

October 29, 2014

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Reference No.: 14-0066

Albert Titus, Executive Director  
North Central Texas Regional Certification Authority  
624 Six Flags Drive, Suite 100  
Arlington, TX 76011

Dear Mr. Titus:

ATS International, LLC (ATS), appeals NCTRCA's denial of its application for certification as a Disadvantaged Business Enterprise (DBE) under the standards of 49 C.F.R. Part 26 (the Regulation). NCTRCA states its intent to deny for failure to cooperate but neither explains the nature of the claimed non-cooperation nor specifically references evidence in the record that might support the conclusion. We therefore reverse<sup>1</sup> and direct NCTRCA to certify the firm.<sup>2</sup>

NCTRCA's denial letter is deficient under the Regulation. The letter announces a generalized sequence of alternative conclusions (not specific enough to alert the applicant of the nature of the alleged lapse) that is in no way tailored to the circumstances of this case. The boilerplate language does not comply with the requirements of §26.86(a), which states in pertinent part:

**“§26.86 What rules govern recipients' denials of initial requests for certification?**

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.”

The entirety of the pertinent denial letter language is:

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<sup>1</sup>49 C.F.R. §26.89(f)(2) (Department reverses decisions unsupported by substantial evidence or contrary to substantive or procedural provisions concerning certification). See §26.86(a), discussed *infra*.

<sup>2</sup> §26.89(f)(2) (“and directs you to certify the firm or remove its eligibility, as appropriate”).

“This refers to your firm’s failure to cooperate with this Department’s request for information (i.e. annual update/no change affidavit or request for additional information) or an informal hearing, regarding the updating of your file with the North Central Texas Regional Certification Agency (NCTRCA).

Therefore, we have determined that your firm is not eligible for the Disadvantaged Business Enterprise (DBA) program based on the Code of Federal Regulations (CFR) 49 at CFR Part 26.73(c) which 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’*. This has resulted in our decision to deny your firm as a DBE.” (Emphasis in original.)

The Department has difficulty determining what “this” is. We cannot discern a §26.86(a)-compliant reason coupled with supporting evidence (e.g., a statement of what the request was, when the certifier made it, what, if any, the applicant’s response was, and how that response was deficient). Without specifying the nature of its failure, NCTRCA as a practical matter deprives the applicant of any meaningful opportunity to challenge the existence of a failure, or provide mitigating information, on appeal. As a technical matter, NCTRCA’s denial fails to state sufficiently specific grounds or any evidence in support, which is contrary to the substantive and procedural rules of §26.86(a). The record further reveals that NCTRCA made an eligibility decision without conducting, or even attempting to schedule, a site visit and interview,<sup>3</sup> which appears to be contrary to the requirements of §26.83(c)(1).

We reverse NCTRCA’s decision under §26.89(f)(2) as unsupported by substantial evidence and contrary to the substantive or procedural certification provisions noted.

We direct NCTRCA to certify ATS without delay and add the firm to applicable DBE lists and databases.

This decision is administratively final. Thank you for your continued cooperation.

Sincerely,

Samuel F. Brooks, DBE Appeal Team Lead  
External Civil Rights Programs Division  
Departmental Office of Civil Rights

cc: Aleyama Binoy, ATS

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<sup>3</sup>The site visit is an opportunity to clarify issues potentially in dispute, resolve misunderstandings, and determine what, if any, additional information the certifier requires to make its eligibility determination.