

May 5, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 14-0151

Shalish R. Naik
President
Charles A. Mananganaro Consulting Engineers, P.C.
[REDACTED]
Hawthorne, NY 10532

Dear Mr. Naik:

Charles A. Mananganaro Consulting Engineers, P.C. (CMCE), appeals the Connecticut Department of Transportation's (ConnDOT) denial of its interstate application for Disadvantaged Business Enterprise ("DBE") certification, under criteria set forth at 49 CFR Part 26 (the Regulation). ConnDOT denied certification for CMCE's failure to provide (all of) the information specified in §26.85(c).

CMCE filed an application for interstate certification on or about May 23, 2014. The application contained a notarized Affidavit of Certification for Out-of-State Applicants, which you signed May 19, 2014. The affidavit lists the information that §26.85(c) requires (principally, a complete copy of the home state (New York) application, including supporting materials, annual affidavits, and other correspondence, if any), and your signature attests under penalty of law "that I have submitted all of the information required by 49 CFR 26.85(c)."

On June 24, 2014, ConnDOT sent CMCE a letter, to your attention, in which it recommended denial of the firm's application. The reason stated is that the May 23, 2014, application package neither contained an application for DBE certification nor any of the documents required by the interstate certification section sections listed above. Since the application packet did, as noted above contain the affidavits described in §§26.85(c)(3) and (4), as well as substantial supplementary documents, ConnDOT's concern appears to be with the firm's failure to submit a complete copy of the CMCE's New York uniform certification application (UCA).

The administrative record contains just one page (p.4) of the New York UCA. We understand that the failure to provide the remainder of the application may have been an oversight: the record suggests that the firm provided most or all of the supplementary documents required. ConnDOT might have intervened to advise CMCE of what precisely was missing from the firm's

interstate application or been more accurate in its description of the missing materials in its letter of June 24, 2013. Such an intervention, in the Department's view, could have facilitated the firm's application and ultimately saved time and resources. However, ConnDOT's June 24, 2014, letter clearly extended the firm the right to a hearing to contest the denial (or provide the missing information). ConnDOT ended the letter noting that "if we do not hear from you, this denial will stand;" and explaining your right to appeal to the Department should the appeal stand.

Just as ConnDOT might have facilitated the process, so could the firm. The firm was obliged under §26.85(c) to provide "a complete copy" of the New York application for certification. Section 26.85(c)(1) (the verbatim text of which appears in ConnDOT's letter and on the affidavit that you signed). The firm, further, could have requested a hearing with ConnDOT rather than simply not respond. When CMCE did not respond, ConnDOT sent a letter on July 8, 2014, notifying you that, because of the CMCE's failure to respond, the denial decision was final. This letter also advises CMCE of its right to appeal the denial to the Department.

The firm's appeal offers no substantive argument concerning why ConnDOT's decision should be reversed. See §26.89(c) (if you want to appeal, you *must* send a letter to the Department "including information and arguments concerning why the recipient's decision should be reversed). The appeal letter nowhere states that ConnDOT erred. Rather, CMCE's Office Manager writes to the Department in CMCE's the appeal letter:

"Although I am appealing your [sic] determination regarding DBE Certification, I am really asking for your assistance. I want to apologize for any problems or confusion I have caused. I am new to this position and not quite sure what are the proper forms to submit. I also was away for 3 weeks and to make matters worse, when I received the letters did not respond as quickly as I should have. I looked online for forms stated in your [sic] correspondence but was not sure what forms were needed."

The record shows that the Office Manager, Ms. Barber, signed for ConnDOT's June 24 letter on June 27, under a week before the proposed hearing date of July 3. However, there is no contention on appeal that ConnDOT did not provide you enough time to contest its proposed action, and there is no evidence of any attempt on the firm's part, belatedly or not, to provide the missing information. (ConnDOT, however, never clarified, until its September 15, 2014, rebuttal letter that it was missing was the remainder of CMCE's New York Uniform Certification Application because the firm apparently had provided ConnDOT only page 4.)

Although ConnDOT could have been much clearer in communicating to you what was missing from the firm's interstate application, the broader notification of June 24, 2014, surely provided the firm the opportunity to inquire exactly what was missing. CMCE, for whatever reason, made no such inquiry.

In the absence of any argument to the contrary, we conclude that ConnDOT's actions were consistent with the substantive and procedural certification provisions of Part 26, and supported by substantial evidence. We therefore affirm under §26.89(f)(1).

We encourage ConnDOT and CMCE to communicate better in future dealings on related matters. We detect reluctance on both sides to engage or to facilitate, contrary to the Department's intent in promulgating the interstate certification rule.

CMCE may reapply for interstate certification in Connecticut at any time after July 7, 2015. We trust that CMCE, should it choose to reapply, will provide ConnDOT a complete copy of the New York application and all supporting materials (e.g., affidavits or no change, other correspondence, correspondence or submissions to other states concerning a DBE application or DBE status) specifically enumerated in §26.85(c). Likewise, we trust that ConnDOT will be more transparent with the firm regarding the completeness of the submission and will avoid unusually short response times to any supplemental inquiry it may have.

This decision is administratively final and not subject to petitions for review. Thank you for your participation in the DBE program.

Sincerely,

Samuel F. Brooks
Acting Lead Specialist
External Civil Rights Programs Division
Departmental Office of Civil Rights

cc: Shari Pratt, ConnDOT