Memorandum of Understanding Between the U.S. Small Business Administration and The U.S. Department of Transportation (ARCHIVED)

Background

THIS MOU IS NO LONGER IN EFFECT. IT'S BEEN ARCHIVED FOR REFERENCE PURPOSES.

The U.S. Small Business Administration (SBA) and the U.S. Department of Transportation (DOT) recognize that small business concerns owned and controlled by socially and economically disadvantaged individuals are deprived of equal access to contracting opportunities. Through innovative business initiatives such as the 8(a) Business Development (8(a) BD), the Small Disadvantaged Business (SDB) and the Disadvantaged Business Enterprise (DBE) programs, SBA and DOT have established effective procurement assistance mechanisms for small disadvantaged business concerns owned and controlled by disadvantaged individuals. SBA and DOT have the responsibility to ensure that these programs promote the competitive viability of small disadvantaged concerns in the free market enterprise system.

SBA's 8(a) BD and SDB programs and DOT's DBE program share many common certification requirements. Therefore, SBA and DOT intend to develop common application procedures that will streamline the certification process of the respective programs. This streamlined process will reduce administrative costs and provide more opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals.

Purpose

The purpose of this Memorandum of Understanding (MOU) between the SBA and DOT is to identify reciprocal certification principles and streamline procedures for expediting the certification requirements of SBA regulations (13 C.F.R. part 124) and DOT regulations (49 C.F.R. parts §23 and 26). This streamlined certification process is intended to reduce the procedural burdens on applicants, to fulfill the requirements of the Paperwork Reduction Act, and to facilitate the White House's initiative on reinventing how the Government does business.

Authority

This agreement is under the authority of 15 U.S.C. §634, 637 (a) and (d) and 636(j); 10 U.S.C. §2323; and 49 U.S.C. §47107, 47113 and 47123; 49 U.S.C. §1615; P.L. 105-178, § 1101(b); 112 Stat 107, 113; 64 FR 5096, 5127; and 42 U.S.C. 2000d et seq.

Objectives

To the extent consistent with SBA and DOT statutory and regulatory provisions, SBA and DOT agree to accomplish the following objectives:

Establish a certification process that facilitates the participation of firms certified under DOT rules in SBA programs and the participation of firms certified under SBA rules in DOT programs.

Establish procedures for the efficient transfer of information among SBA, DOT, and DOT recipients, for the consideration of certification appeals, and for the determination of business size issues.

Establish one common 8(a) BD, SDB and DBE application form recognizing the fact that the form will contain one common part and three additional parts for 8(a) BD, SDB and DBE certification.

Rulemaking

SBA and DOT understand that DOT will issue a notice of proposed rule making (NPRM) to amend 49 C.F.R. part 26 as needed to establish new or altered responsibilities for DOT recipients. SBA and DOT understand further that the new or altered responsibilities of recipients stated in this MOU do not become binding on recipients until the issuance of a final ruled based on this NPRM. Provisions of this MOU that are intended to be part of this NPRM are identified with an asterisk (*).

The NPRM process does not prevent DOT from assisting SBA in identifying currently certified DBE program participants who receive DOT financial assistance. DOT must assist SBA with this identification process within 30 days after the signing of this agreement.

SBA and DOT understand that SBA may issue a NPRM to amend 13 C.F.R. part 124 (subparts A and B) as required to establish new or altered responsibilities stated in this MOU.

Scope

(a) This MOU applies to SBA and DOT programs with respect to certification for participation in the 8(a) BD, SDB and DBE programs of small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) This MOU provides for the procedures and criteria that SBA, DOT and DOT recipients (*) will follow to facilitate the reciprocal certification of participants in the 8(a) BD, SDB and DBE programs.

(c) This MOU commits SBA and DOT to establish a uniform certification application form for 8(a) BD, SDB and DBE programs that will be used by all SBA and DOTrecipients (*).

(d) The certification procedures established by this MOU are intended to apply to all SBA offices and DOT recipients (*) located within the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

Certification

In both SBA and DOT programs, only small business concerns 51percent owned and controlled by socially and economically disadvantaged individuals may participate in 8(a) BD, SDB and DBE programs. SBA, DOT and DOT recipients will accept and recognize 8(a) BD, SDB and DBE certifications as provided in this section. SBA and DOT will also develop guidance concerning the reciprocal certification process and their mutual responsibilities implementing it.

