



The Department of Transportation gave notice to the Petitioner of the Department's intent to deny certification as a disadvantaged business enterprise (DBE) on May 14, 1998. On June 3, 1998, the Petitioner requested a formal hearing on the Department's decision. The Department referred the matter to the Division of Administrative Hearings on July 6, 1998. By notice dated August 7, 1998, the matter was set for hearing on September 25, 1998, in St. Augustine, Florida.

On or about September 18, 1998, a telephone conference was held to consider all pending motions. The Department withdrew its discovery motion, and the parties agreed to continue the hearing until November 2, 1998, in Tallahassee, Florida. On or about November 10, 1998, a telephone conference was held to consider pending motions. The parties resolved pending discovery issues and the Department's motion for continuance was granted. The case was rescheduled for hearing on January 28 and 29, 1999, in Jacksonville, Florida, and was held further on April 16, 1999, in Tallahassee, Florida.

At the formal hearing, the Petitioner called as witnesses John Smith, Robert Maxwell, Robert Theus, Terry Caldwell, Melvin Carter, Sheran Carter, and Mary Miller. The Petitioner filed as late-filed exhibits a composite attached to its notice of filing which was filed with the Division of Administrative Hearings pursuant to the Order entered June 3, 1999. The Department

called Glenda Carter and Mary Miller and entered 13 exhibits into the record.

Both parties filed proposed findings of fact and the Department was permitted to file a response to the Petitioner's proposed findings which was received on July 20, 1999. The post-hearing pleadings of both parties have been read and considered.

#### FINDINGS OF FACT

1. Ameriseal of Northeast Florida, Inc. is an active Florida corporation engaged in the business of highway striping and marking. Ameriseal of Northeast Florida, Inc., was considered for re-certification by the Department of Transportation as a DBE.

2. Sheran Carter is the president and majority stock holder of Ameriseal of Northeast Florida, Inc. She is a white female, and in charge of administration of the corporation.

3. Her husband, Melvin Carter, a white male, is the minority shareholder of the corporation and is described by various witnesses as an individual with a broad range of experience and knowledge in the business in which the Petitioner engages and is the key operational employee of the company supervising the operational activities of the corporation.

4. The relationship of Sheran Carter and Melvin Carter is a normal, close relationship in which business is mutually discussed and suggestions are exchanged.

5. The Department asserts that there are many reasons for denying DBE status to the Petitioner, to include: lack of adequate capital contribution to the company by Sheran Carter, lack of control by Ms. Carter as that term is defined by the rules, filing of false documents by the Petitioner with the Department, failure to reveal "affiliated" companies, and the assertion that Sheran Carter's financial contributions to the corporation were loans.

6. The facts reveal that Melvin Carter, Dennie Carter, and Henry Allen engaged in a paving business in the 1980s which was successful, and gradually came to specialize in resurfacing airport runways. The company was very successful. However, in 1988 and 1989 changes in federal funding for the maintenance of airports resulted in a drastic downturn in the company's business. As a result thereof, their company suffered financial reverses and was in danger of financial collapse.

7. At or about this time, Ameriseal of Northeast Florida, Inc., was formed. The owners and principal officers of the company were the wives of Melvin Carter, Dennie Carter, and Henry Allen. Certain unencumbered assets of the predecessor corporation were transferred to the wives in repayment for loans made by the wives to the predecessor corporation. In turn, these

assets became part of the capital contribution of the wives to the establishment of Ameriseal of Northeast Florida, Inc.

8. After its formation, Ameriseal of Northeast Florida, Inc., engaged in highway striping and marking. The operations of Ameriseal of Northeast Florida, Inc., were significantly smaller than its predecessor corporation, and after a couple of years' operation, it was determined that its activities could not support the three families.

9. There is competent evidence to establish that the monies loaned by Sheran Carter to the predecessor corporation were jointly held funds belonging to Sheran Carter and her husband, Melvin Carter. On this basis, Melvin Carter would be considered one-half owner of the one-third share transferred to Sheran Carter. However, the testimony of the corporation's accountant establishes that Sheran Carter purchased with personal funds belonging to her the shares and corporation owned by Sharon Allen. Upon completion of this purchase, Sheran Carter owned 50% of the corporation, her husband owned 16 2/3% of the corporation and Glenda Carter, the wife of Dennie Carter, owned 33 1/3% of the corporation.

10. A controversy developed regarding the purchase and transfer of the shares owned by Glenda Carter in Ameriseal of Northeast Florida, Inc. Glenda Carter filed a civil action against Melvin Carter and Ameriseal of Northeast Florida, Inc., alleging that her name had been forged on transfer documents

indicating the purchase of her shares by the corporation. This action was eventually settled upon payment of additional funds to Glenda Carter. The testimony of the corporation's accountant establishes that Sheran Carter paid her personal funds to settle the suit with Glenda Carter and received a bill of sale for transfer of Glenda Carter's shares in the corporation.

