

July 12, 2019

Reference Number 19-0073

Philistine Ferrand, DBE Liaison Officer
Louis Armstrong New Orleans International Airport
P.O. Box 20007
New Orleans, LA 70141

Dear Ms. Ferrand:

Aviation Solutions Services, LLC (Aviation Solutions) appeals the Louis Armstrong New Orleans International Airport's (NOIA) November 15, 2018 denial of its application for certification as a Disadvantaged Business Enterprise (DBE) under the standards of 49 C.F.R. part 26 (the Regulation). After carefully reviewing the complete administrative record, we remand for NOIA to conduct further proceedings consistent with this letter.

Background

Martha Harper is the sole owner of Aviation Solutions. The firm seeks to perform numerous airport services, including "troubleshooting, operating, monitoring, and managing baggage/conveyer belts, above-wing services and stations, below-wing services and stations, ground service equipment, concessions, security, and many other service lines." M. Harper Résumé. Ms. Harper co-owns another firm, NOLA Aviation, with her nondisadvantaged husband Kevin Harper. NOLA Aviation provides on-call aircraft and ground equipment maintenance services. Ms. Harper works 24 hours a week at Aviation Solutions and 3 days a week for NOLA Aviation.

Ms. Harper used funds from a joint marital account to establish Aviation Solutions. However, Mr. Harper did not renounce his interests in the marital funds when Aviation Solutions applied for certification. The firm submitted Mr. Harper's signed renunciation with its appeal.

Decision

The denial letter cites several ownership and control provisions as grounds for determining that Aviation Solutions is ineligible for certification. However, citations alone are insufficient to uphold a denial under section 26.86(a), which requires explanations and supporting evidence for each ineligibility ground. The Department cannot affirm on the basis of unexplained citations. "Affiliation," outside employment, and substantiality of ownership (via the marital property rule) are the only issues sufficiently raised in the denial letter. We address them in turn.

NOIA concludes that Aviation Solutions is ineligible for DBE certification because it is “affiliated” with NOLA Aviation. “Affiliation” is a counting concept, however, not a stand-alone denial ground. It applies in determining whether the applicant is an eligible “small business.” NOIA made no determination on that issue. (If NOIA’s intent was instead to explain that the firm is ineligible on independence grounds, it did not do so in the denial letter.)

NOIA also concludes that Aviation Solutions is ineligible on the basis of Ms. Harper’s outside employment. Again, the fact that she has outside employment—which is not in dispute—is not a sufficient denial ground. The rule states that there must be conflict or prevention for the firm to be ineligible,¹ and NOIA describes none.²

Whether the firm is ineligible because of the marital property rule is the remaining issue. Section 26.69(i) permits NOIA to include no more than half of the Harpers’ joint capital contribution unless Mr. Harper irrevocably renounces and transfers all his rights in enough of his ownership interest to allow NOIA to consider Ms. Harper to own at least 51% of the firm. The rule requires Mr. Harper to renounce and transfer in a way that is effective under Louisiana law. The Department intends for the renunciation rule to encourage legally effective transfers to disadvantaged owners, not operate as a trap for those unaware of it. We instruct NOIA, as part of its evaluation on remand, to consider the renunciation. That includes providing Mr. Harper, if necessary, an effective renunciation (redacted to fully protect privacy interests) from its files. We further instruct NOIA that the renunciation is to be considered timely, as we are asking NOIA for a new eligibility determination. Please see sections 26.73(b)(1), 26.89(e), 26.89(f).

Conclusion

We vacate the denial and remand for further proceedings consistent with the instructions above. We see no need for NOIA to request new information unless it determines that the current renunciation is ineffective; in that case, it should advise Mr. Harper of the deficiency and how it can be corrected, allowing Mr. Harper sufficient time to provide a legally effective document.

We authorize NOIA to reconsider only the 3 issues identified above in reaching its determination. Unless the present renunciation is ineffective, NOIA should issue its decision by August 2, 2019.³

¹ Section 26.71(j) states that “in order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests *that conflict with* the management of the firm *or prevent* the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.” (Our emphasis.) Please see also section 26.86(a).

² Aviation Solutions had no jobs or employees to manage when it applied for certification. Ms. Harper explained to NOIA that she would delegate her responsibilities at NOLA Aviation if she needed to devote more time to Aviation Solutions.

³ We expect a determination on the merits, not a decision that Aviation Solutions has not met its burden of proof. If, for example, NOIA believes it has insufficient information to make a proper business size determination, NOIA should consider that potential denial ground no longer available.

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

Sincerely,

Samuel F. Brooks
DBE Appeal Team Lead
Disadvantaged Business Enterprise Division

CC: Aviation Solutions