



**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. 22-0074

Bridgette Beato  
Five23 Group, Inc.  
[REDACTED]  
Alpharetta, GA 30009

Verniece Love  
Director of SWaM and DBE Certification  
Virginia Department of Small Business and Supplier Diversity  
101 N. 14th Street, 11th Floor  
Richmond, Virginia 23219

Dear Ms. Beato and Ms. Love:

The Virginia Department of Small Business and Supplier Diversity (VDSBSD) denied the request of Five23 Group, Inc. (FGI), a certified DBE, for two additional NAICS codes. The two codes, 541360 and 541370, concern, respectively, geophysical and non-geophysical surveying and mapping services.

VDSBSD said that Ms. Beato did not have education, experience, or licensing in these fields, while FGI's Director of Geospatial Services, Scott Sugar, did. Therefore, VDSBSD said, Ms. Beato was dependent on Mr. Sugar for activities under the NAICS codes in question. For this reason, FGI did not meet the requirement of section 26.71(b) of the Department's DBE regulation for being an independent firm.

Under section 26.71(b), independence concerns relationships between a DBE firm and non-DBE firms. It is not the correct provision of the regulation to use in analyzing whether a disadvantaged owner has the ability to "run the show" within her own company. In a case where the disadvantaged owner has less experience or expertise in a function of her company than a key employee, the relevant test is that of section 26.71(g), namely whether the disadvantaged owner has "the ability to intelligently and critically evaluate information 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."

While not citing section 26.71(g), VDSBSD in effect concluded that Ms. Beato did not meet this requirement.<sup>1</sup> In the appeal, Ms. Beato asserted that she had managed a wide variety of projects

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<sup>1</sup> "Without evidence indicating that you possess either an education in surveying services or relevant experience directly relating to surveying services, we cannot reasonably conclude that you are able to evaluate technical

for FGI<sup>2</sup>, many of which included geospatial services as a subset of the overall project, enabling her to gain the necessary experience to qualify for the contested NAICS codes.

In reviewing the record, what we see is an assumption by VDSBSD that Ms. Beato lacks the ability to meet the requirements of section 26.71(g) with respect to the two NAICS codes, contrasted with her general assertion that she has sufficient experience to do so. The record does not contain sufficient facts on which to base a decision concerning the section 26.71(g) issue. Because the record is incomplete and unclear with respect to this key matter, we are remanding the case to VDSBSD under section 26.89(f)(4).

On remand, we direct VDSBSD to schedule a joint interview with Ms. Beato and Mr. Sugar, to be held within 21 days of the date of this letter. In this meeting, Ms. Beato and Mr. Sugar must be given the opportunity to explain how they work together concerning matters covered by the two NAICS codes.

For example, what is the specific experience that Ms. Beato has gained over the years that she believes enables her to make independent decisions on the subject matter in question? What degree of oversight does Ms. Beato exercise concerning the tasks Mr. Sugar performs? With respect to activities involving his area of expertise, does Mr. Sugar bring issues or options to Ms. Beato's attention, which she then considers and makes her own decisions concerning? Have situations occurred where Ms. Beato has overruled or modified recommendations that Mr. Sugar has made? Are there situations in which Mr. Sugar operates or makes decisions autonomously, without involving Ms. Beato in the substance of the work? It would be very helpful for Ms. Beato and Mr. Sugar to describe specific examples on current or past projects that illustrate the nature of their working relationship.<sup>3</sup>

Within 21 days of this meeting, we direct VDSBSD to issue a new decision concerning whether FGI meets the requirements of section 26.71(g) with respect to the NAICS codes in question.

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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information presented to you regarding the surveying services and to use that information to make independent decisions regarding FGI's operations without depending upon a more experienced individual." Denial letter, p. 3.

<sup>2</sup> The appeal includes a lengthy list of projects on which FGI has worked.

<sup>3</sup> This is the kind of inquiry and discussion that is properly a part of the initial, pre-decisional interview that certifiers should conduct in all cases that touch on section 26.71(g) issues.