



**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

August 26, 2020

Docket Number 20-0067

John Clark, President
New Concept Construction, LLC
12860 Sandalwood Drive
Florissant, MO 63033

Dear Mr. Clark:

This letter addresses your appeal of the St. Louis Lambert International Airport's (SLIA) April 7, 2020, decertification of your firm (NCC) for failure to cooperate. SLIA determined that you did not file the required annual affidavit for 2019.

1. Facts.

On February 6, 2020, SLIA notified you that it intended to decertify NCC for not filing the affidavit. The notice offered NCC an opportunity to respond and set a hearing date of April 7, 2020. When you did not file, contest, or appear, SLIA decertified NCC.

On appeal, you admit that you did not file the affidavit and state that you did not receive SLIA's notice of intent. United States Postal Service records, however, show that the SLIA's February 6, 2020, letter was properly delivered to the address on file for your firm.

2. Standard of review for decertification appeals.

The Department makes its decision "based on the entire administrative record as supplemented by the appeal." Section 26.89(e). "The Department does not make a de novo review of the matter; [rather, it] affirms [the] decision unless it determines, based on the entire administrative record, that [the] decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification." Section 26.89(f)(1).

3. Discussion.

The DBE regulations require a DBE's disadvantaged owner to file, on or before the anniversary of the firm's certification, an affidavit attesting that there has been no change in the firm's circumstances that affects its eligibility. See section 26.83(j). Timely filing is, in effect, a condition of remaining certified. The requirement is unconditional. Responsibility for timely filing rests squarely on the DBE and its owner.

You admit that you did not comply. Section 26.83(j) deems that omission to be a failure to cooperate. Section 26.73(c) permitted, and section 26.87(b) required, SLIA to begin decertification proceedings.

We conclude that SLIA complied fully with applicable certification rules and applied them correctly. You allege no reversible error and we find none. See section 26.89(c).

We therefore affirm SLIA's decision, as section 26.89(f)(1) prescribes. NCC may reapply for certification when the waiting period elapses.

This decision is administratively final.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Melissa Stuedle, SLIA