

August 6, 2019

Reference Number 19-0044

Melissa Riley  
Omega 4 Construction, LLC  
REDACTED  
Lubbock, TX 79423

Dear Ms. Riley:

We are responding to your December 12, 2018 appeal of the Texas Department of Transportation's (TxDOT) denial of Omega 4 Construction, LLC's (Omega) application for Disadvantaged Business Enterprise (DBE) certification under 49 CFR part 26 (the Regulation). After reviewing the record, we affirm TxDOT's decision. *See* section 26.89(f)(1).

TxDOT denied Omega's DBE application under numerous sections of the Regulation. We affirm based on section 26.71(g).

You and your husband Matthew Riley founded Omega in 2017. You are the majority owner and Chief Financial Officer (CFO) and Mr. Riley is the minority owner and Manager/President. He is not socially and economically disadvantaged (SED) under the Regulation. Omega is a heavy civil construction company.

Mr. Riley has more than five years of heavy civil construction experience.<sup>1</sup> He manages Omega's day-to-day field operations and operates equipment. Mr. Riley makes all of Omega's project-related decisions and is responsible for contract negotiations.<sup>2</sup> You listed your qualifications related to Omega as "accounting, Quickbooks training, bidding" and your duties and responsibilities as "payroll, office management, accounting, marketing, bidding, invoicing, vendors."<sup>3</sup> You and Mr. Riley are both authorized to apply for, establish, and sign loan agreements for Omega, sign payroll and creditor checks, set salaries, hire and fire employees, sign contracts, and prepare bids and proposals. The only activities in which you participate without Mr. Riley are administrative and accounting functions.<sup>4</sup>

It is plausible that since founding Omega you have gained an overall understanding of heavy civil construction; however, you have not provided evidence that you have managerial and technical competence directly related to heavy civil construction, as required by section 26.71(g). Your

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<sup>1</sup> *See* Résumé of Matthew Philip Riley.

<sup>2</sup> *See* Uniform Site Visit/Field Audit Report (Site Visit Report) (Aug. 14, 2018).

<sup>3</sup> Affidavit of Managerial Technical Competence.

<sup>4</sup> *See* Site Visit Report.

affidavit of managerial and technical competence lists only administrative and office management skills. You have not explained how those skills would allow you to intelligently and critically evaluate information that Mr. Riley presents to you and then make independent decisions about Omega's daily operations, management, and policymaking. Section 26.71(g) requires you to be able to do so. Finally, section 26.71(g) states that expertise limited to office management, administration, or bookkeeping functions unrelated to a firm's principal business activities is insufficient to demonstrate control. The evidence you submitted shows that your expertise is largely limited to these areas.

We find substantial evidence to support TxDOT's denial decision. Thus, we affirm. This decision is administratively final and not subject to petitions for review.

Sincerely,

Samuel F. Brooks  
Appeal Team Lead  
Disadvantaged Business Enterprise Division

cc: TxDOT