

February 20, 2018

Reference Number 17-0129

Ms. Keturah Lindsay
President
Dean Petroleum, LLC
REDACTED
Studio City, CA 91604

Dear Ms. Lindsay:

Dean Petroleum, LLC (Dean Petroleum) appeals¹ the California Unified Certification Program's (CUCP) denial² of the firm's application for Disadvantaged Business Enterprise (DBE) certification, under the rules of 49 C.F.R. Part 26 (the Regulation). After reviewing the complete administrative record, as §26.89(e) requires, the U.S. Department of Transportation (the Department) affirms CUCP's decision under §26.89(f)(1).

FACTS

Since Dean Petroleum's founding in 2017, you have been the firm's President, Chief Executive Officer (CEO), and 51% owner; David Parker, who is not presumed socially and economically disadvantaged (SED) under the Regulation, has been the Senior Vice President, Chief Operating Officer (COO), and 39% owner; and Kaleem Ahmad, who is presumed SED under the Regulation, has been Vice President and 10% owner. Dean Petroleum describes itself as a "supplier of petroleum products to commercial, government, and end user customers. We specialize in the delivery of gasoline, diesel fuel, and jet fuel sites on a contract basis."³ CUCP received Dean Petroleum's UCA on April 17, 2017. *See id.*

¹ *See* Appeal Letter (July 20, 2017).

² *See* Denial Letter (June 27, 2017).

³ Uniform Certified Application (UCA) at 1.

On May 8, 2017, CUCP emailed you⁴ to schedule an on-site visit⁵ and provided you a list of documents to submit during the visit.⁶ Not having received a response from you, CUCP emailed you again on May 20, 2017, stating “This is my second request for a on site visitation for the firm. Please advise as to a date and time convenient for your firm.”⁷ CUCP sent you a third, and final, email on June 10, 2017, stating “This is my third (3rd) in final request to schedule an onsite visitation and documents. I need to hear from you by the close of business on Friday, June 16, 2017. If not I will close your file for lack of response.”⁸ You did not respond.

CUCP denied your UCA on June 27, 2017 for failure to cooperate under §26.73(c) and §26.109(c) of the Regulation. Your appeal letter states that your “perceived lack of cooperation was merely due to technical difficulties. As of today, our e-mail issues have been corrected by our provider.”⁹ You do not allege that you eventually provided CUCP the documents, nor did you provide them on appeal.

DISCUSSION

§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.* (emphasis added).

§26.109(c) states:

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

⁴ See Email from CUCP to keturah@deanpetroleum.com (May 8, 2017).

⁵ See §26.83(c)(1)(i): “[A certifier must] [p]erform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification.”

⁶ The documents included your signed tax returns for the last three years and a revised résumé that describes your roles and responsibilities at Dean Petroleum, as well as Dean Petroleum’s 2017 balance sheet; LLC membership certificates, office lease agreement, business license, March and April 2017 bank statements, payroll information, and copies of any contracts Dean Petroleum procured since its founding, or a signed statement stating that the firm does not have any contracts.

⁷ Email from CUCP to keturah@deanpetroleum.com (May 20, 2017).

⁸ Email from CUCP to keturah@deanpetroleum.com (June 10, 2017).

⁹ Appeal Letter.

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).

CUCP contacted you three times to schedule an on-site visit and remind you to submit the documents listed in the first (May 8) email. The documents CUCP requested are relevant to the certification process under §26.73(c). CUCP's emails gave you cumulatively over five weeks to respond. Your belated claim of the "technical difficulties" is not a defense under the Regulation, which defines the non-response itself as a failure to cooperate, with the result that CUCP could deny the firm's application. CUCP properly availed itself of that remedy, and we affirm the action under §26.89(f)(1) as supported by substantial evidence and consistent with applicable Regulation provisions.

This decision is administratively final and not subject to petitions for reconsideration. The firm may reapply for certification after June 26, 2018.

Sincerely,

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

cc: CUCP