

October 31, 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 14-0070

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

Dear Mr. Titus:

Grace & Mercy Auto Service, Inc. (G&M), 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 does not specifically reference evidence in the record that might support the conclusion. We therefore reverse¹ and direct NCTRCA to certify the firm.²

We find NCTRCA's denial letter to be 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 any particular 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 denial letter language is:

“This refers to your firm's failure to cooperate with this Department's request for information

¹49 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*.

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

(i.e. annual update/no change affidavit or request for additional information or only received part of the information requested) 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.” (Underscoring and italics in original.)

We find no specific §26.86(a)-compliant reason (the denial letter provides alternative possibilities without specifying one) coupled with any supporting evidence at all (for example, a statement of what the request was, when the certifier made it, what/when the applicant’s response was, and how/why that response was deemed uncooperative). Without identifying the nature of the lapse, NCTRCA as a practical matter deprives the applicant of any meaningful opportunity to challenge its existence, or provide mitigating information, on appeal.³

Apart from the apparently imperfect communication between certifier and applicant, the Regulation requires the certifier to state adequate grounds and evidence in support. NCTRCA did not, in contravention of the substantive and procedural rules of §26.86(a). The record further reveals that NCTRCA made an eligibility decision without conducting, or even scheduling, a site visit and interview,⁴ which similarly contravenes §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 G&M 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

³ A single email request for a checklist of information and documents appears in the administrative record. The request concerns principally corporate documents, client references, and résumés. The firm’s owner denies receiving the request, and NCTRCA pre-emptively foreclosed the possibility of a follow-up. The Department reminds the parties that sometimes flexibility serves the greater good. The certifier has discretion to extend a deadline, renew a request, or reopen an application to consider information requested and which the applicant attempts to provide.

⁴ The site visit is an opportunity to clarify issues potentially in dispute, resolve misunderstandings, and determine what, if any, additional information the certifier may need to make a determination on the merits.

cc: G&M