

Uniform Certification Program Agreement

In The United States Virgin Islands, this 24 of September 2009

Appear

As party of the First Part: Virgin Islands Public Works Department, (VIPWD) represented by its Commissioner, Darryl A. Smalls, P.E.,

As party of the Second Part: Virgin Islands Port Authority, (VIPA) represented by Kenn Hobson, Executive Director.

The parties mutually agree to establish a Unified Certification Program and thus state:
WHEREAS:

1. The Virgin Islands Department of Public Works, is committed to minority, women and small business concerns owned and controlled by socially and economically disadvantaged individuals so that they may have the maximum opportunity to participate in federally funded contracting and procurement programs to create significant opportunities for Disadvantaged Business Enterprise (DBE) participants. Title VI of the Civil Rights Act of 1964 stipulates a mandate to provide financial assistance for DBE's contracting opportunities for highway, transit and airport projects. The Disadvantaged Business Enterprise program ensures nondiscriminatory access to contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals and develops and implement an affirmative action program that promotes the participation of minority firms on Federal Aid programs.
2. Federal Aviation Authority (FAA).
3. Federal Transportation Administration – (FTA),

4. Federal Highway Administration – (FHWA)

The regulation intends to adhere to and embed the existing common application procedures to the uniform certification process (Unified Certification Program-UCP) to ensure reductions in administrative costs and provide more opportunities for small business concerns owned and controlled by DBE's. Any government agency certifying has the responsibility to ensure that these programs promote competitive viability of small disadvantaged concerns in the free-market enterprise system; ensure that the certification process is in accordance with Federal Regulation 49 CFR, Part 23 and 26 in "narrowly tailoring requirements in increase effectiveness and reduce burdens", in providing a one-stop shop certification process. The Virgin Island Department of Public Works will be the lead agency to coordinate the establishment of the Unified Certification Program within the Territory. Virgin Islands Port Authority is the other component of this agreement.

WHEREAS: The purpose of this UCP agreement is to identify reciprocal certification requirements of United States Department of Transportation (DOT) Regulation 49 CFR, Part 23 & 26. This UCP process agreement is intended to reduce the procedural burdens on applicants; fulfill the requirements of paperwork reduction; and reduces confusion caused by multiple and potentially conflicting outcomes in certification decisions. Such criteria shall include but not be limited to on site visit, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of stocks capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred (where applicable). The national standard application will be used in accordance with the final rule.

WHEREAS: The DBE Program is goal-oriented in establishing a standardize process in state administered, and federally funded contracting and procurement programs to create significant opportunities for DBE's. All state transportation agencies do have DBE's program objectives to increase the quantity of equal opportunities relative to the availability of ready, willing, and able DBE firms competing for USDOT-assisted contracts. All USDOT-assisted projects, regardless of system or exempt status are subject to the legislative and regulatory DBE requirements. The parties agree to accomplish the following objectives:

1. Establish a Uniform Certification Program (UCP) process to facilitate the participation of firms certified under the United States Department of Transportation (USDOT) Regulation 49 CFR, Part 23 & 26. The Program is comprised of this agreement and its attachments.
2. Establish certification procedures and standard requirements as set forth in 49 CFR, Part 23 & 26 and cooperate fully with oversight, reviews and monitoring activities of USDOT and its agencies.
3. Establish a UCP that will implement USDOT directives and guidance concerning certification, ensuring that the uniform certification process will have sufficient resources and expertise to carry out the requirements in 49 CFR, Part 23 & 26.
4. Establish procedures for the efficient transfer of information among USDOT recipients, government and state agencies, and the uniform consideration of appeals, determination of business size or any other concern related to 49 CFR, Part 23 & 26.

5. Develop one common application, DBE certification form, letter, notification (to be used), recognizing its uniformity for all purposes of this uniformity process in accordance with 49 CFR, Part 23 & 26.
6. Develop an eligibility committee (one per each party) to review any investigative information concerning certification documentation provided to make a determination as to whether or not the firm meets the eligibility criteria requirements. Any decision the firm or small business concern considers to be subject to be appealed shall appeal this decision administratively. (Attachment A-appeals section)
7. Establish a DBE Directory, which will be available through a database system. A database will be developed through the internal information system to maintain communication between the partners of the UCP.

