

July 22, 2016

Reference Number: 16-0038

Gregory Bishop  
Musa Media Inc.  
**REDACTED**  
Torrance, CA 90501

Dear Mr. Bishop:

Musa Media Inc. (MMI), appeals the California Unified Certification Program's (CUCP)<sup>1</sup> decertification of MMI 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). We regret that we cannot reach a result more favorable to the firm.

The record reflects that CUCP notified MMI by letters dated May 15, 2014, and June 8, 2014, that MOE's required annual affidavit and supporting documentation for 2014 were due by August 1, 2014.<sup>2</sup>

The §26.83(j) affidavit requirement is mandatory. It exists independent of the certifier's reminder or request. Although it is unclear that an MMI representative actually received CUCP's reminder letters, 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*

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<sup>1</sup> The certifier in this case is the California Department of Transportation (Caltrans), a member of the CUCP.

<sup>2</sup> CUCP certified MMI by letter dated July 19, 2013. Accordingly, the anniversary of certification would have been July 19, 2014. That letter at page 2 states that "[i]n order to assure your continuing DBE status, you must annually submit a No Change Declaration form (which will be sent to you), along with supporting documentation." The letter further states: "Also, should any changes occur that could affect your certification status prior to receipt of the No Change Declaration Form, such as changes in your firm's name, business/mailling address...please notify us immediately. Failure to submit forms and/or change of information will be deemed a failure to cooperate under section 26.109 of the Regulations." (Emphasis added.) The certification letter and both information request letters were addressed to MMI at 23720 Arlington Avenue, Suite 1, Torrance, CA.

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 MMI did not provide the required affidavit and documentation,<sup>3</sup> CUCP validly moved to decertify, via §26.87(b) Notice of Intent (Proposal to Remove) dated September 24, 2014 (stating that the reason for the proposed removal of certification was non-receipt of the required information and the firm's resulting failure to cooperate), two months after the information was due. That Notice stated that you had the right to an informal hearing within 30 days of the Notice and that you also had the right to present written information and arguments. The Notice further stated that if you chose not to appeal to CUCP's Reconsideration Official, the firm would be found ineligible. CUCP issued its Notice of Decertification on October 27, 2015, fully fifteen months after the 2014 No Change Affidavit was due.<sup>4</sup> These actions complied with the substantive and procedural decertification rules of §26.87.<sup>5</sup> MMI acknowledges in its appeal letter that it received the Notice of Decertification on November 19, 2015. MMI implies that it received neither the reminder letters nor the Notice of Intent sent to the same address.

MMI does not contest the decertification as faulty or impermissible, and its appeal letter states no reversible error. It states:

“We were made aware after contacting the DBE customer service representative that we needed to submit an annual No Change Declaration Form, along with supporting documents.

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<sup>3</sup> There is no evidence that MMI responded at all to CUCP's notices.

<sup>4</sup> There is no indication in the record regarding why it took CUCP an additional year (from the Notice of Intent) to complete the decertification.

<sup>5</sup> The record does not reflect any appeal to CUCP's Reconsideration Official.

Unfortunately, the employee that originally filed Musa Media as a DBE, Andrew Fukuzawa, does not work for us anymore. Therefore, we didn't track these required annual submissions to continue being eligible as a DBE because the notifications were being sent to a former employees [sic] email address.

We would like to resolve this problem as soon as possible because as a service disabled veteran owned small business, the certification allows us to be hired for a lot of military contractors.

We now know the procedures to stay certified as a DBE, and this removal won't happen again."

This Office does not conduct a de novo review of certification decisions. It does not certify, decertify, or reinstate certifications: those are recipient prerogatives. This Office lacks the power, absent a substantive or procedural error or unless there is no substantial evidence for the determination, to reverse a decertification decision. This Office's 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 (here, decertification) and whether that decision is consistent with the Regulation. Section 26.89(f). In this case, there is substantial evidence that MMI failed to provide the mandatory affidavit, which the firm concedes, and consequently failed to cooperate.

MMI had the obligation to notify CUCP of pertinent changes in contact information. Non-receipt of reminders does not vitiate the regulatory requirement. The record indicates, in any event, that CUCP mailed its several notices to the correct business address.

CUCP's decertification complied with the Regulation's substantive and procedural rules, and §26.89(f)(1) requires us to affirm it.<sup>6</sup> MMI may reapply for DBE certification after October 26, 2016.

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

Sincerely,

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

cc: Janice Salais, CUCP

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<sup>6</sup> The firm's recourse after a valid decertification is to reapply for certification after the appropriate waiting period. CUCP's waiting period is one year from the date of decertification.