



**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

October 13, 2020

Docket Number 20-0090

Kelly Ziegenfuss, President  
Ziegenfuss Drilling, Inc.  
PO Box 308  
Ringo, NJ 08551

Dear Ms. Ziegenfuss:

This is in response to your appeal of the decision of New Jersey Transit (NJT) to deny the application of Ziegenfuss Drilling, Inc. (ZDI) for DBE certification. NJT denied the application on the grounds that you do not have the ability to control ZDI and that the firm is not independent. This decision focuses on the independence issue.

In its denial letter, NJT said ZDI leases major drilling equipment from a non-DBE firm, Ziegenfuss Drilling Equipment, Inc., (ZDE), which is owned by your father, Mark Ziegenfuss, who previously owned ZDI as well. The lease agreement for the drilling equipment was signed by you and Mr. Ziegenfuss on September 1, 2018, remains in effect through August 31, 2028. Both companies operate from the same property location listed at 2 Frontage Road, Ringoes, New Jersey. Mr. Ziegenfuss is still involved in the company as a part-time business advisor. NJT also noted that you and your father both have signing privileges on ZDI's bank account.

In your appeal, you state that you own ZDI only, and ZDI has a lease arrangement with ZDE for the companies' facility. ZDI rents equipment from ZDE. This has been the relationship between the companies for over 20 years, because it is a good business practice to keep assets separate from the operating entity. The two companies are owned by different individuals, file separate tax returns, and have different EIN numbers. As owner of ZDI, you made the choice to retain Mr. Ziegenfuss as a signatory on the company's bank account.

Under section 26.71(c), only an independent business – one that does not depend for its viability on a relationship with another firm – may be certified as a DBE. Certifiers are told to scrutinize relationships with non-DBE firms in such areas as personnel, facilities, and equipment.

As both you and NJT describe the long-standing relationship between ZDI and ZDE, the two companies – both before and after you became ZDI's owner – have operated in an inextricably intertwined fashion. ZDE owns the equipment. ZDI rents it. They share the same property. Mr. Ziegenfuss remains involved in both companies and has access to the bank accounts of both. Notwithstanding the formal distinctions between the companies in terms of corporate identities

and tax matters, it is not credible to portray either one of the companies being viable absent its relationship to the other.

Under the circumstances, NJT had substantial evidence to find that ZDI is not independent of its relationship with ZDE. For this reason, we affirm NJT's decision.

This decision is administratively final.

Sincerely,

Samuel F. Brooks  
DBE Team Lead  
Disadvantaged Business Enterprise Division

cc: Lisa-Marie Codrington