



**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 9, 2020

Docket No. 20-0075

Calvin M. Thweatt
Virginia Department of Small Business and Supplier Diversity
101 N. 14th Street, 11th Floor
Richmond, VA 23219

Dear Mr. Thweatt:

This is in response to the appeal by Meadows CMPG, Inc. (Meadows) of your office's decision to deny DBE certification to the firm in several NAICS codes for which it applied.

Meadows applied for certification in two baskets of NAICS codes, the first concerning management, marketing, event planning, etc.; and the second concerning more technical fields like radon testing, engineering services, and hazardous waste management and remediation. Your office approved the codes in the first basket and denied those in the second, on the basis that Meadows's disadvantaged 100 percent owner, Kristin Lindsey, does not have the background, experience, or professional credentials needed to control the operations of the company in those fields.

According to the record, Ms. Lindsey does not have a professional engineer's license or other credentials pertinent to the technical fields in which Meadows operates. Two non-disadvantaged employees of the firm, Michael Cree (Ms. Lindsey's husband) and Michael Harris, have credentials that allow Meadows to meet Virginia requirements for performing work in these fields.

As the appeal points out, when state law does not require that one possess a professional license or credential to be regarded as controlling a firm, a disadvantaged individual's lack of the credential is only one factor in determining whether [not sure what happened here; space not intended]she actually controls the firm.¹ The record, particularly the recording of the on-site interview, paints a convincing picture that, notwithstanding Ms. Lindsey's lack of credentials in some of the areas in which Meadows works, she does control the overall work of the firm.

For example, Meadows employs engineers and other professionals to perform the firm's specialty work. Ms. Lindsey hires and manages these employees. She visits project sites weekly. She chooses

¹ 49 C.F.R. § 26.71(h). The appeal cites a recent decision by this office (19-0075, *Dulles Geotechnical & Materials Testing Services, Inc.*; August 20, 2019) that overturned a Virginia certification decision, saying that a company having employees able to perform functions requiring a license could be certified even though the disadvantaged owner did not personally hold the credentials involved.

among bidding options her husband provides, approves cost estimates, authorizes expenditures, and signs the company's checks and its contracts.

Meadows had 30 employees and at the time VDSBSD interviewed her, and it was working on 53 projects. It is not realistic to expect any leader of such a firm to be hands-on for all the details of all the projects. There is a chain of command, in which six project managers provide information in their subject matter areas to Ms. Lindsey, who then makes decisions. See J&E Steel Erectors [pls complete cite from attached & add helpful info parenthetically]. The DBE regulation permits this type of delegation when the disadvantaged owner exercises control over the firm's operations, management, and policy.² The owner need not be as expert as other participants in every critical area of the firm's operations, as long as she can critically evaluate information her employees provide and make informed decisions based on it.³ The on-site interview and other portions of the record leave little doubt that Ms. Lindsey regularly meets these requirements.

We conclude that VDSBSD's determination is unsupported by substantial evidence and not fully consistent with applicable rules. Accordingly, we reverse under section 26.89(f)(2) and direct VDSBSD to certify Meadows promptly in the NAICS codes it requested.

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

Sincerely,

Samuel F. Brooks
Team Lead
Disadvantaged Business Enterprise Division

cc: Kristin Lindsey

² 49 CFR 26.71(f).

³ 49 CFR 26.71(g).