

February 11, 2005

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Reference No.: 05-0032

Ms. Adrian Fedczak  
Mooky Rebal Construction  
2240 Warwood Avenue  
Wheeling, WV 26003

Dear Ms. Fedczak:

This is in response to the appeal that you filed on behalf of your firm, Mooky Rebal Construction (MRC). We have carefully reviewed the material from the West Virginia Department of Transportation (WVDOT) as well as that submitted by you and have concluded that the denial of MRC's certification as an eligible DBE under criteria set forth in 49 CFR Part 26 ("the Regulation") is supported by substantial evidence.

Your appeal is denied based upon our determination that substantial record evidence supports WVDOT's conclusion that you failed to cooperate with WVDOT officials during their investigation of your firm's eligibility for DBE certification, as required by 49 CFR Part 26 Section §26.109(c) of the Regulation. "The Regulation requires that firms wishing to be certified in the Department's DBE Program are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information."

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

The record evidence reveals that WVDOT received MRC's DBE Certification Application on October 5, 2004 and determined that additional information was required. On October 13, 2004, WVDOT sent you a letter via certified mail requesting that specific documents be submitted by November 12, 2004. This letter was received by you on October 26, 2004. According to the record on October 21, 2004 a WVDOT official contacted with you via telephone and discussed the missing information. Subsequently, on October 27, 2004, WVDOT sent you a follow-up letter via certified mail in a last attempt to receive the missing information. This letter was received by you on November 2, 2004. You were given ample time to submit the additional information requested by WVDOT which was needed in order to make a determination as to whether your firm met the eligibility requirements. You failed to provide the requested information.

The letter also stated, in accordance with 49 CFR Part 26, that “failure or refusal to provide such information is a ground for a denial of certification.”

WVDOT issued its decision decertifying your firm on November 15, 2004, because you were non-responsive to its request for information necessary to make a decision regarding your firm's eligibility. The denial letter of WVDOT outlined in detail the need for the requested documentation.

Your letter of rebuttal states, “We applied for certification the first of September. The secretary, which was a new one due to the other being on maternity leave, mailed the application incomplete. This was unknown until the letter dated October 13<sup>th</sup> was received in the office on October 26<sup>th</sup>. On the weekend of September 16<sup>th</sup> my firm was damaged by the flooding in the Ohio Valley. The paperwork for the first 6 months of the business activity and the information concerning the equipment, etc. has been lost. I have also had to change my address several times which has had an effect on the time limit I receive mail.”

It is important to note that the responsibility for establishing DBE eligibility rests with the applicant firm, not the recipient. Your failure to respond to the recipient's requests for information appears to have been the primary reason resulting in WVDOT's final decision.

Based on these findings, we have determined that MRC does not meet the requirements of the Department's Regulation 49 CFR Part 26.109 (c) which state, in part as follows:

“Cooperation. All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).”

In summary, the information provided cumulatively supports a conclusion that MRC 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 WVDOT'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: WVDOT