

February 21, 2019

Reference No: 18-0140

Christina C. Tanney
President, Woman Truck Brokers
REDACTED
Fresno, CA 93723

Dear Ms. Tanney:

This is in response to your appeal of the decision of the City of Fresno to deny certification to Woman Truck Brokers (“the firm”). The U.S. Department of Transportation (DOT) affirms the City’s decision.

I. Procedural History

The firm applied for certification on October 13, 2017. An on-site interview was conducted on March 22, 2018. The City denied the firm’s application through a letter May 2018 letter. The firm appealed to the Department through a letter dated July 10, 2018.

II. Burdens of Proof and Standard of Review

(a) Burdens of Proof

As provided in 49 CFR 26.61(b) of the rule, an applicant firm must demonstrate, by a preponderance of the evidence, that it meets Part 26 requirements concerning business size, social and economic disadvantage, ownership, and control. This means that the applicant must show that it is more likely than not that it meets these requirements. A certifier is not required to prove that a firm is ineligible. A certifier can properly deny certification on the basis that an applicant did not submit sufficient evidence that it meets eligibility criteria.

(b) Standard of review for certification appeals

On receipt of an applicant’s appeal from a denial of certification, the Department makes its decision “based on the entire administrative record as supplemented by the appeal...”¹

¹ 49 CFR 26.89(e)

The Department does not make a *de novo* review of the matter....”² The Department affirms (a certifier’s) decision unless it determines, based on the entire administrative record, that (the certifier’s) decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.”³

This language means that the Department does not act as though it were the original decision maker in the case or substitute its judgment for that of the certifier. If the certifier’s decision – including a finding that an applicant failed to meet its burden of proof – is supported by substantial evidence, then the Department will affirm the certifier’s decision.

III. Discussion

(a) The companies and their relationships

The applicant firm in this case is Woman Truck Brokers, Inc., dba WTB Inc., 51 percent owned by Christina Tanney and 49 percent owned by her mother, Deborah Brown. The firm works closely with W.T.B., Inc., 100 percent owned by Ms. Brown. W.T.B., Inc., was formerly a certified DBE, but it lost its certification as the result of Ms. Brown exceeding the personal net worth cap in the Department’s regulations. For clarity, this decision will use the spelled-out name of the applicant firm to avoid confusion with the very similar name of Ms. Brown’s firm.

Ms. Tanney also owns and operates another trucking business, Tanney Transport. Tanney Transport has not applied for DBE certification as part of the present action.

The facts of the relationship between Woman Truck Brokers and W.T.B. are not in dispute. The initial capital for Woman Truck Brokers was provided by Ms. Tanney **REDACTED**, via a check from Tanney Transport, and Ms. Brown **REDACTED**. The firms share quarters at **REDACTED** W. Belmont Avenue in Fresno, which Ms. Brown owns.⁴ For the first several months of the applicant firm’s corporate existence, it did not pay rent to W.T.B. Woman Truck Brokers does not own its own vehicles; it leases them from W.T.B. at a rate of 15 percent of the revenue attributable to the vehicles. Ms. Tanney has the principal operating responsibility for Woman Truck Brokers, including financial, contracting, dispatching, and bidding and estimating. Ms. Brown, who has lengthy experience in the same areas, assists her daughter.

In May 2017, Ms. Brown wrote in the minutes of a W.T.B. shareholder’s meeting that “The decision has been made, I will be passing W.T.B. off the Christina Tanney. She created a company Woman Truck Brokers, Inc. dba WTB Inc. I will help as I can but will faze (sic) out.”

A May 24, 2018, letter from the firms’ CPA, Vern R. Onstine, helps to fill out the picture. It describes a decision by Ms. Brown, following her husband’s death, not to sell W.T.B. Instead, Christina would form a new corporation, which would assume all operations. Ms. Brown would lease equipment to the new entity, avoiding adverse tax consequences from a sale. Ms. Brown would continue to serve as an officer of the new company to provide credibility. The accountant

² Id.

³ 49 CFR 26.89(f)(1)

⁴ Appeal letter, p. 2

characterized Woman Truck Brokers as a “young, under-capitalized business struggling to provide service to a new cliental (sic) and previous customers of WTB, Inc.”⁵

In her appeal letter, Ms. Tanney said that she decided to start Women Truck Brokers to “supersede a company that had started a trail before me....” She noted that while her firm leases equipment from W.T.B., it does not lease employees. Women Truck Brokers hired all the necessary employees itself. She added that W.T.B. currently has no employees and is not performing truck brokering services, and is being used by Woman Truck Brokers simply as a lessor, just as it might otherwise use a bank or truck dealer.

(b) The Department’s analysis

It is clear from the record that, at the present time, W.T.B. and Woman Truck Brokers are inextricably intertwined. The latter was explicitly designed as a successor firm to the former, which can no longer be certified on its own as a DBE. The good will accumulated by Ms. Brown’s firm over time would probably enhance the new firm’s credibility, including with customers of W.T.B. The strong similarity of the names of the two firms underlines their desire for continuity. The firms share facilities, owned by Ms. Brown/W.T.B., and Woman Truck Brokers used them rent-free for some time. Woman Truck Brokers’ trucks are leased from W.T.B., which is the applicant firm’s sole source of vehicles at this time. Ms. Brown is a 49 percent owner and vice-president of Woman Truck Brokers.

The employment of drivers by Woman Truck Brokers rather than W.T.B., the apparently inactive status of W.T.B. in the truck brokering business, and Ms. Tanney’s management role of Woman Truck Brokers notwithstanding, the certifier has substantial evidence to determine that Woman Truck Brokers is not an independent business, as required by section 26.71(b):

Only an independent business can be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

As outlined above, there is substantial evidence in the record that, absent its relationship with W.T.B., Woman Truck Brokers would not be a viable company. It is fair to conclude that, but for this relationship, Woman Truck Brokers could not exist in its present form.

IV. Conclusion

Given the information in the record, the Department concludes that the City of Fresno had substantial evidence to decide that the firm failed to meet its burden of proof concerning independence. Consequently, the Department affirms the certifier’s decision denying the firm’s application for DBE eligibility.

This decision is administratively final and not subject to petitions for review.

⁵ In the letter, the CPA did not use periods after each letter of the firm’s name, but it is clear from context that the statement was referring to Ms. Brown’s original firm.

Sincerely,

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

cc: Jean Thomas-Runnels