The parties hereby submit this agreement, subject to the following

TERMS AND CONDITIONS

FIRST: The parties will participate in the establishment of a UCP for DBE's, that will govern all matters regarding the DBE Program.

SECOND: Initially the VIDPW has been designated as the data bank source, while other agencies may be granted access through its web-site to make updates, revisions and additions or corrections. The web page could also generate notices of interest, questions & answers and general information to help DBE's at its most.

THIRD: Only firms certified as eligible DBE's by the parties to this agreement in compliance with 49 CFR Part 23 & 26 shall participate in the territory's program as DBE's. Certification of VIPA & VIDPW, which are direct recipients of Federal funds,

will remain as an in-house task of VIDPW to overcome duplication and additional paper work that it may be burdensome for some of these sub-recipients.

FOURTH: Each party shall certify qualified DBE applicants that apply before them, subject to these criteria:

- One standard application form (Attachment 1) will be used accordingly with 49 CFR, Part 23 & 26 criteria, subject to Clause Eighth. Application should be submitted with promptness and the firm shall be certified before award of contract.
- On-site visits (Attachment 2) will be required as part of the certification process. This review will be and it may be shared with other recipients upon request.
- Certifications are valid for a three-year period or until no future discrepancies can be found concerning current certification. However, yearly up-dates will be required: prior submission of No change affidavits, personal net worth (PNW) statements and company financial statements (audited where required).
- Information on certified firms should be provided and available, but may be considered warrant
- Small Business Administration (SBA) 8(a) certifications can be accepted under this agreement subject to review and approval of the UCP (VIDPW), under the requirements of uniformity of certification for small business concern and reciprocity criteria (USDOT MOU) of one-stop shopping conditions according to 49 CFR, Part 23 & 26 regulations. Certification application form used for 8(a) firms will be accepted in lieu of requiring the firm to submit the standard national

application form, but the UCP reserves the right to deny certification if SBA firm does not comply with eligibility criteria.

- Airport concessionaires must meet their size standard according to 49 CFR. Part 23, Appendix F and no personal net worth submission should be requested unless regulation applicability is amended.

FIFTH: Communication between the parties to this agreement (VIDPW/VIPA) will be subject but not limited to telephone conversations, conferences, and meetings; correspondence, electronic shared information transmittals, data or any other way of communication to facilitate a uniform certification process.

SIXTH: The VIDPW will act as an instrument for VIPA & VITRAN in The Virgin Islands who request to channel their applications through the Program and shall revise, evaluate and certify qualifying firms as DBE's, if in compliance with 49 CFR 23 & 26.

SEVENTH: If any party to this agreement is in need, or in receipt, of information necessary to make a determination of DBE eligibility, it should notify and submit such with promptness to make the right determination in certification or denial of status of the possible petitions as DBE.

EIGHTH: A uniform certification letter (Attachment 3), certificate, (Attachment 4), correspondence, follow up, on-site visit review and certification approval of eligibility as a DBE will be used by all the components of this UCP agreement. The UCP application of the USDOT will be integrated immediately to the process. A firm whose certification expires after the new form is adopted, shall only be required to submit the no change

affidavit and supporting documents. The certification letter will include the letterhead of the direct recipient making the determination in certifying.

NINTH: After final review of the documents submitted by applicants, the pertinent component of the UCP will assign its coordinator to perform, as requested by 49 CFR, Part 26, an on-site visit review to the principal place of business. It will take place where the individual(s) who control and manage the firm's day-to-day operations spend most working hours and where management's business records are kept. Decision by the recipient will be within a 90-day period after the complete application is received. Once it has a final recommendation as an eligible disadvantaged firm (DBE), a letter will be sent to the applicant, signed by the head of the Department (i.e. VIDPW Commissioner, VIPA, etcetera.) and mailed by certified mail, return receipt requested.

TENTH: For the purposes of this agreement, Liaison Officers (person of contact for each UCP) for each party are: Shelton Shulterbrandt – VIDPW, Antoinnette Johnson - VIPA. If any changes are to be made on these designations, the head of the Agencies shall notify in writing to the other parties.

