regional Transportation Authority, North Central Texas Regional Certification Agency, and South Central Texas Regional Certification Agency. Each TUCP Certifying Partner agrees to commit sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

### **A. Definitions**

#### **1. TUCP Certifying Partner**

The TUCP Certifying Partners are the Texas Department of Transportation (TxDOT), City of Houston, City of Austin, Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), and South Central Texas Regional Certification Agency (SCTRCA).

#### **2. Recipient**

Any public entity which receives direct USDOT financial assistance.

#### **3. Sub-recipient**

Any public entity receiving USDOT financial assistance through another recipient.

#### **4. Grantee**

Any public entity that has received USDOT assistance.

## B. Organization

The TUCP shall establish an Executive Committee consisting of representatives from each of the Certifying Partner agencies, who shall be designated by the signatories to this MOA Agreement. The Executive Committee will also be responsible for resolving any conflicts regarding certification actions between its members. The Standard Operating Procedures of the TUCP Section P subparagraph 1- Agency Compliance, outlines the process for dealing with matters regarding the compliance with certification requirements. Nothing in this agreement should be construed to contravene the sovereignty of each participant. The contact for the TUCP is the Texas Department of Transportation, Civil Rights Division.

A *Certifying TUCP Partner* may terminate its responsibilities under this Agreement upon a six month notice to all TUCP Partners. *Potential Certifying agencies* may request to perform certifications through a formal submittal of qualifications to the Executive Committee of the TUCP.

1. The following procedures must be followed by the transitioning agency when terminating its responsibility:
  - A. Notify the TUCP Executive Committee at least six months prior to the termination of certification responsibilities.
  - B. Provide a written notice to each DBE/ACDBE explaining the agency's termination of responsibility. Include in this notice the following:
    - 1) A date the change will be effective.
    - 2) The name, physical address, email, telephone number and contact information of the new Certifying partner to which the DBE/ACDBE is being transferred.
    - 3) A written assurance that the change of Certifying Partners will have no effect on the firm's DBE/ACDBE status or certification.
    - 4) A reminder that all future contact regarding certification should be directed to the new certifying partner.
  - C. Deliver all certification material including complete files to the new Certifying Partner on or before the effective termination date.
  - D. Ensure that the TUCP DB/ACDBE directory is updated to reflect the change of certifying agencies on or before the effective termination date.

2. A *potential TUCP Partner* may request to perform DBE/ACDBE certifications on behalf of the TUCP through the following procedures:
  - A. The agency must submit a formal written request to the TUCP Executive Committee stating the following:
    - 1) The reason for the request.
    - 2) A description of the agency as well as the functions or duties of the section or office that will be conducting the certifications.
    - 3) A statement reflecting the capabilities of the agency to perform certification including available staffing, training and expertise.
    - 4) A statement reflecting the available resources and budget to perform certification.
    - 5) A description of the counties for which the agency will serve.
  - B. The TUCP Executive Committee shall review the formal request of the Potential Certifying Agency and determine whether any additional information is needed before a decision can be made.
  - C. The TUCP Executive Committee has the right to require the requesting agency to be available for interviewing prior to a decision (should it be necessary).
  - D. The TUCP Executive Committee shall either deny or tentatively approve an agency's request to perform certifications by a majority decision. As lead agency, the TxDOT shall break any tied votes.
  - E. Should the TUCP Executive Committee tentatively approve an agency's request to perform certification, a request for addition shall be drafted by the Committee and submitted to US DOT for formal approval.
3. The TUCP Executive Committee shall adhere to the following procedures with the addition of a *new Certifying Partner*.
  - A. Establish an effective start date for the new agency.
  - B. Provide a written notice to each DBE/ACBDE explaining the addition of a new Certifying Partner for their area. Include in this notice the following:
    - 1) A date the change will be effective.
    - 2) The name, physical address, email, telephone number and contact information of the new Certifying member for which the DBE/ACDBE is being transferred.
    - 3) A written assurance that the change of Certifying Partners will have no effect on the firm's DBE/ACDBE status or certification.
    - 4) A reminder that all future contact regarding certification should be directed to the new certifying member.
  - C. Deliver all certification material including complete files to the new Certifying Partner on or before the effective start date.
  - D. Ensure that the TUCP DBE/ACDBE directory is updated to reflect the change of certifying agencies on or before the effective start date.

