

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 13,543

IN THE MATTER OF:

Served October 19, 2012

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

Case No. AP-2012-079

This matter is before the Commission on the response of applicant to WMATC Order No. 13,357, served July 23, 2012, requesting additional information in order to ensure a full and fair determination of this application.

The Washington Metropolitan Area Transit Regulation Compact,¹ (Compact), applies to: "the transportation for hire by any carrier of persons between any points in the Metropolitan District."² A person may not engage in transportation subject to the Compact unless there is in force a Certificate of Authority issued by the Washington Metropolitan Area Transit Commission (WMATC) authorizing the person to engage in that transportation.³

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.⁴ The instant application is unopposed.

¹ 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).

² Compact, tit. II, art. XI, § 1. The Metropolitan District includes: the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties; and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of those counties, cities, and airports. Compact, tit. I, art. II.

³ Compact, tit. II, art. XI, § 6(a).

⁴ *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).

Title II of the Compact, 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.⁵ A determination of compliance fitness is prospective in nature.⁶ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁷ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁸

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.⁹

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.

⁵ *In re Nur Corp.*, No. AP-10-178, Order No. 12,730 (Feb. 15, 2011).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Order No. 12,730.

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.¹⁰

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.¹¹

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. 58.¹²

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.¹³

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.

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

¹¹ *Id.* at 5-6.

¹² *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).

¹³ *In re Exec. Tech. Solutions, LLC*, No. AP-04-84, Order No. 8273 (Sept. 20, 2004).

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.¹⁴

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:

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

¹⁴ *In re Addis Transp., Inc.*, No. AP-11-111, Order No. 13,114 (Jan. 10, 2012).

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.¹⁵

IV. INSTANT APPLICATION

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),¹⁶ however, indicates that applicant also has had an ongoing contract with the Missile Defense 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 (CSOSA) 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 (DSCA) 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

¹⁵ *In re Exec. Tech. Solutions, LLC*, No. AP-12-033, Order No. 13,311 at 8 (June 12, 2012).

¹⁶ https://www.fpds.gov/fpdsng_cms/.

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, 2012,¹⁷ 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. WMATC ORDER NO. 13,357

In the interest of ensuring a full and fair determination of this application, the Commission issued Order No. 13,357 on July 23, 2012, directing applicant to supplement the record with the following documents:

For each of the following contracts: (1) a copy of the full contract; (2) copies of all correspondence with the agency (including emails); (3) a statement identifying any and all carriers hired by applicant to perform the contract on applicant's behalf; (4) a statement indicating the dates of service rendered by each carrier on applicant's behalf; and (5) 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. CSOSA Contract
- E. DSCA Contract

The order stipulated that applicant would be permitted to submit other documents to the extent applicant believed such other documents might help the Commission reach a fair decision on this application.

The order reminded applicant that applicant bears the burden of proof on the issue of regulatory compliance fitness.

¹⁷ 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 accepted this late-filed response into the record in order to ensure a full and fair determination of this application.

VI. APPLICANT'S RESPONSE TO ORDER NO. 13,357

Document Category 1

Applicant has produced copies of some or all of the first four contracts listed above. Applicant has not produced a copy of any contract with the DSCA. Apparently, applicant's position is that no such contract exists, that applicant provided service to that agency at applicant's general tariff rates.¹⁸

Document Category 2

Applicant has produced copies of its correspondence with WMATC but no correspondence with the agencies with which applicant has contracted.

Document Category 3

Applicant has produced no statement identifying any and all carriers hired by applicant to perform contracts on applicant's behalf.

Document Category 4

Applicant has produced no statement indicating the dates of service rendered by other carriers on applicant's behalf

Document Category 5

Applicant has produced three invoices for service rendered by other carriers on applicant's behalf. All three were issued by Henka International, Inc., trading as Worldwide Tours & Travel, WMATC Carrier No. 372.

VII. FINDINGS OF JURISDICTION

After reviewing the supplemental information produced by applicant in response to Order No. 13,357, we find that, for the following reasons, the Commission has jurisdiction over four of the five contracts at issue. The Commission does not have jurisdiction over the MDA contract.

A. DHS-CIS Contract

This contract by its own terms is a "Fixed Price" contract. The services covered by the contract are described on page 1-8 of the contract in section C.4 titled, "Scope", as follows:

USCIS requires the services of a Contractor to furnish personnel, vehicles, equipment, maintenance, and supervision necessary and incidental to providing transportation for Government personnel, packages, and mail between various locations. Over 95% or more of the transportation required will be within the Washington Metropolitan Area. For purposes of this contract, Washington Metropolitan Area is defined as the District of Columbia; the counties of Montgomery, Prince George,

¹⁸ Response to WMATC Order No. 13,357 at 4.

and Anne Arundel in Maryland; and the counties of Arlington, Fairfax, Loudoun, and Prince William and the City of Alexandria in Virginia.

