

Metropolitan Nashville Airport Authority

MEMORANDUM

TO: Raul Regalado, President and CEO

CC: Monty Burgess, Executive Vice President and COO
Robert Watson, Senior Vice President and CLO
Stan Van Ostran, Vice President and CFO
Amber Gooding, Director of Business Diversity Development

FROM: Julie Zwicknagel, Internal Auditor

DATE: November 23, 2010

SUBJ: Disadvantaged Business Enterprise (“DBE”) Program Audit Report

Background

The Metropolitan Nashville Airport Authority’s (“Authority”) DBE Program was established in 1989 in accordance with the provisions of 49 CFR Part 26, “Participation by Disadvantaged Business Enterprise in Department of Transportation (“DOT”) Financial Assistance Programs.” The objectives of the DBE Program are as follows:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department’s highway, transit, and airport financial assistance programs;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that the Department’s DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet this part’s eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Federal Aviation Administration (“FAA”) recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal

fiscal year are required to have a DBE program, which includes Airport Concession Disadvantaged Business Enterprises (“ACDBEs”).

In accordance with 49 CFR Part 23, “Participation of Disadvantaged Business Enterprise in Airport Concessions,” the Authority has also established an ACDBE Program. The objectives of the ACDBE Program are as follows:

- To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- To ensure that the Department’s ACDBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet this part’s eligibility standards are permitted to participate as ACDBEs;
- To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

It is the Authority’s policy that DBEs have the maximum opportunity to participate in the performance of construction and professional service contracts, and that ACDBEs have the maximum opportunity to participate in the performance of concession and management services contracts. In addition, all contractors performing work for the Authority under federal grant programs are required to take all necessary and reasonable steps, as defined in 49 CFR, Parts 23 and 26, for DBEs and ACDBEs to participate on contracts without discrimination on the basis of race, color, national origin or sex.

The Authority is required to set an overall goal for DBE participation in DOT-assisted contracts. The overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on federally funded contracts. The goal must reflect the determination of the level of DBE participation expected absent the effects of discrimination. The Authority’s overall DBE participation goal for FY2010 through FY2013 is 7.5%.

The Authority is also required to develop DBE goals on individual projects prior to solicitation for bids. The goal should reflect the regional availability of DBEs willing and ready to participate in the project. Once a goal has been established, the Bid Solicitation must convey the requirements of the contractor to comply with the DBE provisions. Contracts may only be awarded to the bidders who have demonstrated good faith effort in meeting the goals.

In accordance with 49 CFR Part 23, the Authority is required to establish an overall ACDBE goal. The Authority’s ACDBE goal for FY 2009 through FY 2011 is 16.3% of the total gross receipts for concessions at the Airport. The following are not included in the total gross receipts for concessions:

- The gross receipts of car rental operations;
- The dollar amount of a management contract or subcontract with a non-ACDDBE;
- The gross receipts of business activities to which a management contract or subcontract with a non-ACDDBE pertains; and
- Any portion of a firm's estimated gross receipts that will not be generated from a concession.

In general, to be eligible for the DBE/ACDDBE program, persons must own 51% or more of a "small business," establish that they are disadvantaged within the meaning of DOT regulations, and prove they control their business. The following general guidelines determine whether a firm is eligible for the DBE program:

- **Business Status** – A firm must be in existence, operational and in business for a profit. The disadvantaged owner(s) of the firm must possess the resources and expertise to operate in the firm's field of work. Firms must provide more than prima facie evidence that they do not exist only on paper and that they were not organized in an attempt to take advantage of project goals.
- **Small Business Size** – A firm (including its affiliates) must be a small business as defined by Small Business Administration ("SBA") standards. It must not have annual gross receipts over \$22.41 million in the previous three years (\$52.47 million for airport concessions in general with some exceptions).
- **Social and Economic Disadvantaged Status** – Citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals.
- **Personal Net Worth** – The majority owner(s) of the firm should not have personal net worth ("PNW") over \$750,000. In this calculation, their personal residence and their ownership in the firm that is seeking certification are not counted towards their personal net worth.
- **Ownership** – A firm must be 51% owned by a socially and economically disadvantaged individual(s). Ownership must be acquired through real and substantial contributions of expertise, capital or other tangible personal assets.
- **Control** – To establish control, the disadvantaged owner(s) must demonstrate sufficient expertise in the firm's field of operations to control the overall direction and the day-to-day operations of the firm. This control is comprised of managerial/administrative and operational/on-site.
- **Independence** – The firm should possess adequate assets/resources to operate self-sufficiently in the 5 areas considered critical to the operations of a firm: personnel, facilities, equipment, financial and/or bonding support, and supervision.

