

May 24, 2019

Reference Number 19-0019

Mr. Richard Kelly, Jr.
Kelly Law
429 Fourth Ave., Suite 401
Pittsburgh, PA 15219

Dear Mr. Kelly:

This letter responds to your appeal¹ of the Pennsylvania Unified Certification Program's denial² of your client Transport U, LLC's application for DBE certification under the rules of 49 CFR Part 26 (the Regulation). After considering the record as a whole, we affirm PAUCP's decision under §26.89(f)(1).³

Background

Transport U provides non-emergent and para-transit services for several local hospital systems.⁴ Maureen Simmonds, Doris Cargnoni, James Cargnoni, and Jack Cargnoni organized the firm in 2006.⁵ Ms. Simmonds and Ms. Cargnoni each held 33% ownership interest and James and Jack Cargnoni each held 17%.⁶ Ms. Simmonds has been Transport U's president since the firm's founding and became Transport U's sole owner in 2017.⁷ Ms. Simmonds's husband, Steven

¹ See Appeal Letter (Aug. 23, 2018). The Allegheny County Department of Minority, Women and Disadvantaged Business Enterprises is the PAUCP certifying entity that issued the denial.

² See Denial Letter (July 24, 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 On-Site Visit Report (May 22, 2018).

⁵ See Operating Agreement of Transport U, LLC (Operating Agreement) (Oct. 18, 2006).

⁶ See Operating Agreement at Schedule A.

⁷ Following her death in May 2017, Ms. Cargnoni (via her estate), James Cargnoni, and Jack Cargnoni sold their ownership interests to Ms. Simmonds. See Agreement Regarding Sale of Membership Interest (Dec. 5, 2017); see also Transport U, LLC Action by Unanimous Consent in Writing of the Members (Nov. 30, 2017).

Simmonds, became Transport U's vice president and a springing member of the firm in 2017.⁸ He is not socially and economically disadvantaged (SED) under the Regulation.

In addition to his role at Transport U, Mr. Simmonds is the sole member and owner of Hospital Discharge Services, LLC (HDS).⁹ HDS manages the transit discharge desk for Allegheny Health Network (AHN). Transport U hires and manages the drivers for this service. AHN is Transport U's largest ongoing contract and the largest completed contract. Mr. Simmonds executed Transport U's contract with AHN.¹⁰

PAUCP denied Transport U's UCA under §§26.69(a), (c)(1), (h), and (i) (ownership) and §§26.71(b) and (k) (control). We affirm PAUCP's decision under §26.71(b).¹¹

Discussion

An applicant firm must demonstrate, by a preponderance of the evidence, that it meets each element of DBE certification eligibility. *See* §26.61(b). As such, you bear the burden of showing that Transport U's viability does not depend on its relationship with Mr. Simmonds and non-DBE firms HDS and AHN. *See generally* §26.71(b).

Transport U shares personnel, i.e., Mr. Simmonds, with non-DBE firm HDS. *See* §26.71(b)(1). You describe Mr. Simmonds as "a pivotal employee" of Transport U,¹² as he is "in charge of" shuttle operations, shuttle client scheduling, employee issues for shuttle services, client relations for shuttle services, and maintenance of the vehicles and management of the shop where the vehicles are stored and maintained.¹³ *See* §26.71(b)(2). You acknowledge that Transport U's largest ongoing and completed contracts are with AHN and that Mr. Simmonds procured

⁸ As a springing member, Mr. Simmonds does not have any interest in Transport U's profits, losses, or capital and has no right to receive any distributions of assets. Nor is he required to contribute capital to the firm. *See* Operating Agreement of Maureen Simmonds and Steven Simmonds.

⁹ *See* Operating Agreement of Hospital Discharge Services, LLC (Sept. 3, 2014).

¹⁰ *See* UCA at 12.

¹¹ Section 26.71(b) states: "Only an independent business may 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. (1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. (2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm. (3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm. (4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice."

¹² Appeal Letter at 3.

¹³ *Id.* at 3-4.

them.^{14,15} Mr. Simmonds's firm HDS manages AHN's transit discharge desk. You do not explain how the relationship between Transport U and Mr. Simmonds, who is non-SED, a pivotal employee of both Transport U and HDS, owns and operates non-DBE firm HDS, and is responsible for negotiating and executing Transport U's contracts with AHN, is consistent with normal industry practice. *See* §26.71(b)(4). It is your burden to have done so. *See* §26.61(b).

Conclusion

We affirm. *See* §26.89(f)(1). Substantial evidence supports PAUCP's conclusion that Ms. Simmonds and Transport U do not meet the requirements of §26.71(b). This decision is administratively final and not subject to petitions for review.

Sincerely,

Samuel F. Brooks
Appeal Team Lead
Disadvantaged Business Enterprise Division

cc: PAUCP

¹⁴ *See* UCA at 12. You claim that Transport U's relationship with HDS accounts for less than 3% of Transport U's business with AHN but do not provide evidence to support the assertion. *See* Appeal Letter at 10.

¹⁵ We do not see a pattern of exclusive or primary dealings between Transport U and a prime contractor. *See* §26.71(b)(3).