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CERTIFIED MAIL
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Reference No.: 14-0081

Cindy Strom Arellano, Esq.
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Dear Ms. Arellano:

This letter responds to your March 12, 2014 appeal on behalf of your client, GVCO Construction, Inc. (GVCO). GVCO appeals the California Unified Certification Program's (CUCP) December 13, 2013 denial of the firm's application for certification as a Disadvantaged Business Enterprise (DBE) under the standards of 49 C.F.R. Part 26 (the Regulation). We carefully reviewed the entire administrative record, including the arguments contained within your appeal, and find that substantial evidence supports CUCP's determination. We affirm CUCP's decision as consistent with the substantive and procedural provisions of the Regulation. See §26.89 (f) (1).

CUCP denied GVCO's application on two grounds:

- (1) Failure to demonstrate overall understanding of, and managerial and technical competence and experience directly related to, the firm's work or operations, §26.71(g); and
- (2) Outside employment that conflicts with control of the firm, §26.71(j).¹

We find that the record supports CUCP's conclusion on the first ground. Specifically, we agree that GVCO failed to demonstrate that its disadvantaged owner, Gloria Coyt, has the managerial and technical competence and experience to control a firm that will perform general engineering construction work. We affirm the denial only on ground one and express no opinion concerning

¹ It appears that CUCP attempts to make a §26.71 (n) argument in its denial letter. It states that the firm's disadvantaged owner does not have the ability to control a "heavy engineering firm." The firm applied for certification in the following NAICS codes: (1) 237110 -Water and Sewer Line and related structures construction; (2) 237310- Highway, Street and Bridge Construction; and (3) 237990-Other Heavy and Civil Engineering Construction. We would have agreed with CUCP if it reached its conclusion based on §26.71 (n); however, CUCP did not adequately cite or present this ground in its denial. We therefore decline to consider whether GVCO meets the requirements of §26.71 (n).

ground two.²

Facts

Gloria Coyt formed GVCO in March of 2012, and is the firm's sole owner and employee. Although the firm had not performed any work at the time of its application, the firm's primary business activity is "General 'A' Licensed Engineering Construction." *See* GVCO Uniform Certification Application at 1. Specifically, Ms. Coyt intends to perform "work as a subcontractor and to focus on small to mid-size concrete work. This would include concrete structures for pipelines (i.e. catch basins, etc.) as well as curb, gutter, sidewalk and concrete masonry walls. In the event the 'right' site utilities project presents itself, [she] would also consider this type of work." Damon Dorn email, June 19, 2013.

From 1990 until 2011, Ms. Coyt worked as a bookkeeper and provided general office support to various construction firms.³ In 2011 – two years before her application for DBE certification – She began work as a "General Engineering Contractor" at G.B. Cooke, Inc. According to her résumé, Ms. Coyt performed the following duties in this position:

Assisted Chief Estimator in preparation of bids for public works and private construction projects. These were General Engineering projects, including major utility installations, structural concrete and related work. Coordinated all phases of construction with engineers and architects. Supervised all project aspects, including scheduling, budgeting, quality control, purchasing, safety, compliance and project close-out.

Negotiated agreements with vendors and local subcontractors, managed payment schedules and purchase orders. Monitored progress, ensured timely delivery of all ordered supplies.

Served as liaison to owner representative and acted as troubleshooter in resolving project issues and change orders.

Ms. Coyt received her Class "A" General Engineering Contractor's License on February 7, 2013. Ms. Coyt took classes in accounting and general business studies, but did not study civil engineering or structural construction.

² Regarding ground two, CUCP argues that because Ms. Coyt is employed at another employer (G.B. Cooke Inc.), she cannot devote the necessary time and attention that is required to meet the control requirements of §26.71(j). However, the record suggests that it may be reasonable for Ms. Coyt to work at another firm while she builds her new start-up business. See generally §26.73(b)(2) ("[a recipient] must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, or has not demonstrated a potential for success").

³ The résumé shows Ms. Coyt's position at G.B. Cooke, Inc. (2004-2011) and C.P. Construction Co., Inc. (1997-2004) as a "General Engineering Contractor"; however, her duties only consisted of administrative work.

