

August 16, 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference Number: 02-0271

Mr. Albert Bates
President
Worldwide Support, Inc.
6317 Puerto Drive
Rancho Murieta, CA 995683-9358

Dear Mr. Bates:

This is in response to the appeal that was filed by you in behalf of your firm, World Wide Support, Inc. ("Worldwide"). We have carefully reviewed the material from the California Department of Transportation ("CALTRANS") and have concluded that the denial of Worldwide's certification as an eligible DBE under criteria set forth in 49 CFR Part 26 ("the regulation") is justifiable.

Your appeal is denied based, in part, upon a determination that despite your impairment ("legal blindness"), you have not met your burden of demonstrating that you are a socially and economically disadvantaged individual pursuant to the requirements of the regulation. On March 14, 2002 this office wrote to you in response to your earlier letter requesting DBE certification on the basis that you are a 100% Service Disabled ("blindness") Veteran. In our letter, you were informed that there are currently no statutory provisions that either authorizes or requires presuming that service-disabled veterans are socially and economically disadvantaged individuals for purposes of the DBE program, despite the fact that Congress has chosen to make a specific provision for businesses owned by service-disabled veterans in certain Federal procurement programs administered by the Small Business Administration (SBA).

Despite the above, the Department agrees that individuals with disabilities, whether or not service-connected, can be both socially and economically disadvantaged. Under the Department's regulation, any person who is not a member of one of the presumptively disadvantaged groups can apply for certification of his or her business as a DBE on an individual basis. Under the regulation, the applicant owner, not the Department, has the burden of establishing by a preponderance of the evidence that he or she meets the requirements for social and economic status.

Your appeal is denied based, in part, on the Department's conclusion that despite your sight impairment (legal blindness in both eyes), you failed to establish that you are socially and economically disadvantaged pursuant to the requirements of the regulation.

The specific reasons for the denial of your appeal include the following:

SOCIAL DISADVANTAGE

- a. Socially Disadvantaged individuals are those persons who have been subjected to social or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control.
- b. The regulation requires that there must be at least one objective feature that has contributed to social disadvantage, such as disability or other similar causes not common to individuals who are not socially disadvantaged.
- c. Applicants must show a negative impact on entry into or advancement in the business world because of the disadvantage.

The record evidence reveals that you were examined by Dr. [REDACTED] on September 26, 1994 in his office. Dr. [REDACTED] concluded that your diagnosis was bilateral macular degeneration. According to Dr. [REDACTED], You are “most certainly legally blind.” Dr. [REDACTED] also diagnosed you on September 23, 1998 as being legally blind due to macular degeneration. In this regard, the Department of Veterans Affairs has disclosed that you have a service-connected disability rating of 100 percent. It appears from the record that CALTRANS erroneously concluded that you are blind in your left eye only. The record, as discussed above, establishes that you are legally blind in both eyes.

It is important to note that the fact that you are legally blind in both eyes does not automatically create a presumption, pursuant to the regulation, that you are in fact socially and economically disadvantaged for purposes of the DBE Program. Your March 25, 2002 letter to the Department states as follows:

“...I intend to rely solely on evidence of blindness to support my assertion that I am socially and economically disadvantaged in accordance with the provisions of CFR 49....”

Please be aware of other aspects of social disadvantage, which must be considered by the recipient in making determinations of social disadvantage. These include education, employment and business history. The Department has carefully considered the above factors, and concludes that you are not socially disadvantaged.

(a) One of the specific requirements which must be met by applicant owners include the requirement that there must be at least one objective feature that has contributed to social disadvantage that is not common to individuals who are not socially disadvantaged. Your disability (legal blindness) satisfies this requirement.

(b) The Department has considered your listed personal experiences of substantial and chronic social disadvantage in American society. The Department has reviewed the

restrictions that you listed in your appeal letter. Some of the barriers you listed include restrictions such as inability to go out to business lunches or dinners, inability to eat in public places, inability to drive a car, inability to read newspapers, requests for quotes, and directions. While most of these restrictions clearly are inconveniences which must be overcome in order to enjoy many of the everyday pleasures of life, the Department has concluded that they are not the kind of long-standing and chronic handicaps that would preclude one from participating as an active member of American society. We are clearly cognizant of the many hardships and inconveniences faced by persons with disabilities; however, the Department concludes that this does not substantiate social disadvantage.

(c) The regulation requires recipients to consider education, employment and business history to determine if the totality of circumstances shows disadvantage in entering into or advancing in the business world. Your resume, presented with the firm's application clearly reveals that you have overcome many of the barriers to entering business suffered by all entrants into the business world. You earned a B.S. degree in Secondary Education from [REDACTED] and attended [REDACTED] where you studied International Relations (MS) 1974. Additionally, you have attended various other institutions and taken a number of different courses, many of which have prepared you to effectively control the business despite your handicap. The record also clearly establishes that despite your handicap you have managed to maintain control over the affairs of your business. The Department also notes that you are honorably retired from the [REDACTED] where you appear to have acquired excellent logistic skills.

ECONOMIC DISADVANTAGE

Factors to be considered in determining economic disadvantage include the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification and/or similar lines of business which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital.

The Department has carefully considered your disadvantage with respect to economic conditions that may have impacted on your business. In your statement of social and economic disadvantage, you stated the following:

- a. Your total net worth is less than \$250,000.
- b. You started Worldwide in 1991. According to the record, your inability to read and perform normal functions required by employers prevented you from obtaining employment. In 1994, you were medically classified as legally blind. It appears that despite your becoming totally blind, you have been able to achieve some success in the business world.
- c. According to you, you are unable to travel alone, causing you to miss out on possible contracting opportunities; your inability to read, further complicates opportunities to identify and understand potential business opportunities; you have

actively sought business from companies, many of whom expressed an interest in doing business with your firm until the fact that you are blind was revealed. The Department has carefully considered your statements in behalf of your appeal. Despite the fact that you have clearly suffered some disadvantages as a result of your blindness the Department, based on the totality of the record, has concluded that you have not met the burden of establishing social disadvantage in accordance with the requirements of the regulation.

The record evidence reveals that you have not established that you are an economically disadvantaged person. Although your earned income for the past 3 years, according to your application, was zero and your net worth less than \$200,000, many of the barriers that you address in your appeal are common to businessmen in the general public.

Based on these findings, we have determined that Worldwide does not meet the requirements of the Department's regulation 49 CFR Part 26 Appendix E to Part 26).

In summary, the information provided, cumulatively supports a conclusion that Worldwide does not meet the criteria as required for DBE certification under 49 CFR Part 26. The company is, therefore, ineligible to participate as a DBE on Federal financially assisted projects. This determination is administratively final as of the date of this correspondence.

Sincerely,

Original Signed By

Joseph E. Austin, Chief
External Policy and Program Development Division
Departmental Office of Civil Rights

cc: CALTRANS