

April 26, 2019

Reference Number: 18-0165

Anthony Steen  
President  
LMN Concrete & Grinding  
**REDACTED**  
Jurupa Valley, CA 92509

Dear Mr. Steen:

This letter addresses your appeal<sup>1</sup> of the California Unified Certification Program's (CUCP) decision to remove LMN Concrete & Grinding (LMN) from the Disadvantaged Business Enterprise (DBE) program under the rules of 49 CFR part 26 (the Regulation).<sup>2</sup> After reviewing the record, we affirm CUCP's decision.<sup>3</sup>

*Background*

You own LMN and its two affiliates, AFS Investments LLC d/b/a LMS Transport (LMS) and Steen Holdings LLC. In November 2012 CUCP certified LMN with North American Industry Classification System (NAICS) code 238990 - All Other Specialty Trade Contractors. In June 2018 CUCP calculated the combined three-year average annual gross receipts of LMN, LMS, and Steen Holdings as **REDACTED**.<sup>4</sup>

CUCP found LMN ineligible for continued DBE certification under §§26.65(a) and (b) and 26.71(n)(1).<sup>5</sup> We affirm based on §26.65(a).

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<sup>1</sup> See Appeal Letter (Aug. 28, 2018).

<sup>2</sup> See Reconsideration Decision on DBE Graduation Proposal (Reconsideration Decision) (June 7, 2018).

<sup>3</sup> Section 26.89(f)(1) states: "The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification."

<sup>4</sup> See Reconsideration Decision at 1.

<sup>5</sup> In your appeal letter you argue that LMN is eligible for additional codes because the firm is not "merely a concrete related services firm." Appeal Letter at 1. LMN is not certified to perform work as a DBE in any other codes, but it may apply for such certification (and prove its eligibility) at any time.

### *Discussion*

A DBE is a for-profit small business concern that is owned and controlled by at least one socially and economically disadvantaged individual.<sup>6</sup> The Regulation adopts the U.S. Small Business Administration's (SBA) provisions pertaining to small business size standards and gross receipts.<sup>7</sup> SBA's small business size standard for NAICS code 238990 is \$15 million.<sup>8</sup> CUCP calculated LMN's three-year average annual gross receipts as **REDACTED**. CUCP included the gross receipts of LMS and Steen Holdings in its calculation.<sup>9</sup> CUCP then concluded that LMN is no longer a small business and thus, no longer eligible for DBE certification. You agree that LMN exceeds the SBA size standard for NAICS code 238990.<sup>10</sup>

Substantial evidence demonstrates that CUCP met its burden of proving, by a preponderance of the evidence, that LMN is ineligible for continued DBE certification. *See generally* §26.87.<sup>11</sup>

### *Conclusion*

We affirm. *See* §26.89(f)(1). This decision is final under and not subject to petitions for reconsideration.

Sincerely,

Samuel F. Brooks  
Appeal Team Lead  
Disadvantaged Business Enterprise Division

cc: CUCP

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<sup>6</sup> *See* §26.5 – What do the terms in this part mean?

<sup>7</sup> *See* §26.65(a): “To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.” *See also* 13 CFR 121.201 and 121.104.

<sup>8</sup> *See* 13 CFR 121.201 – What size standards has SBA identified by North American Industry Classification System codes?

<sup>9</sup> *See generally* 13 CFR 121.103 and 121.104.

<sup>10</sup> *See* Appeal Letter at 1.

<sup>11</sup> The record shows that CUCP complied with the requirements of §26.87.