(a) Acceptance of DOT DBE certifications for the 8(a) BD program. SBA will accept firms certified as DBEs by DOT recipients, subject to the following additional requirements: The disadvantaged owners must be U.S. Citizens (13 C.F.R. § 124.101). Owners of firms who are women and are not members of one of the designated groups presumed to be socially disadvantaged under 13 C.F.R. § 124.103(b), must provide personal statements relating to their individual social disadvantaged status as required by 13 C.F.R. §124.103(c)(2)(ii). Disadvantaged owners of firms must have a net worth less than $250,000, must lack adequate access to credit and capital, and may not have made any asset transfers within the past 2 years contrary to the requirements of 13 C.F.R. §124.104 (c). Firms must have been in business in their primary industry classification for at least 2 full years or satisfy the requirements for a waiver under 13 C.F.R. §124.107(b). Firms and their principals must demonstrate good character under 13 C.F.R. §124.108(a). Firms, their disadvantaged owners, or the disadvantaged owners' family members must not own more than 20 percent equity ownership interest in another 8(a) BD firm as required by 13 C.F.R. §124.105(g). Firms with non-disadvantaged owners must not own more than 10 percent of another 8(a) BD participant in the developmental stage of program participation or 20 percent of another 8(a) BD participant in the transitional stage of program participation as required by 13 C.F.R. §124.105(h). With respect to DBE airport concessionaires, firms must meet the SBA size standard corresponding to their primary SIC code. Note: SBA may certify a firm or an individual claiming disadvantaged status for participation in the 8(a) BD program only one time.

(b) Acceptance of DOT DBE certifications in the SDB program. SBA will accept firms certified as DBEs by DOT recipients, subject to the following additional requirements: Disadvantaged owners must be U.S. citizens (13 C.F.R. §124.1002(a)). Disadvantaged owner must have a personal net worth less than $750,000.00 (13 C.F.R. §124.1002 (c)). Owners of firms who are women and are not members of one of the designated groups presumed to be socially disadvantaged under 13 C.F.R. § 124.103(b), must provide personal statements relating to their individual social disadvantaged status as required by 13 C.F.R. §124. §124.1008(e)(2). With respect to DBE airport concessionaires, firms must meet the SBA size standard corresponding to their primary SIC code. (c) Acceptance of SBA 8(a) BD and SDB Certifications by DOT Recipients DOT recipients will accept the certification applications forms and packages submitted by the firm to SBA, in lieu of requiring the firm to submit the recipients' own application forms and packages (*). DOT recipients will accept into the DBE program firms certified as 8(a) BDs and SDBs by SBA, subject to the following conditions: The firm must meet DOT statutory gross receipts cap (i.e., the firm must not have annual gross receipts, averaged over 3 years, greater than $16.6 million, as may be adjusted by the Secretary of Transportation from time to time for inflation). Firms owned by Alaskan Native Corporations, Indian Tribes, and Native Hawaiian Organizations must meet small business size requirements and must be controlled by socially and economically disadvantaged individuals as required by 49 C.F.R. part 26. Firms and owners must meet control requirements of part 26 concerning licenses and credentials (see 49 C.F.R. §26.71(h)). The DOT recipients are required by statute to conduct an on-site review of the eligibility of the firm. DOT and SBA recognize that based on the information gained from the on-site review, including documentation that the firm meets DOT eligibility criteria, a DOT recipient may deny certification to a firm that SBA has certified. DOT and SBA recognize that if a firm certified by SBA applies for DBE certification to a DOT recipient outside the state in which it maintains its principle place of business (its "home state"), the recipient may decline to process the firm's application unless there is a report of a "home state" on-site review on which the recipient may rely. (*)DOT recipients reserve the right to deny firms certified by SBA DBE certification if the SBA certified firm does not provide products or services that the applicable DOT recipient procures or requires (See also above VII (a)(4)). (*)

Certification Appeals and Size Determinations

If a DOT recipient denies certification to a firm or decertifies a firm that is certified by SBA, the firm may appeal through the DOT certification appeal process. (*)

If SBA denies certification to a firm or decertifies a firm that is certified by a DOT recipient, the firm may appeal through the SBA certification appeal process.
SBA and/or DOT will inform each other, in writing, on any occasion where either agency's certification appeal system takes action that results in or confirms a loss of eligibility to any firm certified under the other agency's regulations.

Whenever a DOT recipient and/or SBA denies certification or decertifies a firm that it knows is certified by SBA or DOT, the acting agency will notify the other agency in writing. (*)

DOT recipients will rely on SBA size determinations for SBA-certified firms that seek to participate in the DBE program. With respect to any size issues pertaining to firms participating or seeking to participate in the DBE program, SBA will make it size determination procedures available by request from DOT and DOT recipients. SBA will also provide general guidance to DOT and DOT recipients concerning size issues.

