

August 20, 2019

Reference Number 19-0075

Calvin M. Thweatt  
Virginia Department of Small Business and Supplier Diversity  
101 N. 14<sup>th</sup> Street, 11<sup>th</sup> floor  
Richmond, VA 23219

Dear Mr. Thweatt:

This letter responds to Dulles Geotechnical & Materials Testing Services, Inc.'s (DGMTS) February 23, 2019 appeal of the Virginia Department of Small Business and Supplier Diversity's (VDSBSD)'s January 8, 2019 denial of DGMTS's request for VDSBSD to add North American Industry Classification System (NAICS) codes 561990 and 238910 to the firm's Disadvantaged Business Enterprise (DBE) certification under the rules of 49 CFR part 26 (the Regulation). After reviewing the record in its entirety, we reverse VDSBSD's decision. *See* section 26.89(f)(2).

Tariq Hamid is DGMTS's sole owner, president, and is socially and economically disadvantaged (SED) under the Regulation. His résumé shows he has extensive education and work history in geotechnical and civil engineering and soil testing. VDSBSD certified DGMTS as a DBE in 2013 with NAICS codes 541330 (engineering services, consulting engineer, engineering design services, and geological engineering services), 541380 (geotechnical testing laboratories or services), and 541350 (building inspection services).<sup>1</sup> DGMTS now requests NAICS codes 561990 and 238910. Code 561990 (All Other Support Services) encompasses flagging, i.e., traffic control, services. NAICS code 238910 (Site Preparation Services) is for firms engaged in site preparation activities, such as excavating and grading, demolition of buildings and other structures, and septic system installation.

VDSBSD found DGMTS ineligible for NAICS codes 561990 and 238910 under section 26.71(n), based on a finding that DGMTS does not meet the requirements of sections 26.71(b) (independence) and (h) (licenses and credentials). VDSBSD explained that DGMTS cannot independently perform the work described in the codes because it must rely on subcontractors for the required licenses or other credentials. DGMTS contends that it now has employees who have the required credentials for code 561990 and that a license is not required to perform soil drilling under code 238910.

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<sup>1</sup> Full descriptions of all NAICS codes are available at <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

VDSBSD appropriately considered Mr. Hamid's lack of license or other credentials as one factor in determining that Mr. Hamid cannot control the work in the requested NAICS codes. *See* section 26.71(h). The other factor VDSBSD considered is DGMTS's use of subcontractors to perform the work as no one at DGMTS has the required licenses or credentials. *See* section 26.71(b).

The second factor VDSBSD considered is essentially a rephrasing of the first, and the license rule requires another, different factor. Further, the evidence before us supports the firm's responses and renders the license issue moot. After reviewing the entire record, we conclude that VDSBSD's determination is unsupported by substantial evidence and not fully consistent with applicable certification provisions. Thus, we reverse under section 26.89(f)(2) and direct VDSBSD to add NAICS codes 561990 and 238910 to DGMTS's DBE certification without delay and update related lists and databases.

This decision is administratively final and not subject to petitions for review. Thank you for your continued cooperation.

Sincerely,

Samuel F. Brooks  
Appeal Team Lead  
Disadvantaged Business Enterprise Division

cc: Dulles Geotechnical and Materials Testing Service, Inc.