



**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 27, 2020

Docket Number 20-0069

Sharon Zitlau
Owner
BZR Power Division, LLC
[REDACTED]
Boise, ID 83709

Dear Ms. Zitlau:

BZR Power Division, LLC (BZR) appeals the Idaho Department of Transportation's (IDDOT) April 2, 2020 denial of the firm's application for Disadvantaged Business Enterprise (DBE) certification under the DBE program rules in 49 CFR part 26. IDDOT determined that BZR does not meet the control requirements of section 26.71(g).¹ After reviewing the entire record, we find that substantial evidence supports IDDOT's decision. Thus, we affirm. See section 26.89(f)(1).

You assumed ownership of BZR in January 2019. Your non-socially and economically disadvantaged son Jess Zitlau formed the firm in November 2018. He is the Director of Operations and Foreman. BZR engages in high voltage electrical contracting and outdoor lighting. Mr. Zitlau has more than 20 years of direct experience in these services. We see no evidence that you have any related knowledge or experience. BZR's certification application indicates that you never participate in bidding and estimating, marketing and sales, supervising field operations, attending bid openings and lettings, hiring and firing staff or field crew, obligating the business by contract or credit, or signing checks. In contrast, the certification application states that Mr. Zitlau always performs these activities. You and Mr. Zitlau both participate in office management tasks, make purchasing decisions, and designate profits and spending. You have submitted no evidence that you perform any activities or make any decisions without his involvement. You listed your responsibilities as making sure licenses are current, writing and maintaining the employee handbook, doing paperwork, and managing accounts receivable/payable. See DBE Certification On-Site Report (March 9, 2020) at p. 8.

Section 26.71(g) requires you to have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which BZR is engaged and its operations. You have provided no evidence that you have such understanding, competence, or experience directly related to high voltage electrical contracting and outdoor lighting. You are correct that section 26.71(g) does not require you to have experience or expertise in every critical area of BZR's operations or have greater experience or expertise than Mr. Zitlau. Section 26.71(g) does require you to have the ability to intelligently and critically evaluate information presented by him or other participants in the firm's activities and use that information to make independent

¹ As the applicant firm, BZR bears the burden of proving that, more likely than not, it meets all ownership and control requirements. See section 26.61(b).

decisions concerning BZR's daily operations, management, and policymaking. You have not submitted any evidence that you would be able to intelligently and critically evaluate information that Mr. Zitlau or others present to you and make independent decisions. There is no evidence that you make any independent decisions, as you do not perform any functions without Mr. Zitlau. Further, you do not participate at all with Mr. Zitlau in bidding and estimating, marketing and sales, supervising field operations, attending bid openings and lettings, hiring and firing staff or field crew, obligating the business by contract or credit, or signing checks. He performs those activities on his own. Finally, section 26.71(g) states that expertise limited to office management, administration, or bookkeeping functions unrelated to the firm's principal business activities is insufficient to demonstrate control. Per your own statement, your expertise is limited to office management and administrative functions such as making sure licenses are current, managing paperwork, and overseeing accounts receivable/payable.

We find substantial evidence to support IDDOT's determination that you do not control BZR. We affirm. See section 26.89(f)(1). This decision is administratively final.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Idaho Department of Transportation