March 22, 2019

Reference Number 18-0113

Ms. Yvonne Todaro
President
Welshfield Trucking LLC
REDACTED
Burton, OH 44021

Dear Ms. Todaro:

This letter responds to your appeal[1] of the Ohio Department of Transportation (ODOT)'s denial[2] of Welshfield Trucking LLC's (Welshfield) application for Disadvantaged Business Enterprise (DBE) certification under the rules of 49 CFR 26 (the Regulation). After considering all the facts in the record, we affirm ODOT's decision.[3]

BACKGROUND

You founded Welshfield in April 2012 and are the sole owner and President. Welshfield transports stone, gravel, asphalt, and other related materials for local paving companies.[4] You assert that you contributed **REDACTED** to the firm to acquire your ownership interest.[5] You claim that your father gifted the funds to you.[6] You agreed to give ODOT proof of your contribution after ODOT's on-site visit to your office.[7] You subsequently sent ODOT a bank statement that made no mention of the **REDACTED**. You submitted a copy of the cancelled **REDACTED** on appeal, explaining that you were unable to timely provide it to ODOT because

[1] *See* Appeal Letter (May 22, 2018).

[2] *See* Denial Letter (March 20, 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] *See* Uniform Certification Application (UCA) at 1.

[5] *See id.* at 7. *See also* Exhibit A of Amended Operating Agreement (April 2012).

[6] *See* On-Site Visit Report (March 12, 2018) (unpaginated).

[7] *See id.*

"it took [your] bank several weeks to retrieve a copy of the check from their records."[8] You contend that the check proves that you invested $35,000 in Welshfield.[9]

ODOT denied Welshfield's DBE certification application under §§26.69(a), (b), (c)(1), and (e) (ownership) and §26.71(b) (control) of the Regulation. We affirm ODOT's decision under §§26.69(a), (b), (c)(1) and (e).

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 26.69(a) states:

> In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.

Section 26.69(b) states (in relevant part):

> To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
>
> (3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

Section 26.69(c)(1) states (in relevant part):

> The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise[10] to acquire their ownership interests, must be real, **substantial, and continuing, going beyond pro forma ownership** of the firm as reflected in ownership documents. **Proof of contribution of capital should be submitted at the time of the application.**
>
> (emphasis added)

Section 26.69(e) states (in relevant part):

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[8] Appeal Letter at 2.

[9] *Id.*

[10] You do not claim to have contributed expertise in exchange for your ownership interest.

> The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial.

ODOT determined that you did not demonstrate that your "ownership in Welshfield is real, substantial, and continuing, going beyond pro forma ownership […]."[11] ODOT explained that you did not provide proof of your claimed **REDACTED** capital contribution. You argue that your "ownership is real which is demonstrated by the use of [your] **REDACTED** investment to start the company."[12]

In evaluating whether you meet the Regulation's ownership requirements, ODOT appropriately considered the origin of the **REDACTED** you purport to have invested to obtain your ownership of Welshfield. *See* §26.69(a). You argue that the funds were a gift from your father. Despite your assurance to ODOT that you would submit proof of the gift as well as proof that you contributed it to Welshfield, you did not do so. That fact alone is a sufficient ground for us to uphold ODOT's denial decision. *See* §26.69(c)(1). On appeal, you provided a copy of the **REDACTED** check your father gave you. However, you did not provide evidence that you made a real contribution, i.e., that you actually contributed the funds to Welshfield to acquire your ownership interest. Sections 26.69(c)(1) and (e) require you to have done so. You demonstrated only that your father wrote you a check. Consequently, your claimed 100% ownership interest – the one you acquired without evidence of any capital contribution – is not real, substantial, continuing, and does not go beyond pro forma ownership under §26.69(c)(1); nor is your ownership real and substantial under §26.69(e). Lastly, the Regulation plainly states that a socially and economically disadvantaged individual must own at least 51% of the firm that is applying for DBE certification. *See* §26.69(b). Since under the Regulation your ownership is not considered real and substantial, you do not satisfy this requirement either.

Substantial evidence supports ODOT's decision that you have not met the requirements of §§26.69(b), (c)(1), and (e). We affirm.

CONCLUSION

The Department affirms ODOT's ineligibility determination, per §26.89(f)(1), as supported by substantial evidence and consistent with applicable certification provisions. This decision is administratively final and not subject to petitions for review.

You may reapply for certification after the applicable waiting period. Please note that we express no opinion on any issue related to your control of the firm.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

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[11] Denial Letter at 3.

[12] Appeal Letter at 4.

cc: ODOT