

April 25, 2016

Reference Number: 15-0140

T.J. Carrothers, President
New Vision Contracting, LLC
REDACTED
St. Louis, MO 63121

Dear Mr. or Ms. Carrothers:

New Vision Contracting, LLC (NVC), appeals the Missouri Unified Certification Program's decertification of NVC as a Disadvantaged Business Enterprise (DBE) under criteria set forth at 49 C.F.R. Part 26 (the Regulation). After examining the full administrative record, we find that there is substantial evidence upon which to affirm the decertification under Regulation §26.89(f)(1).

The record reflects that MUCP notified NVC on January 20, February 27, April 2, and April 17, 2015, that NVC's required annual affidavit and supporting documentation (namely, tax returns for 2013) were due. Record at 11, 14. The §26.83(j) affidavit requirement is mandatory. It exists independent of the certifier's reminder or request. The regulatory requirement is:

"If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c)." (Emphasis added.)

Section 26.109(c) provides:

"Cooperation. All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to

cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; *with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment*; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).” (Emphasis added.)

When NVC did not file the required affidavit and documentation, MUCP validly moved to decertify, via Notice of Intent dated June 10, 2015 (stating that the reason for the proposed action was non-receipt of the required information and the firm’s resulting failure to cooperate, i.e., non-response). That Notice offered NVC an informal hearing to contest the proposed action. When no one appeared for the hearing or otherwise contacted the certifier, MUCP issued its Notice of Decertification dated August 11, 2015. These actions complied with the substantive and procedural decertification rules of §26.87.

LWL’s appeal letter states no reversible error. It states simply:

“I am in receipt of a certified letter that I received dated August 11, 2015 that states that New Vision Contracting Co., LLC has been removed from the DBE Program for being “non-responsive.” I would like to appeal this decision, by responding to whatever it was that New Vision Co., LLC did not respond to.”

This Office does not conduct a de novo review of certification decisions. Its function is to resolve appeals based on the particular issues presented, the requirements of the Regulation, and the complete administrative record. Section 26.89(e). The standard is whether substantial evidence supports the certifier’s decision and whether that decision is consistent with the Regulation. Section 26.89(f). In this case, there is substantial evidence that the firm failed to provide the mandatory affidavit (about which requirement NVC was notified at the time of certification) and consequently failed to cooperate.

The record shows that the decertification complied with the Regulation's substantive and procedural rules, and §26.89(f)(1) requires us to affirm it.¹

This decision is administratively final and not subject to petitions for reconsideration.

Sincerely,

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

cc: MUCP

¹ The firm's recourse after a valid decertification is to reapply for certification, after the appropriate waiting period.