

July 27, 2015

CERTIFIED MAIL
RETURNED RECEIPT REQUESTED

Reference No. 14-0084

Mr. Michael McKoy
State Contractor Utilization Engineer
North Carolina Unified Certification Program
1509 Mail Service Center
Raleigh, NC 27699-1509

Dear Mr. McKoy:

This letter responds to DD Dedmon Trucking, Inc.'s, ("DDDT") appeal to the North Carolina Unified Certification Program's ("NCUCP") denial of Disadvantaged Business Enterprise ("DBE") certification under criteria set forth at 49 CFR Part 26. On February 5, 2014, NCUCP denied the firm Disadvantaged Business Enterprise (DBE) certification after determining that DDDT was not an independent business within the meaning of 49 C.F.R. Part 26, §26.71 (b).

The Department finds that the record is unclear or incomplete with respect to matters likely to have a significant impact on the outcome of the case. NCUCP's denial letter does not sufficiently examine the independence factors to enable the Department to make a principled decision. See generally §§26.71(b)(1)-(4). The letter cites §§26.71(b)(1) and (3), but provides incomplete or unclear rationales; there is no discussion of the other subsections of §26.71(b). The denial letter merely lists certain commonalities and fails to clarify how the relationship with Asphalt Paving of Shelby (APS) affects DDDT's viability.

According to the application for DBE certification, DDDT was established in May 2013, and is a for hire contract hauler of non-hazardous materials, aggregates, asphalt, recycled asphalt and concrete. Delores Dedmon, the socially and economically disadvantaged owner, is the President and 100% owner of DDDT. NCUCP found that DDDT was not an independent business as required by §26.71(b) due to the firm's reliance on APS, a woman owned and non-disadvantaged business. NCUCP did not complete the required analysis that §26.71(b) requires. This provision prescribes that a firm is eligible as a DBE if its viability does not depend on its relationship with another firm or firms; and the regulation contains four elements recipients must evaluate.

Though the applicant has the burden of proving eligibility by a preponderance of the evidence, §26.61(b), the Regulation requires the recipient to conduct a thorough analysis of all the facts in the record in light of the several independence factors.

Section 26.71(b) states: “Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.” §26.71(b)(1) states that “in determining whether a potential DBE is in fact independent, you must scrutinize relationships with non-DBE firms in areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.” NCUCP lists potentially relevant findings in its denial letter but fails to provide a good analysis of these issues.

NCUCP stated in its denial letter: “DD Dedmon Trucking is co-located at [REDACTED] Road....Asphalt Paving of Shelby owns the office space, yard, facilities and equipment used by DD Dedmon Trucking. DD Dedmon Trucking uses their yard to park and service their dump truck, facilities for bathrooms and office space, truck stand and pressure washer used to clean their dump truck....The haul ticket from Vulcan Materials listed Asphalt Paving as the customer and DD Dedmon Trucking as the truck used.”

Personnel: The denial letter indicates that Delores Dedmon’s husband, [REDACTED] all work for APS, but the letter does not provide any explanation regarding how their role affects DDDT’s independence. In addition, after reviewing the onsite report and other documents contained in the record, we note that Donald Dedmon, Sr. a non-disadvantaged individual appears to be the one who controls ASP in the absence of his mother, and seemingly DDDT. However, NCUCP’s denial letter did not indicate in great detail, nor mention what role, if any, [REDACTED] or other employees play in DDDT’s business affairs. With there being no analysis concerning the substance of his actual duties or role as it relates to his actual relationship to the applicant firm, we cannot support NCUCP’s determination.

Facilities: NCUCP indicated that that DDDT uses office and yard space owned by APS. It is neither uncommon nor outcome-determinative for a firm to lease space from an affiliate. Again the denial letter is vague of any information that speaks to DDDT not paying fair price or that APS is substantially subsidizing DDDT; mere co-location is not itself a ground for supporting NCUCP’s decision on this issue.

Equipment: The denial letter refers to DDDT’s truck, but offers no explanation or clear analysis of how this affects DDDT’s independence. NCUCP’s findings include no analysis of shared equipment that might impair DDDT’s independence. The Department cannot determine whether substantial evidence supports NCUCP’s position that shared equipment substantially impairs the firm’s independence.

Financial/Bonding Support, Other Resources: The denial letter refers to haul tickets from Vulcan Materials Company and DDDT’s total gross receipts. The explanation given in this instance is vague and the Department finds no indication in the record that NCUCP determined to what extent DDDT depends on APS for its finances or other resources. There is no indication that NCUCP considered all of the §26.71(b)(1) factors and little analysis of how the findings affect DDDT’s independence. Simply stating that some of the employees

work for ASP is not a sufficient rationale for determining that DDDT has not proved independence.

§26.71(b)(2) states: “You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.” The denial letter does not explore this factor or explain any perceived deficiency of independence.

§26.71(b)(3) states: “You must examine the firm’s relationships with prime contractors in order to determine whether a pattern of exclusive or primary dealings with the prime contractor compromises the independence of the potential DBE firm.” The denial letter is vague and does not indicate that NCUCP conducted a thorough examination of the prime contractor relationship to determine any conclusions.

§26.71(b)(4) states that “when considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between potential DBE and non-DBE firm(s) with normal industry practice.” NCUCP suggests, but does not say, that the relationship between DDDT and ASP are inconsistent with industry practice. The denial letter provides no discussion about whether the sharing mentioned in NCUCP’s findings is common or uncommon among related firms in the industry.

NCUCP’s unexplained findings are insufficient for us to determine whether DDDT proved that its viability is independent of the relationship with ASP.

Further, NCUCP stated in its denial letter, “Based on the preponderance of the evidence, this firm failed to demonstrate the necessary independence and control by a socially and economically disadvantaged individual.” While NCUCP mentions control by the disadvantaged owner, §26.71 (g) was not cited in your denial of the firm’s certification. Section 26.71(g) could be relevant as to whether the socially and economically disadvantaged owner demonstrated managerial experience and technical competence directly related to the firm’s business. However, NCUCP did not offer any argument regarding this provision, therefore we cannot address it.

We request that NCUCP either certify the firm or provide the firm with a new denial letter that complies with the requirements of §26.86(a) and explicitly addresses §26.71 (b)1-4. If NCUCP determines that the firm meets the qualifications of the Regulation that would resolve the issue.

However, if NCUCP determines that the firm still does not meet the requirements of 49 CFR Part 26, the firm can reinitiate its appeal to the Department pursuant to §26.89. This file is being closed in our records and the firm's owner Delores Dedmon, has been notified of this action via a copy of this letter. Thank you for your continued cooperation.

Sincerely,

Sheryl G. Williams
Acting Associate Director
External Civil Rights Programs Division
Departmental Office of Civil Rights

cc: DDDT