

September 9, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference Number: 04-0102

Mr. Rolando M. Doctora
C.E.O.
MEA Group, Inc.
9015 Town Center Parkway, Suite 105
Lakewood Ranch, FL 34202

Dear Mr. Doctora:

This is in response to the appeal that you filed on behalf of your firm, MEA Group, Inc. ("MEA Group"). We have carefully reviewed the material from the Wayne County Human Relations Division ("WCHRD") as well as the information you provided and have concluded that the denial of your firm's certification as an eligible Disadvantaged Business Enterprise (DBE) under criteria set forth in 49 CFR Part 26 ("the Regulation") is supported by substantial record evidence.

Your appeal is denied based upon our determination that substantial evidence supports WCHRD's conclusion that the disadvantaged business owners' contribution of capital to acquire their ownership interest in MEA Group was not real, substantial, and continuing as required by the Department's Regulation.

The Department is unable to determine whether substantial evidence supports WCHRD's conclusion that MEA Group is not an independent business within the meaning of the Department's Regulation. This area needs to be developed further.

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

OWNERSHIP

The Regulation at §26.69(c) provides in part, that contributions of capital or expertise by the disadvantaged owner to acquire an ownership interest in the participating DBE business be real and substantial and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents.

Under the Regulation at §26.69(e), contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and

substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee.

According to the record, MEA group, a Florida based professional aviation engineering and consulting firm was originally incorporated as Steel City Engineering Inc. in 1991 by William Hakos and George Rubino, both non-disadvantaged individuals. According to the record, the firm name was changed in 1991 to Mosby Engineering Associates, Inc. with ownership divided 75% for Mr. Hakos and 25% for Mr. Rubino. In 1997, the firm's name changed to MEA Group. George Rubino personally secured a loan on behalf of the company for \$ (the entire debt level of the firm), which he then used to buy Mr. Hako's stock. Subsequently, various employees then purchased ownership interest in MEA Group in 2000: Mr. Rolando Doctora, a disadvantaged individual and Chief Executive Officer; Gloria Brady, Vice President, and her husband Scott Brady, a non-disadvantaged individual; and Linda Patterson. (Linda Patterson later sold her shares). Lisa Waters acquired her interest in the firm in January 1, 2001. The respective owner's share is as follows:

Rolando Doctora, disadvantaged individual	13,600 shares	20% owner
Gloria Brady, disadvantaged individual	8,500 shares	13% owner
Scott Brady, non-disadvantaged individual	8,500 shares	13% owner
George Rubino, non-disadvantaged individual	23,800 shares	36% owner
Lisa Waters, disadvantaged individual	12,000 shares	18% owner

WCHRD determined that the documents submitted as proof the owners' initial capital investment contained inconsistencies and discrepancies related to the dates the owners acquired their ownership interests and the stock amounts for each owner.

1. The firm's December, 2003 DBE application notes that the owners, with the exception of Mr. Rubino, were appointed to their posts on April 27, 2000. The firm's DBE application notes that Ms. Waters has held her position since January 2000. According to WCHRD, each person borrowed \$12,000.00 to gain their ownership interests in April, 2000. The transaction is described by MEA in its October 26, 2000 "Petition to Challenge Florida DOT's Denial of Disadvantaged Business Enterprise Certification to MEA Group, Inc." as follows:

. . . On or about April 18, 2000, each of the new equity owners entered an unconditional guaranty of payment and performance, acknowledging and personally guaranteeing, as owners of the firm, their joint and several liability and obligation for payment of 1) the promissory note entered between People's Community Bank of the West Coast, as lender, and MEA as the principal, on April 6, 2000, in the amount of ; and 2) the revolving line of credit, in the amount of , entered by and between the same lender and the same principal, also on April 6, 2000.

2. The Board of Director's November 14, 2000 meeting minutes state:

Whereas the Board of Directors of MEA Group, Inc. has determined that the value of the shares of stock sold to the shareholders on April 12, 2000 might be

construed as inequitable with the amount of capital contributed and the percentages of ownership obtained, it is hereby resolved that the Board . . . has determined that the value of the shares on April 12, 2000 should have been \$1.00, their par value. Accordingly, the Treasurer is authorized to collect additional capital from Rolando Doctora and Linda Patterson in the amount of \$1,600.00 each and to issue refund checks to Gloria Brady and Scott Brady in the amount of \$3,500.00 each, in order that the ownership interest of the new equity owners will clearly be commensurate with the initial capital contribution each made. This action will in no way affect future equity owners, the value of the shares they may purchase, or the percentage of ownership interest they may be entitled to.

The record evidence contains checks from Linda Patterson and Rolando Doctora in the amount of \$1,600.00 each which were drawn on joint bank accounts they owned with their respective spouses. WCHRD thus determined that Ms. Patterson and Mr. Doctora did not acquire their ownership interest until November 14, 2000, not April 2000.

3. The shareholders' September 14, 2000, meeting minutes indicates that Lisa Waters was offered a 5% ownership interest for an amount equal to 5% of the firm's equity. According to a shareholder's resolution, the shareholders also authorized the sale of 3,579 shares of stock for \$12,000 to Ms. Waters effective January 1, 2001. The record evidence contains a check dated February 7, 2001 which was written from a joint account owned by Lisa and Edward Waters. The record also contains correspondence dated August 14, 2002 from _____ indicating that Ms. Waters financed a \$ _____ loan dated May 7, 2001 to allow her to purchase 8,421 additional shares of the firm. The correspondence notes that "disbursement of funds on this loan was handled by way of internal credits and debits, rather than by the issuance of a loan proceeds check."