Firms meeting the eligibility standards must contact the specific state or local transportation entity for which they wish to participate in contracts. In addition to requesting documentary evidence substantiating a firm's size, owner's personal net worth, independence, and an individual's ownership and control, recipients are required to perform an on-site visit to the firm's offices and job sites. To ease the burden of applying to multiple DOT recipients within

a state, the DOT requires a Unified Certification Program to be developed so that applicants need only apply once for DBE certification that will be honored by all recipients in the state.

The state of Tennessee has established the Tennessee Uniform Certification Program (“TNUCP”). The TNUCP is charged with the responsibility of certifying firms for the purpose of maintaining a database of certified DBEs for the United States Department of Transportation grantees in the state of Tennessee. The following member agencies certify DBEs:

- Tennessee Department of Transportation
- Metropolitan Knoxville Airport Authority (DBE and ACDBE)
- Chattanooga Metropolitan Airport Authority (DBE and ACDBE)
- Memphis Shelby County Airport Authority (DBE and ACDBE)
- Metropolitan Nashville Airport Authority (DBE and ACDBE)
- Chattanooga Area Regional Transportation Authority
- Memphis Area Transit Authority
- Metropolitan Transit Authority (Davidson County)
- Jackson Transit Authority
- Smyrna Airport Authority
- Tri-Cities Airport Commission
- Clarksville Transit System
- Regional Transportation Authority (Middle TN)
- Knoxville Area Transit
- Jackson Airport Authority
- Johnson City Transit

Once a firm has been certified through the TNUCP program, the DBE(s) must provide a completed TNUCP DBE Renewal Application to the certifying agency on the anniversary date of their initial certification. The application must include the following documents:

- Copy of the most current corporate tax returns with all attached schedules.
- Copy of the most current personal tax returns with all attached schedules.
- Completed Renewal Application, signed by applicant(s) and notarized.

The certifying agency must review all the above information to ensure the DBE(s) still meets the criteria under 49 CFR, Parts 23 and 26.

DBE programs must also include a monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award are actually performed by DBEs. The Authority has established contract compliance processes that involve the review and enforcement of specific DBE utilization terms and conditions associated with related contracts. The process involves, but is not limited to, the collection and review of payment data and supporting documentation to ascertain that the committed levels of DBE participation are achieved.

The Authority is required to compile reports on an annual basis of actual DBE participation in contracting (commitments, awards, and payments) and by airport concessions. Airports must submit DBE participation reports to the FAA for 49 CFR Part 26 by December 1st and Part 23 reports by March 1st.

On August 15, 2009, the Metropolitan Nashville Airport Authority Office of Business Diversity Development (“BDD”) Disadvantaged Business Enterprise and Small, Minority, and Woman-Owned Business Policy and Process Manual (“DBE and SNWBE Policy and Process Manual”) was approved to establish requirements for the office of BDD.

Objectives

The objectives of the audit were as follows:

1. Determine business development and outreach efforts are being performed by the Office of BDD;
2. Determine compliance with DBE certification procedures;
3. Determine compliance with DBE contract compliance procedures; and
4. Document and evaluate existing internal controls.

Testing

In order to satisfy the audit objectives, the following tests were performed:

1. Determined the following business development and outreach efforts are being performed by BDD:
 - a. Established cooperative relationships with business organizations and community stake holders through participation in business expos, trade associates, professional conferences and meetings.
 - b. Informed DBEs of contracting opportunities through emails and flyers about project pre-bid meetings and contractor to subcontractor networking sessions.
 - c. Facilitated educational and technical assistance workshops as a method of increasing competencies and capacity of potential DBE firms attempting to produce business with the Authority.
 - d. Reported DBE contracting activity monthly to the Board of Commissioners and senior leadership.
 - e. Developed DBE goals on an individual project level in accordance with acceptable goal setting methodologies as outlined in 49 CFR Part 26.
 - i. Verified the Authority submitted DBE participation reports to the FAA as required by 49 CFR Part 23 and 26.
2. Obtained a current listing of all DBEs and ACDBEs certified by the Authority. Selected a sample for detailed testing and performed the following:
 - a. Determined firm submitted application and all supporting documentation included on the DBE Uniform Certification Application Supporting Documents Checklist, including but not limited to the following:

