



## **Disadvantaged Business Enterprise**

### **"Notice of Change" and "Notice of No Change"**

#### **Statement of Policy**

The Luzerne County Transportation Authority ("the LCTA" or the Authority") has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

The Authority receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Authority signed an assurance that it will comply with 49 CFR Part 26.

Furthermore, the Authority is committed to implementing the provisions of the DBE Program. It is the policy of the Authority to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in contracting and procurement activities of the Authority, including all DOT-assisted contracts. It is also our policy to follow the policies and procedures of 49 CFR Part 26, specifically the provisions of "Notice of Change" (Section 26.83(i), and "No Change" (Section 26.83(j)) outlined below:

#### **What is a "notice of change" and when should recipients require DBE firms to submit one? (Section 26.83(i))**

- A "notice of change" is a written affidavit that DBE firms must provide to the LCTA DBELO within 30 days of any change in their circumstances affecting their ability to meet part 26 eligibility standards regarding size, disadvantage, ownership and control.
- A notice of change must include documentation describing the change in detail.
- The notice of change requirement became effective March 4, 1999.
- The LCTA DBELO shall ensure that all currently certified DBEs are aware of their obligation to submit notices of change on an annual basis.
- For purposes of this notice requirement, a "change" in the firm's circumstances includes a change in the regulation (e.g., from former part 23 to part 26) that affects the firm's eligibility. For example, part 26 includes a \$1,320,000 personal net worth cap that was not included in former part 23. A disadvantaged owner whose net worth exceeds this amount is obligated to file a notice of change.

**What is a "no change" affidavit and when should recipients require DBE firms to submit one? (Section 26.83(j))**

- A "no change" affidavit is an affidavit each DBE firm must provide to the LCTA DBELO annually on the anniversary date of the firm's certification. The affidavit affirms that there have been no changes in the firm's circumstances affecting its ability to meet part 26 size, disadvantage, ownership, and control standards (except for changes about which the firm has submitted a "notice of change" to the recipient).
- With a "no change" affidavit, the rule requires a firm to submit supporting documentation concerning its size and gross receipts.
- The "no change" affidavit requirement became effective March 4, 1999, for all DBE firms.
- All firms certified under former part 23 will have a certification anniversary date no later than March 3, 2000. The LCTA DBELO shall ensure that all such firms have submitted their initial "no change" affidavits in that time, each by its own certification anniversary date, and each year thereafter in compliance with part 26.
- For purposes of this notice requirement, "no change" in the firm's circumstances means, among other things, that changes in the regulation (e.g., from former part 23 to part 26) have not affected the firm's eligibility. For example, part 26 includes a \$1,320,000 personal net worth cap that was not included in former part 23. By submitting a "no change" affidavit, the owner of a DBE firm is affirming that his or her personal net worth does not exceed \$1,320,000. Recipients should ensure that currently certified DBEs are aware of this obligation.

**Are DBE and ACDBE firms required to transmit notices of change and affidavits of no change to all recipients/UCPS with which they are certified? (Section 26.83(i)-(j))**

- Yes. A DBE or ACDBE, including one that is certified in more than one state, must always send an annual affidavit of no change or, as needed, a notice of change, to every recipient/UCP with which its home state is not sufficient.
- This requirement applies to ACDBEs under 49 CFR Part 23 as well as DBEs under 49 CFR Part 26.
- The fact that ACDBEs and DBEs remain certified until or unless decertified does not affect the requirement to provide annual affidavits of no change and notices of change.
- Failure to provide these documents subjects a firm to decertification proceedings for failure to cooperate (see 49 CFR 26.109(c)).
- When providing an affidavit of no change, the firm must attach documentation showing that it continues to meet applicable small business size standards. The LCTA DBELO/ state UCPS (PA) may request additional information (e.g., concerning personal net worth or the firm's independence) where there is reason to believe that additional verification is necessary.

- If you are a DBE firm, you must inform the LCTA DBELO or state UCP (PA) in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.
- Changes in management responsibility among members of a limited liability company are covered by this requirement.
- You must attach supporting documentation describing 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. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).
- If you are a DBE firm, you must provide to the LCTA DBELO, every year on the anniversary of the date of your certification, an 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. This 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 requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the LCTA DBELO under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

Source: <https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/55851/official-questions-and-answers-disadvantaged-business-enterprise-program-regulation-49-cfr-26-4-25.pdf>

## **CONTACT INFORMATION**

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### AFFIDAVIT OF CERTIFICATION

*This form must be signed and notarized for each owner upon which disadvantaged status is relied.*

**A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.**

I \_\_\_\_\_ (full name printed),  
swear or affirm under penalty of law that I am  
\_\_\_\_\_ (title) of the applicant firm  
\_\_\_\_\_ and that I  
have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract, subcontract, concession lease or sublease, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership changes, address/telephone number, personal net worth exceeding \$1.32 million, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise or Airport Concession Disadvantaged Business Enterprise. In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s): (Check all that apply):

- Female     Black American     Hispanic American
- Native American     Asian-Pacific American
- Subcontinent Asian American     Other (specify)

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$1.32 million, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Signature \_\_\_\_\_ (DBE/ACDBE Applicant)      \_\_\_\_\_ (Date)

#### NOTARY CERTIFICATE