



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

Headquarters

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

November 1, 2013

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

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

Dear Mr. McDonald:

We write today regarding your compliance with the U.S. Department of Transportation's (DOT) regulatory requirements for recipients of Federal funds. The Federal Transit Administration's (FTA) investments are intended to provide and maintain access to public transportation for transit riders across the country, while delivering significant economic benefits to manufacturers and the American workforce. FTA has reasonable cause to find the Long Beach Public Transportation Company or Long Beach Transit (LBT) in violation of the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) regulations (49 C.F.R. Part 26). Unless LBT submits evidence to the contrary, this noncompliance will result in LBT's contract with BYD Motors, Inc. (BYD) being ineligible for FTA funding.

DOT's DBE program helps small businesses owned by socially and economically disadvantaged individuals to compete in the marketplace, and is designed to support the people who create jobs—our nation's entrepreneurs. Most importantly, this program is intended to prevent discriminatory practices and to create a level playing field on which DBE's may compete fairly for federal-taxpayer-funded projects.

LBT is the recipient of one or more FTA grants and is thereby expected to comply with the DBE regulations. However, FTA records indicate that LBT accepted a bid and awarded an FTA-assisted contract to an ineligible transit vehicle manufacturer (TVM) — BYD — in violation of the DBE regulation as described below [the specific citation and details behind it are cited below].

After reviewing LBT's recent contracting activity for Project CA-88-0004-00, FTA noted that at the time BYD submitted and LBT accepted BYD's proposal to provide electric buses, BYD had not included a signed DBE certificate of compliance as is required by 49 C.F.R. § 26.49(a). Pursuant to the rule, FTA recipients "must require [...] 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.” 49 C.F.R. § 26.49(a). Failure to comply with this requirement may result in “formal enforcement actions” or “appropriate program sanctions” as determined by FTA. 49 C.F.R. § 26.101(a).

To help transit agencies verify TVM certification, FTA maintains a web site listing all certified TVMs and issues concurrence letters to identify the exact date of their eligibility. BYD was not listed on the web posting and had not received a concurrence letter when BYD submitted its bid to LBT for the procurement. As a result, both at the time BYD submitted its bid to LBT and currently, BYD is ineligible to bid on federally assisted transit procurements.

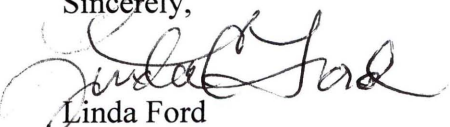
FTA alerted LBT to BYD’s ineligibility before it accepted BYD’s bid proposal for Project CA-88-0004-00 (Scope-ALI 111-00 and 11.12.01). Specifically, FTA provided LBT with several advisory notices before the solicitation and award of this contract: On June 14, 2012, FTA cautioned LBT to be “particularly mindful of the [TVM] requirement in executing the electric vehicle purchase [...] under the TIGGER grant”; and on September 25, 2012, FTA also provided a link to the Triennial Review workbook further emphasizing the need for TVM compliance. Notwithstanding these notices, it is our understanding that LBT released a Request for Proposals on October 1, 2012, accepted BYD’s bid proposal without confirming TVM eligibility, and awarded the contract to BYD on April 29, 2013.


On June 26, 2013, months after it submitted its bid proposal to LBT, and nearly two months after LBT awarded the contract, BYD submitted a DBE goal methodology and program plan for fiscal year 2014 to FTA for approval. FTA has not approved this submission due to lingering deficiencies. Any approval of the June 26, 2013 submission, however, will not cure LBT’s bid or award violations. The DBE regulations explicitly require TVM certification prior to accepting a bid and before awarding a contract.

Accordingly, FTA has preliminarily determined that LBT failed to comply with 49 C.F.R. Part 26. LBT will have 30 days from the date of this letter—until December 1, 2013—to rebut these preliminary findings and determinations. Unless LBT submits evidence to the contrary, its noncompliance with the DBE regulation will render the contract with BYD ineligible for FTA participation. LBT should have deemed BYD’s bid non-responsive at the time it was submitted because BYD had not provided a DBE program to FTA. FTA cannot participate in contracts awarded to bidders that fail to certify compliance with Federal requirements, including DBE.

Please contact Linda Ford at linda.ford@dot.gov or (202) 366-1674 with any questions or concerns.

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