

was presented. The hearing was recorded but not transcribed. Petitioner has not submitted proposed findings of fact or conclusions of law as of the date of this order. Respondent filed its proposed recommended order on May 22, 1996 and each of its proposed findings of facts have been substantially adopted in this Order.

FINDINGS OF FACT

1. On October 17, 1994 Petitioner, in order to be recertified, submitted its Application for Certification as a DBE to the Department.

2. Following an initial review of Petitioner's application, the Department determined that the application as submitted was incomplete.

3. On October 27, 1994, the Department sent Petitioner a certified letter requesting additional information including:

(a) A copy of Petitioner's financial statement for the year ending December 31, 1993, showing its gross receipts.

(b) Answers to questions 24, 25 and 26, of Petitioner's Application.

(c) Copies of Petitioner's State Quarterly Unemployment Tax Report (LES Form UCT-6) for the last three quarters.

(d) A copy of Petitioner's annual report submitted to the Department of State, Division of Corporations, for 1994.

(e) A completed code sheet indicating the Petitioner's area of specialty.

(f) Documentation indicating Petitioner's ethnic status.

4. The Department's request for additional information was received by Petitioner.

5. The Department's request for additional information notified Petitioner that it must submit the requested information within thirty days if it was to be considered by the Department in its determination of recertification.

6. All of the additional information requested by the Department was critical in determining Petitioner's inclusion in the DBE Program. Specifically it pertained to whether Petitioner continued to be qualified as a Small Business Concern.

7. The Petitioner failed to respond to the Department's request for additional information.

8. The Petitioner did not request an extension of time for filing a response to the Department's request for additional information.

9. On January 10, 1995, having reviewed no response to its request for additional information, the Department processed Petitioner's application as it was originally provided. The Department notified Petitioner of its intent to deny its Application based on Petitioner's failure to demonstrate that it is a Small Business Concern.

10. On January 30, 1995, Petitioner requested a formal hearing pursuant to Section 120.57(1), Florida Statutes. However, as indicated above, Petitioner failed to appear for the properly noticed hearing and presented no evidence that it qualified as a Small Business Concern. Petitioner has constructively abandoned its request for recertification as a DBE.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding.

12. Section 339.0805(1)(c), Florida Statutes, provides in part:

The department shall certify a socially and economically disadvantaged business enterprise, which certification shall be valid for 12 months, or as prescribed by 49 C. F. R. part 23.

13. Rule 14-78.005(7), Florida Administrative Code, provides in part:

Pursuant to 49 C. F. R. Subtitle A, Subpart D, Section 23.62, a firm seeking certification and recertification as a DBE shall meet the following standards. A firm which does not fulfill all the Department's criteria for certification shall not be considered a Disadvantaged Business Enterprise.

(a) The firm must be a small business concern;

14. Rule 14-78.002(17), Florida Administrative Code, provides in part:

Pursuant to 49 C. F. R. Subtitle A, Subpart D, Section 23.62 and Appendix A to Section 23.62 and Appendix B of Subpart D, "Small Business Concern" means those business concerns as defined in 13 C. F. R. Section 121.403(a) and (b), which regulation is hereby incorporated by reference and made a part of these rules.

15. Rule 14-78.007(2)(a), Florida Administrative Code provides:

Within 30 days after receipt of an application for certification as a DBE, the Department shall examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the Department if permitted by law to require. In order for the additional information to be considered, the DBE shall return the requested information to the Department within 30 days after receipt of the request. If the additional information is not received within 30 days, the Department will process the appli-

cation with the information as provided unless the applicant has requested and received an extension in writing.

16. Respondent previously was certified as a DBE and is seeking recertification. Therefore the Department bears the burden of proof. Fla Dept. of Transportation v. J. W. C. Company, Inc., 396 So.2d 778, 788 (Fla. 1st DCA 1981).

17. Petitioner's failure to respond to the Department's request for additional information made it impossible for the Department to determine Petitioner's status as a Small Business Concern. Petitioner failed to demonstrate that it is a Small Business Concern as defined in Rule 14-78.007(17), Florida Administrative Code.

18. The Department correctly followed the statutory and regulatory requirements in denying Petitioner's Application for Certification as a DBE on January 10, 1996.

19. By failing to provide additional information to the Department or at the formal hearing, Petitioner has abandoned its request to be certified as a DBE.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a Final Order be entered denying Petitioner's Application for Certification as a DBE.

DONE and ENTERED this 4th day of June, 1996, in Tallahassee, Florida.

DANIEL M. KILBRIDE, Hearing Officer
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of June, 1996.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to the Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the agency that will issue the Final Order in this case concerning their rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.