- i. Work experience resumes for all owners and officers of the firm.
- ii. Personal Financial Statement.
- iii. Personal tax return for the past three years.
- iv. The firm's tax returns and all related schedules for the past three years.
- v. Documented proof of contributions used to acquire ownership for each owner.
- vi. The firm's signed loan agreements, security agreements, and bonding forms.
- vii. Description of all real estate owned/leased by the firm and documented proof of ownership/signed leases.
- viii. List of equipment leased and signed lease agreements.
- ix. List of construction equipment and/or vehicles owned and titles/proof of ownership.
 - x. Year-end balance sheets and income statements for the past three years.
 - xi. All relevant licenses, license renewal forms, permits, and haul authority forms.
 - xii. DBE, ACDBE, SBA 8 (a) or SDA certifications, denials, and/or decertification's, if applicable.
 - xiii. Bank authorization and signatory cards.
 - xiv. Schedule of salaries paid to all officers, managers, owners, and/or directors of the firm.
 - xv. Trust agreements held by any owner claiming disadvantaged status, if any.
- b. Determined compliance with the initial review process.
 - i. Verified after the initial application review, BDD sent a letter via certified mail to the firm advising the applicant of any additional information to be received, which allowed the applicant for a thirty (30) calendar day turnaround from the date of the letter, if applicable.
 - ii. Verified if the applicant did not respond with all the information as requested, BDD sent a second letter via certified mail requesting the information, which allowed the applicant a fifteen (15) calendar day turnaround, if applicable. A follow-up telephone call was made to the applicant and documented as part of the application.
 - iii. Verified if the applicant did not respond with all the information as requested, BDD sent a third letter via certified mail requesting the information, which allowed the applicant a fifteen (15) calendar day turnaround, if applicable. The letter indicated that refusal to send the requested information would result in a denial or certification based on 49 CFR Part 26.73 (c) and 26.109 (c). A final follow-up telephone call was made to the applicant and documented as part of the application.
- c. Determined Nashville Nails on-site review was not scheduled within ninety (90) days of the receipt of the applicants completed application and supporting documents.
 - i. Verified the firm's on-site interview was not properly documented and the applicant did not sign on-site verification forms.

- d. Determined compliance with eligibility criteria standards, including but not limited to the following:
 - i. Business status.
 - ii. Small Business Size.
 - iii. Social and economical disadvantaged status.
 - iv. Personal net worth.
 - v. Ownership.
 - vi. Independence.
 - e. Determined non compliance with InShuttle Transportation Inc. (“InShuttle”) and Neely’s Barb-B-Que (“Neely’s”) DBE annual renewal certification procedures.
 - i. Verified DBE provided the Authority with a completed TNUCP Renewal Application on the anniversary date of their initial certification and included the following documents:
 - 1. A copy of the most current corporate tax returns with all attached schedules.
 - 2. A copy of the most current personal tax returns with all attached schedules.
 - 3. A completed renewal application signed by applicant(s) and notarized.
 - ii. Verified all of the above information did not meet the criteria under 49 CFR Parts 23 and 26 and a memo was not sent to the BDD Director recommending renewal or denial.
 - iii. Verified if more information was needed to make a determination, BDD did not follow the same process as the aforementioned initial review process identified in section b.
 - f. Determined the Authority’s certification procedures did not comply with the overall TNUCP program goals and 49 CFR Parts 23 and 26.
3. Determined BDD is reviewing payment data and supporting documentation to ascertain that the committed levels of DBE participation are achieved.
 4. Determined compliance with the following pre-award contract compliance procedures:
 - a. Verified after notification of an upcoming procurement opportunity, BDD developed the appropriate goal for a project utilizing the Authority’s Participation Level Request Form.
 - b. Verified BDD attended pre-proposal or pre-bid meetings to address any DBE questions from potential bidders/responders and explained DBE participation requirements, as well as provided a list of certified DBE businesses which may be utilized by potential bidders or responders for the proposal/bids.
 - c. Determined after receipt of bids or proposals, BDD verified and analyzed the DBE participation or good faith effort (“GFE”) for adherence to the set goal submitted by each proposer or bidder.
 5. Determined compliance with the following post-award contract compliance procedures:
 - a. Determined BDD did not perform on-site project monitoring to verify work performed by those contracted DBEs for project #0579: Reconstruct Taxiway Bravo South.

