



**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

November 12, 2020

Docket No. 20-0072

Larry D. Lashinsky
Rea, Rea, & Lashinsky
4015 Wayne Street
P.O. Box 87
Hollidaysburg, PA 16648

Dear Mr. Lahinsky:

This is in response to your appeal of the decision by the New Jersey Department of Transportation (NJDOT) to deny the application for DBE certification of your client, Keller Engineers of New Jersey, LLC (KENJ). NJDOT denied the application the basis of both ownership and control.

With respect to ownership, NJDOT pointed to a provision in KENJ's operating agreement reciting that the transfer to Samir Mody of a 51 percent ownership share in the company had been accomplished via a [REDACTED] unsecured loan from Keller Engineers, Inc. (KEI), a non-DBE firm. At the time of the decision by NJDOT, Mr. Mody owed [REDACTED] of the loan amount. KEI remains a 49 percent owner of KENJ. NJDOT found that since Mr. Mody relied on an unsecured note payable to the firm or an owner who is not a disadvantaged individual (i.e., KEI), he did not make a sufficient contribution of capital to meet regulatory requirements for ownership.¹

Concerning control, NJDOT pointed to several provisions in KENJ's operating agreement that limited Mr. Mody's discretion as a business owner, for example by requiring agreement by votes representing 75 percent of the firm's ownership, giving KEI an effective veto with respect to these actions.² Such arrangements, which "prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm,"³ preclude a disadvantaged owner from controlling a firm for DBE certification purposes.

¹ 49 CFR 26.69(c)(2).

² See denial letter, pp. 5-6.

³ 49 CFR 26.71(c).

The Department has frequently ruled that provisions that prevent a disadvantaged owner from making unilateral business decisions run afoul of section 26.71(c).⁴ You enclosed with the appeal an amended operating agreement, dated May 1, 2020, that attempted to modify some of these provisions. The appeal also noted that there were pending changes to the financial arrangements between Mr. Mody and KEI.

However, section 26.89(f)(6) of the DBE regulation provides that our decisions are “based on the status and circumstances of the firm as of the date of the decision being appealed,” in this case February 5, 2020. On that date, the provisions and arrangements cited in the denial letter were still in place. Should KENJ choose to reapply for certification in the future, the firm can include the changed provisions in its application materials for consideration by NJDOT.

We conclude that NJDOT had substantial evidence to find that KENJ did not meet ownership and control provisions of the Department’s DBE regulation. Consequently, we affirm NJDOT’s decision.

This decision is administratively final.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Ivette Santiago-Green

⁴ See, e.g., 14-0024 *Smart Associates Environmental Consultants, Inc.* (July 1, 2015), 14-0035 *Rear View Safety, Inc.* (July 6, 2015), 14-0034 *Vegas Heavy Haul, Inc.* (July 8, 2015), 15-0148 *Gideon Toal Management Services* (March 26, 2016), 16-0015 *Tollie’s Landscaping and Lawn* (June 10, 2016), 16-0064 *Ryan Biggs/Clark Davis Engineering and Surveying, P.C.* (August 12, 2016), 17-0053 *D.M. Conlon Inc.* (November 21, 2017), 17-0131 *Cable Trucking Inc.* (March 26, 2018), 19-0010 *VEC Services LLC* (May 2019).