

March 20, 2015

Certified Mail
Return Receipt Requested

Reference No.: 14-0121

Ms. Marleen M. Noel
307 Industries, LLC
[REDACTED]
Temecula, CA 92592

Dear Ms. Noel:

307 Industries, LLC appeals the California Department of Transportation, California Unified Certification Program (CUCP)'s September 9, 2013, determination that 307 Industries is ineligible for certification as a Disadvantaged Business Enterprise (DBE) under criteria set forth in 49 C.F.R. Part 26 (the Regulation). We have carefully reviewed your November 27, 2013, appeal and CUCP's administrative record as a whole; and conclude that CUCP's decision is supported by substantial record evidence and not inconsistent with any substantive or procedural certification provision. We therefore affirm the denial of DBE certification under §26.89(f)(1).¹ **(The firm may reapply for DBE certification as the appropriate waiting period has past).**

CUCP denied the firm's certification application on grounds that the firm did not meet its burden of proof under §§26.61(b) and 26.69(b). Under §26.61(b), the firm, not the certifying authority, has the burden of proving all aspects of eligibility for DBE certification. 307 Industries failure to prove that it meets any single requirement for certification renders the firm ineligible. We find, based on careful analysis of the entire administrative record, that the firm failed to prove by a preponderance of evidence that you as the firm's socially and economically disadvantaged owner satisfied the requirements of §26.69(b). That finding is sufficient for sustaining the denial.

Authority

The specific authority for affirming the certification denial includes the following:

§26.61(b): The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

¹ This provision provides that "The Department affirms [the certifier's] decision unless it determines, based on the entire administrative record, that [the] decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification").

§26.69(a): In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices

§26.69(b): To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. (1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. (2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement. (3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

Discussion and Decision

According to the firm's uniform certification application (UCA) submitted to CUCP in June 2013, 307 Industries was established in 2005. One version of the UCA contains the entry "not applicable" in the blocks intended for the percentage of the firm owned by you and your non-disadvantaged spouse, Dan Noel. The application appears to have been resubmitted in September 2013 with your initials next to these blocks indicating equal 50% ownership, a fact you confirm in an email to CUCP on September 4, 2013.

We agree with CUCP's conclusion that at the time of its DBE certification application, 307 Industries did not meet the requirements of §26.69(b) by the preponderance of the evidence standard. You indicated in your May 31, 2014, appeal to the Department that your ownership percentage has been corrected. However, at the time of CUCP's denial decision, 307 Industries was owned equally by you and your non-disadvantaged spouse, and you have not demonstrated ownership of at least 51% of the firm, which is a requirement under §26.69(b). In summary, we affirm CUCP's certification denial decision

Conclusion

The evidence supports a conclusion that 307 Industries did not meet the eligibility requirements for the DBE program and that CUCP's decision based on ownership grounds cited above is proper and not inconsistent with the substantive or procedural provisions of Part 26. We affirm. This decision is administratively final and not subject to petitions for review.

Sincerely,

Marc D. Pentino, Acting Associate Director
External Civil Rights Programs Division
Departmental Office of Civil Rights

cc: CUCP