- b. Determined after receipt of a request for payment from the prime contractor/consultant, BDD reviewed the information submitted and checked the DBE participation.
- c. Determined after final calculations of the DBE participation, BDD completed either a memo regarding the participation for the project or inserted that information into the department's own close out report.
6. Determined compliance with post-award changes to the scope of work.
7. Through inquiry and observations, reviewed the existing internal controls in place.

Conclusion

Based upon the audit, the following was determined with respect to the stated objectives:

1. An on-site review was not performed for Nashville Nails, as noted in finding #1.
2. BDD's files were missing corporate tax return information to properly assess InShuttle did not exceed size standards in determining eligibility of annual renewal of DBE certification, as noted in finding #2.
3. A memo from the Certification Specialist is not being sent to the BDD Director recommending renewal or denial of annual renewal certifications, as noted in finding #3.
4. Transfare's annual certification renewal was not processed in a timely manner, as noted in finding #4.
5. Neely's has not provided BDD with requested annual renewal certification information for a period in excess of one year, as noted in finding #5.
6. On-site monitoring was not performed for project #0579: Reconstruct Taxiway Bravo South, as noted in finding #6.

Finding #1

Observation

An on-site review was not performed for Nashville Nails.

Background

According to II. Certification Procedures, A. DBE Certification Process, 2. Initial Review, On-Site Review of the DBE and SMWBE Policy and Process Manual, “An on-site interview will be conducted after all information required on the DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST has been submitted for review. During the on-site interview, firms applying for certification must verify their status by making available for review the appropriate books, records, and other documents pertaining to the financial and operational aspects of the firm and its principals. A tour of work sites, office and storage space, and a survey of equipment and supplies must be made. An on-site review must be scheduled prior to a certification decision. All new firms’ on-site interviews must be recorded and the applicant must sign the on-site verification form. For out-of-state firms, an on-site visit and current certification letter must be received from the applicant’s home state in writing prior to a certification decision.”

An objective of the audit was to determine that an on-site review was performed and verify the firm’s on-site interview was properly documented and the applicant signed the on-site verification form.

Through audit testing it was determined that there was not any supporting documentation in BDD’s files to verify the performance of an on-site review for Nashville Nails.

Recommendation

BDD should perform an on-site review for Nashville Nails and update BDD file information with the appropriate supporting documentation.

Management Response

The certification office has conducted a site visit and a record of such is in the file.

Finding #2

Observation

BDD's files were missing corporate tax return information to properly assess InShuttle did not exceed size standards in determining eligibility of annual renewal of DBE certification.

Background

According to II. Certification Procedures, A. DBE Certification Process, 4. Annual Renewal of Certification of the DBE and SMWBE Policy and Process Manual, "The DBE(s) must provide a completed TNUCP DBE Renewal Application to MNAA every year on the anniversary date of their initial certification. This application must include the following documents as listed on the Disadvantaged Business Enterprise Renewal Application letter:

- a. Copy of most current corporate tax returns with all attached schedules.
- b. Copy of the most current personal tax returns with all attached schedules.
- c. Completed Renewal Application, signed by applicant(s) and notarized.

When MNAA has received a renewal application, the Certification Officer must ensure that the copy of the most current corporate tax returns (if applicable) with all attached schedules is in order. Average annual receipts must be within SBA Regulations 13 CFR Part 121. The DBE applicant(s) should maintain the highest salary/earnings amongst the officers of the corporation. In addition, the DBE applicant(s) must continue to hold at least 51% of the ownership in the company.

A copy of the most current personal tax returns with all attached schedules must also be reviewed. Again, average annual receipts must remain within SBA Regulation 13 CFR Part 121. Finally, the completed Renewal Application, signed by applicant(s) and notarized must be completed in its entirety.

