



**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

Departmental Office of Civil Rights
1200 New Jersey Avenue, S.E., W76-401
Washington, DC 20590

May 2, 2022

Docket No. 20-0002

Ms. Sherry M. Bult
Double M Trucking, Inc.
18131 Crystal Lane
Lansing, IL 60438

Dear Ms. Bult:

The Illinois Department of Transportation (IDOT) denied the DBE application of Double M Trucking, Inc., on the basis of ownership and control. This decision focuses on ownership.

According to the IDOT denial letter, Double M was founded by your husband, Marvin Bult, who originally owned 100 percent of the company. In February 2019 and October 2020, 100 percent of the stock of the company – worth [REDACTED], according to the firm's application – was transferred to you. There is no evidence of any cash contribution or other consideration that you provided in return for the stock. Double M applied for DBE certification in February 2021, four months after the second increment of the stock transfer to you.

From these facts, IDOT concluded that you did not make a real, substantial, and continuing contribution of capital to the firm, as required by section 26.69(c) of the Department's DBE regulation. Moreover, since you received your stock via a transfer without adequate consideration from Mr. Bult, a non-disadvantaged individual who remains involved in the company as operations manager, in order to count your ownership of those assets toward certification you had to prove by clear and convincing evidence that the transfer was made for reasons other than obtaining DBE certification. See section 26.69(h)(2)(i).

In your appeal, you said that you worked for Double M without salary for many years, and that if monetized at [REDACTED] per year, this labor would count as a [REDACTED] capital contribution. The appeal presents this as a contribution of expertise cognizable under section 26.69(f). Also, the stock of the company is now held in a trust in which you are the sole settlor and trustee, showing that you are in fact the 100 percent owner of the company.

In reviewing the record, we find that the short interval between the transfer of assets and the application for certification supports an inference that the transfer was made for the purpose of obtaining certification, an inference explicitly confirmed in paragraphs 5, 6, and 16 of the on-site interview report. This prevents your meeting the clear and convincing evidence burden of proof that applies under section 26.69(h).

In addition, section 26.69(c)(2) provides that mere participation in a firm as an employee is an insufficient contribution of capital. Retrospective speculation about money you might have made and subsequently contributed to the firm does not equate to a capital contribution. Nor does “sweat equity” count as a contribution of expertise under section 26.69(f), even if it had been documented in the records of the firm, as required by section 26.69(f)(1)(iv). Moreover, section 26.69(f)(2) requires evidence of a significant financial investment in the firm, which is not present here. While under some circumstances assets held in trust can count toward ownership, see section 26.69(d), placing assets in a trust does not eliminate the requirement that the assets must have been acquired via a capital contribution from their owner.

In light of the entire record, IDOT had substantial evidence to find that you did not meet the ownership requirements of sections 26.69(c) and (h). Therefore, under section 26.89(f)(1) of the regulation, we are affirming IDOT’s decision.

This decision is final and not subject to administrative reconsideration.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Debra A. Clark, Illinois Department of Transportation