



**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

January 18, 2022

Docket No. 22-0075

Ms. Ariana Deschaine, President
A. Clear Run, LLC
9564 US Route 9W, Suite 2
Athens, NY 12015

Dear Ms. Deschaine:

The New York State Department of Transportation (NYSDOT) denied the application of your firm, A. Clear Run, LLC (ACR) on the ground that it did not meet the independence requirements of section 26.71(b) of the DBE regulation.

NYSDOT cited several facets of the relationship between ACR and three firms operated by your husband, John Deschaine: Hudson River Bulk, Inc. (HRB); John R. Deschaine Logging and Land Clearing, Inc. (DLLC); and JR Holdings, LLC (JR Holdings). According to NYSDOT, these companies provided trucks to ACR through transactions that were not arms-length, with financing that you did not demonstrate came from your own resources. One vehicle, for example, was purchased in part with an interest-free [REDACTED] loan from DLLC. NYSDOT contends that you did not provide evidence of having made payments on the loan. Another truck was purchased by DLLC and leased to you at an interest rate of 0.05 percent. In addition, ACR shares office, garage, and yard space with your husband's companies. In recent years, you also worked part time for DLLC and HRB.

In your appeal, you emphasize that, while your husband and his firms assisted your acquisition of vehicles¹, including via gifts, you control all operations of ACR. Though not mentioned either in the denial or appeal, the fact – mentioned in the on-site report -- that ACR had recent contracts with four firms not affiliated with your husband's companies (DA Collins/Kubricky Construction, B&B Forest Products, Peckham Industries, and McGinnis) lends support to your assertion that ACR is independent.

In reviewing a certification, the Department does not make a *de novo* evaluation of the evidence. Rather, we determine whether the certifier had substantial evidence to make the decision it did. In this case, notwithstanding some evidence that would support ACR's claim to be an independent firm, we find that NYSDOT had substantial evidence to reach its conclusion that, absent its relationships with and support from your husband's firms, ACR would not be viable and hence did not meet independence requirements. We therefore affirm NYSDOT's decision under section 26.89(f)(1) of the regulation.

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

¹ Much of the appeal focuses on disadvantaged ownership, which was not a denial ground.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Joe Stuhlman, NYSDOT