

October 5, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 04-0114

Mr. Srinu Talluri
President/CEO
e-Business Partners, Inc.
28202 Franklin Road
Southfield, MI 48034

Dear Mr. Talluri:

This is in response to the appeal you filed on behalf of your firm, e-Business Partners, Inc. (e-Business). We have carefully reviewed the material from the Wayne County Human Relations Department (WCHRD), as well as that you submitted, and have concluded that the denial of e-Business' certification as an eligible Disadvantaged Business Enterprise (DBE) under criteria set forth in 49 CFR Parts 23 and 26 ("the Regulation") is supported by substantial evidence.

Your appeal is denied based upon our determination that substantial record evidence supports WCHRD's conclusion that the contribution of capital or expertise to acquire ownership interest in the firm by the disadvantaged owner was not real and substantial.

Your appeal is also denied based upon our determination that substantial record evidence supports WCHRD's conclusion that ownership and control by the disadvantaged owner is not real, substantial and continuing as required by 49 C.F.R. §§26.69 and 26.71, and that the disadvantaged owner does not possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day decisions on matters of management, policy and operations.

How are burdens of proof allocated in the certification process? The Regulation provides that firms seeking DBE certification has the burden of proof by demonstrating to the recipient, that they meet the requirements of the regulation for group members, individual disadvantage, business size, ownership, and control, by a preponderance of the evidence (more likely than not). In reviewing all facts of the record, this office has concluded that e-Business failed to meet its burden, by a preponderance of the evidence, with regards to the contributions of capital and control requirements of the Department's DBE Regulation.

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

- 1) The Regulation also provides that the contributions of capital or expertise by the socially and economically disadvantaged owners to**

acquire their ownership interests must be real and substantial. The record evidence reveals that e-Business a firm specializing in Information Technology consulting, application development, business intelligence and systems engineering and integration was established on March 15, 1999. According to the records, Mr. Jamal Shallal, non-disadvantaged and 14% owner (40,000 shares), incorporated the firm in the state of Michigan on April 21, 1999 under the name of YDS Systems, Ltd. The name apparently was later changed to e-Business. Mr. Shallal was responsible for the start-up loan to the firm in the amount of \$. It is important to note that the promissory note dated April 05, 1999, states that the loan is secured by all assets (All furniture, all computers, desktops, servers and laptops and all software developed since March 15, 1999) and Accounts Receivables of e-business Partners dated July 01, 2002. He also invested \$400.00 cash for his ownership interest. The record also reveals that you, the President and CEO, own 33% of the stock which you alleged that you paid \$1,000.00 in cash for your ownership interest (100,000 shares). Mr. Philip Shisha, Executive Vice President owns 33% of the stock (100,000 shares) also invested \$1,000.00 (cash) toward his stock ownership interest in the firm. Mrs. Lillian Shallal, the owner of 20% of the stock ownership (60,000 shares) paid \$1,000.00 in cash to purchase her ownership interest.

When the firm was initially incorporated, the firm's authorized capital stock consisted of 500,000 shares at 10 cents per share value. The application reveals that the number of shares of e-Business stock was changed to 300,000 shares at 10 cents per share par value. According to the record, there is no available information to substantiate these investments. However, the Board of Director's meeting minutes reveals that Mr. Shallal is the Chairman of the Board.

The Department's Regulation state:

§26.69 (c) "The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. 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."

§26.69 (e) "The 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."

We agree with WCHRD's determination that the contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests were not real, substantial and continuing.

Your letter of rebuttal states “Mr. Sрни Talluri (President and CEO) and Mr. Philip Shisa (Executive Vice President) each own thirty-three (33) percent of the stock, which constitutes the majority of e-Business Partners, Inc. stock. The copy of the Bylaws of the firm, reviewed by Ms. Duffie was an old draft copy and it indicated erroneously that Mr. Jamal Shallal was President and CEO since June 08, 2001. The start-up loan to e-Business Partners, Inc. provided by Mr. Jamal Shallal was for working Capital to the start-up company and is to be paid by the company and not by Mr. Talluri and Mr. Shisha, individually.”

“Cancelled checks to determine OWNERSHIP were not submitted because the partners contributed \$1,000.00 in cash for starting the company and we indicated on the application that cash was used. If you would like to have a Notarized affidavit to certify cash contribution, we will be glad to provide it. Mr. Shallal, as Treasurer and CFO of the company is authorized to sign any financial transaction after all the partners approve the transaction. ...The partnership approved to have a master revolving Line of Credit to cover late receivables in the amount of \$ and Mr. Shallal was authorized to sign it on behalf of the company.”

“The money borrowed from Mr. Shallal was exclusively used for Working Capital and specifically to pay some immediate expenses such a Rent, computers, software, and utilities, etc.” Your rebuttal substantiates that the contributions of capital by the socially and economically disadvantaged owners was not real and substantial and is contrary to the intent of the Department’s Regulation. With regards to the wrong documents being provided to the Analyst, the burden of proof is on the firm.

2. 49 CFR Part 26§26.71(d) state “The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.”

The record information reveals that the non-disadvantaged owner, Mr. Jamal Shallal, Chairman and CFO, has over 30 years experience in data processing, systems and project planning, systems development and implementation. He also has over 20 years experience in financial planning and cash management. Lillian Shallal, wife of Jamal Shallal, works full-time as a bilingual tutor and para-professional at . You, Sirini Tulluri, are the President and Chief Executive Officer, are the Director of Application Development and have over ten years of IT experience and 6 years experience in project management. Philip Shisha has over 20 years experience in IT and over ten years experience in system integration.

Mr. Shallal is responsible for all financial transactions and reporting including banking, loans, lines of credits, taxes and accounting. We agree with WCHRD’s determination that the non-disadvantaged owner possesses the

power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

Your letter of rebuttal states “Mr. Shallal as a non-disadvantaged owner was elected by all the owners to be Treasurer and CFO. All the partners make all decisions regardless of whether they are financial in nature or contract negotiations with clients or targeting specific business opportunities. Mr. Shallal signs any financial transactions or leases such as rent as we had designated. Mr. Shisha and/or Mr. Talluri signs all contracts with clients or Business Partners. Contrary to what is being pointed out in the second paragraph, socially and disadvantaged owners (Messrs. Talluri and Shisha) posses[ses] all the power to direct or cause the direction of the management and policies of the company and to make day-to-day as well as long term decisions on matters of management. We do not understand how the analyst concluded that only one person makes all the decisions. The disadvantaged owners (Mr. Talluri, President and CEO and Mr. Shisha, Executive Vice President) do and did hold the highest officer positions in the company since June 08, 2001. Mr. Shallal as Treasurer, CFO, did not and never did, however, exercise the power to control the company or was proportionately more responsible for the operation of the company.”

Based on these findings, we have determined that e.Business does not meet the qualifications of 49 CFR Part 26 §§26.69 and 26.71 of the Department’s DBE Regulations.

In summary, the information provided cumulatively supports a conclusion that e-Business does not meet the criteria as required for DBE certification under 49 CFR Parts 23 and 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