

March 3, 2020

Reference No. 20-0035

Elizabeth Froelich
Froelich Freight, LLC
17876 Road 8
Cecil, OH 45821

Dear Ms. Froelich:

This is in response to an appeal of the decision of the Ohio Unified Certification Program (OUCP) that Froelich Freight, LLC (FF) is ineligible for DBE certification because it is not an independent firm, as required by the Department's disadvantaged business enterprise (DBE) regulation, 49 CFR Part 26. The Department is affirming OUCP's decision.

Section 26.71(b) of the regulation provides that "only an independent business can 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." Under section 26.61(b) of the regulation, an applicant must show the certifier, by a preponderance of the evidence, that it meets this requirement.

OUCP notes that FF enjoys a close relationship with Countyline Towing, a firm owned by Dan Froelich, the father-in-law of FF owner Elizabeth Froelich. OUCP's denial letter and FF's appeal agree that Countyline owns a noticeable portion of FF's equipment (27 percent, by the appeal's calculation). Moreover, the firms were co-borrowers on a 2017 \$602,000 bank loan for equipment. At the time, Ms. Froelich could not have obtained the loan on her own, because she did not have sufficient credit. OUCP also cites four other equipment loans on which FF and Countyline were co-borrowers. Ms. Froelich, Mr. Froelich, and other family members were guarantors on all these loans. In 2017 and 2018, FF subcontracted a much of its work to Countyline.

The appeal contends that the portion of FF's equipment owned by Countyline is not significant enough to impair FF's independence and that, in any event, Ms. Froelich fully controls the vehicles as well as the financial affairs of the firm. Countyline's involvement had become far less significant by the time of FF's 2019 application, the appeal states.

Under section 26.89(f)(1) of the regulation, the Department upholds a certifier's decision unless we find that its decision is unsupported by substantial evidence. In this case, the evidence concerning the relationship between FF and Countyline is sufficiently substantial to support OUCP's conclusion that FF did not carry its burden of proof that the firm would be viable absent its relationship with Countywide, notwithstanding the appeal's contentions concerning the evolution of that relationship. For this reason, the Department is upholding OUCP's decision.

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

Sincerely,

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

cc: Deborah Green