



**U.S. Department of  
Transportation**

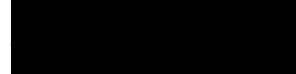
Office of the Secretary  
Of Transportation

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

December 14, 2020

Docket Number 20-0116

Susan Bayat, PE  
EnTech Engineering, PC



Dear Ms. Bayat:

This is in response to your appeal of the decertification of your firm, EnTech Engineering, PC (ETE), by the New York State Unified Certification Program (NYSUCP). The basis of the decertification was that ETE had exceeded the \$[REDACTED] million overall small business size standard of section 26.65 of the Department's DBE regulation.

When a DBE's average gross receipts for the three most recent fiscal years exceeds the section 26.65(b) cap, it is no longer eligible to participate in the DBE program. There is no dispute that ETE's annual gross receipts, averaged over the three years preceding NYSUCP's decision, is \$26.3 million.

ETE argues that it should be allowed to recompute the average based on lower, 2020 year-to-date revenues. Unfortunately for ETE, the regulation does not permit a firm or certifier to take into account anticipated gross receipts for a current or future year, ratably or otherwise.<sup>1</sup> Nor is there any basis in the regulation for making this calculation over a five-year rather than a three-year period, as ETE advocates.<sup>2</sup> Finally, the appeal implies that had the statutory size cap of section 26.65(b) been adjusted, ETE's [REDACTED] million average gross receipts might have fallen below a new, higher cap. Our response is the same. Certifiers, and we, apply the rule we have.<sup>3</sup>

We affirm the decertification under section 26.89(f)(1) as consistent with the regulation and supported by substantial evidence.

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<sup>1</sup> A different rule would defeat the objective of finality.

<sup>2</sup> Although the SBA final rule at 84 FR 66561 changes the time period under which a firm calculates the section 26.65(a), NAICS code-based cap, it does not change the section 26.65(b) statutory cap. See Pub. L. No. 114-94 § 1101(b)(2)(A)(iii) (Dec. 4, 2015).

<sup>3</sup> See generally sections 26.73(b)(1), 26.89(f)(6).

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

Sincerely,

Samuel F. Brooks  
Team Lead  
Disadvantaged Business Enterprise Division

cc: Suchetta Premchan, Johnny Cisneros, DeJuan Hardy, Regina Oliver