



**U.S. Department of
Transportation**

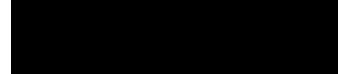
Office of the Secretary
Of Transportation

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

January 28, 2021

Docket Number 21-0012

Eve Hinman
Hinman Consulting Engineers, Inc.



Lisa S. Thompson
Lansing Business & Workforce Diversity
Office of Business Development
Michigan Department of Transportation

Dear Ms. Hinman and Ms. Thompson:

This is in response to HCE's appeal of the Michigan Department of Transportation's decertification for failure to cooperate. MDOT states that HCE did not file the annual no-change affidavit with documentation of the firm's 2019 gross receipts (collectively, NCA), as DBE regulation section 26.83(j) requires.

The NCA was due June 20, 2020. Ms. Hinman admits that the firm did not provide it as required.¹ Section 26.83(j) deems that omission to be a failure to cooperate, and section 26.109(c) provides that the certifier may remove certification as a result.² The regulation fully authorized MDOT's action, in short, and may even have required it.

The question becomes whether MDOT's decision-making process complied with the decertification rules. We cannot say that it did because MDOT did not provide us a regulation-compliant notice of intent to decertify.³ See, e.g., sections 26.87(b), (d), and (g). See also sections 26.89(d), (e), and (f).⁴ We therefore reverse and direct MDOT to restore certification.

¹ Ms. Hinman in fact makes no claim that she attempted to contact MDOT at all, whether to request an extension of time, to explain extenuating circumstances, or otherwise.

² Decertification section 26.87(b) states that the certifier "must" move to decertify in this circumstance.

³ Upon notice of an appeal, the certifier must provide the Department a complete administrative record that includes any and all evidence relied upon in making its decision. The NOI is the linchpin of any decertification. It is indispensable, yet absent here—that fact precludes an affirmation of HCE's decertification.

⁴ We also question whether HCE states a proper section 26.89(c) claim. The appeal makes no allegation which, if accurate, amounts to MDOT's error, omission, or misapplication of rule. The NCA requirement is unconditional, not

This disposition returns the parties to the status quo ante, compliance-wise. Having instructed MDOT and HCE regarding the operative rules' meaning and application, we restore them to the positions they occupied on June 1, 2020, and offer advice about how they might stay in compliance. See generally section 26.89(f)(4).

We suggest that HCE provide MDOT a complete, rule-compliant 2020 NCA no later than 4 p.m., Michigan time, February 17, 2021. We consider a time-stamped e-mail transition ideal, but HCE may submit in whatever manner it chooses. If HCE provides such an NCA, we direct MDOT to review the submission under its standard procedures and take whatever action, if any, it considers appropriate under the regulation.⁵

Nothing in this letter is to be construed as otherwise altering the parties' rights and responsibilities under the regulation.

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

Sincerely,

Samuel F. Brooks
Team Lead
Disadvantaged Business Enterprise Division

contingent on being reminded, having a fully staffed office, or actual receipt of a properly addressed NOI. The responsibility rests exclusively with the DBE and its owner. But for MDOT's own substantial misstep, we almost certainly would have affirmed the decertification. Ms. Hinman unilaterally could have avoided that fate, and spared everyone considerable trouble, by simply providing MDOT a new NCA, as she did in 2018 and 2019.

⁵The parties should note that section 26.83(j) permits sworn affidavits executed on penalty of perjury in lieu of notarization. If need be, MDOT may accept an image of a signed, otherwise conforming document, or one that bears an electronic signature.