

May 26, 2016

CERTIFIED MAIL  
RETURNED RECEIPT REQUESTED

Reference Number: 16-0008

Angela de la Rosa  
ACDBE Certification Manager  
Office of Contract Compliance  
Bureau of Contract Administration  
1149 S. Broadway, Suite 300  
Los Angeles, CA 90015

Dear Ms. de la Rosa:

Jacobsen/Daniels Associates (JDA) appeals the California Unified Certification Program's (CUCP) decertification of the firm as a Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) under the standards of 49 C.F.R. Parts 26 and 23 (the Regulation).<sup>1</sup> After examining the entire administrative record, the Departmental Office of Civil Rights (Department) concludes that the record is incomplete regarding matters likely to have a significant impact on the outcome of the case. We therefore remand under §26.89(f)(4)<sup>2</sup> for further proceedings consistent with the instructions below.

The CUCP's July 8, 2015 decertification letter determined that JDA's disadvantaged owner's (Darryl Daniels) personal net worth (PNW) exceeded \$1.32 million, rendering the firm ineligible for continued certification. The CUCP reached its determination, in part, based upon the value of Mr. Daniels's interest in an outside business. The CUCP, however, valued that business based

---

<sup>1</sup> The City of Los Angeles Bureau of Contract Administration proposed JDA's decertification. City of Los Angeles is a certifying member of the CUCP.

<sup>2</sup> §26.89(f)(4) provides:

"If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part."

exclusively on book value—Mr. Daniels’s equity as reflected on the firm’s balance sheet—without any argument that book value in this case represents the fair market value of the business. Because the fair market value of other business interests is critical to our disposition regarding PNW, we remand the case to CUCP to examine the fair market value of Mr. Daniels’s ownership interest in the business.

## I. Procedural History

The CUCP issued its notice of intent to decertify JDA on April 29, 2015, which JDA responded to—in writing—in May 2015. The CUCP issued a decertification notice on July 8, 2015. JDA filed its appeal with the Department on October 9, 2015.

## II. Facts

The pertinent facts are uncontroverted. Mr. Daniels is the firm’s 51% owner, and Bradley Jacobsen—non-disadvantaged—is the firm’s 49% owner.

The CUCP certified JDA as an ACDBE/DBE in March 2003.<sup>3</sup> It did not object to JDA’s continuing eligibility until early 2015. During a routine certification review, the CUCP examined Mr. Daniels’s 2013 PNW statement and determined that he exceeded the \$1.32 Million PNW cap. Based on its findings, the CUCP issued a notice of intent to decertify JDA, and gave the firm an opportunity to respond to the proposed decertification in writing or by an informal hearing. JDA opted to reply to its proposed decertification in writing and Mr. Daniels submitted a 2015 Personal Financial Statement (PFS) with the firm’s response.<sup>4</sup>

The CUCP decertified the firm based on its finding that Mr. Daniels—JDA’s Disadvantaged owner— has a personal net worth (PNW) in excess of **REDACTED**. JDA disputes all of the adjustments made by the CUCP to Mr. Daniels’s PFS. The adjustment that creates an excess of personal net worth, however, relates to an outside business holding, Dansen, LLC. Dansen is a real estate holding company that owns commercial real estate located at 121/22 Pearl Street, Ypsilanti, MI 48197.

Mr. Daniels values his 50% share in Dansen at a negative value. Mr. Daniels reached the value based on the Dansen’s cash on hand, the fair market value of the property held by Dansen (derived from a tax assessment), less security Deposits Payable and mortgage on its property. The CUCP took issue with this approach and elected instead to adjust the value of Mr. Daniels’s interest in Dansen to reflect its book value. The CUCP explained its reasons for its calculation, which is significantly higher than the value offered by JDA:

---

<sup>3</sup> JDA is certified in Michigan— its home state—as well as in Alabama, Alaska, Arizona, Illinois, Florida, Georgia, Indiana, Iowa, Louisiana, Maryland, Minnesota, Mississippi, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Virginia, and Wisconsin.

<sup>4</sup> We note from the record that Mr. Daniels’s 2013 PFS lists assets as of March 2013, but is signed and dated November 20, 2013. It appears that Mr. Daniels omitted his additional residence, which he acquired in April 2013, from the PNW statement. We, however, acknowledge that Mr. Daniels subsequently included the property on his 2015 PFS. *See generally*, 2013 and 2015 PFSs.

The submitted valuation of Dansen, LLC (Exhibit E.1) showed the calculation of ownership equity in the LLC, which owns the property located at 119/121 Pearl Ypsilanti. Your worksheet indicates the ownership equity was calculated by using the equity in the real estate property owned by the company rather than using the overall book value of the firm. For consistency, the CUCP uses book value for calculation of other business interests. Therefore, one half of the 2014 book value, obtained from the LLC's 2014 Financial Statements, was used for the 50% ownership equity in this company.

The CUCP Decertification letter of July 8, 2015.

### Discussion

The issue on appeal is whether a certifier may calculate a disadvantaged owner's interest held in a non-applicant firm based on book value without a determination that, based on the facts and circumstances, book value represents fair market value. We find that, in such instance, a book valuation of other business assets, without explanation, is inconsistent with the substantive provisions of the Regulation.

In decertification proceedings, a certifying agency bears the burden to prove, based on the preponderance of evidence, that a firm is no longer eligible to be certified as a DBE. §26.87(d)(1).

In order to participate in the DBE/ACDBE program, a disadvantaged owner must report “[a]ll [personal] [assets] . . . at their current *fair market values* as of the date of [the personal net worth] statement.” (Emphasis added) PNW Instructions, 49 C.F.R. Part 26 Appendix G at 4. Although the Regulation does not define fair market value (FMV), it is commonly understood to mean the price at which a willing buyer will purchase property from a willing seller. See In the Matter of: Big, Inc., 1992 WL 558955, at fn. 5 (*quoting Estate of Palmer v. C.I.R.*, 839 F.2d 420, 422 (8th Cir.1988) fair market value is “the price at which a willing buyer will purchase property from a willing seller when neither is under any compulsion to buy or sell and both have reasonable knowledge of the relevant *facts and circumstances*.”).<sup>5</sup>

In this instance, however, JDA did not meet its duty to provide a fair market valuation of the owner's interest in Dansen, LLC on the personal net worth form. The firm's valuation used the assessed value of real estate property held by Dansen, instead of the fmrv of the holding company.<sup>6</sup> In addition, JDA's valuation is also largely based upon a tax assessment. The CUCP, in turn, used book valuation to calculate the value of Dansen with no indication that book value represents FMV.

---

<sup>5</sup> Although evaluating fmrv is a fact determinative exercise that may place some burden on a certifier and an applicant or current DBE firm, we note that there are many acceptable means of determining FMV. The certifier should determine fair market valuation based upon the totality of circumstances, including evidence of the valued assets presented by the owner.

<sup>6</sup> Many factors influence the market value of real estate holdings (e.g., the ability to generate income from rent collected, the financial position of the business, location).

### III. Conclusion

We remand for the CUCP to supplement the record with a new PNW determination that includes findings to support its determination of the FMV of Mr. Daniels's interest in Dansen, LLC. The CUCP must present a full rationale for how it determines the FMV of Dansen, LLC and explain how the certifier's valuation better reflects the FMV of the business than the value offered by the firm. We direct CUCP to issue a new, Regulatory compliant certification decision letter by July 29, 2016.

Sincerely,

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

Cc: Mr. Daniels  
FAA Office of Civil Rights