

July 1, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 14-0138

Wanda F. Kirkpatrick
Chair, Minnesota Unified Certification Program
Director, Office of Equal Opportunity
Metropolitan Council
560 6th Avenue North
Minneapolis, MN 55411

Dear Ms. Kirkpatrick:

This is in reference to the matter of Rice Lake Boring, Inc. (Rice Lake), which applied for certification with the Minnesota Unified Certification Program (MNUCP) as a Disadvantaged Business Enterprise (DBE) under criteria set forth in the DBE Program Regulation 49 C.F.R. Part 26. On March 27, 2014, the MNUCP determined that Rice Lake was ineligible as a DBE, with MNUCP finding that the firm failed to demonstrate, by a preponderance of the evidence, several eligibility criteria such as: (1) the firm's sole owner, Ms. Krystal Hentges, met the control requirements of §26.71(e-g) given her lack of expertise in the firm's line of work and the disproportionate involvement of two non-disadvantaged participants—Paul Flykt (project manager) and Tim Bonnema (superintendent); (2) Rice Lake was independent as required by §26.71(b); and (3) Ms. Hentges met the ownership criteria of §26.69(c).

The firm on appeal vigorously disputes each of MNUCP's findings and presents, among other items, affidavits of the firm's principals. You note in your lengthy rebuttal letter that Ms. Hentges produced a significant amount of new information in her appeal and offered several arguments that were unavailable to MNUCP at the time of its review. As you requested, we are remanding the matter for reconsideration by MNUCP, so that the MNUCP can assess the new information and the arguments the firm makes in rebuttal, and review the firm's eligibility.

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

Please provide this office with a copy of MNUCP's final action (certification or denial letter actually sent to the firm) not later than the close of business September 29, 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: Matthew T. Collins, Attorney for Rice Lake Boring