

July 29, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference Number: 14-0082

Mr. Zhong Chen, President
Dynasty Group, Inc.
205 W. Wacker Drive, Suite 1450
Chicago, IL 60606

Dear Mr. Chen:

This is in reference to an appeal of Disadvantaged Business Enterprise (DBE) decertification of Dynasty Group, Inc. (Dynasty Group) by the Northeast Illinois Regional Commuter Railroad Corporation (Metra) on December 17, 2013. We have carefully reviewed the record from Metra and the material you submitted on the firm's behalf and conclude that substantial evidence supports Metra's decision, which we affirm pursuant to §26.89(f)(1) of the Department's DBE Regulation Title 49 Code of Federal Regulations (C.F.R.) Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Program." (Department affirms certifier decision unless it determines, based on the entire administrative record, decision is unsupported by substantial evidence or inconsistent with substantive or procedural provisions concerning certification).

Dynasty Group submitted a No-Change Affidavit to Metra in June 2013, along with your personal net worth statement. In this statement, you calculated your net worth to be [REDACTED]. According to a letter from you dated October 3, 2013, contained in Metra's record, you met with the agency to discuss issues concerning loans and related entries on the firm's tax returns. The primary entry at issue in this case appears to be a \$[REDACTED] "loan from shareholders" that is reported on the firm's 2012 tax return, which Metra added a portion of to the assets in your statement. In your October 3rd letter, you indicate that the \$[REDACTED] reported on the return was comprised of a loan from you and your spouse [REDACTED], estimated unpaid tax ([REDACTED]) and a loan from your mother ([REDACTED]). You reported [REDACTED] on your personal net worth statement submitted to Metra, an amount you alleged in your October 3 letter constitutes approximately half of your joint loan you held with your spouse.

On October 22, 2013, Metra informed you in writing that the agency found reasonable cause to believe Dynasty Group was no longer eligible for the DBE program based on §26.67(b) "Rebuttal Presumption of Disadvantaged," and proposed to decertify the firm because your personal net worth was over [REDACTED]. In this notice, Metra stated:

At the time of the submission of the No-Change Affidavit dated May 31, 2013, the personal financial statement of Mr. Zhong Chen, the 100% owner of Dynasty Group calculated a personal net worth of \$ [REDACTED] exceeding the SBA standard¹ of [REDACTED]. This calculation was based upon the inclusion of Mr. Chen's interest in an outstanding loan from the shareholder to the company in the amount of [REDACTED]. (Notice of Intent, Oct. 22, 2013)

Metra offered you an opportunity to submit a written appeal to the agency or to request an informal hearing. On November 13, 2013, you requested an informal hearing to respond to Metra's notice of removal; and one was held on December 16, 2013. You also submitted a written response to Metra on December 17, 2013, addressing their conclusions and including a revised personal net worth statement and amended tax returns for 2011 and 2012 (signed only by you) which you stated corrects the manner in which the loan from yourself and your spouse are reported. You stated in this correspondence that you enclosed a receipt showing that you mailed these returns and requested additional time so that you could get confirmation from the Internal Revenue Service (IRS) of their filing. The record contains your December 16, 2013, letter to the IRS requesting to file amended returns for 2012 and 2011. You stated: "The original returns reflected the balance of joint asset on line 19 between husband and wife. The amended returns correct the balance to the owner's portion of the loan and credit the balance to line 20. The column (b) on lines 19 and 20 of the 2012 return was also corrected accordingly to reflect the correction taking place on the 2011 return."

Metra decertified the firm from the DBE program on December 27, 2013, repeating the language above and adding a phrase referencing how the shareholder loan is reported on the company's tax return. Metra stated:

At the time of the submission of the no-change affidavit dated May 31, 2013, the personal net worth (PNW) statement of Mr. Zhong Chen 100% shareholder of Dynasty Group was calculated at [REDACTED] exceeding the PNW limit of [REDACTED]. This calculation was based upon the inclusion of Mr. Chen's interest in an outstanding loan from the shareholder to the company in the amount of \$1,617,434, **which Mr. Chen reported as a receivable on the 2012 corporate federal tax return.** Mr. Chen's PNW is above [REDACTED] million PNW requirements, therefore making Mr. Chen ineligible to participate in the DBE program. (Decertification Letter, Dec. 27, 2013, emphasis added)

You appealed Metra's decision on the firm's behalf to the Department on January 23, 2014, alleging that Metra had agreed to allow the firm more time to provide proof that amended returns were filed and that the agency base its decision on those corrected returns. Along with your appeal to the Department, you submitted Dynasty Group's amended returns for 2009, 2011, and 2012, however, there is no evidence that these returns were submitted to the IRS or that you provided this proof to Metra prior to their decertification decision.

¹ Metra mistakenly refers to the \$1.32 million standard as an SBA standard instead of the personal net worth threshold set by the Department.

Pursuant to §26.89(d), the Department requested Metra's complete administrative record, which we received April 14, 2014. In its April 8, 2014, letter to the Department, Metra stated:

We take exception to a few assertions made by Mr. Chen in his February 21, 2014, appeal letter. . . Metra brought this whole issue of Mr. Chen being over the PNW limit to him on September 24, 2013 at a meeting [at] Metra's headquarters. At no time during the conversations, the September 24, 2013, meeting or December 16, 2013 hearing did Metra indicate we would allow or consider Mr. Chen's amended tax returns and PNW statements, which were submitted at the hearing, in the determination of the Dynasty Group certifications status.

Metra reiterated these points in a July 21, 2015, letter to the Department, noting that during the hearing, you attempted to submit amended 2012 and 2011 corporate tax returns and two revised PNW statements that were dated December 16, 2013, which were signed and dated the same day as the hearing. Metra stated that the hearing officer would not accept the amended returns because you could not provide any evidence to show the tax returns were submitted to, and received by, the Internal Revenue Service.² There is no evidence that Dynasty Group filed amended returns with the IRS as you allege that corrects the "loan to shareholder amount" or requested proof from that agency that amended returns were received.³ It was appropriate therefore for Metra to count the full amount of this shareholder loan when calculating your personal net worth.

We affirm the decertification as supported by substantial evidence and consistent with the certification provisions of 49 C.F.R. Part 26. (Per §26.89(f)(6), the Department bases its decision on the status and circumstances of the firm as of the date of the decision being appealed). We affirm. This decision is administratively final and not subject to petitions for review. The firm may reapply for DBE certification at any time.

Sincerely,

Marc D. Pentino
Lead Equal Opportunity Specialist
External Civil Rights Programs Division
Departmental Office of Civil Rights

cc: Metra

² Metra's record does not contain a verbatim record of its decertification hearing (see §26.87(d)), however, there is no dispute that Metra held a hearing in this case and that you were offered the opportunity to present proof of filing amended tax returns; which is the single issue in this case. We find no reversible error pursuant to §26.89(f)(3).

³ We note that according to the IRS website, individuals can complete Form 4506 or 4506T to request tax return information. See <http://www.irs.gov/taxtopics/tc156.html>