



**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

September 21, 2020

Docket Number 20-0088

Emily Price, President  
Abigail Miller, Vice President  
Emby & Co., LLC  
[REDACTED]  
Broadus, TX 75929

Dear Ms. Price and Ms. Miller:

This is in response to your appeal of the denial by the Texas Department of Transportation (TxDOT) of the application for DBE certification of Emby & Co., LLC. TxDOT made the denial on the basis of disadvantage,<sup>1</sup> independence, and control. This decision focuses on the issue of independence.

Only an independent business can be certified as a DBE.<sup>2</sup> In determining that Emby is not independent, TxDOT cited its relationships with Miller Transportation, a trucking company owned by Ms. Miller's parents. Abigail Miller works there over 20 hours per week, more time than she spends working at Emby.<sup>3</sup> Emily Price formerly worked for MJ Miller, Inc., another transportation company owned by the elder Millers. Emby's principal place of business is located in Ms. Price's home, which was given to her by Ms. Miller's parents. Emby's only contract is with Miller Transportation.

In your appeal, you contend that notwithstanding the family and business relationships, you run Emby's day-to-day business and are in control of its financial affairs. The appeal states that "This is a transition time for Emby, it is the sole intent of Miller and Price to establish complete independence."

Given the current and former employment relationships of Ms. Miller and Ms. Price with companies owned by Ms. Miller's parents in the same type of business, the fact that Emby's only contract is with Miller Transportation, and the location of the firm's offices in a property donated

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<sup>1</sup> Since, as women, both owners of Emby are presumed to be socially and economically disadvantaged, TxDOT erred in evaluating their disadvantage under the criteria of Appendix E of the Department's regulation. Appendix E applies only to individuals who are not so presumed.

<sup>2</sup> 49 CFR 26.71(b).

<sup>3</sup> In the on-site report, Ms. Miller said she worked three hours a day for Emby.

to Ms. Price by Ms. Miller's parents, we find that TxDOT had substantial evidence to determine that Emby is not independent. It is commendable that the owners' intent is to establish complete independence, but TxDOT reasonably concluded that this goal has not yet been achieved.

For these reasons, we affirm TxDOT's decision. This decision is administratively final.

Sincerely,

Samuel F. Brooks  
DBE Team Lead  
Disadvantaged Business Enterprise Division

cc: Michael D. Bryant