

June 15, 2016

Reference Number: 16-0032

Mr. Kris Pearson
Coastal Excavation, LLC
P.O. Box 2421
Sitka, Alaska 99835

Dear Mr. Pearson:

Coastal Excavation, LLC (Coastal) appeals the Alaska Unified Certification Program's (AUCP's) denial of its application for certification as a Disadvantaged Business Enterprise (DBE) under criteria set forth at 49 C.F.R. Part 26 (the Regulation). After reviewing the administrative record, we conclude that substantial evidence supports AUCP's determination. We affirm the ineligibility determination under §26.89(f)(1).

In the denial letter dated August 19, 2015, AUCP cites the firm's failure to satisfy the requirements of §26.5(2)(iii) relating to the definition of Native Americans as socially and economically disadvantaged individuals. *See generally* §26.61(b). We affirm on this ground.

Applicable Authority

§26.5 provides:

“Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

...

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

...

(iii) “Native Americans,” which includes persons *who are enrolled members* of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

...

(Emphasis added.)”

§26.61(b) provides:

“The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.”

§26.89(f)(1) provides, in pertinent part:

“The Department affirms [the certifier’s] decision unless it determines, based on the entire administrative record, that [the] decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.”

§26.89(g) provides:

“All decisions under this section are administratively final, and are not subject to petitions for reconsideration.”

Decision and Discussion

Coastal is a service contracting firm established on July 1, 2007 (Certification Denial Summary (CDS) dated August 18, 2015). You are the 100% owner of the firm and identified yourself as a Native American. *Id.* at 1. The record indicates that you provided a blood quantum letter dated August 9, 1996, from the Minnesota Chippewa Tribe, indicating that as a non-enrollee, you possess a blood degree of 1/256 Chippewa Indian Blood White Earth Reservation, Mississippi Band. In the Appeal Letter dated November 6, 2015, you state that a Chippewa Tribe representative informed you that you are 1/8 Chippewa, which is enough to be recognized by the Chippewa tribe, but not enough to be an enrollee.

AUCP denied your request for DBE certification on August 19, 2015. because you did not meet the explicit criteria for group membership pursuant to §26.5. To qualify as a Native American under this provision, you must be an enrolled member of a Native American tribe. Since you are a non-enrolled member of the Minnesota Chippewa Tribe, AUCP concluded that you do not meet the definition of a Native American per the Regulation.¹ We affirm AUCP’s decision that

¹Though you do not meet the definition of a Native American per §26.5, you may choose to reapply for the DBE Program pursuant to §26.67(d), appendix E, procedures with regard to your claimed disability.

Section 26.67(d), relating to individual determinations of disadvantage, states that an individual may be deemed socially and economically disadvantaged (SED) on a case-by-case basis, and that “In making these [SED]

you do not meet the definition of a Native American per §26.5. Accordingly, you do not, under the definition, enjoy the rebuttable presumption of social and economic disadvantage.

Conclusion

We affirm AUCP's ineligibility determination, based on §26.5 relating to the definition of socially and economically disadvantaged individuals, as supported by substantial evidence and not inconsistent with the Regulation's substantive and procedural provisions relating to certification.

This decision is administratively final and is not subject to petitions for reconsideration. You may reapply for certification after the applicable waiting period expires.

Sincerely,

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

cc: AUCP

determinations, use the guidance found in appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of appendix E of this part."

Appendix E, Paragraph I mentions those with disabilities, "At least one objective distinguishing feature has contributed to social disadvantage, such as race, ethnic origin, gender, disability..." Appendix E, Paragraphs II and III specifically pertain to a social and economic disadvantage analysis regarding, e.g., those with disabilities.

An appendix E application generally requires a comprehensive narrative statement of individual social and economic disadvantage.