



**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 25, 2022

Docket No. 22-0044

Mahendra Patel, President
MP Engineers and Architects, P.C.
40 Rector St., Ste. 1020B
New York, NY 10006

Lorraine Warren
Chairperson, New York State Unified Certification Program
State of New York Metropolitan Transportation Authority
2 Broadway
New York, NY 10004

Dear Mr. Patel and Ms. Warren:

MP Engineers and Architects, P.C. (MPEA) is appealing its decertification as a DBE by the New York State Unified Certification Program (NYSUCP). NYSUCP determined that Mahendra Patel, MPEA's owner, had the ability to accumulate substantial wealth (AASW). Because we find NYSUCP's action to be flawed procedurally, we need not address the substance of the AASW finding.

NYSUCP's procedural problems begin with inappropriate communications by the New York State Department of Transportation (NYSDOT). In a January 27, 2021, email quoted in the appeal,¹ a New York State Department of Transportation (NYSDOT) staff member threatened to propose decertifying MPEA for failure to cooperate if Mr. Patel's wife, Nita Patel, did not directly, as distinct from through an attorney, respond to him. Threatening the firm's eligibility because the owner's spouse, who was not involved in owning or controlling the firm, did not respond as NYSDOT staff directed is misconduct.

Certifier staff continued their attempts to intimidate the firm. Within a few weeks after the email to Ms. Patel, in a February 16, 2021, conference call quoted in the appeal,² a different NYSDOT staff member suggested that Mr. Patel voluntarily withdraw MPEA's certification, saying that otherwise the matter would be "turned over to the feds" and alluding to the False Claims Act. There could be a "big problem," the staff member continued, so if an attorney advised to "fight

¹ Appeal, p.16.

² Appeal, p. 28. In the absence of any NYSUCP Response challenging the Appeal's assertions, we consider them to be substantially accurate.

it,” Mr. Patel should “know what you’re up against so [you] can evaluate that.” The January and February threats violate the section 26.109(d) prohibition of intimidating or coercing any individual or firm and thereby require us to reverse the decertification under section 26.89(f)(2).³

We direct NYSUCP to reinstate certification forthwith.⁴

This decision is administratively final.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

³ By the terms of the rule, NYSUCP is “in noncompliance with this part.” NYSUCP’s tactics also substantially compromised the firm’s right to due process under section 26.87(d). Despite conceding, in a September 17, 2021, email that the certifier’s standard operating procedures do not bar attorneys from participating in decertification proceedings, NYSUCP did bar firm counsel even from passing a note to Mr. Patel as he testified. See Appeal at 21 and 38; Hearing Transcript at 49.

⁴ Again, we express no opinion on MPEA’s eligibility. If NYSUCP reasonably believes that MPEA is ineligible, then section 26.87(b) requires it to issue a new NOI and conduct further proceedings consistent with section 26.87. If it does, we suggest that it scrupulously follow required procedures and conduct itself in a way consistent with the fairness that the program extends to all participants.