## **C. Purpose**

The objectives of the TUCP are as follows:

- To follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Parts 23 and 26.
- To cooperate fully with all oversight, review and monitoring activities USDOT and its operating administrations.
- To provide directives and guidance on DBE/ACDBE certification matters.
- To make all certification and decertification decisions on behalf of all TUCP Partners with respect to participation in the USDOT DBE Program. Certification decisions by the TUCP shall be binding on all TUCP Certifying Partners.
- To provide a single DBE/ACDBE certification that will be honored by all TUCP Partners.
- To maintain a unified DBE/ACDBE directory containing at least the following information for each firm listed: address, phone number and approved NAICS codes. The TUCP shall make the directory available to the public electronically on the Internet as well as in print.
- The TUCP Partners will commit adequate resources and expertise to carry out this agreement. The partners will continue to individually bear the costs of training staff, certifying firms and sharing DBE/ACDBE files, i.e. postage and copying costs. Travel to and from meetings will be the responsibility of individual partners.

## **II. TUCP PROGRAM DESCRIPTION**

### **A. Partners' Roles, Responsibilities & Obligations**

All TUCP Partners agree to maintain DBE/ACDBE certification application files, conduct site visits, make certification decisions and handle appeals and complaints. The Certifying TUCP Partners agree to utilize the USDOT Uniform Certification Application and Affidavit.

- All decisions related to eligibility and certification must comply with 49 CFR Parts 23 and 26.
- The TUCP Certifying Partners who are recipients or sub-recipients of federal funds must have an approved DBE Program. Additionally, each Certifying Partner must have clearly defined and written processes and procedures related to the administration of its DBE Program and certification decisions.

- Each TUCP Certifying Partner must adhere to the processes and procedures as set forth in their Standard Operating Procedures.
- If a TUCP Certifying Partner is no longer able or willing to uphold the procedures outlined in this MOA and in the TUCP SOP, then that partner shall notify each partner in writing and submit to TxDOT all certification files within 180 days to maintain proper certification coordination.
- TUCP certifying partners agree to assist and comply with FHWA, Federal Transit Administration (FTA), and Federal Aviation Administration (FAA) in conducting partner reviews outlined in the TUCP SOP.
- Any request received by a TUCP Partner by organizations and entities to become certifying members of the TUCP will be forwarded to each TUCP Partner for review. The TUCP Certifying partners will make a recommendation and forward the request to USDOT for review and a recommendation.
- Any changes or additions to the TUCP Certifying Partners will require an amendment to this agreement. Parties to this MOA cannot add another member to the TUCP without the organization signing the MOA. The other TUCP partners will also need to sign the updated MOA acknowledging the new partner.

## **B. DBE/ACDBE Directory & Internet Access**

The TUCP DBE/ACDBE Directory will be located on the TUCP website. In accordance with 49 CFR §23.31(b) and §26.31, the DBE/ACDBE Directory will include the following minimum information for each firm:

- Name, address and telephone number of firm;
- Contact person
- Types of work performed by the firm with appropriate six (6) digit NAICS code and description.

The TUCP DBE/ACDBE Directory may contain additional information, including but not limited to the following:

- Geographic Location of the Firm (i.e., county)
- Website Address of the Firm
- Fax Number & E-Mail Address of the Firm

- Name of Certifying Partner

Each TUCP Partner by signature of this agreement agrees to submit the above information.

### **III. TUCP PROGRAM COST AND FUNDING**

The cost of creating and establishing the TUCP website will be the responsibility of TxDOT and the electronic DBE/ACDBE Directory will be the responsibility of each TUCP Partner. Each TUCP Partner has agreed to collaboratively respond to information requests or open records requests for certification lists or copies of the database as appropriate.

#### **A. Training and Resources**

The TUCP Partners will conduct ongoing in-service training. The TUCP Partners will agree to rotate the duties of hosting, planning and conducting training sessions amongst the TUCP Partners.

### **IV. CERTIFICATION PROCEDURES AND PROCESS**

In addition to the following procedures, the TUCP will follow all certification procedures and standards of 49 CFR Part 23 and Part 26, and will implement USDOT directives and guidance concerning DBE/ACDBE certification matters. The SOP has been developed and will be utilized by all Certifying TUCP Partners. The SOP may be modified as needed and agreed upon by majority consensus of the Certifying TUCP Partners. If consensus cannot be reached, the issue will be forwarded to Federal Highway Administration (FHWA) – Texas Division for further guidance.

- The TUCP will utilize the USDOT approved Uniform Certification Application and other related certification documents to facilitate “one-stop shopping” for applicants.

#### **A. Geographic & Industry Considerations**

The TUCP Certifying Partners have agreed to perform the certification process for DBE/ACDBE program applicants within the State of Texas by geographical location and by industry. If a DBE applicant/firm is interested in working only on TxDOT projects, TxDOT agrees to process the application and/or have certification responsibility for the DBE firm. In these cases, all certifying TUCP partners will forward the application within three to five business days to TxDOT for processing. All Certifying Partners will process intrastate airport concessionaire ACDBE certification applications, based on the firm’s geographical location of its principal place of business.

