



**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

June 28, 2019

Reference No: 19-0033

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

Kyongsik Jun, Architecture and I, LLC  
18232 Arizona Circle  
Bethesda, MD 20813

Re: Denial of DBE Certification of Architecture and I, LLC.

Dear Ms. Crusse and Mr. Jun:

Architecture and I, LLC (Architecture) appeals to the U.S. Department of Transportation, Departmental Office of Civil Rights ("the Department"), the Maryland Department of Transportation's (MDOT) October 11, 2018, denial of its application for Disadvantaged Business Enterprise (DBE) certification, under criteria set forth in the DBE Program Regulation at 49 C.F.R. Part 26 (the Regulation). The Department remands this matter so that MDOT may conduct an on-site interview and continue its evaluation of the firms' eligibility as a DBE.

Record Evidence

Architecture was formed in February 17, 2012 and filed a DBE Uniform Certification Application (UCA) on June 26, 2018, requesting 5 North American Industry Classification Systems (NAICS) codes: "Architectural Services" (541310); "Engineering Services" (541330); "Commercial and Institutional Building Construction" (236220); Plumbing, Heating and Air-Conditioning Contractors" (238220); and "Electrical Contractors and Other Wiring Installation Contractors" (238210). Kyongsik Jun owns 100% of Architecture, which performs Architectural design/engineering/construction management service and subcontracting for HVAC and electrical. (UCA at 5).

MDOT's record contains a memorandum to the file documenting that the agency spoke by phone with a representative of the firm on October 2, 2018. In this conversation, MDOT learned that although the firm listed a Fairfax, VA mailing address, Mr. Jun operates the firm from his primary residence in Bethesda, Maryland but conducts its business from the Virginia location.

MDOT did not conduct an on-site review or interview with Mr. Jun but did, on October 11, 2018, find the firm ineligible under §26.81(d) because Architecture was not first certified in what MDOT believed was its home state of Virginia.

### Decision

When a firm applies for certification as a DBE, the firm's home state processes its application (See §26.83). Home state as defined in §26.5 means "the state in which a DBE firm or applicant for DBE certification maintains its principal place of business." The certifier (in this case MDOT) may, but is not required to, process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The phrase "principal place of business" means the business location where the individuals who manage the firm's day-to-day operations spend most working hours.<sup>1</sup>

MDOT is correct that the Regulation affords discretion in determining an applicant's principal place of business if the offices from which management is directed and business records are kept are in different locations. Mr. Jun alleges on appeal that the firm is headquartered in Maryland, pays state taxes, and that he spends most of his working hours in the state, along with 3 of his employees. He explains that Virginia is the firm's satellite location and established to meet client needs in the two neighboring jurisdictions. He also alleges that all business accounts and licenses are under the state of Maryland as well.

We remand the file to MDOT and direct the agency to advise Architecture within 45 days of this letter whether its application is complete and suitable for evaluation and, if not, what additional information or action is required (see §26.83(k)), and conduct an onsite visit to the firm's Maryland offices. Per §26.83, MDOT must render a decision on the firm's application within 90 days of receiving from the applicant firm all the information required in this part.

If, upon review MDOT determines that the evidence warrants certification, then it must certify the firm without delay. Otherwise, MDOT must provide the firm a denial letter that makes a substantive determination and complies with §26.86(a). In the latter case, Architecture may appeal to the Department within the usual 90-day period.

This decision is administratively final. Thank you for your continued cooperation.

Sincerely,

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

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<sup>1</sup> MDOT's denial slightly, but incorrectly alters this definition to be "the location from which the owners of a firm manage, control and operate the firm on a consistent basis and where business records are maintained."