

December 17, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 04-0140

Mr. Arthur Wright
Manager, Equal Opportunity
Florida Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399-0450

Dear Mr. Wright:

This is in reference to an appeal of Disadvantaged Business Enterprise (DBE) certification denial concerning Professional Conveyor South, LLC ("PCS"). We have carefully reviewed the material from the Florida Department of Transportation (FDOT) and PCS and have concluded that the record should be developed further before the Department can make a final decision on the appeal. The record is unclear with respect to several matters likely to have a significant impact on the outcome of the case. Accordingly, we are remanding the case to FDOT for further consideration.

The record evidence indicates that FDOT determined that Ms. Tracy Weiland, the disadvantaged owner, did not possess control of PCS within the meaning of the Department's Regulation 49 CFR §26.71 because she 1) lacked technical expertise, specialized knowledge, training, education, or experience in conveyor and baggage handling equipment installation and repair, and 2) relied upon Mr. Steven Robotham, a non-disadvantaged individual, in critical aspects of the firm.

1. On August 9, 2004 (one day before FDOT's denial letter), Ms. Weiland informed TDOT that Mr. Robotham died on June 17, 2004, and that she personally completes bidding, hiring/firing field supervision, and purchasing for the firm. It appears in the denial letter that FDOT based its decision largely on the involvement of Mr. Robotham, who passed prior to FDOT's denial. Although this information was conveyed to FDOT, there is no indication that this was taken into consideration when FDOT made its decision. In its analysis, FDOT needs to determine to what extent Ms. Weiland controls PCS since Mr. Robotham is no longer involved in the firm. FDOT's denial letter also does not address whether Ms. Weiland's prior employment at PCS in Connecticut provided her with sufficient experience and knowledge about conveyor and baggage handling equipment installation and repair. Her résumé indicates that she handled the day-to-day

business of PCS, including bidding, ordering of material, and sales. However, a form attached to her rebuttal letter indicates that Ms. Weiland's duties at PCS include airport baggage carousel removals, installation and service supervision, and millwright duties. During FDOT's on-site review, it appears that FDOT asked Ms. Weiland what essential technical skills participants in the firm need to be successful. Her answer does not appear to address the technical nature of the business and there is no indication that FDOT pursued the matter. In order to assess Ms. Weiland's control of PCS, FDOT needs to delve deeper into the nature of the firm's activities and the specific knowledge required to operate this type of firm.

2. The on-site review report notes that the firm pays Ms. Weiland's personal expenses but that she is not customarily the highest paid person. Under the Department's Regulation §26.71(i), differences in remuneration must be considered in determining a disadvantaged owner's control of the firm. This is missing from FDOT's decision to deny the firm DBE certification.

3. According to the firm's DBE application, Ms. Weiland invested \$65,000.00 in cash and \$5,000.00 in equipment to acquire her ownership in the firm. According to the on-site review report, Ms. Weiland sold her home in Connecticut and used part of the proceeds to purchase equipment. The record contains a copy of a check drawn on the firm's account made payable to Mr. Robotham and appears to correspond to a reimbursement by the firm for equipment. However, the record does not contain proof of the cash investment in the form of bank statements or copies of checks made payable from Ms. Weiland, nor does the record contain proof of the sale of her home in Connecticut. Lastly, Ms. Weiland stated in her August 9, 2004, letter to FDOT that the firm offered a loan to Mr. Robotham's children in Connecticut which are currently being repaid. The issue of Ms. Weiland's contribution to obtain her ownership in PCS needs to be further addressed by FDOT.

4. 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. According to FDOT's site visit report, PCS subcontracts specialty work, such as electrical services. FDOT also indicated that PCS hires employees as needed and has a contract with a staffing agency. These circumstances raise questions concerning the firm's independence; however, this was not part of FDOT's decision and the matter needs to be looked at closely.

5. Some items necessary for the Department to make a decision are missing from the file. This includes the firm's operating agreement. Although Ms. Weiland appears to have indicated in an April 22, 2004, email message to FDOT, that she does not have an "operation agreement," FDOT should either obtain this document and review it pursuant to §26.69 of the Department's Regulation, or note its absence in its decision if it finds the firm non-compliant under §26.73(c). In addition, you indicated in your October 6, 2004, letter to the Department that a tape recording of the on-site review is available. Tape recordings or transcripts of on-site visits should be included in FDOT's case file forwarded to the Department.

We request that FDOT conduct an onsite review of PCS and submit a decision to the firm within 45 days from the date of this remand letter. However, if you still conclude that the firm does not meet the eligibility requirements of the Regulation, PCS should be afforded the opportunity to

renew its appeal to this office. This appeal is being closed in our files pending the outcome of this remand.

Thank you for your continued cooperation.

Sincerely,

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

cc: Professional Conveyor South, LLC