

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 13,357

IN THE MATTER OF:

Served July 23, 2012

Application of EXECUTIVE TECHNOLOGY)
SOLUTIONS, LLC, for a Certificate)
of Authority -- Irregular Route)
Operations)

Case No. AP-2012-079

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. This is the second application filed by applicant this year. The first was denied without prejudice for applicant's failure to demonstrate regulatory compliance fitness.¹ The instant application is unopposed.

The Washington Metropolitan Area Transit Regulation Compact, (Compact),² Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission. If the applicant does not make the required showing, the application must be denied under Section 7(b).

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.³ A determination of compliance fitness is prospective in nature.⁴ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁵ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁶

¹ *In re Exec. Tech. Solutions, LLC*, No. AP-12-033, Order No. 13,250 (May 3, 2012), *recon. denied*, Order No. 13,311 (June 12, 2012).

² Washington Metropolitan Area Transit Regulation Compact, Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), *amended by* Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

³ *In re Nur Corp.*, No. AP-10-178, Order No. 12,730 (Feb. 15, 2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁷

I. HISTORY OF VIOLATIONS

Applicant previously held WMATC Certificate of Authority No. 985 from June 30, 2005, until February 17, 2012, when Certificate No. 985 was revoked in Order No. 13,167 for applicant's willful failure to comply with Article XI, Section 6, of the Compact, (operating without authority), Regulation Nos. 55 (operating without applicable tariff) and 62 (operating without required vehicle lease), and Order No. 12,798 (failing to present vehicles and produce documents), as follows:

Ten months after the Commission ordered respondent to present certain vehicles for inspection by Commission staff, respondent has yet to comply or explain its failure to do so. And respondent's violation of the Commission's lease requirements in Regulation No. 62 persists.

Respondent's failure to cease operating on November 1 when Certificate No. 985 became suspended and the filing of an obviously altered safety inspection certificate leave no doubt that respondent has failed to show cause why Certificate No. 985 should not be revoked.⁸

Applicant was assessed a \$2,250 civil forfeiture, as well, for performing a U.S. Navy contract for approximately two weeks while Certificate No. 985 was suspended, despite assurances from applicant that the Navy contract had been entirely subcontracted to another WMATC carrier.⁹

In addition, Commission records show that Certificate No. 985 was suspended three times for applicant's willful failure to comply with the Commission's insurance requirements in Regulation No. 58.¹⁰

⁷ Order No. 12,730.

⁸ *In re Exec. Tech. Solutions, LLC*, No. MP-10-090, Order No. 13,167 (Feb. 17, 2012).

⁹ *Id.* at 5-6.

¹⁰ *In re Exec. Tech. Solutions, LLC*, No. MP-11-096, Order No. 13,035 (Nov. 1, 2011); *In re Exec. Tech. Solutions, LLC*, No. MP-06-173, Order No. 10,045 (Nov. 1, 2006); *In re Exec. Tech. Solutions, LLC*, No. MP-05-168, Order No. 9087 (Nov. 1, 2005).

Finally, Commission records show that the Commission conditionally approved the issuance of Certificate No. 985 in 2004 subject to a one year period of probation due to applicant's then recent violations of Federal Motor Carrier Safety Regulations.¹¹

II. FIRST POST-REVOCATION APPLICATION

Applicant's first post-revocation application was denied in Order No. 13,250, served May 3, 2012. As noted above, the reason for denying the application was that applicant failed to demonstrate regulatory compliance fitness. What follows are the findings and conclusions reached by the Commission in that proceeding in Order No. 13,250:

Applicant's failure to comply with Article XI, Section 6, of the Compact, Regulation Nos. 55 and 62, and Order No. 12,798 was serious enough to warrant revocation of Certificate No. 985. There is no evidence of any mitigating factors in the record, and the Commission investigation that resulted in revocation of Certificate No. 985 continued for nearly two years because of applicant's failure to fully cooperate.

Applicant, on the other hand, has paid the \$2,250 forfeiture assessed in the revocation order. This may be considered a correction of past mistakes.¹²

Ultimately, however, we cannot say that applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.

