



**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

February 22, 2021

Docket Number 21-0040

James L. Drury II
Goosmann Law Firm
410 5th Street
Sioux City, IA 51101

Dear Mr. Drury:

This is in response to the appeal of your client, BCG Logistics, LLC, from the denial by the Louisiana Department of Transportation and Development (DOTD) of BCG's application for certification as a disadvantaged business enterprise (DBE). DOTD denied the application on the basis of independence. See 49 CFR sec. 26.71(b).

According the administrative record, David Guillory, a disadvantaged individual, is the 51 percent owner of the BCG, a Baton Rouge, Louisiana, trucking firm.¹ The remaining 49 percent is owned by Doug, Anderson, Lee, and Hilliard Barber and Darren Grille (4.9 percent each) and Ryan Heck, Steven Cheatham, and Jason Lyngaas (8.167 percent each).² The four Barbers are principals of Barber Brothers Contracting, a long-established Louisiana highway construction firm based in Baton Rouge, of which Mr. Grille is also an officer. Mr. Heck, Mr. Cheatham, and Mr. Lyngas are partners in Cajun Ready Mix Concrete, also based in Baton Rouge, which, according to its website, has over 60 rear-discharge mixer trucks and 9 state certified batch plants.

DODT points to two guaranty documents backing over [REDACTED] in loans BCG took out from Mack Financial Services for the purchase of a number of trucks. The guarantors included, in addition to Mr. Guillory, Barber Brothers Contracting, Cajun Ready Mix Concrete, Douglas and Lee Barber, Ryan Heck, and Jason Lyngaas. From this, DOTD concluded that BCG would not

¹ From the contracts listed and the vehicles pictured in the on-site report, BCG's main business involves hauling construction materials.

² Information in the on-site report raises a question about whether Mr. Guillory made a capital contribution to the firm commensurate with his claimed 51 percent ownership. According to financial data in the report, Mr. Guillory made a [REDACTED] contribution from personal savings. The four Barbers and Mr. Grille contributed [REDACTED] each, for a total of [REDACTED]. Mr. Cheatham, Mr. Lyngaas, and Mr. Heck each contributed [REDACTED], for a total of [REDACTED]. Of the total contributions of a penny short of [REDACTED] then, Mr. Guillory contributed only a third. DOTD did not base its decision on this issue, however.

be a viable company in the absence of this financial support from these other individuals and firms, and hence not independent.³

The appeal responds that the fact that a business has loans does not interfere with its ability to be independently viable. A business should not have to be completely debt-free to be eligible for DBE certification, the appeal argues.

While it is accurate to say that applicants need not be debt-free, it does not follow that a start-up massively supported by non-disadvantaged persons and firms involved in the same business is independent of them. DOTD's concerns relate, properly in our view, to magnitude, proportion, relatedness, and aligned business interests. It is highly unlikely that a start-up business with a capitalization of [REDACTED] could secure [REDACTED] in equipment loans without guarantees from larger, longer-established firms and several of their principals, all non-disadvantaged.⁴ Absent this significant support from related, non-disadvantaged persons and firms, it is improbable that BCG would have been able to procure so many business-essential vehicles immediately after its formation. We conclude that DOTD had substantial evidence to support its conclusion that BCG did demonstrate independence. See sections 26.61(b), 26.89(f)(1). We therefore affirm the ineligibility determination.

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

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: David Guillory
Paula Merrick Roddy

³ In addition to the loan guaranty documents, the close relationships among BCG's owners with two well-established firms engaged in similar types of work suggests that BCG, Barber Brothers Contracting, and Cajun Ready Mix Concrete may be affiliates. DOTD did not pursue this issue, however.

⁴ It borders on the inconceivable that unrelated parties operating at arm's length would enter into these transactions on these terms.