



**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

October 26, 2022

Docket No. 22-0053

Peter B. Ford
Meghan F. Leemon
Piliero Mazza
1001 G Street NW, Suite 1100
Washington, DC 20001

Donald N. Mayes
Deputy Director
Equal Opportunity Department
City of Phoenix
200 W. Washington Street, 15th Floor
Phoenix, AZ 85003

Dear Mr. Ford, Ms. Leemon, and Mr. Mayes:

The City of Phoenix decertified Stormwater Plans, LLC (SWP), saying that the firm had “graduated” from the DBE program¹ because its gross receipts significantly exceeded Small Business Administration (SBA) size standards for firms in its NAICS codes, rendering the firm ineligible under section 26.65(a) of the Department’s DBE regulation.

In doing so, the City ignored most of the requirements of section 26.87. The City’s noncompliance makes its decision inconsistent with applicable rules; hence we reverse under section 26.89(f)(2) and direct the City to restore SWP’s certification forthwith. This decision is administratively final under section 26.89(g) and not subject to petitions for reconsideration.

As guidance to the City and SWP in any further proceedings that may occur concerning the firm, we refer the parties to the procedural requirements of section 26.87 that apply to any action to remove a firm’s certification. First, a certification can be removed only for one of the reasons specified in section 26.87(f). Second, if a certifier believes it has good cause to remove a certification, it must provide the firm the written notice of its reasons required by section 26.87(b). The firm must be given the opportunity for an informal hearing under section 26.87(d), and the administrative due process provisions of that section and section 26.87(e) apply.

In considering whether to commence another proceeding to decertify SWP, the City should first examine section 26.73(i) to determine whether its provisions apply to SWP. If they do, then size

¹ The DBE program does not use the SBA term “graduation.” When a DBE firm exceeds applicable size standards, it becomes subject to decertification (removal) because it is no longer *eligible* to participate.

considerations like those discussed in the decision and appeal become moot. If not, then the City should review the appeal's arguments with respect to how SBA size and affiliation rules apply to the firm under section 26.65(a).

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division