

August 5, 2019

Reference Number 19-0097

Ms. Kahla Terral
Terral Construction, LLC
REDACTED
Farmerville, LA 71241

Dear Ms. Terral:

This letter responds to your April 3, 2019 appeal of the Louisiana Department of Transportation and Development's (LaDOTD) January 8, 2019 denial of Terral Construction, LLC's (Terral) application for Disadvantaged Business Enterprise (DBE) certification under the rules of 49 CFR part 26 (the Regulation). After considering the entire record, we affirm LaDOTD's decision. *See* section 26.89(f)(1).

Background

You started Terral in 2007 and are the sole owner. The firm performs construction activities such as building bridges, excavation and embankment, and water and sewer work.¹ LaDOTD denied Terral's DBE certification application under multiple ownership and control provisions of the Regulation, including section 26.69(c)(1) regarding ownership. It is on that ground that we affirm LaDOTD's decision.

Discussion

As the applicant firm, Terral bears the burden of proving that, more likely than not, the firm meets the Regulation's certification requirements. *See* section 26.61(b). To be an eligible DBE, a firm must be at least 51 percent owned by a socially and economically disadvantaged (SED) individual(s). *See* section 26.69(b). Section 26.69(c)(1) states that the applicant firm's ownership by SED individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Further, proof of a contribution of capital should be submitted at the time of the application.

LaDOTD found that you do not meet the requirements of section 26.69(c)(1) because you did not contribute capital or expertise to acquire your ownership.² You contend only that you made an

¹ *See* Uniform Certification Application at 5.

² *See* Denial Letter at 2.

initial capital contribution through funds from your mother. You concede that neither you nor your mother can produce evidence supporting your statement.³

You offer no evidence that you made a “real” contribution of capital or expertise to acquire your ownership of Terral and we do not see any in the record. Sections 26.61(b) and 26.69(c)(1) require you to have done so. *See also* sections 26.69(a) and (e). As your claimed ownership interest is unsupported by a countable contribution, it is pro forma under section 26.69(c)(1). This means that Terral does not meet the Regulation’s requirement that an SED individual own at least 51% of the applicant firm. Thus, Terral is ineligible for DBE certification.

Conclusion

We find substantial evidence to support LaDOTD’s decision that you do not own Terral within the meaning of the Regulation. Thus, we affirm. *See* section 26.89(f)(1). This decision is administratively final and not subject to petitions for review.

Sincerely,

Samuel F. Brooks
Appeal Team Lead
Disadvantaged Business Enterprise Division

cc: LaDOTD

³ *See* Appeal Letter at 2. *See also* section 26.69(a) (origin of assets and how and when they were used).