11. Upon settlement with Glenda Carter, Sheran Carter owned 83 1/3% of the corporation. Testimony was also received that Sheran Carter transferred sufficient shares in the corporation to Melvin Carter such that Melvin Carter owns 25% of the corporation and Sheran Carter owns 75% of the corporation.

12. At all times relevant to the pending denial, Sheran Carter was a majority share holder of the corporation.

13. Evidence was received that over the years Melvin Carter, Dennie Carter, and Henry Allen in various combinations owned various corporations. However, there is no evidence that any of these corporations are affiliated with or do business in any manner with Ameriseal of Northeast Florida, Inc. Because Melvin Carter, a minority stock holder in Ameriseal of Northeast Florida, Inc., was also a stock holder or officer in these other corporations, it may have been appropriate to have reported them as affiliated corporations in filings with the Department; however, the evidence is that none of these corporations is currently active.

14. The Department asserts that the formation of Ameriseal of Northeast Florida, Inc. was to establish the corporation as a DBE. While creation of the corporation and the transfer of assets from the predecessor corporation to Ameriseal of Northeast Florida, Inc., may have been an effort to protect assets from potential creditors upon the demise of the predecessor corporation, there is no evidence that it was created for the purpose of establishing the new corporation as an DBE. The creation of the corporation preceded by a couple of years' consideration of obtaining DBE status.

15. At or about the time of the purchase of the shares from Dennie and Glenda Carter and Sharon and Henry Allen, Sheran Carter took an increasingly active role in the management in the corporation.

16. As that participation has evolved, she is responsible for administration of the office and financial activities of the corporation, and Melvin Carter is responsible for the field operations of the company. They mutually manage their family company. Although there is evidence that Melvin Carter's participation in the activities of the corporation are decreasing, the evidence is that the couple's sons are taking an increasingly active role in the business. They are white males.

17. Sheran Carter demonstrated technical expertise and possesses knowledge and understanding of the technical aspects of the company's operations and functions.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties in this case. This Recommended Order is entered pursuant to Section 120.57, Florida Statutes.

19. The Petitioner in this case has the burden of proof to show that it is qualified as a disadvantaged business enterprise. The Department of Transportation asserted many reasons for denying DBE status to the Petitioner. The reasons included lack of adequate capital contribution to the company by Sheran Carter; the assertion that Sheran Carter's contributions were in the form of a loan company; the filing of false documents by the Petitioner; the failure to reveal "affiliated" companies; the assertion that Petitioner was formed for the specific purpose of qualifying as a DBE; and the lack of control by Sheran Carter as that term is defined by the Department's rules. All of these reasons, with the exception of the latter, were addressed satisfactorily by the Petitioner or were of minimal consequence.

20. The Petitioner demonstrated that the minority owner had at least 51% of the ownership of the corporation. The Petitioner showed that the minority owner had the technical knowledge and expertise to qualify. The facts surrounding the formation of the corporation indicate that it was not created for the purpose of participating in the DBE program. The "affiliated" corporations were shown to be inactive and not a concern as it relates to the



Petitioner. However, Rule 14-78.005(7)(c), Florida Administrative Code, provides:

That a DBE shall be an independent business entity and that the Department shall consider all relevant factors, including the date the firm was established, the adequacy of its resources, and degree to which financial relationship, equipment leasing, and other business relationship with non-DBE firms may vary from industry practice.

(1) The ownership and control exercised by disadvantaged individuals shall be real, substantial, and continuing, and shall go beyond mere pro forma ownership of the firm, as reflected in its ownership documents. Where the applicant business is found to be a family-operated business, and when the firm's duties, responsibilities and decision making are occurring jointly and mutually among the owners and principals, or occurring severally or individually along managerial and operational lines between disadvantaged and non-disadvantaged owners, in such instances the disadvantaged owner shall not be considered as controlling the business. (Emphasis supplied.)

21. The facts of the organization and operation of the corporation taken in a manner most favorable to the Petitioner show that the disadvantaged owner controls the administrative and financial functions of the corporation and her white, male husband controls the field operations of the corporation. The picture painted by the various witnesses indicates that, in this family-owned business, duties, responsibilities, and decision-making are occurring jointly and mutually among the owners and principals and occurring severally and individually along managerial and operational lines between the disadvantaged and

non-disadvantaged owners. Therefore, under the rule cited, the disadvantaged owner shall not be considered as controlling the business.

22. Based upon the provisions of the cited rule, the Department must deny the Petitioner DBE status.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED:

That the Department enter a final order finding that the Petitioner's application for re-certification as a disadvantaged business enterprise be denied.

DONE AND ENTERED this 11th day of August, 1999, in Tallahassee, Leon County, Florida.

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of August, 1999.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.