

July 8, 2015

CERTIFIED MAIL
RETURNED RECEIPT REQUESTED

Reference Number: 14-0083

Ms. Donna Haynes-Williams, President
Haynes Integrated Technologies, LLC
[REDACTED]
Gulfport Mississippi 39503

Dear Ms. Haynes:

Haynes Integrated Technologies, LLC (HIT) appeals the Mississippi Department of Transportation's (MDOT's) denial of its application for certification as a Disadvantaged Business Enterprise (DBE) under criteria set forth at 49 C.F.R. Part 26 (the Regulation). After reviewing the full administrative record, we conclude that substantial evidence supports MDOT's determination. We affirm the ineligibility determination under §§26.89(f)(1).

In the denial letter dated January 31, 2014, MDOT cites the firm's failure to meet the requirements of §§26.71 (d), (g), and (n) relating to control. The argument for §26.71(n) is underdeveloped and we therefore do not consider this ground properly before us on appeal. We acknowledge that you are President of HIT and do not affirm MDOT's determination on the basis of §26.71(d)(1). We affirm on §26.71(g) grounds. *See generally* §26.61(b).

Applicable Regulation Provisions

§26.61(b) provides:

"The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control."

§26.71(d)(1) provides:

"The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) *A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).*

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.” (Emphasis added.)

§26.71(g) provides:

“The socially and economically disadvantaged owners must have 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. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. *The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.*” (Emphasis added.)

§26.71(n) provides:

“You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.”

§26.89(f)(1) provides:

“The Department affirms [the certifier's] decision unless it determines, based on the entire administrative record, that [the] decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.”

§26.89(f)(6) provides:

“The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.”

§26.89(g) provides:

“All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

Operative Facts

Haynes Integrated Technologies, LLC (HIT) is an electrical contracting company established in December 2009 (Uniform Certification Application (UCA) dated October 4, 2013). You are the Principal of HIT and own 100% of the firm's shares. (*Id.* at 4; Amendment HIT, LLC Agreement Dated November 1, 2013 "hereafter Amendment" at 80 and 82). The UCA states that The President of HIT is Matthew Carr. The Denial Letter indicates that you subsequently contacted the Secretary of State's Office and requested that the information be changed to show that you are Managing Member and President, and that Marcella Richardson is the Secretary of the firm. The record shows e-mails requesting that a change be made to remove Matthew Carr as President on December 18, 2013 and January 21, 2014. A handwritten note on the copies of the e-mails in the record states that the requested change was completed over the phone.

Your résumé shows the following previous positions to the present: Beau Rivage Casino-Resort Director of Convention Sales; Party Girls Imprintables and Gifts-Owner; Beau Rivage Casino/Resort-Assistant Director of Catering and Convention Services; and Haynes Electric Co., Inc.-C.O.O.

Matthew Carr's résumé shows his previous positions to the present: Telecommunications Technician-Communication Resources Corp. 1997-1999; Project Manager/Telecommunications Specialist II/Team Leade- Business Communications, Inc., 1999-2007; Project Manager-Sunrise Network Solutions, Inc. 2008-2011; and President-Operations Manager-Haynes Integrated Technologies, LLC 2012-Present. He has experience in installation, programming and maintenance of KSU and PBX systems; installation of 1,500,000 of new category 6 network and category 6 telephone cables; project managing design build outside plant network infrastructure; procurement of materials and supplies for all projects and operations. He is responsible for providing design/build services for various telecommunications projects to upgrade existing fiber optic, telephone and network cabling infrastructure to support expansion. He provides functions such as job estimating; overseeing daily operations of technicians; employee development; human resources; sales; customer service; accounting and project-related duties including field installations and service work.

Mr. Carr's training includes AMP ACT I Installing Premises Cabling Systems Training February 2006; AMB ACT II Certifying & Trouble shooting Premises Cabling Training February 2006; AMP Registered Contractor Training Program May 2006; Registered Leviton Voice & Data Certified Installer Training January 1998; Hubbell Premises Wiring Certified Installer Training January 2012; CPR Certified June 2002; Corning TS-FSD-400 Fiber Optic Design for MM and SM Optical Networks –March 2010; Corning TS-LAN-500 Installation of MM and SM Optical Networks-November 2008; and 10-Hour OSHA-May 2011. Mr. Carr holds a certification in BICSI Information Transport Systems Installer 2 and a U.S. Merchant Marine 100 Ton Master License. Adam Feeney is the licensed contractor in electrical work and communication systems (Denial Letter at 1). He is the Treasurer of the firm.

