



**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 23, 2019

Reference Number: 18-0175

Preet Johal
Economy Trucking Services, Inc.
P.O. Box 525
Union City, CA 94587

Dear Ms. Johal:

Economy Trucking Services, Inc (ETS) appeals the California Department of Transportation's (CALTRANS) removal of the firm's Disadvantaged Business Enterprise (DBE) certification. CALTRANS decertified the firm as a DBE for failure to provide information as required by §26.83(j) of the DBE program regulation, 49 C.F.R. Parts 26 (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 CALTRANS's decertification of ETS and we affirm the decision as required by §26.89(f)(1).

Factual and Procedural Background

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. DBE firms that fail to cooperate will be denied certification, their eligibility will be removed, and/or they will be suspended and disbarred. §26.109(c).¹

Under the Regulation, after a certifying agency deems a firm eligible for the DBE program, the firm has a continuing obligation to provide the agency with a yearly submission of information. This requirement, specified in §26.83(j), states:

If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn

¹ §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)."

declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

On March 20 and April 23, 2018 CALTRANS sent letters to you as a reminder that your annual updates and relevant federal tax documents needed to be submitted, setting a due date of June 1, 2018. When CALTRANS did not hear from you, the agency (on June 22, 2018) issued a proposed removal of the firm's DBE certification. Per the Regulation §26.87, CALTRANS offered ETS the option of requesting an informal hearing and providing a written response. CALTRANS provided you a third opportunity (by email dated July 26, 2018) to submit the required documents by August 1, 2018 or the firm would be decertified. The record indicates ETS failed to submit an annual affidavit and tax documents or avail itself of any of the appeal options the agency offered; prompting CALTRANS to issue a final DBE certification removal notice on August 20, 2018.

ETS timely appealed the decertification to the Department on August 30, 2018 and stated:

I apologize for our firm doesn't have any copies of the previously sent letter. I don't know if they were lost in transit or misplaced by our staff. Over the past few months we have had changes in staffing dedicated to picking up the mail, office manager, and administrative personnel. I again apologies for this was an honest mistake of not identifying previous letter. We simply failed to complete the required annual update.

Decision

The evidence supports CALTRANS conclusion that ETS failed to comply with §26.83(j) when it did not submit the mandatory annual affidavit of no change and related documents concerning the firm's gross receipts (the requirement of which, ETS was notified at the time of its certification in May 2011). These oversights constitute a failure to cooperate under §§26.73(c)² and §26.109(c). This Office cannot remedy a DBE firm's evident non-compliance. That is the firm's responsibility. ETS had the option to submit the required documents irrespective of issues surrounding you not receiving or losing your mail. CALTRANS' actions complied with the

² §26.73(c) states: "DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification."

Regulation's substantive and procedural decertification provisions of §26.87, and §26.89(f)(1) requires us to affirm it.³

ETS 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: CALTRANS

³ See also §26.87(f), which states in part: "*Grounds for decision.* You may base a decision to remove a firm's eligibility only on one or more of the following grounds: . . . (6) *The firm has failed to cooperate with you* (see §26.109(c))." (Emphasis added).