



**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

August 15, 2022

Docket No. 21-0115

Leslie Weber
State Highway Clearing LLC
19782 Co. Rd. D
Archbold, OH 43502

Dear Ms. Weber:

The Ohio Department of Transportation (ODOT) denied the application of State Highway Clearing LLC (SHC) for DBE certification on the basis of control.

According to ODOT's denial letter, your work experience consists of being a nurse, a paralegal, and a gym owner. You said during the on-site interview that while you had been exposed to SHC's line of work (land clearing and mulching trees and brush) through your husband's job,¹ you had not been trained in that type of work. SHC had completed two small contracts, during which you worked mostly in the office, though you did at times go out to the jobsites to check on them. From this information, ODOT concluded that you had not carried your burden of proof that you had sufficient technical competence and experience to control the firm.

The appeal asserts that the fact that SHC completed the two small contracts shows that you are able to control the management, supervision, and direction of the firm. The appeal further asserts that you have management other business management experience. Citing section 26.71(g) of the DBE regulation, the appeal asserts that nothing in the record "indicates that [you do] **not** have the 'overall managerial and technical competence and experience to control the type of work the company performs.'" (emphasis in original)

We will address the second point first. The appeal misunderstands the burden of proof and how it applies. Section 26.61(b) requires the disadvantaged owner to prove, by a preponderance of the evidence, that she satisfies all certification criteria, including control. The certifier has no obligation to prove the opposite.

Regarding substantive section 26.71(g) control, the record indicates that you played a limited role in SHC's performance of the two small contracts it had completed at the time at the time of ODOT's decision. You did general office work and occasionally "checked" the job sites. There is no evidence that you supervised the work or directed the workers to do it in a particular way. Further, managerial experience in another type of business (i.e., a gym) does not necessarily

¹ The name and functions of Ms. Weber's husband's company are not specified in the record before the Department.

translate into the ability to control a business involving land clearing and mulching trees and brush, which is what the regulation (the disadvantaged owner “must have...managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm’s operations”) requires. We cannot conclude on the record before us that you proved either technical competence or directly related managerial experience.

Accordingly, we must affirm ODOT’s decision under section 26.89(f)(1) because it is consistent with applicable certification rules and supported by substantial evidence.

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

Sincerely,

Samuel F. Brooks
Team Lead
DBE Division

cc: Deborah M. Green, ODOT