While this application was pending, Commission staff wrote to applicant on March 8, 2012, requesting additional information pursuant to Regulation No. 54-04(b). Staff requested, among other things:

a list of all contracts for transportation in the Washington Metropolitan Area Transit District, [the identity of] the carrier(s) performing those contracts on applicant's behalf, . . . copies of any and all contracts with said carrier(s), and a statement from each such carrier confirming when service on behalf of applicant commenced.

Applicant responded through its attorney on March 22. Although the response did not include a list of applicant's transportation contracts in the Metropolitan District, the response did include the following statement:

¹¹ *In re Exec. Tech. Solutions, LLC*, No. AP-04-84, Order No. 8273 (Sept. 20, 2004).

¹² *In re Addis Transp., Inc.*, No. AP-11-111, Order No. 13,114 (Jan. 10, 2012).

Executive Technology Solutions, LLC is currently assisted on the National Navy Medical Center Project by Worldwide Tours and Travel based on their general tariff. Attached is a letter from Worldwide Tours and Travel confirming this arrangement. Additionally, the Contract Tariff was filed on January 23, 2012. However, the company's re-filing accompanies this response. Reston Limousine is now supporting the Department of Homeland Security, ICE under a subcontract agreement with ALEX.

The March 22 response also includes the following statement addressing applicant's willingness and ability to comport with the Compact in the future - a statement expressly affirmed by applicant's president and CEO, Ms. Miran Kim on April 6, 2012:

Executive Technology Solutions. LLC has implemented a new management and oversight structure and maintains the ability and willingness to comport with the Compact and Rules and Regulations. Past violations were due, in part, to improper management. The management structure of the company has been drastically changed in response to the past violations. Ms. Miran Kim, the President and CEO, has taken a greater role in management. Furthermore, an administrative assistant was terminated for her role in the mismanagement of paperwork which led to a violation. Moreover, the company has engaged the undersigned to provide legal guidance to ensure the company operates in compliance with the Compact and the rules and regulations thereunder.

Later, on April 17, 2012, in response to further inquiries from staff regarding applicant's transportation contracts in the Metropolitan District, applicant's president/CEO, Ms. Kim, had this to say:

Our organization provides passenger ground transportation with-in the Washington, DC Metropolitan Area. Although our Organization maintains several contracts for passenger transportation, I now better understand that specific contracts are applicable to the Commission's jurisdiction. After reviewing contracts, there are three such contracts, i. One contract with the United States Navy, ii. A contract with Alternative Experts/United State Department of Homeland Security (DHS-ICE), and the United State Department of Homeland Security (DHS-CIS).

There is nothing in the record to indicate that applicant has been subcontracting the DHS-CIS contract to any WMATC carrier. On the contrary, applicant's failure to disclose the DHS-CIS contract in its March 22 response and Ms. Kim's remark that she "now better understand[s]" WMATC jurisdiction support the opposite conclusion.

Inasmuch as applicant's violation of the Compact and regulations thereunder appears to be ongoing despite an alleged restructuring of management and the hiring of counsel, we cannot say that applicant has carried its burden of demonstrating regulatory compliance fitness.

III. CEASE-AND-VERIFY ORDER

After concluding in Order No. 13,250 that applicant had failed to demonstrate regulatory compliance fitness, the Commission directed applicant to "immediately cease providing passenger transportation services under the United States Department of Homeland Security (DHS-CIS) contract."

The Commission also directed applicant to "verify that it has ceased operating the DHS-CIS contract" and to "corroborate that verification with a written statement from the DHS-CIS contracting officer and the WMATC carrier hired to perform said contract on applicant's behalf."

Applicant requested reconsideration and a stay of Order No. 13,250, but both requests were denied.¹³

IV. INSTANT RECORD

The instant application was filed June 5, 2012. Applicant was advised by letter dated June 7, 2012, that the application had been accepted and that pursuant to Regulation No. 54-04(b), applicant would have 14 days to furnish certain additional information. Applicant's responses fail to resolve all regulatory compliance fitness issues.

