



**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

Departmental Office of Civil Rights
1200 New Jersey Avenue, S.E., W76-401
Washington, DC 20590

March 13, 2019

Reference Number 18-0128

Monica Crusse
Office of Minority Business Enterprise
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076

Timothy L. Smoot
Senior Vice President & Chief Financial Officer
Meridian Management Group, Inc.
826 E. Baltimore St.
Baltimore, MD 21202

Dear Ms. Crusse and Mr. Smoot:

Meridian Management Group (MMG) appeals¹ the Maryland Department of Transportation's (MDOT) March 27, 2018 denial of the firm's application for Disadvantaged Business Enterprise (DBE) certification, under the rules of 49 C.F.R. Part 26 (the Regulation). MDOT denied MMG's application under §26.109(c) of the Regulation. After reviewing the administrative record, we remand the matter for additional proceedings §26.89(f)(4).²

On June 27, 2017 and September 5, 2017 MDOT sent Mr. Smoot a letter acknowledging receipt of MMG's DBE certification application.³ MDOT subsequently requested information from MMG on four occasions – during the December 12, 2017 on-site visit, via phone call on January

¹ See Appeal Letter (June 18, 2018).

² Section 26.89(f)(1) provides: "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."

³ See Letter from MDOT to Timothy L. Smoot (June 27, 2017).

30, 2018, by email on February 2, 2018,⁴ and by letter on March 9, 2018.⁵ No one from MMG responded to MDOT. The March 9, 2018 letter, addressed to Mr. Tucker, alerted Mr. Tucker that MDOT would deny MMG's DBE certification application if the firm did not cooperate with MDOT's instruction to provide the requested documents "within 15 days of this letter."⁶ MMG did not respond; MDOT hence denied the firm's application on March 27, 2018 for failure to cooperate.⁷

There is clearly a procedural error in the record MDOT provided to the Department. MDOT acknowledges receipt of the firm's DBE application, however, MMG only submitted an application for MBE certification. Confusing the matter is the firm's submission of personal net worth statements that are part of the Department's DBE application. The firm never submitted a full DBE application, however, MDOT proceeded to deny both MBE and DBE certification in the same correspondence, offering separate appeal rights. MMG chose to follow MDOT's directions by appealing to the Department (presumably the DBE denial) rather than appealing the MBE denial in Maryland Circuit Court.

MMG on appeal submits information relevant to MDOT's request. The Department contacted MDOT and the agency informed us that it erroneously advised MMG to appeal to the Department. We remind MDOT and MMG that the DBE program is entirely separate from state-level MBE programs. If MMG intended to apply to the DBE program, we ask the firm to submit the Uniform Certification Application to MDOT, at which time the agency is to follow the procedures outlined in §26.83 and render a decision on the firm's eligibility within the Regulation's timelines.

⁴ See Email from MDOT to Stanley Tucker (Feb. 2, 2018 at 4:04 p.m.). Mr. Tucker is MMG's President and Chief Executive Officer.

§26.89(f)(4)(4) states: "If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to [the recipient] with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to [the recipient] for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part."

⁵ MDOT sought the same information each time - a current personal net worth statement and résumé for each of MMG's owners; a copy of Mr. Tucker's 2016 individual tax return; copies of the Morgan Advisory Group's tax returns for 2014, 2015, and 2016; and copies of your and Randy Croxton's 2014, 2015, and 2016 individual tax returns. Mr. Croxton is MMG's Chief Information Officer and 25% owner.

⁶ Denial Letter for Failure to Cooperate – Warning (March 9, 2018).

⁷ Section 26.109(c) of the Regulation states in relevant 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 (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 [...])" (emphasis added). See also §26.73(c), the Regulation's other provision addressing cooperation. MDOT did not cite §26.73(c) as a denial ground.

This matter is closed in the Department's file.

Sincerely,

Marc D. Pentino
Lead Equal Opportunity Specialist
Disadvantaged Business Enterprise Division

cc: MDOT