



**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

Departmental Office of Civil Rights
1200 New Jersey Avenue, S.E., W76-401
Washington, DC 20590

May 2, 2017

Reference Number: 16-0163

Patricia Surges
President
Glen Rock Electric, LLC.
234 W. Florida St., Ste. 209
Milwaukee, WI 53204

Re: DBE Certification Denial of Glen Rock Electric, LLC

Dear Ms. Surges:

Glen Rock Electric, LLC (Glen Rock) appeals the Wisconsin United Certification Program's (WUCP) denial of its application for certification as a Disadvantaged Business Enterprise (DBE) under the standards of 49 C.F.R. part 26 (the Regulation). WUCP determined that Glen Rock failed to satisfy the control requirements of Regulation §§26.71(b) and 26.71(g). The U.S. Department of Transportation, Office of Civil Rights (Department) has carefully reviewed the full administrative record and concludes that substantial evidence supports WUCP's decision on the §26.71(g) ground. We therefore affirm the denial of DBE certification.

I. Background

Glen Rock, a limited liability company with its principal place of business in Milwaukee, Wisconsin, is an electrical contracting firm. In January 2016, you and your husband, the owners of Glen Rock, submitted an application for certification as a DBE to WUCP. WUCP reviewed the documentation provided with the application and conducted an on-site interview on April 21, 2016. On May 16, 2016, WUCP provided Glen Rock with a Notice of Intent to Deny Certification, which indicated that certification would be denied on the basis of §26.71(g). Glen Rock sent a response to the Notice on May 25, 2016, in which the findings outlined were disputed. On May 31, 2016, WUCP denied Glen Rock's application for certification on the basis of Glen Rock's failure to satisfy the requirements of §§26.71(g) and 26.71(b). Glen Rock timely appealed to DOT on August 26, 2016.

II. Discussion

a. Scope and Standard of Review

When applying for DBE certification, under 49 §26.61(b) “[t]he firm seeking certification has the burden of demonstrating...by a preponderance of the evidence, that it meets the requirements of this sub-part concerning group membership or individual disadvantage, business size, ownership, and control.” Under §§26.86(d) and 26.89(c), a firm may appeal a denial of DBE certification to the Department. The Department does not make a de novo review or conduct a hearing; its decision is based solely on a review of the administrative record as supplemented by the appeal. §26.89(e). The Department must affirm the initial decision unless it determines, based upon its review of the entire administrative record, that the decision was “unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.” §26.89(f)(1).

b. Discussion

WUCP concluded that you do not control the firm within the meaning of 49 C.F.R. §26.71(g). Section 26.71(g) requires that “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.” In the denial letter, WUCP found that while you demonstrated responsibility for administrative and office management tasks, you failed to demonstrate an overall understanding of the firm’s area of business. Denial Letter, Record at pp. 215-216.

The test is in part whether or not the owner has overall knowledge of the business sufficient to make critical evaluations. *See* 15-0026, *Danel Designs, LLC* (October 1, 2015).¹ Specifically, a business owner is required to understand the specifics of the work performed. *See id.* The test also requires a demonstration of managerial and technical competence and experience directly related to the firm’s business.

Your answers during the On-Site Review, as well as information from your résumé, indicate that you have not successfully demonstrated that you have an overall knowledge of the business sufficient to make critical evaluations or the required competence and experience. According to your resume, your previous experience—which occurred entirely with **REDACTED** —included payroll, accounts payable, accounts receivable, lien reports, customer service, and office management. Patricia Surges Résumé, Record at p. 169. There are no additional skills or trainings listed. *Id.*

Further, the available evidence indicates that you lack managerial and technical competence and experience directly related to electrical contracting. *See, e.g.,* Patricia Surges Résumé, Record at p. 169. The firm currently has no employees and is comprised solely of you (President) and your husband, Christopher Surges (Vice President). DBE Application, Record at p. 20; On-site

¹ In *Danel Designs, LLC*, the Department reversed a denial of certification on the basis of 49 C.F.R. §26.71(g), and stated that the test is whether an applicant owner has overall knowledge sufficient to make critical evaluations. In that case, it was determined that the owner possessed sufficient knowledge, through previous on-the-job experience and a demonstrated understanding of the work and how it is performed, to satisfy the requirements of §26.71(g).

Review Report, Record at p. 200. During the On-Site interview, you indicated that Mr. Surges would assist with “estimates, bidding and consulting.” On-Site Review Report, Record at p. 197. In fact, the application indicates that Mr. Surges shares responsibility for every aspect of control (including setting policy for company direction, major purchasing decisions, marketing and sales, supervising field operations, hiring and firing management and field staff, designating profits, spending, or investment, and obligating the business by contract or credit). DBE Application, Record at 20-21. Further, Mr. Surges has over 10 years of management experience working with electric contracting firms. Christopher Surges Résumé, Record at pp. 167-168. Conversely, there is no evidence in the record concerning your experience, training, or skill in the key operational components of the firm.

During the On-Site interview, you stated your duties as “A/R, A/P, Payroll, Reports, Lien Reports, and other duties as needed.” On-Site Review Report, Record at p. 197. Your evident competence and experience with office management, administration, and bookkeeping are not sufficient to demonstrate control under §26.71(g). The record does not show that you solely control any of the firm’s key operations. We find that you have failed to demonstrate that you have an understanding of the specifics of the work being performed such that you could critically evaluate the quality or success of the work.

Finally, WUCP concluded that you do not control the firm within the meaning of §26.71(b), which requires that an applicant for certification be an independent business. The Department declines to review this ground for denial, as the analysis of §26.71(g) is sufficient to affirm WUCP’s denial.

III. Conclusion

Upon review of the administrative record as a whole, and for the above-stated reasons, we conclude that WUCP’s denial of Glen Rock’s application for DBE certification is supported by substantial evidence, and we affirm it.

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

Sincerely,

Samuel F. Brooks
DBE Appeal Team Lead
Disadvantaged Business Enterprise Division

cc: Wisconsin Unified Certification Program