The contract thus calls for passenger transportation for hire between points in the Metropolitan District subject to WMATC licensing jurisdiction.¹⁹

B. Navy Contract

The Commission found in February of this year that it has jurisdiction over this contract, as noted above in the "History of Violations" discussion.

C. MDA Contract

Exhibit 7.5 to this contract lists the street addresses of the agency facilities requiring passenger carrier service. Several of these facilities are located in the Metropolitan District, but those facilities are all located in Virginia and thus are not within WMATC jurisdiction according to Article XI, Section 3(g), of the Compact, which excludes from our jurisdiction "transportation solely within the Commonwealth of Virginia."

D. CSOSA Contract

Section H.1, "Type of Contract", describes this document as a "firm fixed price contract for Chauffeur services." Under section C.2, "Description of Services", such services include "transporting the Director and Deputy Director of CSOSA, or other senior level officials, to and from various meetings and conferences within the District of Columbia metropolitan area" Section C.4 contemplates that these services may be performed using a government-owned vehicle. Although the furnishing of chauffeurs to operate vehicles owned by the government does not necessarily constitute passenger carrier service requiring a WMATC certificate of authority, section C.2 of the contract also requires applicant to obtain maintenance for such vehicles, which is regarded as an attribute of carrier status,²⁰ as is assumption of risk,²¹ which under section F.5, "Indemnification", appears to be fully placed on applicant.

On balance, the Commission finds sufficient grounds exist for exercising jurisdiction over this contract.

¹⁹ See *In re Transcom, Inc.*, No. AP-05-113, Order No. 9907 (Sept. 3, 2006) (holding fixed-price Immigration & Customs Enforcement passenger transportation contract subject to WMATC licensing jurisdiction).

²⁰ See *In re Government Contracting Resources, Inc., t/a GCR, Inc.*, No. AP-97-56, Order No. 5236 (Dec. 3, 1997) (including responsibility for vehicle maintenance in list of contract requirements).

²¹ *Id.*

E. DSCA Contract

Inasmuch as applicant appears to assert that services to this agency were billed at applicant's general tariff rates, it would appear jurisdiction has been conceded.

Two shuttle bus schedules for motor coach service between Arlington, VA, and the District of Columbia, submitted by applicant and detailing arrival/departure times for "CHDS"²² events hosted by DSCA at Ft. McNair in June 2011 and April 2012 support this conclusion.

VIII. LIKELIHOOD OF FUTURE COMPLIANCE

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.²³

The record shows that notwithstanding the suspension of WMATC Certificate No. 985 on November 1, 2011, the revocation of WMATC Certificate No. 985 on February 17, 2012, and the issuance of a Commission cease and desist order on May 3, 2012:

Applicant performed the DHS-CIS contract from December 6, 2009, through July 13, 2012, as noted above in the last paragraph of the "Instant Application" discussion above.

The Commission's Motor Carrier Safety Specialist observed applicant operating a shuttle bus between Walter Reed National Military Medical Center (WRNMMC) and the Medical Center Metro Station on the grounds of the National Institutes of Health in Bethesda, Maryland, on July 19, 2012.²⁴ The Commission's Motor Carrier Safety Specialist observed unlicensed carriers operating shuttle buses between WRNMMC and the Silver Spring Metro Station, apparently on applicant's behalf, that same day.²⁵

Applicant has been operating the CSOSA contract continuously since its inception, from October 1, 2005, to present.

Applicant operated the DSCA contract on April 15, 2012.

²² According to the DSCA website, CHDS stands for Center for Hemispheric Defense Studies. <http://www.dsca.mil/programs/biz-ops/new/contactUs.html>.

²³ *In re Exec. Tech. Solutions, LLC*, No. AP-12-033, Order No. 13,250 (May 3, 2012).

²⁴ Affidavit of Chris Aquino.

²⁵ *Id.*

Under the circumstances, we believe it only fair to allow applicant an opportunity to respond to our findings and this reading of the record. The response should include an explanation of why the Commission should not assess a civil forfeiture against applicant under Article XIII, Section 6(f), of the Compact for knowingly and willfully violating the Compact and why the Commission should not deny this application under Article XI, Section 7(b), of the Compact for applicant's failure to demonstrate regulatory compliance fitness.

THEREFORE, IT IS ORDERED:

1. That applicant shall have 30 days to respond in writing to the Commission's findings and reading of the record in this order.

2. That applicant shall have 30 days to explain in writing why the Commission should not assess a civil forfeiture against applicant under Article XIII, Section 6(f), of the Compact for knowingly and willfully violating the Compact.

3. That applicant shall have 30 days to explain in writing why the Commission should not deny this application under Article XI, Section 7(b), of the Compact for applicant's failure to demonstrate regulatory compliance fitness.

4. That applicant may submit within 15 days from the date of this order a written request for oral hearing that specifies the grounds for the request, describes the evidence to be adduced, and explains why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BELLAMY:



William S. Morrow, Jr.
Executive Director