

November 15, 2017

Reference Number 17-0050

Ms. April Murillo Stremming
President & CEO
AMT66, LLC
REDACTED
Phoenix, Arizona 85032

Dear Ms. Stremming:

This letter responds to AMT66 LLC's appeal¹ of the City of Phoenix's² (Phoenix) January 9, 2017 denial³ of AMT66's Uniform Certification Application (UCA) for Disadvantaged Business Enterprise (DBE) certification under the rules of 49 C.F.R. part 26 (the Regulation). After considering all the facts in the record pursuant to Regulation §26.89(e), the U.S. Department of Transportation (the Department) affirms under §26.89(f)(1).⁴

FACTS/TIMELINE

Margaret April Murillo Stremming (Ms. Stremming) founded AMT66 in January 2010. The firm provides administrative management and general management consulting services. Ms. Stremming is the President and CEO.⁵ She is AMT66's sole officer and permanent employee.⁶ She was the sole owner when AMT66 submitted its UCA in August 2016. On December 2, 2016 Ms. Stremming's ownership decreased to 91% when Gladys Lopez acquired a 9% ownership interest in the firm.⁷ Ms. Lopez is presumed socially and economically disadvantaged (SED)

¹ See Appeal Letter (March 7, 2017).

² The City of Phoenix is a member of the Arizona Unified Certification Program (AZUCP).

³ See Denial Letter (Jan. 9, 2017).

⁴ See §26.89(f)(1): "The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification."

⁵ See UCA (Aug. 12, 2016).

⁶ AMT66 has two seasonal employees. See *id.*

⁷ The record indicates that Ms. Lopez had previously owned a portion of the firm but relinquished it in 2015. No related facts are at issue on appeal.

under the Regulation.

On September 8, 2016, Phoenix requested that AMT66 provide supplemental information related to Ms. Stremming's personal bank account and AMT66's 2015 tax returns.⁸ Phoenix instructed AMT66 to provide the information by September 15. AMT66 did so on September 12 and Phoenix marked the September 8 request as "Answered" in its electronic certification database.⁹

Phoenix conducted an on-site interview with Ms. Stremming on December 20, during which Ms. Stremming notified the certification analyst of Ms. Lopez's recent 9% ownership acquisition. Both parties agree that upon learning this new information, the certification analyst informed Ms. Stremming that she would have to submit additional documents before Phoenix could determine AMT66's DBE eligibility.¹⁰ Ms. Stremming contends that the certification analyst instructed her not to submit documents until Phoenix provided her further notice.¹¹ The record shows that on December 20, shortly after the on-site interview, Phoenix provided Ms. Stremming a specific list of documents to submit by December 27.¹² Six of the 10 documents related to Ms. Lopez's ownership of AMT66. Ms. Stremming claims not to have received the list of documents until December 28. She also states that the U.S. Small Business Administration (SBA) did not require her to submit documents about Ms. Lopez's ownership; therefore, neither should have Phoenix.¹³

On the afternoon of December 28, Phoenix reminded Ms. Stremming of the 10 documents she was to have provided the previous day. Phoenix asked Ms. Stremming to submit them by the end of that same day, *i.e.*, December 28.¹⁴ Ms. Stremming did not do so. On December 29, Phoenix contacted Ms. Stremming again and extended the submission deadline to January 6, 2017. Not having received the documents by January 6, Phoenix issued a denial decision on January 9, 2017, citing AMT66's failure to cooperate under §26.73(c).¹⁵

DISCUSSION

Section 26.73(c) states:

DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

⁸ See City of Phoenix Certification Application Q&A (electronic database).

⁹ See *id.* See generally §26.83(k).

¹⁰ See Denial Letter at 1.

¹¹ See Appeal Letter at 2.

¹² See City of Phoenix Certification Application Q&A (electronic database).

¹³ See Appeal Letter at 2. SBA's rules do not govern the DBE program.

¹⁴ See Email from Phoenix to Ms. Stremming (Dec. 28, 2016 at 1:37 p.m.).

¹⁵ See Denial Letter.

Phoenix provided Ms. Stremming a one-week deadline to produce the documents requested on December 20.¹⁶ Ms. Stremming did not comply with the deadline. Phoenix twice reminded Ms. Stremming, on December 28 and 29, to submit the documents and extended the deadline to January 6. Ms. Stremming states on appeal that she ultimately decided to comply with Phoenix's request and attempted to upload the documents to Phoenix's certification database on January 6.¹⁷ She concedes, however, that Phoenix did not receive the documents because she did not correctly upload them.¹⁸

CONCLUSION

Substantial evidence in the record supports Phoenix's ineligibility determination based on AMT66's failure to cooperate under §26.73(c). We affirm under §26.89(f)(1).

This decision is administratively final and not subject to petitions for reconsideration. AMT66 may reapply for certification after January 8, 2018.

Sincerely,

Samuel F. Brooks
DBE Appeal Team Lead
Disadvantaged Business Enterprise Division

cc: City of Phoenix

¹⁶ We caution Phoenix against imposing short deadlines during times of year when many businesses are closed and their owners occupied with seasonal tasks. We might well construe such deadlines as unreasonable. *See* 16-0159 Total Fence LLC (April 17, 2017) (cautioning certifiers to be mindful of holiday weekends and of applicants' business dictates and practical needs) and 16-0068 Gady Contracting G.C., Inc. (October 31, 2016) at 1 and n.4 (two calendar days generally not ample time for firm to cooperate; cooperation provisions subject to a reasonableness standard).

¹⁷ *See* Appeal Letter at 2.

¹⁸ *See id.*