

August 4, 2016

Reference Number: 16-0058

Ms. Arlene Chaves  
Chaves & Associates

**REDACTED**

St. Leandro, CA 94577

Dear Ms. Chaves:

Chaves and Associates, LLC (C&A) seeks to appeal the California Unified Certification Program's (CUCP)<sup>1</sup> removal of C&A's Disadvantaged Business Enterprise (DBE) certification under 49 CFR Part 26 (the Regulation). Because C&A did not comply with the appeal requirements set forth in Regulation §26.89(c), we dismiss the appeal and do not reach the merits.

Section 26.89(c) states: "If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply."

BART issued its final decision in this matter on July 14, 2015. Subsequently, C&A submitted a letter dated October 5, 2015, to the Department. C&A's letter simply states, "In response to the letter dated July 14, 2015 that we received from Ruby Smith, Manager of the Economic Opportunity Policy & Programs, as I have personally stated to Ms. Smith, I do not agree with her decision to remove my firm from the DBE program, therefore this is my notification that I hereby intend to appeal."

A notice of intent to appeal does not constitute an appeal for purposes of Section 26.89(c). As of December 4, 2015, the Department had not received a Regulation-compliant appeal from C&A. Furthermore, C&A's letter dated October 5, 2015 did not contain any information regarding why BART's decision should be reversed. Accordingly, on December 4, 2015, the Department dismissed C&A's appeal (then numbered 16-0006) for failure to timely state a claim upon which relief could be granted. This action was and remains administratively final.

On December 10, 2015, C&A filed a letter that apparently crossed paths in the mail with the Department's December 4, 2015 letter. C&A's letter sets forth information and argument regarding why it considers BART's decision to be erroneous. This second attempt to appeal is

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<sup>1</sup> Bay Area Rapid Transit (BART) is the certifier in this case.

simply untimely. The ninetieth day following BART's decertification decision was October 12, 2015; and the decision itself noted that C&A had ninety days within which to appeal to the Department.

Having failed to timely file an appeal that complies with §26.89(c), C&A's recourse is to reapply for certification. C&A may reapply at any time since the waiting period has elapsed. The Department expresses no view regarding BART's stated reasons for denial or C&A's eligibility for certification.

This determination is administratively final and not subject to petition for review.

Sincerely,

Marc D. Pentino  
Lead Equal Opportunity Specialist  
External Civil Rights Programs Division  
Departmental Office of Civil Rights

cc: BART