



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

Departmental Office of
Civil Rights

1200 New Jersey Avenue, SE
Washington, DC 20590

July 28, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 14-0087

Julie Caldwell
Contract Compliance Officer
Idaho Transportation Department
3311 West State Street
Boise, ID 837007-1129

Dear Ms. Caldwell:

Bridger Crane & Rigging, LLC (BCR), appeals the Idaho Transportation Department's (ITD) denial of its interstate application for Disadvantaged Business Enterprise (DBE) certification, under criteria set forth at 49 CFR Part 26 (the Regulation). BCR, correspondence in the administrative record reveals, is certified as a DBE in its home state Wyoming.

Without mentioning the operative rule, Regulation §26.85, ITD denied certification on grounds of the disadvantaged owner having adjusted personal net worth (PNW) in excess of the §26.67(a)(2)(i) cap of \$1.32 million, which renders the firm ineligible. There is no evidence that IDT made a good cause finding under §26.85(d) or provided the firm a §26.85(d)(4) notice or the opportunity to rebut the proposed finding, all as the interstate certification rule requires.

We remand under §26.89(f)(4) for reconsideration of available evidence and for IDT to:

- (1) correct, as applicable,¹ the procedural errors noted above;
- (2) make a substantive eligibility determination under the interstate certification rule; and
- (3) determine current ownership, under Idaho law, of the assets in trust for the benefit of socially disadvantaged owner Jessica Infanger.

¹ The Regulation permits State B (Idaho) simply to recognize the State A (Wyoming) certification without further procedures. Section 26.85(b). The interstate certification rule's due process protections become operative only after State B determines not to exercise its discretion under §26.85(b). Accordingly, IDT would pursue items 1-3 only if it did not accept the Wyoming certification under that section.

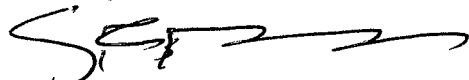
Resolution of these issues is likely to have a significant impact on the outcome of the case. We respectfully request that IDT complete its review and issue its decision (as the evidence and discretion warrant, either a certification letter or a denial letter, this Office copied, that fully comports with the Regulation²) not later than November 27, 2015. That date accounts for the 60-day and two 30-day actions prescribed in §26.85(d).

In the Department's view, the substantive issues for decision concern whether Wyoming's non-inclusion of the trust's assets on Ms. Infanger's PNW statement³ was error and whether (if not) Idaho law requires a different result. *See generally* §§26.85(d)(2)(iii) and (iv).

In summary, we vacate the denial and instruct IDT to conduct further proceedings consistent with the guidance provided above. IDT remains free, under §26.85(b), to accept the Wyoming certification and certify the firm without further procedures.

Thank you for your cooperation. We look forward to hearing from IDT.

Sincerely,



Samuel F. Brooks
DBE Appeal Team Lead
External Civil Rights Programs Division
Departmental Office of Civil Rights

cc: Jessica Infanger, BCR; Lisa Fresquez, WYDOT

² Including, e.g., §§26.85(d) (notice, opportunity to respond, impartial decision maker, written decision) and 26.86(a) (certifier must explain all denial grounds in writing with specific references to evidence in the record in support of each reason for denial).

³ See March 7, 2014, e-mail from Wyoming DOT DBE Coordinator to Ms. Infanger, copying the Federal Highway Administration regional representative and explaining Wyoming DOT's characterization of the trust's liquidation restriction as a "contingent liability." In the Department's view, there is no contingent *liability*. Rather, the appellant argues that there is a condition precedent to liquidation of the trust (namely that Ms. Infanger attain the age of 40 years). We cannot determine, based upon the administrative record before us, whether as a matter of state law Ms. Infanger nevertheless "owns" the assets in the trust for purposes of §26.67. It is possible that under Wyoming or Idaho law Ms. Infanger owns the trust's assets in whole or part despite the apparent liquidation restriction.