First, the acceptance letter noted that applicant proposed operating 12 vehicles and requested applicant to complete and submit the Commission's WMATC Vehicle List form for the 12 vehicles. Applicant submitted a vehicle list on June 21, 2012, but for only 10 vehicles. Applicant offers no explanation for not including all 12.

Second, the acceptance letter requested applicant to file a list of all contracts requiring applicant to transport passengers between points in the Washington Metropolitan Area Transit District, whether or not applicant was performing the transportation at that time. The letter further requested applicant to state the beginning and ending dates for service under each contract. Applicant responded on June 21, 2012, that it "currently has a contract with the Department of Homeland Security CIS (December 2010 - December 2013) and Department of the Navy (October 2009 - October 2012)." The Federal Procurement Data System (FPDS),¹⁴ however, indicates that applicant also has had an ongoing contract with the Missile Defense

¹³ *In re Exec. Tech. Solutions, LLC*, No. AP-12-033, Order No. 13,311 at 8 (June 12, 2012).

¹⁴ https://www.fpds.gov/fpdsng_cms/.

Agency (MDA) since June 2011, with a principal place of performance in Vienna, VA, that applicant had a contract with the District of Columbia Court Services and Offender Supervision Agency to transport passengers in the District during the month of November 2011, while applicant's WMATC authority was suspended, and that applicant had a contract with the Defense Security Cooperation Agency to transport passengers in the District in April and May of this year, while applicant's WMATC authority was revoked. Vienna and the District of Columbia are within the Metropolitan District.

Third, the acceptance letter requested that applicant explain why it had yet to verify cessation of the DHS-CIS contract and had yet to corroborate that verification with a written statement from the DHS-CIS contracting officer and the WMATC carrier hired to perform said contract on applicant's behalf. Applicant produced no statement from DHS-CIS and no statement from any carrier but instead responded on June 21, 2012, as follows:

Regarding the US Department of Homeland Security, Citizenship and Immigration Services contract, we have been in discussion and submitted the request this week. However, ETS has no control over the time and method in which the government responses (sic). It is important to note, that only specific aspects that pertain to WMATC jurisdiction are relevant, therefore the assertions that ETS has to cease operating on the contract, requires clarification.

Applicant later supplemented this response on July 16, 2012,¹⁵ informing the Commission that DHS-CIS terminated its contract with applicant effective July 13, 2012. This has been confirmed by the agency. It must be noted, however, that according to the agency, applicant performed the contract from December 6, 2009, through July 13, 2012, notwithstanding the suspension of WMATC Certificate No. 985 on November 1, 2011, and notwithstanding the revocation of WMATC Certificate No. 985 on February 17, 2012.

V. REQUEST FOR ADDITIONAL INFORMATION

In the interest of ensuring a full and fair determination of this application, applicant will be given an opportunity to supplement the record in the following manner.

For each of the following contracts, applicant shall: (1) submit a copy of the full contract; (2) produce copies of all correspondence with the agency (including emails); (3) identify any and all carriers hired by applicant to perform the contract on

¹⁵ Although the July 16 response was filed well beyond the 14-day deadline specified in the Commission's June 7 acceptance letter, and although applicant did not request any extension of the 14-day deadline, we will accept this late-filed response into the record in order to ensure a full and fair determination of this application.

applicant's behalf; (4) state the dates of service rendered by each carrier on applicant's behalf; and (5) submit copies of all invoices paid by applicant for service rendered by other carriers on applicant's behalf.

- A. DHS-CIS Contract
- B. Navy Contract
- C. MDA Contract
- D. District of Columbia Court Services Contract
- E. Defense Security Cooperation Agency Contract

Applicant may submit other documents to the extent applicant believes such other documents might help the Commission reach a fair decision on this application.

Applicant is reminded that it bears the burden of proof on the issue of regulatory compliance fitness.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.
Executive Director