

December 30, 2019

Reference Number 19-0155

Albert Ribeiro
Ribeiro Construction

[REDACTED]
Clinton, MD 20735

Dear Mr. Ribeiro,

This is in response to your appeal of the decision of the Virginia Unified Certification Program (VUCP) to deny the application of Ribeiro Construction (RC) for interstate DBE certification in Virginia. The U.S. Department of Transportation (DOT) is upholding VUCP's decision.

Procedural Background

RC, previously certified in Maryland, applied for interstate certification to VUCP on August 22, 2018. VUCP staff requested additional documentation on November 20, 2018. On June 28, 2019, VUCP sent RC a letter notifying the firm of the agency's "intent to deny" the firm's application, informing the firm that it had the opportunity to respond in writing or request an in-person meeting within 21 days. RC did not respond. VUCP finally denied the firm's application on July 25, 2019.¹ RC appealed to the Department on August 8, 2019.

Issues and Arguments

VUCP stated two grounds for denying RC's application. First, Mr. Ribeiro's personal financial information submitted in a 2014 statement to Maryland represented that his net worth was approximately [REDACTED], which VUCP adjusted to approximately [REDACTED],

¹ The bulk of both VUCP letters consists of lengthy quotations from 49 CFR Part 26. While we appreciate the agency's attention to our rules, directly stating the reason for denial and explaining the source and importance of the evidence relied upon, with limited footnote citations to relevant rules, will produce a more compact and economical decision letter that is easier for a reader to follow.

² The VUCP letter, at p. 5, specifically references the applicant's Maryland personal financial statement. It also references a 2019 financial statement, not on a VUCP form and not appearing to fully follow the PNW statement template in Appendix G to Part 26. It was apparently generated by Sun Trust bank. It is not clear whether VUCP requested the Sun Trust form (such is not among the documentation a certifier is authorized

both numbers well in excess of the Department's \$1.32 million personal net worth (PNW) cap. Second, VUCP explained that RC did not possess a contractor's license needed to work in Virginia, which VUCP took to mean that the firm would need to depend on a Virginia-licensed firm for work in the Commonwealth, fatally compromising its independence. VUCP tied this second denial ground to section 26.85(d)(2)(iv) of the Department's regulation, relating in this instance to differences between Maryland and Virginia law.

In his appeal, Mr. Ribeiro specified that he was appealing "the portion of the denial based on economic disadvantage." He did not appeal VUCP's second ground for denial, relating to RC not having a Virginia contractor's license.

With respect to economic disadvantage, Mr. Ribeiro states that the over \$2 million net worth stated on his personal financial statement form reflected the combined assets of him and his wife.³ Since PNW should reflect only the applicant's personal assets considered individually, he argues, not those of him and his wife together, the PNW figure should be cut in half, falling under the Department's cap.

In citing RC's lack of a Virginia contractor's license as a further reason for denying his application, VUCP may have been unaware that the Department specifically addressed this issue in the preamble to the final rule that adopted section 26.85. The relevant language is the following:

*With respect to state requirements for business licenses, the Department believes that states should not erect a "Catch 22" to prevent DBE firms from other states from becoming certified. That is, if a firm from State A wants to do business in State B, it is unlikely to want to pay a fee to State B for a business license before it knows whether it will be certified. Making the firm get the business license and pay the fee before the certification process takes place would be an unnecessary barrier to the firm's participation that would be contrary to this regulation.*⁴

In other words, the proper course for State B (Virginia) is to process an applicant's interstate certification request without regard to whether the firm currently has a license like the one at issue in this case. If the firm is certified, it would then have to obtain the license before actually performing a contract in State B.

Discussion

VUCP relied, as it was entitled to do, on the financial information provided, including the values of assets Mr. Ribeiro reported he owned. The record indicates that VUCP properly

to ask for in interstate certification cases by section 26.85(c)), but the Department in this decision is relying only on the 2014 form submitted to Maryland.

³ The individual Federal tax returns included in the record show that Mr. Ribeiro is married to Ms. Sandra Ribeiro.

⁴ 76 Fed. Reg. 5089, January 28, 2011.

notified Ribeiro of its good cause reasons, the evidence supporting them, and the firm's opportunity to respond. That is all section 25.85(d) requires.

Once VUCP provided Mr. Ribeiro the notice section 26.85(d) requires concerning his PNW, Mr. Ribeiro bore the burden of proof to show that he was economically disadvantaged.

Mr. Ribeiro did not take advantage of this opportunity to respond. He did not clarify the meaning of his financial reporting or explain to VUCP why he thought VUCP's proposed denial was wrong. It is not VUCP's error that Mr. Ribeiro failed, to his potential detriment, to clarify the facts or challenge VUCP's analysis.⁵

The effect of Mr. Ribeiro's failure to challenge VUCP's proposed action makes the evidence of excess PNW uncontroverted and RC ineligible. We have reviewed the full record. We affirm the denial⁶ because VUCP followed applicable rules and properly relied on substantial evidence that Mr. Ribeiro is not economically disadvantaged. See section 26.89(f)(1).

RC may reapply for certification when the applicable waiting period expires.

This decision is administratively final and not subject to reconsideration.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Calvin M. Thweatt

⁵ While the record shows that Mr. Ribeiro is married, the financial statement he provided did not identify which assets (if any) he held individually and which jointly. It is not incumbent on VUCP to make that determination under, for example, section 26.61(b) or 26.85(d).

⁶ We do not formally opine on the license-based denial ground because one failure to carry the firm's burden of proof suffices for us to sustain VUCP's denial. See sections 26.61(b), 26.85(d), and 26.89(f)(1).