



**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

November 29, 2022

Docket No. 21-0107

Pamela J. Mazza
Piliero Mazza
888 17th Street NW, 11th Floor
Washington, DC 20006

Verniece Love
Director of SWaM and DBE Certification
Virginia Department of Small Business and Supplier Diversity
101 N. 14th Street, 11th Floor
Richmond, Virginia 23219

Dear Ms. Mazza and Ms. Love:

Our decision of October 31, 2022 was in error. We therefore withdraw it and reverse VDSBSD's denial on the basis of excess gross receipts by virtue of affiliation based on a finding of identity of interest. The reason is that the agency lacked substantial evidence for its determination.¹ Thus, by the terms of section 26.89(f)(2), we direct VDSBSD to certify MBS forthwith. Please copy this Office on the pertinent notification.

Thank you for your patience and cooperation.

This decision is administratively final under section 26.89(g).

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

¹ The denial letter did not state any real evidentiary basis for finding identity of interest. Broad assertions about type of business and overlapping customers, without more, do not support VDSBSD's conclusion. We are generally skeptical that a certifier can identify unrelated construction companies as sharing an identity of interest with an applicant, even if it can establish that the companies work on similar types of projects, or even occasionally on the same projects. Further, we believe it is unreasonable to expect a tribal entity somehow to gain access to unrelated, private company tax returns or other, non-public gross receipts information.