

July 3, 2019

Reference Number 19-0064

Jose A. Escamilla
President
Elevators Etc GS, Inc.
REDACTED
Los Angeles, CA 90022

Dear Mr. Escamilla:

This letter responds to your January 14, 2019 appeal of the Los Angeles Country Metropolitan Transportation Authority's (LACMTA) October 10, 2018 denial of your firm Elevators Etc GS, Inc.'s (EEG) application for DBE certification under the rules of 49 CFR Part 26 (the Regulation). After reviewing the record, we affirm LACMTA's decision.¹

LACMTA found that you do not control EEG within the meaning of the Regulation and denied EEG's application under sections 26.71(b), (c), (d), (e), (f), (h), and (j). We affirm LACMTA's decision under section 26.71(b).²

Facts

You and Jason Babcock founded EEG in April 2018. Mr. Babcock is not socially and economically disadvantaged (SED) under the Regulation. You respectively own 51% and 49% of the firm. EEG repairs, services, and modernizes elevators, moving walkways, and escalators. You were Chief Executive Officer of EEG when the firm applied for DBE certification and Mr.

¹ See section 26.89(f)(1): "The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification."

² Section 26.71(b) states: "Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. (1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. (2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm. (3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm. (4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice."

Babcock was President. EEG's bylaws provide that the President is the Chairman of the Board. Mr. Babcock also owns Elevators Etc LP (EEL), a firm nearly identical in nature to EEG and at which you are a fulltime mechanic. During the onsite visit, a LACMTA official observed that EEG and EEL share an office space and the sign posted outside the office building lists EEL but not EEG. During the onsite visit and on EEG's DBE certification application you indicated that you and Mr. Babcock share the same responsibilities, elaborating that you are still learning and Mr. Babcock makes financial decisions (including independently signing checks), estimating, scheduling jobs, and performing other work as needed.

You state in your appeal letter that after receiving LACMTA's denial decision you and Mr. Babcock switched titles; you will open a separate office space for EEG; you will resign your employment at EEL before EEG performs any work for LACMTA; you will supervise Mr. Babcock; and that you and Mr. Babcock both hold a C-11 Elevator Installation license.

Decision

An applicant firm must demonstrate, by a preponderance of the evidence, that it meets each element of DBE certification eligibility. See section 26.61(b). This means that you bear the burden of showing that EEG's viability does not depend on its relationship with Mr. Babcock and EEL. See generally section 26.71(b).

The facts described above strongly support LACMTA's determination that EEG is not an independent business and that its viability depends on its relationship with non-DBE firm EEL. You have not explained how the closely intertwined relationships among you and the two firms do not compromise EEG's independence or how they are consistent with normal industry practice. We appreciate that you are now Chairman of the Board and plan on taking additional steps to distance EEG and yourself from EEL. However, we base our decisions on the status of the applicant firm at the time the denial decision was issued, and not on events that have not yet occurred. See section 26.89(f)(6).

Conclusion

Substantial evidence supports LACMTA's decision that you do not meet the requirements of section 26.71(b). Thus, we affirm. See section 26.89(f)(1). This decision is administratively final and not subject to petitions for review.

Sincerely,

Samuel F. Brooks
Appeal Team Lead
Disadvantaged Business Enterprise Division

cc: LACMTA