ELEVENTH: An Eligibility Committee is hereby established, with the purpose of receiving those cases in which according to the initial evaluation, applicant is found not eligible to be certified as a DBE firm. The UCP party in charge of the review, shall request the Committee to evaluate the documents. The Committee shall be comprised of a representative of each of the UCP component, and can be one of the Liaison Officers. For the purposes of this agreement, the members of the Eligibility Committee are:

Darryl A. Smalls, Commissioner – VIDPW or his designee

Shelton Shulterbrandt – DBE Program Coordinator, VIDPW

Kenn Hobson, Executive Director, VIPA – or his designee

Antoinnette Johnson, Grants Programs Manager, VIPA

If the eligibility Committee agrees with the UCP part non-eligibility determination, it shall so inform the party, who shall notify the applicant. If the Eligibility Committee finds that applicant is eligible it shall notify the party, which shall review the evidence.

TWELFTH: The Liaison Officer of the agencies of this uniform certification process upon denial or de-certification of an applicant shall notify the recipient in writing within a 30-day period listing the reasons and evidence cited for such determination. The firm will have the opportunity for administrative reconsideration of the eligibility determination within the time frame provided in 49 CFR, Part 26 (Attachment A-appeals section). Unless special or unusual circumstances prevail, an applicant denied certification may reapply one year after the date of the denial letter. All correspondence shall be sent via certified mail, return receipt requested.

THIRTEENTH: To renew or review their status as a DBE, the firms will submit the completed disclosure with No-change Affidavit with the required information to the UCP agency (VIDPW/VIPA) where certification was requested, unless ownership or control has changed. If such changes have occurred, applicant shall submit a new application.

FOURTEENTH: After the documents have been submitted and the review of the information shows/indicates that no changes affecting the minority person's ownership and control have occurred, (and Personnel Net Worth (PNW) is under the established limit ceiling of \$750,000) the DBE will be notified by letter signed by the Commissioner or Executive Director of the certifying agency or head official designated, that it has been re-certified as a DBE. Within a twelve (12) month period of the anniversary certification

date as a DBE firm (certification expires after a three (3) year period) all certified firms are subject to monitoring by the DBE Coordinator or designated officer of each agency to assure that the minority ownership and control will continue.

Confidentiality of information under UCP's control will be kept and remain consistent with requirements of 49 CFR Part 26, and consistent with Federal Freedom of Information and Privacy Acts.

FIFTEENTH: It is understood that within 18 months of this agreement's approval by USDOT, the parties will follow directives to implement it with appropriate resources according to timetable (to be completed by VIDPW and VIPA).

SIXTEENTH: The parties will share a common and single DBE Directory under this agreement. Once a firm is certified in the United States Virgin Islands as a DBE it will become part of the registry that will be available to the general public. The parties under this agreement share current tracking and reporting data to make updates, revisions, and to keep the registry updated. Changes will take effect in a timely manner (or immediately). The agencies under this agreement (UCP) will create a data base to provide information and notices to facilitate the data input of the directory. This information will also be shared and made available to other recipients and the general public. (details re: responsibilities and finances must be agreed upon first)

SEVENTEENTH: This agreement will take effect on the date of approval by the USDOT Secretary as specified on 49 CFR, Part 26.81 and will remain in effect a 49 CFR, Part 26 requires. It may be amended in writing and at any time by mutual agreement between the UCP partners and USDOT designee. The Attachments are an integral part of this Agreement, as follows:

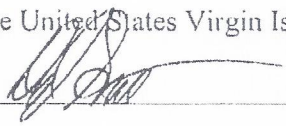
Attachments:

A. The United States Virgin Islands Unified Certification Program

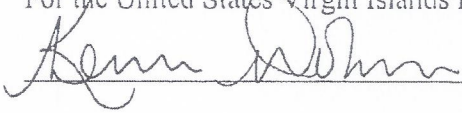
1. DBE Application (nationally approved form)
2. On-site visit review form
3. Certification letter
4. Notification of DBE Certification Renewal
5. No-change Affidavit
6. DBE Renewal Letter
7. Certification for DBE Annual State Goal
8. Timetable (immediate)

The undersigned parties hereby accept the terms of the agreement and are hereby committed to the better development of the Disadvantaged Business Enterprise program and Uniform Certification Process (UCP) under 49 CFR, Part 23 and 26 as amended.

For the United States Virgin Islands Department of Public Works



For the United States Virgin Islands Port Authority



Reviewed by Legal Secretary
Barry Hill
USPA General Counsel