



**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

March 18, 2019

Reference Number 18-0123

Ms. Abigail Pantelakis
Manager & Member
ALP Services, LLC
[REDACTED]
Farmington, UT 84025

Dear Ms. Pantelakis:

This letter responds to ALP Services, LLC's (ALP) June 18, 2018 appeal of the Utah Unified Certification Program's (UUCP) April 3, 2018 denial of the firm's application for Airport Concessions Disadvantaged Business Enterprise (ACDBE) certification under the rules of 49 C.F.R. parts 23 and 26 (the Regulation). After considering all the facts in the record, we affirm UUCP's decision.¹

BACKGROUND

You and your father, David Lloyd, co-founded ALP in October 2017. You respectively own 55% and 45% of the firm.² David Lloyd is not presumed socially and economically disadvantaged (SED) under the Regulation. ALP operates in northern Utah and is a wholesale distributor of grocery items such as dairy products, meat, and baked goods.³ In addition to his role at ALP, David Lloyd is the chief executive officer (CEO) and chief financial officer (CFO) of KJ4-Management LLC, a firm that owns Kent's Market Stores (Kent's Market),⁴ a chain of 10 grocery stores also in northern Utah.⁵ Your mother Kathy Lloyd is a Manager on ALP's Board of

¹ See §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 ALP's Uniform Certification Application (UCA) at p. 11 indicates that only Mr. Lloyd and your husband Joshua Pantelakis contributed capital. You made no apparent capital contribution to acquire your ownership interest. See §26.69(c).

³ See UCA at 5.

⁴ You use the name "Kent's Market" in your appeal letter, while elsewhere in the record the firm is identified as "Kents Market." This decision uses the name Kent's Market.

⁵ See Résumé of David Lloyd and document entitled "David Lloyd (Member/Manager/Authorized Person/CEO)."

Directors and has been an employee and owner of Kent's Market since 2012.⁶ ALP's primary place of business is in David and Kathy Lloyd's personal residence.

You began working in the floral department of one of Kent's Market's locations in 2011 and have been the customer service manager since 2012; the record indicates that you still hold those positions, in addition to being a head hygienist at A1 Dental.⁷ You have a Bachelor of Science degree in Dental Hygiene and are currently the Head Hygienist at A1 Dental.⁸ You manage ALP's website, organize files, and communicate with vendors.⁹

At ALP, David Lloyd shares your authority to sign checks and financially obligate the firm without apparent limitation.¹⁰ He frequently participates in bidding and estimating, manages billing and accounts receivable and payable, and designates profit spending or investment.¹¹ Your three brothers Mathew Lloyd, Andrew Lloyd, and Samuel Lloyd have been ALP employees since ALP's founding.¹² None of them are SED. They are respectively a part-time Marketing Director, fulltime Sales Representative, and a part-time Sales Representative. Ms. Lloyd has worked in the grocery industry since 2002 and has extensive experience in at least 6 grocery store departments, negotiating and establishing vendor contracts, and hiring and training employees.¹³

UUCP denied ALP's application under control provisions §§26.71(b), (c), (d), (e), (g), (j), (k) and (n). We affirm under §26.71(b) and do not render a decision concerning UUCP's remaining denial grounds.

ISSUE

The issue before us are whether substantial evidence supports UUCP's finding that ALP did not prove, by a preponderance of the evidence, that ALP's viability depends on its relationship with the non-DBE firm Kent's Market.¹⁴

DISCUSSION

⁶ See ALP Services, LLC Operating Agreement (Oct. 26, 2017).

⁷ See Résumé of Abigail Pantelakis.

⁸ See *id.*

⁹ See Site Review Report (Feb. 26, 2018) at 3. Generally, expertise limited to office management and administrative tasks is insufficient to demonstrate control. See §26.71(g).

¹⁰ See America First Credit Union Business Application and Account Card (Feb. 15, 2018).

¹¹ See UCA at 9.

¹² See *id.* at 7; see also List of Employees. The record is not clear whether they are also Kent's Market employees.

