



**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

December 7, 2020

Docket Number 20-0107

Deborah A. Beachner  
R.F.B. Construction Company, Inc.  
565 E. 520th Avenue  
Pittsburg, KS 66762

Dear Ms. Beachner:

This is in response to your appeal of the decertification by Oklahoma Transportation (OT) of the R.F.B. Construction Company, Inc. (RFB). RFB did not send OT the annual affidavit of no change required by section 26.83(j) of the Department's DBE regulations. Consequently, OT removed RFB's certification for failure to cooperate under section 26.109(c) of the regulation.

RFB's due date for submitting the affidavit and supporting financial information was February 11, 2020. The record shows that OT sent reminder letters to RFB's mailing address on December 31, 2019, January 12, 2020, and January 27, 2020. On March 2, 2020, OT sent a letter to the same address, proposing to decertify the firm for failure to submit the required materials. Having received no response to any of this correspondence, OT sent a letter to RFB on April 2, 2020, notifying the firm of its decertification.

The primary contention of RFB's appeal is that the firm never received any of OT's correspondence and so was unaware of its obligation to submit the affidavit, suggesting that communications issues resulting from the coronavirus pandemic may have prevented the letters from arriving. Moreover, the appeal states, OT does not have any record of the letters having arrived, such as a receipt for certified mail. The appeal also suggests that an employee may have confused an email relating to a "certification change" with the affidavit of no change, leading to company to think that the affidavit requirement had been met.

Four of the five letters sent by OT to RFB were dated before the pandemic began having widespread impact, making Covid an unlikely suspect in the case. The probability of five different letters sent to the same, correct address going awry over a period of three months seems very low. While section 26.87(b) of the regulation requires a certifier to send written notice to a firm proposing its decertification, the regulation does not require that the certifier maintain a record of the notice's receipt by the addressee. It is possible, of course, that an employee made a mistake. Given that RFB is certified in six states other than Oklahoma, however, the affidavit of no change requirement should be familiar to the company. As President, you bear the ultimate responsibility of ensuring RFB's compliance with regulatory requirements.

Consequently, we find that there is substantial evidence to support OT's action. Under section 26.89(f)(1) of the regulation, we affirm OT's decision.

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

Sincerely,

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

cc: Scott M. Houck