

March 11, 2020

Docket Number 20-0002

Charlie Potts, President
Central Valley Trucking, LLC
18750 County Meadows Rd
Salinas, CA 93907

Dear Mr. Potts:

Central Valley Trucking, LLC (CVT) appeals the California Department of Transportation's (Caltrans) September 12, 2019 denial of its application for certification as a Disadvantaged Business Enterprise (DBE) under the standards of 49 C.F.R. Part 26 (the Regulation). After a careful review of the record, we affirm under section 26.89(f)(1).

Background

CVT is a trucking firm that transports construction material to and from construction sites. On-Site Review Report (OSRR) (August 9, 2019) at 1. You own 51% of CVT and your nondisadvantaged son owns the remaining 49% of the firm.

Discussion

Because you are not a member of a presumed disadvantaged group, you must make an individual showing of disadvantage under the guidance of Appendix E of the Regulation. Appendix E states that evidence of social disadvantage includes the following elements: (1) an objective distinguishing feature which has contributed to your social disadvantage; (2) personal experiences of substantial and chronic disadvantage experienced within the United States; and (3) negative impact on entry into or advancement in the business world because of the social disadvantage.

Objective Feature

You identify your non-Hispanic ethnicity as the objective distinguishing feature that contributed to your social disadvantage.¹

¹ Your appeal asserts that you have another distinguishing feature (colorblindness) that contributed to social disadvantage. We do not opine on claims first raised on appeal.

Personal Experiences of Substantial and Chronic Disadvantage

Appendix E requires you to describe instances of bias that show that you experienced chronic and substantial social disadvantage. You must identify specific instances that are accompanied by supporting facts to carry your burden of proof for this element of social disadvantage. You assert broadly that Hispanic trucking brokers refuse to award jobs to CVT because you are not Hispanic and do not speak Spanish. See generally C. Potts Appendix E Narrative (Narrative) at 1-2; C. Potts Email to Caltrans (August 30, 2019); OSRR at 22. However, you identify no bids, awards, or circumstances in which you believe specific people or firms discriminated against you and no evidence that they excluded CVT because you are not Hispanic. A general belief that a class of actors discriminated against you on the basis of ethnicity or language proficiency does not meet the standard.

Negative Impact on Entry into or Advancement in the Business World

You provide scant evidence that social disadvantage impaired your entry into or advancement in the business world. You explain that you did not attend college for financial reasons, not because of ethnic discrimination, OSRR at 23, and you make no claim regarding membership in trade associations. You make no claim of employment discrimination because you are self-employed. OSRR at 9. Your statement that you owned another firm before forming, capitalizing, and operating CVT tends to rebut a claim of the negative impact of ethnic prejudice on your entry or advancement in business. OSRR at 28. Similarly, your choice not to limit CVT's work options, OSRR at 9, is at best very attenuated evidence that ethnic discrimination limited your progress.

Conclusion

CVT did not carry its burden of proof with respect to social disadvantage. We affirm Caltrans' decision under section 26.89(f)(1) because it is consistent with applicable rules and supported by substantial evidence. This decision is administratively final and not subject to reconsideration.

Sincerely,

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

cc: CVT