¹³ See *id.*

¹⁴ See §26.61(b): "The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control."

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.

UUCP cited multiple, uncontroverted facts to demonstrate that ALP's viability depends on its relationship with Kent's Market. For example, you and David Lloyd co-founded and co-own ALP, David Lloyd is the CEO and CFO of the firm that operates Kent's Market, and ALP and Kent's Market both operate in northern Utah. Unlike David Lloyd, you do not have training or experience in wholesaling; David and Kathy Lloyd can sign ALP checks without your consent; your brothers are ALP employees who perform duties with which you have little or no involvement; and ALP works solely with vendors with whom you developed relationships as a Kent's Market employee. UUCP found that your non-SED brothers, not you, establish new vendor relationships for ALP.

You contend on appeal that ALP is independent because it "has no business connection with Kent's Market" and you have "taken extra care" to not involve any owners of Kent's Market, except Ms. Lloyd, in ALP's activities.

As required by §26.71(b)(1), UUCP scrutinized ALP's relationship with non-DBE firm Kent's Market in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. You concede that you share key personnel, i.e., David and Ms. Lloyd, with non-DBE firm Kent's Market. ALP's primary place of business is in David and Ms. Lloyd's home. At ALP, David Lloyd and Ms. Lloyd have authority to independently sign checks and otherwise financially obligate the firm, and Ms. Lloyd is on the Board of Directors. She is also an owner of Kent's Market. Although David Lloyd is not an owner of Kent's Market, he plays a significant role in the firm's operations as CEO and CFO of KJ4-Management. ALP received financial support from David Lloyd, who contributed ██████████ to acquire his ownership interest.¹⁵

¹⁵ See UCA at 8.

Per §26.71(b)(2), UUCP considered whether present or recent employee/employer relationships between you (as co-owner of ALP) and Kent's Market, David Lloyd, and Ms. Lloyd compromise ALP's independence. UUCP found in the affirmative. All three of you are closely involved with Kent's Market's activities and it would be difficult to discern how each would separate their respective roles to benefit both firms simultaneously. You did not submit evidence showing that the relationships do not affect ALP's independence; it is your burden to have done so.

Under §26.71(b)(3), UUCP did not conclude that ALP has a pattern of exclusive or primary dealings with a prime contractor and the record does not indicate that such a pattern exists. However, UUCP did note that the vendors with whom ALP works are those with whom you developed relationships as an employee at Kent's Market. You did not submit evidence of having developed vendor relationships outside your capacity as a Kent's Market employee.

Lastly, under §26.71(b)(4), UUCP found that ALP's relationship with Kent's Market is not consistent with normal industry practice. You do not explain, e.g., how working as an employee at an apparently competing company, i.e., Kent's Market, is normal industry practice. Again, it is your burden to prove, by a preponderance of the evidence, that it is.

Only independent firms are eligible for DBE/ACDBE certification, and under §26.71(b), its viability must not depend on its relationship with another firm or firms. You did not explain what actions constitute the "extra care" you purport to have taken to keep ALP's activities independent from Kent's Market. The record clearly demonstrates, despite your contention to the contrary, that ALP does have business connections with Kent's Market, through shared employees, vendor relationships, Kent's Market's employees' ability to control ALP's finances, and the location of ALP's office in David Lloyd and Ms. Lloyd's home. Looked at as a whole, the intertwining of the affairs of the two companies provides substantial evidence to support UUCP's conclusion that ALP does depend on Kent's Market personnel, in the absence of which ALP would likely not be viable in the wholesale distribution business.

CONCLUSION

Substantial record evidence supports UUCP's conclusion that ALP did not prove, by a preponderance of the evidence, that its viability does not depend on its relationship with Kent's Market. We affirm under §26.89(f)(1). This determination is administratively final and not subject to petitions for reconsideration.

Sincerely,

Marc D. Pentino
Lead Equal Opportunity Specialist
Disadvantaged Business Enterprise Division

cc: UUCP