

October 26, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 04-0091

Mr. John Topalis
Bostonian Masonry Corporation
153 Washington Street
East Walpole, MA 02032

Dear Mr. Topalis:

This is in response to the appeal that you filed on behalf of your firm, Boston Masonry Corporation (Boston Masonry). We have carefully reviewed the material from the State Office of Minority and Women Business Assistance (SOMWBA) as well as that submitted by you and have concluded that the denial of Boston Masonry's certification as an eligible DBE under criteria set forth in 49 CFR Part 26 ("the Regulation") and the Small Business Administration's regulation, 13 CFR Part 121 ("the SBA regulation") is supported by substantial evidence.

Your appeal is denied based upon a determination that substantial record evidence supports SOMWBA's conclusion that Boston Masonry is not a small business concern pursuant to the Department's regulation and the SBA regulation's business size standards.

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

The SBA Business Size Standards, as set forth in the North American Industry Classification System (NAICS) code, requires that participating DBE businesses be small business concerns. A small business concern, as defined by the SBA regulation, is one whose average annual gross receipts over the previous 3-year period does not exceed the size standards as set forth in the NAICS code. Your application and supporting documents do not indicate that your firm is a small business concern.

The applicable NAICS code used by SOMWBA in determining the proper size standard for your firm was "238140", the classification number for Masonry Contractors. SOMWBA determined that under this classification number the correct size standard limitation for the proper NAICS code is \$12 million as set forth in the SBA regulation. A review of the record reveals that SOMWBA properly calculated your gross average annual receipts over the 3-year period to be -----, thereby making your firm ineligible to participate in the Department's DBE program.

The firm's annual receipts according to your tax returns for the past three years are as follows:

2000	-----
2001	-----
2002	-----
Totaling	-----

Based on these findings, we have determined that Boston Masonry does not meet the requirements of the Department's Regulation 49 CFR Part 26, which states as follows:

“To be an eligible DBE, a firm (including its affiliates) must be an existing small business as defined by the Small Business Administration’s (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.”

In summary, the information provided cumulatively supports a conclusion that Boston Masonry 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 SOMWBA’s Federal financially assisted projects. This determination is administratively final as of the date of this correspondence.

Sincerely,

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

cc: SOMWBA