The officer must scrutinize all of the above information to ensure the DBE(s) still meets the criteria under 49 CFR Part 26. If all information is present, the information will be reviewed, and a memo will be sent to the BDD Director recommending renewal or denial. The Director has the discretion to review the affidavit/application for further analysis. If the Director approves the memo, then a letter is drafted by the reviewer for the Director to sign. This letter is then sent out to the DBE(s)."

An objective of the audit was to determine that BDD was complying with the aforementioned DBE annual renewal certification procedures. Through audit testing it was determined that InShuttle had submitted all the required 2009 annual renewal certification information. However, BDD's files were missing the 2007 and 2005 corporate tax returns to properly assess that InShuttle did not exceed the size standards eligibility criteria.

A firm is not an eligible DBE in any Federal fiscal year if the firm (including affiliates) has had average annual gross receipts, as defined by SBA regulations (max gross receipts \$7

million for NAICS 485510), over the firm's previous three fiscal years, in excess of \$22.41 million.

BDD is in the process of InShuttle's 2010 annual renewal certification and recognized the file was missing information to properly assess the size standards eligibility criteria. Accordingly, BDD has requested InShuttle's 2007 corporate tax return information.

Recommendation

BDD should ensure all file information is complete to properly assess whether the DBE(s) meet annual renewal certification requirements including size standards eligibility criteria.

Management Response

BDD has gone through all the DBE certification files and obtained any missing information to make sure the files are complete. BDD will continue to assess DBE's continued eligibility in the program.

Finding #3

Observation

A memo from the Certification Specialist is not being sent to the BDD Director recommending renewal or denial of annual renewal certifications.

Background

According to II. Certification Procedures, A. DBE Certification Process, 4. Annual Renewal of Certification of the DBE and SMWBE Policy and Process Manual, "The DBE(s) must provide a completed TNUCP DBE Renewal Application to MNAA every year on the anniversary date of their initial certification. This application must include the following documents as listed on the Disadvantaged Business Enterprise Renewal Application letter:

- a. Copy of most current corporate tax returns with all attached schedules.
- b. Copy of the most current personal tax returns with all attached schedules.
- c. Completed Renewal Application, signed by applicant(s) and notarized.

When MNAA has received a renewal application, the Certification Officer must ensure that the copy of the most current corporate tax returns (if applicable) with all attached schedules is in order. Average annual receipts must be within SBA Regulations 13 CFR Part 121. The DBE applicant(s) should maintain the highest salary/earnings amongst the officers of the corporation. In addition, the DBE applicant(s) must continue to hold at least 51% of the ownership in the company.

A copy of the most current personal tax returns with all attached schedules must also be reviewed. Again, average annual receipts must remain within SBA Regulation 13 CFR Part 121. Finally, the completed Renewal Application, signed by applicant(s) and notarized must be completed in its entirety.

The officer must scrutinize all of the above information to ensure the DBE(s) still meets the criteria under 49 CFR Part 26. If all information is present, the information will be reviewed, and a memo will be sent to the BDD Director recommending renewal or denial. The Director has the discretion to review the affidavit/application for further analysis. If the Director approves the memo, then a letter is drafted by the reviewer for the Director to sign. This letter is then sent out to the DBE(s)."

An objective of the audit was to determine that a memo was sent to the BDD Director recommending renewal or denial of the annual renewal certification. Through audit testing it was determined that the Certification Specialist does not send a memo to the BDD Director recommending renewal or denial and the Director of BDD is not signing the annual renewal certification letter sent out to DBE(s).

Instead, the Certification Specialist is utilizing a Certification Renewal Checklist. The checklist includes the firm's name, date renewal packet received, complete/incomplete documents, review date, classification, NAICS code, description, SBA maximum gross amount, and firms gross receipts amounts. The checklist is completed by the Certification Specialist through the annual certification process and is included in the DBE(s) file to support the annual renewal certification.

Upon completion of the Certification Renewal Checklist, the Certification Specialist determines whether the DBE has met all annual renewal certification requirements. If so, the Certification Specialist sends a letter which is signed by the Specialist notifying the DBE(s) of their annual renewal of DBE certification.

