



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

July 28, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 14-0088

Mr. Sonnie Braih
External Civil Rights Administrator
Nevada Department of Transportation
600 Grand Central Parkway
Las Vegas, NV 89106

Dear Mr. Braih:

This is in reference to the matter of Eagle Eye Electric, LLC (Eagle Eye), which applied for certification with the Nevada Department of Transportation (NVDOT) as a Disadvantaged Business Enterprise (DBE) in September 2013 under criteria set forth in the DBE Program Regulation 49 C.F.R. Part 26.

Eagle Eye's Uniform Certification Application lists BSNC (Bering Straits Native Corporation), an Alaska Native Corporation, as its sole owner. On January 2, 2014, the NVDOT determined that Eagle Eye was ineligible as a DBE because the firm failed to provide a shareholders list or list of voting members of BSNC, deeming this failure as grounds for denial under §26.73(c). NVDOT stated this information was necessary in order for the agency to determine whether the majority of the firm's shareholders were Native Americans or descendants of such as required by the §26.73 of the Regulation. NVDOT also cited section 8 of Eagle Eye's bylaws that in NVDOT's view denied members control of the company by granting control to member representatives who have the power to vote for directors of the subsidiary company, not BSNC shareholders. In NVDOT's view this also conflicted with §26.73 of the Regulation.

The firm on appeal disputes NVDOT's conclusions, asserting in part that: (1) Eagle Eye's acceptance into the Small Business Administration's 8(a) program established that Eagle Eye is owned and controlled by an ANC (BSNC), and that Alaska Natives or their descendants as defined under the Alaska Native Claims Settlement Act (ANCSA) own a majority of both the total equity of BSNC and the total voting power to elect directors of BSNC; (2) BSNC corporate documents establish that a BSNC shareholder only may vote if he or she is a Native of Alaska or a descendent of a Native (as both are defined by the ANCSA); (3) NVDOT misreads §26.73(i)1(i) which requires that the ANC and its shareholders establish that they possess majority ownership and majority voting power in the DBE application; a requirement that is met

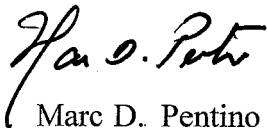
in this case as BSNC possesses all of the voting interest in Eagle Eye by virtue of being its sole member and owning 100% interest.

As you requested, we are remanding the matter for reconsideration by NVDOT, so that the agency can assess the new information and the arguments the firm makes in rebuttal, and review the firm's eligibility. We note that the Department's rationale behind §26.73(i), which NVDOT references in its appeal, is found in the June 16, 2003, final rule; and the Department has issued guidance on how recipients are to determine the eligibility of firms owned by ANC's.¹

We close the present appeal and direct NVDOT, within 90 days, either to certify the firm or, if the facts warrant, issue a new denial letter that fully explains NVDOT's reasons for denial and specifically cites supporting evidence. NVDOT is able in its discretion to conduct another on-site interview with the firm's principals; however, NVDOT's decision in this case should be rendered within the 90-day timeframe.

Please provide this office with a copy of NVDOT's final action (certification or denial letter actually sent to the firm) not later than the close of business October 21, 2015. This appeal is remanded under §26.89(f)(4). Thank you for your continued cooperation.

Sincerely,



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

cc: Richard Oehler, Attorney for Eagle Eye Electric, LLC

¹ See <http://www.gpo.gov/fdsys/pkg/FR-2003-06-16/pdf/03-14989.pdf> and https://www.civilrights.dot.gov/sites/default/files/DBE/Guidance/Official%20Questions%20and%20Answers%2049%20CFR%20Part%2026_0.pdf