**City of Austin: Geographical: Bastrop, Caldwell, Hays, Travis and Williamson**

**City of Houston:** Geographical: Counties of Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto and Waller.

**Corpus Christi Regional Transportation Authority:** Geographical: Counties of Aransas, Bee, Goliad, Jim Wells, Karnes, Kleberg, Live Oak, Nueces, Refugio, and San Patricio.

**North Central Texas Regional Certification Agency:** Geographical: Counties of Collin, Dallas, Denton, Ellis, Erath, Hood, Jack, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise.

**South Central Texas Regional Certification Agency:** Geographical: Counties of Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, and Wilson.

**Texas Department of Transportation:** Geographical: All other remaining counties in Texas.

## **B. Quality Assurance (New Certifications)**

Uniform documents have been developed for use by the Certifying TUCP Partners so that consistent information is obtained and used in certification determinations. At a minimum, there will be annual training of certification staff in order to maintain consistency in determinations.

## **C. Annual Review Process**

By signature of this agreement, ACDBE and DBE certification updates will be conducted annually using the TUCP Annual Update "No Change" Affidavit process as required in the SOP and following the procedures outlined in 49 CFR §26.87.

## **D. Decertification Procedures**

The TUCP Partner agrees to process decertification in compliance to 49 CFR §26.87. Provisions exist in the TUCP SOP for the Certifying TUCP Partners to accept written complaints from a third party alleging the ineligibility of a currently certified firm. The TUCP SOP outlines how those complaints will be handled by the receiving partner.

## **E. Appeals Process and Procedures**

An appeals procedure has been established as part of the TUCP SOP for appeals of denial of original certification and decertification that provides due process to the affected firm in accordance with 49 CFR Part 26.

- **Denials of Original Certifications and Decertification:** The DBE/ACDBE applicant has the opportunity to appeal to USDOT in accordance with 49 CFR §26.89.

Firms that are decertified will have due process in accordance with 49 CFR §26.87.

#### **F. Staff Training**

Each TUCP Partner agrees to:

- Participate in annual staff training; including assisting with the development and coordination of training modules that support the SOP.
- Recruit instructors and determine locations for training workshops.
- Schedule joint training sessions.
- Conduct staff training to assure that all staff are knowledgeable about certification regulations and procedures as updates and changes are made to the regulations.

#### **G. Unified DBE/ACDBE Directory**

By signature of this MOA, the TUCP Partners agree to:

- Develop and complete parameters for the TUCP DBE/ACDBE Directory.
- Compare TUCP Certifying Partner's databases.
- Remove duplicate DBE/ACDBE firms.
- Develop common databases, however, nothing in this agreement excludes the certifying partners from creating and maintaining separate databases for other programmatic needs.
- Develop procedures for electronic submission of DBE/ACDBE firms for inclusion in the TUCP Directory.
- Develop and issue press releases on public access to the online TUCP DBE/ACDBE Directory (information will be maintained on TXDOT Website).

#### **V. CHANGES TO THE MOA**

This MOA can be amended by approval of the majority of the TUCP Partners. Changes to this MOA shall require a majority agreement by the TUCP Certifying Partners. In cases where there is not a majority agreement, the issue will be forwarded to USDOT for resolution and the partners agree to execute the decision of USDOT by signature of this MOA.

**VI. SUMMARY**

As a result of the requirements set forth in 49 CFR Parts 23 and 26, we the undersigned, agree to participate in the TUCP in accordance with the provisions of this MOA and agree to abide by its contents.

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

**TUCP CERTIFYING PARTNERS**

City of Austin  
Name Yonice Briseño Lara Date 8-24-16  
Signature [Signature] Title Director, STMB

City of Houston  
Name Carlecia D. Wright Date \_\_\_\_\_  
Signature [Signature] Title Director  
8-26-16

Corpus Christi Regional Transportation Authority  
Name Jorge Cruz-Aedo Date 8/25/16  
Signature [Signature] Title CEO

North Central Texas Regional Certification Agency  
Name Elicia Mitchell, MPA Date 8/25/16  
Signature [Signature] Title Executive Director

South Central Texas Regional Certification Agency  
Name Julio C. Fuentes Date 08/25/2016  
Signature [Signature] Title Executive Director

Texas Department of Transportation  
Name MICHAEL D. BRYANT Date 8/29/16  
Signature [Signature] Title DIRECTOR,  
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