



**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

October 26, 2022

Docket No. 22-0073

Margaret Beardsley, President  
Pipe Services Corporation  
665 Tower Lane  
West Chester, PA 19380

Katherine Peters, Director  
Pennsylvania Department of Transportation  
Bureau of Equal Opportunity  
P.O. Box 3251  
Harrisburg, PA 17105-3251

Dear Ms. Beardsley and Ms. Peters:

The Pennsylvania Unified Certification Program (PUCP) denied the DBE application of Pipeline Services Corporation (PSC) on grounds of ownership and control. Founded in 1997, PSC had been certified in Pennsylvania from 2009 to 2017. It applied again for certification in 2020.

Concerning ownership, PUCP said that PSC failed to show that Ms. Beardsley made a real capital contribution to the firm. PSC's application stated that she made cash and equipment contributions in 1997 of approximately [REDACTED]. However, after the passage of time, PSC no longer had documentation of the contributions.

Under section 26.73(b)(1) of the regulation, certifiers are told not to refuse to certify a firm based solely on historical information indicating a lack of ownership or control by a socially and economically disadvantaged individual at some time in the past. Applying this provision to the facts of this case, the unavailability of 1997 financial documentation in 2020-22 is not an adequate basis for finding that PSC failed to carry its burden of proof. The fact that PUCP certified the firm in 2009, when the documentation of Ms. Beardsley's financial contribution is much more likely to have been available, reinforces this conclusion.

As to control, PUCP noted that Ms. Beardsley performs a wide variety of key functions for the company.<sup>1</sup> However, PUCP noted that PSC employee Michael Gingrich directs field operations.

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<sup>1</sup> These include "setting policy for company direction/scope of operations; performing bidding and estimating; making major purchasing decisions; marketing and sales; hiring and firing management staff; hiring and firing field staff or crew; designating profits spending or investment; obligating business by contract/credit; purchasing equipment and signing business checks," as well as being "responsible for policy decisions, human resource management, negotiation of contracts, bidding, leases and loans [as well as]...directing staff, scheduling, client

Mr. Gingrich and three other employees also had higher salaries than Ms. Beardsley, who PAUCP believed resided in Florida. From this information, PAUCP concluded that Ms. Beardsley did not carry her burden of proof with respect to control.

In the appeal, Ms. Beardsley stated that, while she owns property in Florida, she had spent a total of approximately only 8 months in Florida during the 2018-21 period, during which she worked remotely. She said that she delegates functions to other participants in the company but retains final decision authority, being in daily contact with Mr. Gingrich. She stated that, in order to make payroll and put money back into the business, she deliberately takes lower compensation as owner than she pays key employees,

Certifiers can take differences in remuneration into account in the context of factors like a firm's policy concerning reinvestment of income (see section 26.71(i)(1)). Ms. Beardsley's choice to take lower compensation is reasonable in light of the needs of growing and sustaining a small business. She may also delegate important functions to key employees, as long the delegations are revocable and she can hire and fire her delegates (see section 26.71(f)). The record, including PUCP's detailed "DBE Report," verifies that Ms. Beardsley meets these requirements.

Ms. Beardsley need not have experience in all aspects of the business, or greater experience or expertise than other participants, e.g., Mr. Gingrich with respect to field operations. Per section 26.71(g), the key inquiry is whether the disadvantaged owner has the overall understanding needed to run the business and can intelligently and critically evaluate information presented by other participants and make independent decisions. Ms. Beardsley's over 20 years of experience as owner of PSC and the broad scope of her functions cited in PUCP's denial letter and Report<sup>2</sup> are more than sufficient to meet this criterion.

We reverse PUCP's decision because it is inconsistent with applicable rules and unsupported by substantial evidence. Please certify PSC without delay.

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

Sincerely,

Samuel F. Brooks  
DBE Team Lead  
Disadvantaged Business Enterprise Division

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relations, trouble shooting and issue resolutions and bidding on new projects." Denial letter, p. 3.

<sup>2</sup> DBE Report, pp. 11-12 and 14-16.