Although BDD is not complying with the DBE and SMWBE Policy and Process Manual requirements, the current process seems to sufficiently assess the annual renewal certification requirements. However, the Director of BDD should review and initial the Certification Renewal Checklist to support the renewal assessment made by the Certification Specialist.

Recommendation

BDD should comply with the annual renewal certification requirements included in the DBE and SMWBE Policy and Process Manual or revise the policy to reflect current practices.

Management Response

BDD will revise the SMWBE Policy and Process Manual to reflect current practices.

Finding #4

Observation

Transfare's annual certification renewal was not processed in a timely manner.

Background

According to II. Certification Procedures, A. DBE Certification Process, 4. Annual Renewal of Certification of the DBE and SMWBE Policy and Process Manual, "The DBE(s) must provide a completed TNUCP DBE Renewal Application to MNAA every year on the anniversary date of their initial certification. This application must include the following documents as listed on the Disadvantaged Business Enterprise Renewal Application letter:

- a. Copy of most current corporate tax returns with all attached schedules.
- b. Copy of the most current personal tax returns with all attached schedules.
- c. Completed Renewal Application, signed by applicant(s) and notarized.

The officer must scrutinize all of the above information to ensure the DBE(s) still meets the criteria under 49 CFR Part 26. If all information is present, the information will be reviewed, and a memo will be sent to the BDD Director recommending renewal or denial. The Director has the discretion to review the affidavit/application for further analysis. If the Director approves the memo, then a letter is drafted by the reviewer for the Director to sign. This letter is then sent out to the DBE(s). If more information is needed, the following process will occur:

The first letter is sent out to the applicant should allow for a thirty (30) day turnaround from the date of the letter. It must be noted on the renewal application letter as well as on the renewal form. This letter and form must be sent via certified mail.

If the applicant does not respond with all information as requested, then a second letter and form are sent via certified mail to the applicant for a second request for information. The second letter and form will state a fifteen (15) day turnaround and the applicant will be informed that refusal to send the requested information will result in a possible denial of certification on 49 CFR Part 26.73 (c) and 49 CFR Part 26.109 (c). This section of the Regulation must be cited in the letter. A follow-up telephone call must also be made to the applicant and documented as part of the application. A copy of the first letter needs to be enclosed and a reference with the date of the telephone call should be included in this second letter.

If the applicant does not respond with all information as requested in the second letter, a third letter is sent via certified mail to the applicant for a final request for information. The third letter and form will state a fifteen (15) day turnaround and the applicant will be informed that refusal to send the requested information will result in a possible denial of certification based on 49 CFR Part 26.109 (c). In addition, the applicant must be aware that 49 CFR Part 26.87 (b) (d) will be enforced. This Regulation must be stated in their entirety. The applicant(s)

must be made aware their certification is subject to an informal Hearing if they do not respond to the request for information by the Processing Agency.”

An objective of the audit was to determine compliance with DBE annual renewal certification procedures including verifying if additional information was needed to make a determination, BDD followed the aforementioned process.

Through audit testing it was determined that Transfare provided BDD with the annual renewal certification information according to the aforementioned timeline; however, BDD did not process the annual renewal certification in a timely manner, as detailed below.

Date	Request	Due Date
12/16/2009	BDD completed initial review and sent letter requesting the following information: work experience resumes, corporate tax returns for 2006 - 2008, personal tax return for 2008, balance sheets and income statements for 2006 - 2008, and schedule of salaries for owners & officers.	12/31/2009
1/5/2010	BDD sent letter stating the Authority was in the process of reviewing the file and would send correspondence to the firm once the review had been completed.	No date for review process identified
5/24/2010	BDD sent letter notifying Transfare that the firm had been renewed as a certified DBE.	

As noted above, on January 5, 2010, BDD sent Transfare a letter stating the Authority was in the process of reviewing the file information. BDD did not complete the review process until May 24, 2010, which is approximately 139 days or over 4 ½ months. 4 ½ months seems to be an excessive amount of time to complete an annual renewal certification.

The DBE and SMWBE Policy and Process Manual specifically define the requirements of the DBE in submitting requested information to the Authority (1st letter – 30 day turnaround, 2nd letter – 15 day turnaround and 3rd letter – 15 day turnaround). However, the Process Manual does not define the amount of time in which BDD should make a certification determination.

