



**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

April 29, 2019

Reference Number: 18-0153

John Emina  
Infrastructure People, LLC  
**REDACTED**  
Marshall, VA 20115

Dear Mr. Emina:

Infrastructure People, LLC (IP) appeals the Virginia Unified Certification Program (VUCP) denial of its application for certification as a Disadvantaged Business Enterprise (DBE) certification under the rules of 49 C.F.R. Part 26 (the Regulation). VUCP denied the firm as a DBE for failure to cooperate as required by §26.83(c)(1)(i) of the Regulation. After carefully reviewing the entire administrative record, the U.S. Department of Transportation, Departmental Office of Civil Rights (the Department), finds substantial record evidence supports VUCP's determination. We affirm the determination of ineligibility under §26.89(f)(1).

Factual and Procedural Background

On April 9, 2018, VUCP informed you by email that as part of the DBE certification process the agency would be conducting an onsite interview with you on April 16, 2018. Additionally, VUCP telephoned the firm on April 17, 2018, attempting again to schedule the on-site interview. On April 23, 2018<sup>1</sup> VUCP emailed you a second time and stated:

Attempts (i.e., emails, telephone call) to schedule an on-site visit, for purposes of the [DBE] certification process, have been unsuccessful. If no response is received, on or before Monday, April 30, 2018, your on-site request will be closed and returned to the DBE certification officer.

Despite VUCP numerous requests, the record indicates that you failed to respond and when VUCP did not hear from you a letter of denial was issued to the firm on July 23, 2018, rendering the firm ineligible to participate in the DBE program.

IP timely appealed the DBE denial to the Department on August 2, 2018, and you stated:

I applied for the DBE/MBE certification through the State internet portal.  
Infrastructure People, LLC was denied DBE certification because there wasn't a

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<sup>1</sup> VAUCP's denial letter mistakenly lists April 17, 2018.

response to their emails and “a [sic] I” missed a phone call for my site visit. I did receive the email but I did not see it until I received the notice and found it in my email spam folder. I have no knowledge of a call or voicemail. For these reasons, I am requesting a reversal of the decision to deny Infrastructure People LLC DBE/MBE application.

### Decision

All participants in the Department’s DBE program are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Applicant firms that fail to cooperate will be denied certification. *See* §26.109(c).<sup>2</sup> The evidence supports VUCP’s conclusion that IP failed to comply with the agency’s numerous communications, which prevented VUCP from performing an on-site interview (a requirement per §26.83(c)(1)(i)).

These oversights constitute a failure to cooperate under §26.109(c). This Office cannot remedy a DBE firm’s evident non-compliance. That is the firm’s responsibility. For IP to be considered eligible for the DBE program, it has an obligation to participate in all aspects of the DBE application process, including but not limited to the mandatory on-site interview, irrespective of the issues surrounding you not seeing your emails or missing a phone call. VUCP’s actions complied with the Regulation’s substantive and procedural denial provisions of §26.86, and §26.89(f)(1) requires us to affirm it.

**IP may reapply for DBE certification after the applicable waiting period has passed.** This decision is administratively final and not subject to petitions for reconsideration.

Sincerely,

Marc D. Pentino  
Lead Equal Opportunity Specialist  
Disadvantaged Business Enterprise Division

cc: VUCP

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<sup>2</sup> §26.109(c) states: “Cooperation. All participants in the Department’s DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).”