

March 19, 2019

Reference Number 18-0109

Mr. Brian Hall
Chief Executive Officer
Brian Hall Properties
REDACTED
Solana Beach, CA 92075

Dear Mr. Hall:

This letter responds to Brian Hall Properties' (BHP) appeal¹ of the San Diego County Regional Airport Authority's (SDCRAA) denial of the firm's request² to add a North American Industry Classification System (NAICS) code to its Disadvantaged Business Enterprise (DBE) certification under the rules of 49 CFR Part 26 (the Regulation). After considering all the facts in the record, we affirm³ SDCRAA's decision.

BACKGROUND

You are the founder and sole owner of DBE-certified firm BHP. You describe BHP as a "residential real estate firm"⁴ that provides service and commercial management services and "handles" lodging for military and civilian personnel.⁵ In 2017 you requested SDCRAA to add NAICS codes 721110 (Hotels (except Casino Hotels) and Motels), 721191 (Bed and Breakfast Inns), 721199 (All Other Travel Accommodations), and 813910 (Business Associations) to your DBE certification.⁶

¹ See Appeal Letter (May 4, 2018).

² See Denial Letter (unpaginated) (April 9, 2018).

³ See §26.89(f)(1): "The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification."

⁴ Uniform Certification Application (UCA) at 1.

⁵ Site Visit Questionnaire (Jan. 2, 2018) at 1.

⁶ The firm currently has NAICS codes 531210 (Offices of Real Estate Agents and Brokers), 531311 (Residential Property Managers), 531312 (Nonresidential Property Managers (Commercial)), 531110 (Lessor of Residential of Buildings and Dwellings), 531120 (Lessor of Nonresidential Buildings), 561510 (Travel Agencies), 561599 (All Other Travel Arrangement and Reservation Services), 561920 (Convention and Trade Show Organizers), 531190

SDCRAA denied your code request in full under §§26.71(g) and (n) and 26.109(c). You appeal only the denial of NAICS code 721110. We affirm SDCRAA's decision under §§26.71(g) and (n).

DISCUSSION

Section 26.61(b) states:

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.

Section 26.71(g) states:

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)

Section 26.71(n) states:

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.

NAICS code 721110 - Hotels (except Casino Hotels) and Motels states:

This industry comprises establishments primarily engaged in providing short-term lodging in facilities known as hotels, motor hotels, resort hotels, and motels. The establishments in

(Lessor of Other Real Estate Property), and 541199 (All Other Legal Service (Notary Public Services)). See California Unified Certification Program Certification Summary Report (undated) at 2.

this industry may offer food and beverage services, recreational services, conference rooms and convention services, laundry services, parking, and other services.⁷

SDCRAA determined that you did not provide evidence of possessing an overall understanding of, and managerial and technical competence and experience directly related to, the operation of a hotel or motel.⁸ SDCRAA explained that you only demonstrated that you make travel arrangements.⁹

You claim to have a “successful track record” of performing the activities in NAICS code 721110 because you booked lodging for entities such as the Department of Homeland Security, National Guard, and the Federal Emergency Management Agency (FEMA).¹⁰ As evidence, you submitted a contract award notification from the National Guard that identifies NAICS code 721110 as the applicable code for the work to be performed;¹¹ a property management agreement under which you would seek new tenants for a single-family residential dwelling;¹² and conference pricing information from two hotels.¹³

Section 26.71(n) does not provide an independent, self-sufficient definition of control. Thus, the term “control” necessarily refers to the particularized requirements described in other parts of §26.71, including §26.71(g).¹⁴ Section 26.71(g) requires you to have an overall understanding of, and managerial and technical competence and experience directly related to, the type of activities described in NAICS code 721110. Section 26.71(n) requires SDCRAA to grant certification to BHP only for specific types of work in which you, as the socially and economically disadvantaged owner, can control.

The only relevant evidence you provided of your eligibility for NAICS code 721110 is a contract award notification from the National Guard that identifies NAICS code 721110 as the applicable code. You have not explained how procuring one contract with NAICS code 721110 demonstrates that you have the requisite overall understanding of, and managerial and technical competence directly related to, the operation of a hotel or motel. You also do not explain how you have the ability to intelligently and critically evaluate information presented by other participants in BHP’s activities and to use the information to make independent decisions concerning the firm’s daily

⁷ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸ See Denial Letter.

⁹ See *id.*

¹⁰ Appeal Letter at 1.

¹¹ See National Guard Award Notice (July 10, 2017). The document does not include any additional details about the work to be performed, i.e., specific activities.

¹² See Property Management Agreement of Mark Coynes and Brian Hall (undated and unsigned).

¹³ See Hotel Adlon Kempinski Proposal and Berlin Marriott Hotel Proposal.

¹⁴ See 17-0101 C.E. Technologies (Jan. 16, 2018), n.11 and 17-0087 Mast Industrial Painting, Inc. (Dec. 14, 2017), n.5.

operations, management, and policymaking related to NAICS code 721110, as required by §26.71(g).

We find that substantial evidence supports SDCRAA's conclusion that you did not prove, by a preponderance of the evidence, that you meet the requirements of §§26.71(g) and (n) with respect to NAICS code 721110. We note that the NAICS codes that BHP already has remain intact.

CONCLUSION

We affirm under §26.89(f)(1). 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: SDCRAA