

THE PORT AUTHORITY OF NY & NJ

March 29, 2016

Ms. Jennifer Fisher
President
Einstein Construction Group, LLC
P.O. Box 2381
Sanger, TX 76202

Re: Intent to Remove Disadvantaged Business Enterprise (DBE) Certification.

Dear Ms. Fisher:

This letter is to notify you of our intention to decertify your firm as an Airport Concession Disadvantaged Business Enterprise (ACDBE) with the Port Authority of NY & NJ. Based upon an examination of the documentation submitted and information presented, this office has concluded that Einstein Construction Group, LLC no longer meets the eligibility criteria for certification as an ACDBE as set forth in U.S. Department of transportation Code of Federal Regulations 49 Parts 23 and 26. In accordance with 49 CFR 26.87 (b), the Office of Business Diversity and Civil rights is proposing to find your firm ineligible and remove its ACDBE certification.

The specific reasons for the determination are as follows:

1. It appears that Einstein Construction Group, LLC is structured as a 50/50 operation where you and your non socially and economically disadvantaged partner have equal rights to business assets, profits and executing managerial decisions.

49 CFR part §26.69 (b)(3) states: In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

On October, 18, 2014, the Port Authority received the corporate taxes for Einstein Construction Group, LLC. The review of the U.S. Corporate Tax Returns for 2013 showed the shareholders percentage of stock interest was split 50%/50%, which indicates the firm does not meet the criteria and is not eligible for certification as a Disadvantaged Business Enterprise. In addition to the firm's corporate taxes, a review of the Amended Operating Agreement contained in the certification file, specifically item #9, states "The company may be dissolved according to the agreement, except that the assets shall be sold/divided by the officers, 50% Paul and 50% Jennifer." This further corroborates the fact that the firm's ownership and assets are split 50%/50%.

*Office of Business Diversity and Civil Rights
2 Montgomery Street, 2nd Floor
Jersey City, NJ 07302*

2. The Amended Operating Agreement for Einstein Construction Group, LLC restricts you and your ability to direct the operations of the business without the consent of the non-minority/women member.

Federal Regulations part §26.71 (c) states: A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

The Amended Operating Agreement dated July 1, 2010 Amendment to #6 entitled "Management duties and Restrictions," states that: "The officers shall have the management rights according to their ownership percentages. Without the consent of the other officer, neither officer shall on behalf of the company, borrow or lend money, execute any mortgage, security agreement, bond or lease, purchase, sell or contract to sell any property for or of the company other than the type of property bought and sold in the regular course of its business." The Operating Agreement restricts your ability to direct and control the operations of the firm without the consent of the non-minority/women member.

3. The non-minority/non women owner appears to be the primary possessor of the expertise necessary to manage and control Einstein Construction Group, LLC., a construction company specializing in general construction contracting.

Federal Regulations part §26.71 (g) states, in part: The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

Your technical background to run and control a general construction contracting company comes into question based on your resume and lack of expertise in the firm's primary field of operations. Your responsibilities are primarily administrative in nature and your work history shows all of your experience is concentrated in administrative duties (e.g., maintain Quickbooks files, preparing payroll, manage banking transaction, tracking of job expenses, filing of DBE/WBE applications).

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In contrast, the resume of Mr. Paul Colagiovanni shows he has over 20 years of experience in the construction industry, holding job titles such as Project Manager, and Manager of Engineering Services. In addition, Mr. Colagiovanni's education and training show he has an Associate degree in Architectural Technology, an OSHA Certification and a Bachelor Degree in Business Management and Economics.

Based on the aforementioned, we conclude that Paul Colagiovanni is the primary possessor of the expertise and experience necessary to manage Einstein Construction Group, LLC and he is disproportionately responsible for the day-to-day operations.

These findings provide the basis for the Port Authority's determination that Einstein Construction Group, LLC no longer meets the eligibility criteria for ACDBE certification, and we are therefore proposing to remove your firm's certification.

In accordance with 49 CFR 26.87 (d), you have the opportunity, by means of an informal hearing or in writing, to provide information and arguments addressing why your firm should remain certified. If you wish to have an informal hearing, you must contact the Certification Manager, Gerald Simpkins at (201) 395-3944 or via email gsimpkin@panynj.gov within seven (7) days from the date of this letter to schedule a date for the informal hearing.

If you elect to respond in writing, your written response, including any supporting documentation, must be received within 14 days from the date of this letter. Please mail your information to Mr. Gerald Simpkins, Certification Manager, The Port Authority of NY & NJ, Office of Business Diversity and Civil Rights, 2 Montgomery Street, 2nd Floor, Jersey City, NJ 07302.

Please note that if you fail to respond in writing or to request an informal hearing in the manner set forth above, your firm's ACDBE certification will be removed. Any certification determination rendered by The Port Authority of NY & NJ will be effective for all certifying partners of the New York State and New Jersey Unified Certification Programs.

Should you have any questions, please contact me at (201) 395-3950 or email at jaortiz@panynj.gov.

Sincerely,



Jayson Ortiz
Certification Analyst
Office of Business Diversity and Civil Rights