Information Collection and Confidentiality

The SBA and DOT will develop and implement one uniform electronic and paper application form for the purpose of streamlining the application process of the 8(a) BD, SDB and DBE programs. The agencies anticipate that this form will be supplemented by attachments pertaining to information specific to each program (e.g. "good character" for purposes of the 8(a) BD program, the $16.6 million gross receipts cap for purposes of the DBE program). SBA and DOT will maintain the confidentiality of information that comes under their control consistent with provisions of the Federal Freedom of Information and Privacy Acts. DOT recipients will maintain the confidentiality of information that comes under their control consistent with the requirements of 49 C.F.R. part 26 DOT.

Responsibilities

The SBA:

Will, pursuant to a written request from a DOT recipient, transfer all necessary paperwork to the requesting DOT recipient for review of an 8(a) BD and/or SDB firm that is certified by SBA. All requested paperwork will be transferred from SBA central office or certification centers to the DOT recipient within 30 days after receipt of this request. If DOT or a DOT recipient has questions about eligibility of the firm, DOT or the recipient may make a separate request to SBA for additional material (e.g., the application and supporting documentation). SBA will provide a copy of this material to DOT or the recipient within 45 days of the additional request. (*)

Will develop uniform procedures for use by all SBA offices to implement SBA's responsibilities under this MOU.

Will grant DBE concerns the right to appeal a denial of 8(a) BD program participation and SDB certification in accordance with 13 C.F.R. Parts 124 and 134.

Will provide appropriate assistance to DOT recipient DBE firms, including information pertaining to the 8(a) BD and SDB application process, filing locations, required documentation and status of the application. The DOT:

Will require its recipients, pursuant to a written request from SBA, to transfer to SBA a copy of the certification documents of a DBE firm that has applied for SBE certification. DOT recipients will transfer this documentation to SBA within 30 days after receipt of this request. If SBA has questions about the eligibility of the firm, SBAmay make a separate request to the recipient for additional material (e.g., the report of the on-site review, the application and support documentation), the recipient will provide a copy of this material to SBA within 45 days of the additional request. (*)

Within 60 days of the signing of this agreement, DOT will contact each recipient and request that a copy of its current DBE directory, along with a confirmation of those firms that have been certified for eligibility under part 26 criteria, be forwarded to SBA.

Will develop uniform procedures for use by all DOT recipients to implement DOT's responsibilities under this MOU. (*)

Agrees to grant 8(a) BD and SBA certified SDB concerns the right to appeal a denial of DBE program participation under 49 CFR parts 23 and 26.

Will require DOT recipients to provide appropriate assistance to SBA certified firms, including information pertaining to the DBE application process, filing locations, required documentation and status of the application. (*)

Term

This MOU will take effect on the date of the latter signature of either the SBA Administrator or the Secretary of Transportation and will remain in effect for 5 years, at which time it may be renewed by mutual agreement of the SBA and the DOT.

Amendment

This MOU may be amended in writing and at any time by mutual agreement of SBA's Associate Deputy Administrator for the Office of Government Contracting and Minority Enterprise Development or his/her designee and DOT's General Counsel or her/his designee.

Termination

Either SBA or DOT may terminate this MOU upon 90 days advance written notice. All participants approved prior to the effective date of termination of this MOU shall remain certified reciprocal participants of the respective SBA and DOT programs. Certified participants will not be decertified absent procedural due process as required by DOT and SBA regulations.

Administration

Points of contact for this MOU are as follows:

For DOT:
Robert C. Ashby
Deputy Assistant General Counsel
1200 New Jersey Avenue, SE,
Room 10424, Washington, DC 20590
(202) 366-9310

For SBA:
Mr. John Klein
Chief Counsel for Special Programs
Office of General Counsel
U.S. Small Business Administration
(202)-619-1772

The SBA and DOT agree to establish a reciprocity committee that includes representatives from each agency for the purpose of overseeing and monitoring the reciprocity process. This committee shall be established within five working days after this MOU is signed and duly executed.

ACCEPTANCE The undersigned parties hereby accept the terms of this MOU:

FOR THE DEPARTMENT OF TRANSPORTATION:

Rodney E. Slater

FOR THE SMALL BUSINESS ADMINISTRATION:

Updated: Thursday, August 22, 2013