



**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

June 30, 2022

Docket No. 22-0017

Linda Clark
Clark Land Resources, Inc.
[REDACTED]
Vista, CA 92084-1418

Dear Ms. Clark:

The California Department of Transportation (Caltrans) denied the DBE application of Clark Land Resources, Inc, (CLR) on the basis of ownership¹ and control. This decision focuses on control, specifically issues in corporate governance documents.

You and your non-disadvantaged husband are the only two members of the firm's board of directors. Per Article II, section 8, of CLR's bylaws, a majority of the board members is needed for a quorum of a board meeting, and an act by the majority of directors constitutes an act of the board. Consequently, your husband's participation and vote is necessary for a quorum or an action of the board. As the Department has frequently ruled,² such a corporate governance structure is inconsistent with sections 26.71(c) and (d) of the Department's DBE regulation, which respectively prohibit provisions that require concurrence by non-disadvantaged participants in a firm and require disadvantaged owners to control the board of directors.

¹ The ownership matter discussed in the Caltrans decision concerns the fact that your \$ [REDACTED] original 2012 capital contribution came from a joint account with your husband, who contributed [REDACTED] at the time. Through a February 4, 2019, transmutation agreement, Mr. Clark renounced his community property interest in your contribution. (The Department explicitly declined to require that a spousal renunciation of joint assets under section 26.69(i) be contemporaneous with the transfer. See 79 FR 59574, October 2, 2014.) In addition, since community property rules apply to non-disadvantaged as well as disadvantaged individuals, half of his [REDACTED] contribution is attributable to you. This makes your initial contribution [REDACTED] well above 51 percent of the initial capitalization of CLR. As a result, ownership is no longer an issue in the case.

² See, e.g., 14-0024 *Smart Associates Environmental Consultants, Inc.* (July 1, 2015), 14-0035 *Rear View Safety, Inc.* (July 6, 2015), 14-0034 *Vegas Heavy Haul, Inc.* (July 8, 2015), 15-0148 *Gideon Toal Management Services* (March 26, 2016), 16-0015 *Tollie's Landscaping and Lawn* (June 10, 2016), 16-0064 *Ryan Biggs/Clark Davis Engineering and Surveying, P.C.* (August 12, 2016), 17-0053 *D.M. Conlon Inc.* (November 21, 2017), 17-0131 *Cable Trucking Inc.* (March 26, 2018), 19-0010 *VEC Services LLC* (May 2019); 21-0030 *CWI Construction, Inc.* (April 2021); 22-0164 *4C Engineering & Geomatics, Inc.* (June 2022).

We recognize that, as the 51 percent owner of the firm, you control shareholders' meetings. We also acknowledge that you said in the on-site interview that you operate the firm without having to run things by your husband. Nevertheless, in assessing whether a firm meets control requirements, we must take into consideration its formal governance structure as stated in its bylaws or other corporate documents. We recommend that, if CLR wishes to reapply for certification, it make changes in its bylaws to avoid this problem in the future.

We find that Caltrans had substantial evidence to find that CLR does not meet control requirements. We therefore affirm Caltrans' decision under section 26.89(1) of the regulation.

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

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Curtis Williams, Caltrans