CUCP conducted an onsite interview at GVCO's office (Ms. Coyt's home) on May 22, 2013. *See* CUCP Site Visit Questionnaire (onsite). Ms. Coyt stated that, "she works as a supervisor for G.B. Cook [sic] doing accounting and also working as a liaison for G.B. Cook [sic] at the Disneyland Park." Onsite at 2. Ms. Hoyt claimed that her work experience as a field supervisor in the construction industry enables her to operate and control GVCO within the meaning of the Regulation.⁴ *Id.*

Discussion

A firm applying for DBE certification bears the burden of demonstrating, by a preponderance of evidence, that its Socially and Economically Disadvantaged owner has "an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations." §26.71(g).

The question in this case is whether GVCO demonstrates that between 2011 and 2013 (the date of GVCO's DBE application), Ms. Coyt obtained sufficient understanding of, and technical competence and experience in, general engineering fieldwork to control GVCO as §26.71(g) requires.⁵ GVCO appears to concede that Ms. Coyt engaged in primarily administrative work from 1990 to 2011. *See* GVCO Appeal at 2. ("CalTrans very accurately cites all of the administrative experience that Ms. Coyt has accumulated prior to 2011.") Its appeal, however, argues that CUCP's decision is incomplete and fails to consider Ms. Coyt's experience after 2011. This experience, according to GVCO, disproves CUCP's conclusion that Ms. Coyt lacks the requisite managerial and technical competence and experience to control the firm.⁶

We agree that GVCO failed to demonstrate that Ms. Coyt meets the requirements of §26.71(g). It is unclear what technical skills, if any, Ms. Coyt obtained while working as a self-reported General Engineering Contractor at G.B. Cooke. For instance, Ms. Coyt's résumé contains vague descriptions of responsibilities as a General Engineering Contractor (e.g. "Assisted Chief Estimator" and "coordinated all phases of construction with engineers and architects"). These descriptions suggest that Ms. Coyt relied on the technical expertise of others and did not make independent decisions about fieldwork, as the Regulation requires. Ms. Coyt's supervisory duties were for non-technical work (scheduling, budgeting, quality control, purchasing, safety,

4 During her onsite review, Ms. Coyt claimed she has 5 years of supervisory fieldwork experience; however, her résumé and appeal indicate that she only had 2 years of experience. *See* Coyt résumé at 1; GVCO Appeal, March 12, 2014 at 3.

5 GVCO bears the burden of demonstrating, by a preponderance of evidence, that its disadvantaged owner possesses an overall understanding of and managerial and technical competence and experience directly related to the firm's primary line of work. *See* §26.71(g).

6 We do not necessarily agree that CUCP did not consider this experience. The denial letter states that CUCP "carefully considered [Ms. Coyt's] background and expertise as it relates to [her] ability to control the day-to-day managerial and operational decisions of a general engineering construction business." CUCP reached its conclusion based on evidence that "almost all" of Ms. Coyt's experience was administrative.

compliance and project close-out). Her résumé also fails to list the specific projects that she completed as a general contractor. At best, Ms. Coyt's résumé indicates that she obtained general construction experience, but not managerial and technical competence and experience directly related to an engineering contracting business.

Finally, GVCO's appeal argues, "the issuance of [Ms. Coyt's] contractor's license should stand on its own as proof of her competence and experience due to the strict application requirements promulgated by the [California State Licensing Board]." GVCO Appeal at 4. The Regulation, however, does not afford a conclusive presumption of technical competence under §26.71(g). In addition, there is a reasonable basis for CUCP to question the probative value of the license if Ms. Coyt waived in through a grandfather clause instead of taking the licensing examination. As CUCP mentioned in its denial letter, there is a provision that allows a contractor to receive a General Engineering license without taking the test. GVCO had the opportunity to produce evidence in support of its application, but failed to provide a copy of Ms. Coyt's exam results.

In summary, the record contains insufficient evidence that Ms. Coyt – as the firm's sole employee – can critically evaluate technical information from other participants in GVCO's structural concrete and underground utilities work and make informed, independent decisions based on that information, as the Regulation requires.

Conclusion:

The Department affirms CUCP's determination that GVCO is ineligible for certification as a DBE, as supported by substantial evidence and consistent with the substantive or procedural provisions concerning certification.

This decision is administratively final and not subject to petitions for reconsideration.

Sincerely,

Samuel F. Brooks
DBE Appeal Team Lead
External Civil Rights Programs Division

cc: CUCP