Although 49 CFR, Part 26.83 (k) states “If you are a recipient, you must make decisions on application for certification within 90 days of receiving the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.”

Recommendation

BDD should revise the DBE and SMWBE Policy and Process Manual to include the established time frame in which BDD will make decisions on applications for certification and annual renewals in accordance with 49 CFR Part 26 guidelines.

Management Response

BDD does not agree. The timeframes are included by reference to the regulations in 49 CFR Part 23 and 26. This particular case was very complex and the department utilized a consulting firm to assist with this review and several others. Due to an overwhelming number of documents, the review process lagged behind.

BDD is committed to ensuring that initial certification applications are processed within 90 days of receiving a completed application and all documents.

Finding #5

Observation

Neely's has not provided BDD with requested annual renewal certification information for a period in excess of one year.

Background

According to II. Certification Procedures, A. DBE Certification Process, 4. Annual Renewal of Certification of the DBE and SMWBE Policy and Process Manual, "The DBE(s) must provide a completed TNUCP DBE Renewal Application to MNAA every year on the anniversary date of their initial certification. This application must include the following documents as listed on the Disadvantaged Business Enterprise Renewal Application letter:

- d. Copy of most current corporate tax returns with all attached schedules.
- e. Copy of the most current personal tax returns with all attached schedules.
- f. Completed Renewal Application, signed by applicant(s) and notarized.

The officer must scrutinize all of the above information to ensure the DBE(s) still meets the criteria under 49 CFR Part 26. If all information is present, the information will be reviewed, and a memo will be sent to the BDD Director recommending renewal or denial. The Director has the discretion to review the affidavit/application for further analysis. If the Director approves the memo, then a letter is drafted by the reviewer for the Director to sign. This letter is then sent out to the DBE(s). If more information is needed, the following process will occur:

The first letter is sent out to the applicant should allow for a thirty (30) day turnaround from the date of the letter. It must be noted on the renewal application letter as well as on the renewal form. This letter and form must be sent via certified mail.

If the applicant does not respond with all information as requested, then a second letter and form are sent via certified mail to the applicant for a second request for information. The second letter and form will state a fifteen (15) day turnaround and the applicant will be informed that refusal to send the requested information will result in a possible denial of certification on 49 CFR Part 26.73 (c) and 49 CFR Part 26.109 (c). This section of the Regulation must be cited in the letter. A follow-up telephone call must also be made to the applicant and documented as part of the application. A copy of the first letter needs to be enclosed and a reference with the date of the telephone call should be included in this second letter.

If the applicant does not respond with all information as requested in the second letter, a third letter is sent via certified mail to the applicant for a final request for information. The third letter and form will state a fifteen (15) day turnaround and the applicant will be informed that refusal to send the requested information will result in a possible denial of certification based on 49 CFR Part 26.109 (c). In addition, the applicant must be aware that 49 CFR Part 26.87 (b) (d) will be enforced. This Regulation must be stated in their entirety. The applicant(s) must be made aware their certification is subject to an informal Hearing if they do not respond to the request for information by the Processing Agency.

In addition, a final follow-up telephone call must be made to the applicant and documented as part of the application. Copies of the first and second letters must be enclosed and the dates of both telephone calls to the applicant must be reference in the third and final letter.

If the applicant does not provide the necessary documentation to renew their certification, then a “Notice of Decision”, as cited in 49 CFR Part 26.87 (g), letter must be sent to the applicant that informs them of the removal of their TNUCP DBE certification referenced. Finally, documentation needs to be delivered to the TDOT DBE Program so they can remove the respective DBE name from the TNUCP DBE Listing.”

An objective of the audit was to determine compliance with DBE annual renewal certification procedures including verifying if additional information was needed to make a determination, BDD followed the aforementioned process. Through audit testing it was determined that BDD has been in the process of receiving annual renewal certification information from Neely’s for more than a year.

Additionally, a change of ownership was verbally communicated to BDD. The ownership changed from Tony Neely owning 51% and Patrick Neely owning 49% of the business to an ownership percentage of 50/50. Accordingly, BDD required additional change of ownership information to make a proper assessment of Neely’s certification. BDD’s correspondence timeline requesting annual renewal certification information from Neely’s is detailed below.

