

February 14, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference Number: 05-0016

Ms. Linda S. Anderson
President and COO
Anderson Realtors, LLC
12501 Woodbridge Court
Mitchellville, MD 20721

Dear Ms. Anderson:

This is in response to the appeal that you filed on behalf of your firm, Anderson Realtors, LLC ("AR, LLC"). The Department first addressed this matter in a January 11, 2005 decision which remanded the case back to the Washington Metropolitan Area Transit Authority ("WMATA") for further consideration. On remand, the Department questioned WMATA's calculation of your personal net worth. WMATA responded by letter on January 28, 2005, and explained that there are different amounts reported in two separate personal net worth statements, and that the second statement you submitted is unnotarized.

We have again carefully reviewed this material as well as information you provided on appeal and concluded that the denial of the 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.

As a result of this review, your appeal is denied based upon our determination that substantial evidence supports WMATA's conclusion that your personal net worth is over the \$750,000.00 limit specified under the Department's Regulation.

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

PERSONAL NET WORTH

According to the Regulation at §26.61(b), the firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements

of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

The Regulation at §26.67(a)(2)(i) requires that each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification must certify that he or she has a personal net worth that does not exceed \$750,000.00.

The record indicates that you included the value of your personal residence ----- in the personal net worth statement you submitted with your June 16, 2004, DBE application. This placed you over the \$750,000.000 threshold as specified by the Regulation §26.67(a)(2)(i). WMATA denied the firm DBE certification based on this reason on August 11, 2004.

In your November 3, 2004, letter to the Department, you enclosed a revised unnotarized personal net worth statement which excluded your personal residence from the calculation. This statement also presented a significantly lower cash-on-hand value than your first personal net worth statement. For example, the first statement listed your cash-on-hand at -----, while the second statement reduced this amount to -----.

WMATA's December 1, 2004, letter to the Department states:

. . . [T]he Personal Net Worth statement of the owner, Linda Anderson, reflected that her net worth was above the designated threshold without the inclusion of her personal residence. Once this determination was made, the evaluation of the DBE application package was concluded, and a denial letter was prepared. The personal net worth information submitted to your office with the appeal reflects several changes and is not consistent with the previous documentation initially submitted to WMATA.

The breakdown that you submitted is as follows:

Cash on hand	-----
IRA/Retirement	-----
Automobile	-----
Other Personal Property	-----
Other Personal Assets	-----
	----- (which excludes your personal residence)
Total Liabilities	- -----
Net Worth	-----

Under the Regulation §26.61(b), you bear the burden of demonstrating that you are socially and economically disadvantaged in order to be eligible for the DBE program. This includes a showing that your personal net worth is under \$750,000.00 as stated in the Regulation §26.67(a)(2)(i). Although you submitted a revised personal net worth, which is below this threshold, it is not notarized and therefore does not conform to the requirements of the

Regulation. Substantial evidence therefore, supports WMATA's determination that you are not eligible for the DBE program.

In summary, the information provided cumulatively supports a conclusion that AR, LLC 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 WMATA'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: WMATA