

October 31, 2017

Reference Number: 17-0080

Ms. Heather Latray
President
Blount Construction, INC
REDACTED
Billings, MT 59106

Re: DBE Certification Denial/Blount Construction, Inc.

Dear Ms. Latray:

Blount Construction, Inc. (BCI) appeals the Montana Department of Transportation's (MDOT) January 25, 2017 determination that the firm is ineligible for Disadvantaged Business Enterprise (DBE) certification under the standards of 49 CFR part 26 (the Regulation). After considering the entire administrative record, the U.S. Department of Transportation (the Department) affirms MDOT's decision. *See* Regulation §26.89(f)(1).¹

The Department affirms the decision because substantial evidence supports MDOT's denial based on failure to cooperate under §26.109(c)² and excess personal net worth (PNW) under §26.67(b)(1)(i).³ We also find that the appeal does not state a claim for which the Department may grant relief. *See* §26.89(c).⁴

¹ §26.89(f)(1) provides: "The Department affirms [a certifier's] decision unless [the Department] determines, based on the entire administrative record, that [the certifier's] decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification."

² §26.109(c) states in pertinent part:

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...

³ §26.67 (b)(1) states:

An individual's presumption of economic disadvantage may be rebutted If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

⁴ §26.67(c) states in part:

I. Facts

BCI filed its Uniform Certification Application (UCA) in August 2016. You submitted a PNW statement that showed a total PNW that far exceeded the Regulation's **REDACTED** limit. *See* S. Latray PNW Statement at 1. MDOT also found information that it believed suggested that you may own other businesses. *See* MDOT email to BCI (December 2, 2016); *see also* S. Latray PNW Statement at 1.

On December 2, 2016, MDOT requested further clarification and supporting information regarding your high stated PNW and the suspected omissions of other businesses as assets.⁵ MDOT sent follow-up reminders by certified mail on December 15, 2016 and January 6, 2017. MDOT's January 6 letter restates its previous certification-related requests:

- Updated Personal Net Worth statement without the disposal well [the entry that you claimed was mistakenly included on the PNW statement and which created the excess in net worth] with documentation on the owner/agreement regarding the well.
- Explanation of all businesses operating from your address. Revise Page 6 of your application to indicate this in question.

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.*

(Emphasis added.)

⁵ In the December 2, 2016 email, The MDOT representative sought clarification on the following questions:

1. The disposal well—you said you would call [MDOT] to explain the details. That's fine if you want to call and chat, but either way [MDOT] *will need an explanation in writing.*
2. In your onsite interview, you stated that there are no other businesses operating from your location; however, a total of at least 9 active companies have your address listed as their company's address.
3. You are listed as the registered agent in Montana for at least two other companies, yet you stated in your interview that you do not own or work for any other company. . .you mentioned the disposal well - did you set up a corporation for the well? And if so, how exactly does that work without you actually owning any land or the well itself? If you do own other companies, [MDOT] will need tax returns for the last three years for those companies.
4. *[MDOT] would like you to fill out a new PNW.* The disposal well should be removed, if you are in fact, not the owner. All businesses that you hold ownership in should be listed in Section 7. Trucks (or anything else) owned by Blount Construction and Engineering should not be listed on the PNW.

MDOT Email to BCI (December 2, 2016). (Emphasis added.)

- Explanation of the companies you are a registered agent for. Do you work for or own any of these companies? If you hold ownership in any of these companies, I will need the last three years of taxes.

MDOT letter to BCI (January 6, 2017). BCI responded to none of these requests. On January 25, 2017, MDOT denied BCI's certification for exceeding the Regulation's **REDACTED** PNW limit and for failure to cooperate.

On appeal, BCI argues that you were preoccupied with caring for an ailing relative and that, "one of the matters requiring completion during this physically and emotionally exhausting time was the provision of supplemental information to finalize my business's inclusion in the MDT [sic] DBE program." See BCI Appeal (April 15, 2017) at 1.

II. Decision

Section 26.67(b)(1) states in pertinent part:

An individual's presumption of economic disadvantage may be rebutted in two ways.

- (i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

The PNW statement you filed showed your personal net worth to be about \$1.32 million. MDOT therefore was entitled to find the firm ineligible because its owner is not socially and economically disadvantaged, as §26.67(a) requires. Substantial, uncontroverted evidence supports MDOT's ineligibility determination, which we affirm under §26.89(f)(1).

MDOT allowed the firm six weeks from the first request to provide the specified certification-related information. BCI concedes that it did not respond to the several requests within the period set by MDOT. While we understand that in fact there were other matters requiring your time and attention, unfortunately, that is not a ground upon which we might overturn a denial for failure to cooperate. See §26.109(c) (no exception for owner being otherwise engaged); *see generally* §26.89(c) (requiring an explanation of certifier error, omission, or misconstruction of applicable rule).

Accordingly, we affirm the denial decision under §26.89(f)(1) because MDOT rebutted your presumption of economic disadvantage and because you failed to cooperate.

BCI may reapply for certification after January 24, 2018.

III. Conclusion

We affirm the denial under §26.89(f)(1) because substantial evidence supports it and because it is consistent with the Regulation's certification provisions.

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

Sincerely,

Samuel F. Brooks
Acting Associate Director
Disadvantaged Business Enterprise Program Division
Departmental Office of Civil Rights

cc: MDOT