Date	Request	Due Date
6/2/2009	BDD sent renewal letter requesting TNUCP application, personal financial statements, corporate & personal tax returns for 2006, 2007, and 2008.	7/2/2009
7/2/2009	BDD sent second letter requesting the same information stated in the 6/2/2009 letter.	7/17/2009
8/5/2009	BDD sent letter stating the Authority received Neely's application on 7/21/09; however, the application was incomplete and did not contain supporting documents. The following documents were requested: work experience resumes, personal financial statement, personal and corporate tax returns for the past 3 years, documented proof of contributions used to acquire ownership for each owner, signed loan agreements, security agreements, bonding forms, descriptions of a real estate, list of equipment leased and signed lease agreements, documented proof of any transfers of assets to/from firm, year-end balance sheets and income statements for the past 3 years, all relevant licenses, DBE, ACDBE, and SBA certifications, bank authorization and signatory cards, schedule of salaries, trust agreements, and incorporation documents.	9/5/2009
2/10/2010	BDD sent letter requesting the the same information stated in the 8/5/2009 letter.	3/10/2010
5/3/2010	BDD sent letter requesting the following information: work experience resumes, documented proof of contributions used to acquire ownership, documentation that supports ownership changes, signed loan agreements, security agreements, bonding forms, descriptions of all real estate, all relevant licenses, DBE, ACDBE, and SBA certifications, bank authorization and signatory cards, schedule of salaries, trust agreements, and incorporation documents.	5/17/2010
5/17/2010	BDD sent letter requesting the following information: work experience resumes, documented proof of contributions used to acquire ownership, copies of personal tax returns for Patrick Neely for 2006, 2007 & 2008, TNUCP application for Patrick Neely, a letter that states when ownership was changed to 50% to 50%, signed loan agreements, security agreements, bonding forms, all relevant licenses, bank authorization and signatory cards, schedules of salaries, copies of current stock certificates, and incorporation documents.	6/1/2010
8/1/2010	BDD sent a final request letter to Neely's requesting the following information: personal financial statement for Patrick Neely, copies of personal tax returns for Patrick Neely for 2006, 2007 & 2008, TNUCP application for Patrick Neely, a letter that states when ownership was changed to 50% to 50%, bank authorization and signatory cards, schedules of salaries, copies of current stock certificates, and incorporation documents.	8/16/2010

In addition to the aforementioned correspondence, BDD made several telephone calls and sent emails requesting the above information. As of August 25, 2010, BDD had not received all the requested information from Neely's.

Neely's is a partner in the airport's concession program and BDD has been more than willing to work with Neely's to renew their ACDBE certification and continue a business relationship. However, BDD is required to follow the proper certification guidelines. If an applicant does not provide the necessary documentation to be considered for certification as a DBE with the Tennessee Uniform Certification Program, the applicant will be denied certification pursuant to 49 CFR Part 26 as noted below.

§26.73(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

§26.109(c) Cooperation. All participants in the Department’s DBE Program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

Recommendation

BDD should proceed with the denial or removal of Neely’s ACDBE certification.

In the future, BDD should follow the annual renewal certification timeline outlined in the DBE and SMWBE Policy and Process Manual as well as 49 CFR Parts 26.73(c) and 26.109(c) guidelines.

Management Response

Neely’s has been certified. This was another unusual circumstance and BDD will follow the process for certifications and recertifications.

Finding #6

Observation

On-site monitoring was not performed for project #0579: Reconstruct Taxiway Bravo South.

Background

According to III. Contract Compliance Procedures, D. Post-Award Compliance Procedures of the DBE and SMWBE Policy and Process Manual, “BDD staff member determines, based upon the work that the DBE subcontractor/sub consultant is to perform and the project schedule, a schedule for random on-site monitoring. This on-site monitoring verifies the work performed by those contracted DBE’s, as only work self-performed counts towards participation.”

An objective of the audit was to determine BDD was performing on-site project monitoring to verify work performed by those contracted DBE's. Through audit testing it was determined that BDD did not perform on-site monitoring for project #0579: Reconstruct Taxiway Bravo South.

Recommendation

BDD should perform on-site monitoring to ensure that work committed to DBEs at contract award is actually performed by DBEs.

Management Response

BDD compliance does perform site visits. This particular project chosen for review was already in progress before the establishment of the BDD compliance department.