Your duties and responsibilities for HIT include making financial decisions and transactions, negotiating and contract execution, hiring and firing management personnel, office management, marketing and sales, purchasing major equipment, and signing company checks for any purpose

(UCA at 5; Record at 8). You share the responsibilities of estimating and bidding; and field production and operations with Matthew Carr. *Id.* The On-site Review Report Dated January 1, 2014 (OSRR) states that Mr. Carr is the Field Supervisor. He hires and fires field personnel in your absence (Record at 16). You act as the Office Manager in Marcella Richardson's absence *Id.* at 15. You stated in the DBE Certification Hearing ("Hearing") Dated January 21, 2014, Transcript at 165, "Initially, I was just doing bookkeeping and billing and what not, and when my father passed obviously it was a considerable void, so in between my brother and I we started taking over the management at the company and I became involved in operations but primarily the financial end of it."

Decision and Discussion

i. Highest Officer Position

Although the Denial Letter dated January 31, 2014 states that you are not President of HIT, the record shows copies of e-mails requesting that a change be made to remove Matthew Carr as President on December 18, 2013 and January 21, 2014. For the purposes of §26.71(d)(1), there is evidence that you hold the highest officer position in the company.

ii. Experience and Expertise

You fail to demonstrate that you control HIT within the meaning of §26.71(g) which states that the disadvantaged owner must have "the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking."

Your résumé shows that your previous positions are unrelated to the electrical contracting field. The UCA states that you are exclusively in charge of financial decisions and transactions; contract execution and negotiation; hiring and firing employees; office management; marketing and sales; purchasing major equipment; and signing checks for any purpose. The OSRR indicates that you are the Co-Office Supervisor along with Marcella Richardson and that you act as the Office Manager in her absence. You stated in the DBE Certification Hearing that, "Initially, I was just doing bookkeeping and billing and what not...started taking over the management at the company and I became involved in operations but primarily the financial end of it."

Matthew Carr's work history in the electrical contracting field is extensive. His résumé shows the previous positions to the present: Site Project Manager; Field Supervisor; and Manager of Operations. The UCA states that Mr. Carr is not exclusively in charge of any specific duty, but shares the duties of estimating and bidding and field/production and operations with you. However, the OSRR states that Matt Carr is the Field Supervisor. He hires and fires field personnel in your absence. Adam Feeney, the treasurer for the firm is licensed in areas of electric work and communication systems. Mr. Feeney handles all the electrical related components of the company.

While you are clearly familiar with the firm's activities relating to office management such as bookkeeping and billing, the evidence shows that relevant technical expertise and experience rests with non-disadvantaged individuals, Mr. Carr and Mr. Feeney. Under the Regulation, knowledge relating to electrical contracting is essential in order to intelligently and critically evaluate information to make independent decisions concerning the firm's daily operations, management, and policymaking. Mr. Carr handles the operational field work while Mr. Feeney handles all the electrical related components of the company, controlling the technical aspects required for HIT's electrical work. You are mainly involved with matters related to office management, particularly making financial decisions as you have previously stated. The record does not indicate that you have any specialized knowledge or experience that relates directly to the business in which the firm seeks to be certified. Given the substantial evidence that non-disadvantaged persons do, we affirm GDOT's determination that you do not demonstrate that you control over HIT's operations within the meaning of §26.71(g).¹

Conclusion

We affirm MDOT's ineligibility determination on the basis of §26.71(g) as supported by substantial evidence and not inconsistent with the Regulation's substantive and procedural provisions relating to certification.

This determination is administratively final and is not subject to petitions for reconsideration. HIT may reapply for certification at any time.

Sincerely,

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

cc: MDOT

¹ MDOT states no disproportionate responsibility rationale. See §26.71(e).