



**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

May 2, 2022

Docket No. 21-0108

Gaya Shanmuganatha
Tiffany & Bosco, P.A.
Camelback Esplanade II, Seventh Floor
2525 East Camelback Road
Phoenix, Arizona 85016

Reyna Valenzuela
Certification Program Manager
City of Phoenix
Equal Opportunity Department
200 W Washington St # 15,
Phoenix, AZ 85003

Dear Ms. Shanmuganatha and Ms. Valenzuela:

On April 21, 2021, the City of Phoenix denied the DBE application of Hawk Contracting, LLC, on the basis of control and ownership.¹

The main basis on which the City concluded that Ms. Heim does not control Hawk is that she does not “carry the ROC license” that the firm needs to operate in the construction business.

The appeal rejoins that the question of control does not turn on whether Ms. Heim personally holds the license, citing 49 C.F.R. § 26.71(h). The appeal is correct on this point. The City’s decision does not cite any state law providing that a person can be regarded as controlling a contracting business only if she is personally named on the license. Indeed, the copy of Hawk’s license in the record shows that it was issued to Hawk as a corporation, not to any individual.

While under section 26.71(h), not holding a license can be a factor in evaluating an owner’s ability to control a firm, Ms. Heim’s resume and the statement of her duties on Hawk’s application, together with the documents appended to the appeal, present evidence that she is capable of controlling the affairs of a firm like Hawk and in fact does so.²

¹ With respect to ownership and control, the City makes a number of references to facts that were in place at the time of a previous denial of Hawk’s application but which changed before the current application. This case must be evaluated under the firm’s present circumstances. See section 26.71(b)(1).

² The City also argues that because Mr. Heim retained the ability to consult with Hawk for three years after Ms. Heim became the 100 percent owner, she lacks the ability to intelligently and critically evaluate information

The ownership issue turns on a financial transaction between Ms. Heim and her husband concerning their house. In 2019, as referenced in both the City's denial letter and the appeal, Mr. and Ms. Heim refinanced their home. At the time of the refinance, the equity in the property was [REDACTED]. In the transaction, Ms. Heim sold her equity interest in the home to Mr. Heim in exchange for [REDACTED], which she retained as her personal and separate property. She claims use of these funds as a capital contribution to Hawk.

The City believes that this information shows that this contribution was of marital assets in which Mr. Heim had not renounced his interest. See section 26.69(i)(1). This would have the effect of halving the contribution attributable to Ms. Heim to [REDACTED]. The appeal contends that the transaction, because it converted what had been joint property to the individual property of Ms. Heim, means that the full [REDACTED] should count as her capital contribution.

In our view, the transaction, which occurred prior to the firm's DBE application, gave Ms. Heim funds, independent of marital property, and in an amount that appears consistent with the fair market value of the property, which she could use to make a capital contribution to Hawk. This is sufficient to meet the applicant's burden of proof with respect to making a real and substantial capital contribution to the firm. See section 26.69(c)(1).

On the basis of the entire record, we find that the City lacked substantial evidence to deny Hawk's application for certification, and we therefore reverse that denial under section 26.89(f)(2) of the regulation. We direct the City to certify Hawk immediately.

This decision is final and not subject to administrative reconsideration.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. See section 26.71(g). The fact that Mr. Heim may participate in this fashion, especially in the absence of any evidence that he has done so, does not support the City's conclusion.