

January 8, 2015

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Reference Number: 14-0146

Gloria Rhodes  
DES Electric, LLC  
[REDACTED]  
Detroit, MI 48216

Dear Ms. Rhodes:

This letter responds to your letter of June 30, 2014 (Appeal Letter), appealing the Detroit Department of Transportation's (DDOT) denial of DES Electric, LLC's (DES) application for certification as a Disadvantaged Business Enterprise (DBE) under the rules of 49 C.F.R. Part 26 (the Regulation). We affirm DDOT's decision because substantial evidence in the administrative record supports the denial.<sup>1,2</sup>

**FACTS:**

The Uniform Certification Application (UCA) you filed with DDOT on February 14, 2014, sets forth the following facts. You, a disadvantaged person, formed DES in June 2013 with Chris LaBelle, a non-disadvantaged person. You own 51% of DES, and Mr. LaBelle owns 49%. DES is an electrical construction company. Chris LaBelle owns non-disadvantaged firm LaBelle Electric Services, also an electrical construction company.

Your husband Brian Rhodes, a disadvantaged Licensed Professional Engineer (Electrical) with no ownership in DES, is DES' supervising Licensed Master Electrician. He supervises all of the electricians who work for DES. Appeal Letter at 2. Mr. Rhodes also owns Rhodes & Associates, Inc., an electrical engineering business.

You indicate that individuals other than yourself control the firm's estimating and bidding (Brian Rhodes, Engineer; Russ Buoy, Estimator), field/production operations, including supervision (Chris LaBelle, Vice President/Operations; Mike Elder, Project Manager), office management (Hazel Rivers), and major equipment purchases (Chris LaBelle exclusively). UCA at 4-5. Further, you concede that you share check writing, authority to make financial transactions, and authority to negotiate and sign contracts with Chris LaBelle. Id.

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<sup>1</sup> As Regulation §26.89(f)(1) requires.

<sup>2</sup> We base our decision solely on the entire administrative record, per §26.89(e).

The Work Experience Resume that you provided DDOT shows only seven months of employment (late 2013 and early 2014) with DES<sup>3</sup> and a thirty-one year stint ending in the year 2000 with Ford Motor Company, Glass Division, where you were an Administrative Assistant, Sales Coordinator, Marketing Manager, and Export Sales Manager. You list no electrical construction credentials or experience (other than DES) of any kind and have no applicable licenses, union memberships, or professional licenses. There is no accounting whatever for the period between 2000 and the formation of DES in June 2013. Further, you left blank the space under the DDOT's request that you "LIST ANY ADDITIONAL INFORMATION YOU FEEL MAY BE HELPFUL TO US IN CONSIDERING YOUR APPLICATION."

Mr. LaBelle reports in his Work Experience Resume that he holds Michigan licenses as a Journeyman Electrician and an Electrical Contractor. His responsibilities at DES are "Oversee Operations for Electrical Construction and Design/Build activities." These are the same responsibilities that Mr. LaBelle has at LaBelle Electric, which he has owned and controlled since 1986. Mr. LaBelle's Personal Financial Statement shows personal net worth well in excess of the [REDACTED] cap in §26.67(a)(2).

You and Mr. LaBelle filled out on-site review questionnaires for DDOT on March 27, 2014. In response to the question (4) "Please describe owner expertise to operate the business and describe how that expertise was obtained (Provide licenses and other documentation)," you wrote: "Sales & Marketing, college." Question 5 is "Please explain your day-to-day operation as well [as] corporate duties and responsibilities." You wrote: "administrative, overseeing the company's operations, Personnel, and hiring." However, in response to Question 9, you concede that "Mike Elder, Senior project Mgr Help with overseeing manpower." Mr. Elder is a non-disadvantaged person, according to your supplementary response regarding gender and ethnicity. Finally, Question 23 asks you to "list seminars or classes you have had pertaining to your duties in the firm." Your entire response is "professional seminars."

Mr. LaBelle's response to the same Question 4 is "30 years in electrical construction." His response to Question 5 is "I will oversee day to day projects with project managers and field employees. I will work with Gloria Rhodes on corp. operations."

According to the On-Site Report (p.2), you co-own Rhodes and Associates, a DBE firm, where your duties are "minimal, taxes + etc." Rhodes Questionnaire at 5. Mr. LaBelle's duties at his other firm are "Operations Project Management." LaBelle Questionnaire at 5. DDOT's representative who conducted the interviews concludes in her Report: "Mrs. Rhodes has experience in the Administrative area of the business *and Mr. LaBelle has experience in project management and electrical construction.*" [Emphasis added.]

DDOT denied DES' application on grounds relating to your failure to demonstrate that you control the firm, within the meaning of the Regulation. DDOT specifically cited §§26.71(b), (d), (e), (f), and (g). Analysis of DDOT's (e), (f), and (g) rationales suffices for present purposes.

## **DISCUSSION:**

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<sup>3</sup> You describe your new duties as "Management of Electrical Construction Firm, Sales and Marketing, Customer Relations."

**§26.61(b): 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.**

Control

**§26.71(e): Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.**

Substantial evidence supports DDOT's determination that Mr. LaBelle's participation and expertise are indispensable to the firm and that he fully controls the operations (electrical construction activities) for which the firm seeks certification. We affirm DDOT's conclusion under §26.71(e) that the firm is ineligible because a non-disadvantaged individual is disproportionately responsible for the operation of the firm. There was substantial evidence, all of it provided by you, that your duties are primarily administrative and that your experience and understanding relate primarily to administration and sales, not field/production operations (without which the firm would generate no revenue). Mr. LaBelle has the more substantial duties, as specified in the UCA, Work Experience Resumes, and On-Site Report Questionnaires, and they are disproportionate to his minority ownership interest.

**§26.71(f): The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.**

The record makes clear that Mr. LaBelle has responsibility for day-to-day operations and field supervision. There is no specific indication that the delegation of powers is revocable or that you have the power to fire Mr. LaBelle, but that failure of proof is not decisive here—for we find that your managerial role in the firm's overall affairs, as the owners themselves described in the application materials, is not such that the recipient reasonably could conclude that you actually exercise control over the firm's operations, management, and policy. Substantial evidence supports DDOT's conclusion that you do not.

**§26.71(g): 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 the**

**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.**

You introduced no evidence that you 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 (electrical construction) and the firm's operations. The applicant has the burden of proof. You introduced minimal and vague evidence, at best, of pertinent experience, training, or knowledge. You failed to make a showing that you are in fact equipped to critically evaluate information presented by engineers, electricians, and project managers and use that information to make independent decisions concerning the firm's daily operations, management, and policymaking, particularly not in the field. Accordingly, DDOT appropriately determined that the firm is ineligible for certification, and we affirm under §26.89(f)(1).

### **CONCLUSION:**

We affirm DDOT denial as supported by substantial evidence and not inconsistent with substantive or procedural certification provisions. DES did not prove by a preponderance of the evidence that socially and economically disadvantaged individuals control the firm within the meaning of the Regulation.

This decision is administratively final and not subject to petitions for review, per §26.89(g).

Sincerely,

Samuel F. Brooks  
Acting Lead Specialist  
External Civil Rights Programs Division  
Departmental Office of Civil Rights

cc: DDOT