



**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

August 31, 2020

Docket No. 20-0042

Ms. Ora J. Joiner
President
Multitech Group, Inc.
311 West Green Oaks Blvd., Suite C
Arlington, TX 76011

Dear Ms. Joiner:

This is in response to the appeal, filed on your behalf by Tracee Houston of the Lorayne Law Group, of the decertification of Multitech Group, Inc. (MTG) by the Texas Unified Certification Program (TUCP).

This decertification action has a lengthy procedural history. On June 22, 2018, the North Central Texas Regional Certification Agency (NCTRCA) issued a letter decertifying the firm. However, NCTRCA failed to follow the procedural requirements of section 26.87 of the Department's DBE regulations, resulting in an April 25, 2019, appeal decision by this office vacating the NCTRCA action and remanding the matter for further proceedings.

On May 6, 2019, NCTRCA issued a letter proposing to decertify the firm, citing the same grounds mentioned in its June 2018 letter. MTG requested a hearing, which was held in June 2019.¹ On August 25, 2019, Elton Price of the City of Austin issued a decision on behalf of the TUCP decertifying MTG. For reasons unclear, this letter was not received by MTG until October 28, 2019, as demonstrated by a USPS notification in the record. Because of this delay in the receipt of the decertification letter, we regard MTG's January 25, 2020, appeal as timely filed.

NCTRCA's May 2019 proposal listed three grounds for believing that MTG failed to meet the control requirements of section 26.71 of the Department's regulations. However, the only basis cited by Mr. Price in the August 25, 2019, letter for his decision to decertify the firm was a problem with sections 3.01 and 3.11 of the corporation's bylaws. Our decision therefore focuses on that issue.

¹ The transcript of the hearing was not provided to MTG nor made a part of this record, as it should have been. However, the decision in this appeal, based as it is on provisions on the face of the corporate by-laws, is not dependent on information that would be developed in such a hearing.

Section 3.01 provides that the business and affairs of the corporation are managed by the board of directors. Under section 3.11, a quorum of the board of directors consists of a “majority of the number of directorship.” The act of a majority of the directors present at a meeting of the board constitutes an act of the board. There are only two members of the board: you and Mr. Keith Gross, who is not a disadvantaged individual.

Consequently, by terms of the bylaws, both you and Mr. Gross would have to be present to form a quorum of the board. To make a decision, both would have to agree; otherwise there could not be a majority of the number of directors. This is contrary to section 26.71(c) of the Department’s DBE regulations, which provides that arrangements 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” preclude a disadvantaged owner from controlling the firm. On this basis, TUCP found that you do not control MTG.

The Department has frequently ruled that provisions that prevent a disadvantaged owner from making business decisions without the cooperation of a non-disadvantaged participant run afoul of section 26.71(c).² Unfortunately, these provisions of MTG’s bylaws have such an effect.

MTG’s appeal points out that section 2.06 of the bylaws provides that the holder of majority of the shares of the corporation constitutes a quorum for purposes of shareholders’ meetings. While true, this does not obviate the problem with meetings of the board of directors created by sections 3.01 and 3.11.

For these reasons, the Department finds that TUCP had substantial evidence to carry its burden of proof that MTG did not meet the control requirements of section 26.71(c) of the regulation.³ Therefore, we are affirming TUCP’s decision.

This decision is administratively final.

Sincerely,

Patricia Ross For:

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Elton Price

² See, e.g., 14-0024 *Smart Associates Environmental Consultants, Inc.* (July 1, 2015), 14-0035 *Rear View Safety, Inc.* (July 6, 2015), 14-0034 *Vegas Heavy Haul, Inc.* (July 8, 2015), 15-0148 *Gideon Toal Management Services* (March 26, 2016), 16-0015 *Tollie’s Landscaping and Lawn* (June 10, 2016), 16-0064 *Ryan Biggs/Clark Davis Engineering and Surveying, P.C.* (August 12, 2016), 17-0053 *D.M. Conlon Inc.* (November 21, 2017), 17-0131 *Cable Trucking Inc.* (March 26, 2018), 19-0010 *VEC Services LLC* (May 2019).

³ The August 25, 2019, decertification letter notes that while the problematic by-law provisions existed at the time MGT was originally certified, NCTRCA apparently overlooked the problem. Consequently, decertification was appropriate since the original certification was clearly erroneous, as provided in section 26.87(f)(5) of the DBE regulation.