

June 8, 2018

Reference Number 18-0035

Sammy Febres, Manager
Florida Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399-0450

Dear Mr. Febres:

By letter dated November 29, 2017, Traffic Control Products of Florida, Inc. (TCP) appeals the Florida Department of Transportation's (FDOT) October 31, 2017 decertification of TCP as a Disadvantaged Business Enterprise (DBE) under the standards of 49 C.F.R. part 26 (Regulation). We conclude that FDOT's decision is inconsistent with applicable certification provisions, Regulation §26.87 in particular; we reverse the decertification under §26.89(f)(2); and we direct FDOT promptly to restore TCP's certification and all attendant benefits.

With one narrow exception not applicable here, section 26.83(h)(1) provides that a DBE firm remains certified unless and until the certifier removes certification in accordance with §26.87. The decertification requirements include, among others: sending §26.87(b) written notice explaining the grounds for *proposing* to decertify and citing specific evidence in support; apprising the firm in that notice of its §26.87(d) right to a state-level hearing to respond to the stated reasons; ensuring that the decision maker in such a proceeding is both knowledgeable about the program and independent of the office proposing to decertify; stating one of the §26.87(f) grounds; and complying with the §26.87(g) rules concerning the notice of decision (a different letter from the notice of intent). There is no provision that permits the certifier to begin with the notice of decision and bypass or omit the other procedures.

FDOT did not comply. Instead it cites a provision that pertains only to counting a DBE's participation on contracts *once it has been decertified*. Section 26.87(j). The provision has no effect whatever on the decertification process or standards. Further, all the cited provision does is permit the certifier *to count* the DBE's participation on existing contracts on which it has begun work. Subsection (3) is an exception to the subsection (1) and (2) rules concerning when a DBE's post-decertification participation on contracts does *not* count toward applicable goals. The exception is not an exemption from the specified, mandatory decertification processes.

In light of our procedural disposition, we do not decide issues arising under §26.65. Eligibility under that provision is a matter for FDOT decide. However, we urge FDOT, in determining whether to proceed with another attempt to decertify TCP, to consider very carefully the evidence TCP provided FDOT of corrected reporting of ownership in alleged affiliates. We are not equipped to decide matters and actions the certifier only partially considered and/or did not

allow the firm to respond to—nor is that our function. We remind FDOT that the Regulation requires us to reverse any determination not supported by substantial evidence.

This decision is administratively final. Please notify TCP without delay that FDOT has restored its certification, with a file copy of that notice to this Office.

Thank you for your cooperation.

Sincerely,

Samuel F. Brooks
DBE Appeal Team Lead
Disadvantaged Business Enterprise Division

cc: TCP