An amendment to the firm's shareholders' agreement indicates that on May 11, 2001, the stock value increased from \$1.00 par value to \$9.50 per share. WCHRD then determined 1) that Ms. Waters acquired her ownership interest on May 7, 2001 which was prior to the stock value increase; 2) her purchase of 12,000 shares for \$ _____ dollars was unclear, and 3) the increase in her ownership from 5 to 18% was also unclear.

(WCHRD's denial letter notes that the firm did not submit documentation concerning the changes of ownership from Linda Patterson to Lisa Waters and that although minutes regarding a termination agreement for Ms. Patterson were mentioned, the agreement was also not submitted.)

Based on the record evidence, it does not appear that the disadvantaged owners made a real and substantial contribution of capital to acquire their ownership interest; but rather received proceeds from loans made through _____ Bank. In general, an owner incurring personal liability to acquire his or her share in the business is not considered real, substantial, and continuing within the meaning of the Department's Regulation. Although there is evidence in the record that you and former owner, Ms. Patterson contributed \$1,600.00, this transaction appears to be made with funds jointly owned with your respective spouses and well after you acquired your ownership interest in the business. In addition, \$1,600.00 does not appear to be

real and substantial to acquire a large percentage of the business worth as much as MEA Group. Similarly, Ms. Waters obtained a loan to acquire her ownership interest which, according to the lender, was handled internally, rather than by the actual issuance of loan proceeds. She, and Ms. Brady, also does not appear to have made any contribution that could be considered meeting the requirements of the Department's Regulation.

Substantial evidence therefore, supports WCHRD's conclusion that the disadvantaged owners did not make a real, substantial, and continuing contribution to acquire their ownership interest in the business.

INDEPENDENCE

The Regulation at §26.71(b), provides that only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

To be an eligible DBE, Under the Regulation at §26.65(a), a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards.

According to the Regulation 26.71(l), where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that: (1) the transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and (2) the disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

WCHRD referenced three pieces of information in its DBE certification denial letter related to MEA Group's independence:

1. WCHRD reviewed the firm's August 2000 on-site review performed by the State of Florida and determined that George Rubino owns a firm named . Although it was indicated that the firm has no ties to MEA Group, it appeared to WCHRD that the firm "interacts" with MEA Group. The record contains a deposit slip dated February 9, 2001 from depositing \$5,374.42 into MEA Group's account.
2. The firm's DBE application indicates that George Rubino owns Parcel 309, LLC which does have a relationship with MEA Group, Inc. WCHRD determined that MEA Group did not indicate how these firms interacts with MEA Group.
3. MEA Group did not submit the income taxes for these firms and without this information, there is insufficient documentation to determine the small business status of MEA Group.

In your April 14, 2004 rebuttal letter you indicate that:

has not been active since prior to 2000 and has not had business dealings with MEA or any other entities since then. The deposit slip dated February 9, 2001, for \$5,374.42 was not from but from Sarasota County, one of MEA's clients. . . . On the issue of Parcel 309, George Rubino is a partner with the MEA Group, Inc. Mr. Rubino is also a partner in a separate Florida Corporation called Parcel 309, LLC that develops real estate. Parcel 309 bought land and built an office complex in which MEA leases approximately 45% of the space. When MEA's lease expired at its old location Parcel 309 agreed to build a building to accommodate MEA at a lease rate less than the current market rates in the metropolitan area.

It is conceivable that MEA Group could rely on other firms such as and Parcel 309, and there may be points in the record which raise questions as to the firm's independence. As stated above, WCHRD indicated that the applicant firm did not submit income taxes for these firms and consequently there is insufficient documentation to determine MEA Group's small business status. While it is necessary for MEA Group, and its affiliates to be a small business concern, WCHRD needs to first establish a connection between MEA Group, and Parcel 309 before determining that MEA Group is dependent upon other firms and does not meet the requirements of the Department's Regulation. WCHRD needs to collect more information before the Department can make a determination concerning this issue.

OTHER ISSUES

The Regulation at §26.69(c) provides in part, that the disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

The record evidence indicates that non-disadvantaged individuals may receive higher compensation than you. According to W-2s contained in the record, George Rubino received more compensation than you and the other disadvantaged owners, Gloria Brady, and Lisa Waters, in the years 2001 and 2001.

	<u>2001 Wages</u>	<u>2002 Wages</u>
Rolando Doctora	Edited	Edited
Gloria Brady		
Scott Brady		
George Rubino		
Lisa Waters		

As shown above, George Rubino, a non-disadvantaged owner, received higher wages than the other owners. In addition, it appears based on the record evidence that the profits were roughly distributed according to each of the owners' share. This also seems consistent with the firm's "Petition to Challenge Florida DOT's Denial of Disadvantaged Business Enterprise Certification

to MEA Group, Inc.” in which MEA Group alleged that the shareholders agreed that the firm’s profits be distributed to them in proportion to their ownership share.

A firm’s chief executive officer generally receives greater compensation than others in the firm, regardless of ownership percentage. While Mr. Rubino certainly plays an important role in the firm, you as Chief Executive Officer should enjoy the customary benefit of ownership, namely the highest wages in the firm, pursuant to the Regulation at §26.69(c). Since WCHRD did not address this point in its decision, the Department will not issue a finding in this regard. However, it is important to note that it is an area of concern.

In summary, the information provided cumulatively supports a conclusion that MEA Group 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 WCHRD’s 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: WCHRD