

November 12, 2020

Docket Number 20-0105

Ms. Vicki Mills
M4 Trucking, LLC
[REDACTED]
Wheatland, CA 95692

Dear Ms. Mills:

This letter responds to your August 15, 2020 appeal of the California Unified Certification Program's (CUCP) July 15, 2020 denial of M4 Trucking, LLC's (M4) application for Disadvantaged Business Enterprise (DBE) certification under the DBE regulations found in 49 CFR Part 26. After considering the entire record, we affirm CUCP's decision. *See* section 26.89(f)(1).

Background

You and your non-socially and economically disadvantaged son Robert Mills started the business in 2019. You respectively claim 51% and 49% ownership of the firm. You contend that you acquired your ownership by contributing [REDACTED] on Feb. 26, 2020; [REDACTED] on May 18, 2020; and [REDACTED] on June 10, 2020.

CUCP denied M4's DBE certification application under multiple Part 26 provisions, including §26.69(c), regarding ownership. CUCP found that you do not meet the requirements of §26.69(c)(1) because you did not contribute any personal assets to acquire your ownership. It is on that ground that we uphold CUCP's decision.

Discussion

As the applicant firm, M4 bears the burden of proving that, more likely than not, the firm meets the DBE certification requirements. *See* §26.61(b). To be eligible for DBE certification, a socially and economically disadvantaged (SED) individual(s) must "own" at least 51% of the firm. *See* §26.69(b). The DBE regulation does not rely on dictionary definitions of "own" or "ownership" or on common usage; it defines the terms more narrowly. The regulation requires that the SED owner's ownership, "*including* [her] contribution of capital or expertise to acquire [her] ownership interest [], be "real, substantial, and continuing, going *beyond* pro forma ownership of the firm as reflected in ownership documents." Section 26.69(c)(1) (emphasis added). *See also* §26.69(e) (contribution must be real and substantial).

The record shows that Yuba-Sutter Economic Development Corporation (Yuba-Sutter) loaned M4 [REDACTED] for working capital and truck purchases. Presumably this is the [REDACTED] you

claim to have “contributed” to the firm.¹ But in fact you did not fund M4’s operations or purchases. Yuba-Sutter did. *See* §26.69(a) (origin of funds). You gave M4 no money or trucks, and Yuba-Sutter did not “contribute capital” either. *See* §26.69(c) and (e). Yuba-Sutter extended credit. It lent M4 money that M4 must repay.

There is no evidence that you parted unconditionally with money or property (for example, trucks) and gave it to M4.² The contribution you claim is not real (you made none), substantial (zero), or continuing (M4 must repay its debt).³ In short, M4 is ineligible because the regulation considers your 51% ownership “pro forma,” for want of a real, substantial, and continuing contribution of capital to support it.

Conclusion

CUCP applied pertinent rules correctly, and that substantial evidence supports its decision. We must affirm under §26.89(f)(1).

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

Sincerely,

Samuel F. Brooks
Team Lead
Disadvantaged Business Enterprise Division

cc: CUCP

¹ We see nothing in the record to support your statement that you contributed [REDACTED]

² Debt is not equity. A debt must be repaid while equity does not. We acknowledge that the rule could be clearer on this point. Its discussion of “loans” refers to the SED *owner* having borrowed money to fund her contribution of capital. The difference is that the company (or seller of an ownership interest) receives cash or property without strings, and it is the SED owner who must repay the loan.

³ As there is no capital contribution at all, your assets cannot have been the source.