



**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

March 10, 2021

Docket No. 20-0068

Virginia Henry
Managing Member
JVH4 Services, LLC dba Total Site Services
1109 Scarlet Sage Parkway
Burleson, TX 76028

Elicia Mitchell
Director of Operations
North Central Texas Regional Certification Agency
624 Six Flags Drive, Suite 100
Arlington, TX 76011

Dear Ms. Henry and Ms. Mitchell:

This letter addresses the appeal of JVH4 Services, LLC of NCTRCA's January 26, 2020, decision to deny the firm's application for DBE certification. NCTRCA had initially denied the application on November 18, 2018. Following the firm's appeal, the Department remanded the case to NCTRCA on October 23, 2019 (Docket No. 19-0127), citing an incomplete discussion of Ms. Henry's ability to control the operations of the firm in the report of the on-site review. The remand directed NCTRCA to schedule a new on-site review to fill in the gaps.

In our previous decision, we noted the importance of certifiers providing on-site review reports as part of the administrative record provided to the Department.¹ Once again, however, the record provided by NCTRCA in the present case did not include the on-site review report, and the Department obtained it only after making a request to NCTRCA.

Our previous decision also specified the kind of information we expected to be elicited on remand.² Unfortunately, the second on-site interview report, dated November 18, 2019, did not

¹ "The record as originally provided to the Department by NCTRCA did not include a report of this interview. A report was subsequently provided to the Department on our request. When a certifier's decision relies on issues to which information from an on-site review or other meeting or hearing is relevant, it is important that the certifier include a report or transcript in the record sent to the Department." Remand at p. 1, footnote 1.

² "In making a determination concerning an applicant's eligibility focused on section 26.71(g), it would seem essential to probe her knowledge in core areas of the firm's work and her ability to apply that knowledge to intelligently and critically evaluate information from other key personnel and make independent decisions." Remand at p. 2.

provide the hoped-for information. The only reference to the subject, in Item 2 under “General Information” of the report form, mentions that Ms. Henry had 1.5 years of on-the job experience, she used the DOT manual on the type of work the company did, and that the superintendent (Mr. Henry) had experience in the field. This brief notation does little to advance our understanding of Ms. Henry’s ability to meet the requirements of section 26.71(g) beyond what we knew at the time of our October 2019 decision.³

NCTRCA’s January 26, 2020, denial letter also asserts that there was no opportunity to visit a job site as part of either on-site review. It adds that, at the time of the second review, JVH4 had no active job sites. JVH4’s appeal letters of January 8, 2019, and April 22, 2020, directly contradict these assertions, saying that the reviewer was offered visits to job sites on both occasions. The scantiness of information in the record makes it impossible for the Department to evaluate the accuracy of these claims.

It is clear that NCTRCA has not changed its view of the firm. The last six paragraphs of its January 26, 2020, denial are virtually identical to the corresponding paragraphs in its November 18, 2018, letter. This parallelism extends to the assertion that Ms. Henry’s husband, James Henry, has signing authority on the firm’s bank account. This assertion is correct with respect to the bank records reviewed for purposes of the November 18, 2018, denial, which shows that both Ms. and Mr. Henry are signatories. However, the corresponding document in this appeal shows Ms. Henry as the sole signatory.

The Department’s standard for deciding a certification appeal is whether there is substantial evidence to support a certifier’s denial of a firm’s application.⁴ A certifier cannot expect the Department to find that there is substantial evidence supporting its decision when the certifier does not provide information that we directed it on remand to provide.

We conclude that there is not substantial evidence in the administrative record to support NCTRCA’s determination that Ms. Henry does not control JVH4. For that reason, we reverse NCTRCA’s decision and direct the agency to certify the firm immediately.

This decision is administratively final and not subject to petitions for review.

Sincerely,

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

³ This case illustrates the point that, to conduct an adequate on-site review, a certifier needs to go beyond filling in blanks on a form. A focused, probing inquiry about facts germane to the eligibility issues involved (e.g., section 26.71(g) attributes) is essential.

⁴ 49 CFR 26.89(f)(1)-(2).