



U.S. Department
of Transportation
**Federal Transit
Administration**

Headquarters

East Building, 5th Floor – TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

December 16, 2013

Kenneth McDonald
President and CEO
Long Beach Transit
1963 East Anaheim Street
Long Beach, CA 90813

Re: Notice of Noncompliance with
Disadvantaged Business Enterprise (DBE) Requirements

Dear Mr. McDonald:

We received Long Beach Public Transportation Company's (LBT) response to our November 1, 2013 letter of probable noncompliance with the Department of Transportation's Disadvantaged Business Enterprise (DBE) regulations. After having carefully considered LBT's response, one simple fact remains undisputed. BYD Motors, Inc. (BYD) was ineligible to bid on the LBT procurement. As a result FTA has determined that LBT failed to meet the requirements of 49 C.F.R. §26.49(a), and, therefore, LBT's contract with BYD is ineligible for Federal Transit Administration (FTA) funding. Our reasons for this decision are stated below.

As noted in our previous correspondence, because LBT is the recipient of one or more FTA grants, loans, and/or contracts, it is required to comply with the DBE regulations. Specifically, 49 C.F.R. §26.49 states in part, "if you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section." The requirements applicable to transit vehicle manufacturers state, "if you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal." *Id.* §26.49(b) In addition, the requirements further provide that, "as a transit vehicle manufacturer, you may make the certification required by this section **if you have submitted the goal this section requires and FTA has approved it or not disapproved it.**" (emphasis added)

FTA has determined that BYD was simply ineligible to bid on the LBT procurement because its February 12 and March 27, 2013 certifications were false. On those dates, BYD could not certify compliance with the DBE regulations because it had not yet submitted for FTA's approval an annual overall DBE percentage goal as required by the DBE regulations.

In addition, the Department's DBE regulations are quite clear that compliance with 49 C.F.R. Part 26 is a condition of assistance. Specifically, 49 C.F.R. §26.21 states, "you are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part." In this case, LBT was not in compliance with DOT requirements when it allowed BYD to bid on an FTA-assisted contract when BYD had not submitted a DBE goal to FTA in advance of submitting its bid to LBT.

Accordingly, FTA has determined that LBT failed to comply with 49 C.F.R. Part 26, and, therefore, the contract with BYD is ineligible for FTA participation.

Sincerely,



Linda Ford
Director, Office of Civil Rights



Dorval R. Carter, Jr.
Chief Counsel

cc: Rolando Cruz, Executive Director and Vice President of Maintenance and Facilities