



**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

July 31, 2020

Docket Number 20-0074

Naushad Hasssan
Nash Contracting LLC



Dear Mr. Hassan:

This is in response to your appeal of the denial of the DBE application of Nash Contracting, LLC, Inc. by the New Jersey Department of Transportation (NJDOT). NJDOT determined that Nash did not meet control requirements for DBE certification.

Nash is a start-up company that, at the time of its application, had not obtained any work and did not possess any equipment. You continue to work full-time for Iron Bridge Constructors (IBC), a firm in which you formerly held an ownership interest.

NJDOT found that because of your full-time work for IBC, you had outside employment that conflicted with your ability to control Nash, contrary to section 26.71(j) of the Department's DBE regulation. NJDOT said that Nash's lack of equipment¹ made it unlikely that Nash could control the firm's operations in its line of work. For these reasons, NJDOT determined that Nash did not meet its burden of proof² with respect to control.

In your appeal, you noted that since Nash had yet to perform any contracts, it was necessary for you to keep working for IBC to have an income. You stated that when Nash did obtain work, you intend to quit working for IBC and work instead for Nash. You added that it is unnecessary for Nash to own any equipment because it can rent what it needs when it secures a contract.

The Department's rules provide that firms should not be denied certification solely because they are new and do not yet have any work.³ Such circumstances, nevertheless, can make it difficult

¹ See 49 CFR 26.71(m).

² NJDOT misstated the applicable burden of proof as being "clear and convincing evidence." The correct standard is "preponderance of the evidence." This mistake does not affect the outcome of the case.

³ See 49 CFR 26.73(b)(2).

for an applicant to meet its burden of proof. Here, NJDOT had substantial evidence to find that, notwithstanding your statement of intent to stop working for IBC, and Nash's intent to rent equipment, should Nash receive a contract in the future, you were not currently able to control the company. Decisions about certification are made on the basis of present circumstances,⁴ not future possibilities.

For this reason, the Department is affirming NJDOT's decision that Nash failed to meet its burden of proof with respect to control.

This decision is administratively final.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Ivette D. Santiago-Green

⁴ See 49 CFR 26.73(b)(1).