

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
633 THIRD AVENUE
NEW YORK, NY 10017

In the Matter

- of -

the Application of

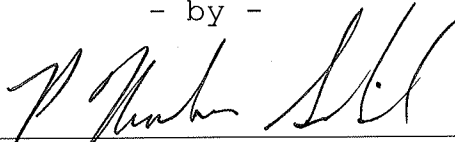
Friend Commercial Contracting Corp.

For Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 59440

RECOMMENDED ORDER

- by -



P. Nicholas Garlick
Administrative Law Judge

May 11, 2016

SUMMARY

This report recommends that the determination of the Division of Minority and Women's Business Development ("Division") of the New York State Department of Economic Development to deny the application of Friend Commercial Contracting Corp. ("applicant") for certification as a woman-owned business enterprise ("WBE") be modified and, as so modified, affirmed, for the reasons set forth below.

PROCEEDINGS

This matter involves the appeal, pursuant to New York State Executive Law ("EL") Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") Parts 140-144, by Friend Commercial Contracting Corp. challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Friend Commercial Contracting Corp.'s application was submitted on February 13, 2015 (Exh. DED2).

The application was denied by letter dated August 27, 2015, from Bette Yee, Director of Certification Operations (Exh. DED1). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet four separate eligibility criteria related to Beth A. Friend's ownership and operation of the applicant.

By letter dated September 18, 2015, Beth A. Friend, on behalf of the applicant, filed a notice of appeal disputing the Division's denial determination.

By letter dated October 15, 2015, the Division notified the applicant that the applicant's written appeal should be submitted on or before November 17, 2015.

By letter dated November 16, 2015, the applicant filed its written appeal, an attachment and two exhibits (listed in the attached exhibit chart as attachment 1 and exhibits A1-A2).

The Division submitted its response, which included a six page memorandum dated February 3, 2016. Attached to the response were five exhibits (listed in the attached exhibit chart as exhibits DED1 - DED5).

On February 5, 2016, this matter was assigned to me. That day, counsel for the applicant contacted me and requested permission to file a reply and three days later, counsel for the Division requested permission to file a sur-response. Both requests were granted.

The applicant's reply dated February 19, 2016 was accompanied by 69 exhibits (listed in the attached exhibit chart as exhibits A3-A71).

The Division's sur-response was received on March 2, 2016 at which time the record in this matter closed.

ELIGIBILITY CRITERIA

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status, regulatory criteria regarding the applicant's ownership, operation, control and independence are applied on the basis of information supplied through the application process.

The Division reviews the enterprise as it existed at the time the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and interviews that are conducted by Division analysts.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proving that the Division's denial of applicant's WBE certification is not supported by substantial evidence (see State Administrative Procedure Act § 306[1]). The substantial evidence standard "demands only that a given inference is reasonable and plausible, not necessarily the most probable," and applicant must demonstrate that the Division's conclusions

and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate" (Matter of Ridge Rd. Fire Dist. v Schiano, 16 NY3d 494, 499 [2011] [internal quotation marks and citations omitted]).

POSITIONS OF THE PARTIES

Position of the Division

In its denial letter, the Division asserts that the application failed to meet four separate criteria for certification.

First, the Division found that the applicant failed to demonstrate that the woman owner, Beth A. Friend, enjoys the customary incidents of ownership and shares in the risks and profits in proportion with her ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2).

Second, the Division found that the applicant failed to demonstrate that the woman owner's, Beth A. Friend's, capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

Third, the Division found that the applicant failed to demonstrate that the woman owner, Beth A. Friend, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(i) and (ii).

Fourth, the Division found that the applicant failed to demonstrate that the woman owner, Beth A. Friend, makes decisions pertaining to the operations of the enterprise or devotes time on an ongoing basis to the daily operation of the business, as required by 5 NYCRR 144.2(b)(1) & (b)(1)(iii).

Position of the Applicant

Friend Commercial Contracting Corp. asserts that it meets the criteria for certification and that the Division erred in

not granting it status as a woman-owned business enterprise pursuant to Executive Law Article 15-A.

FINDINGS OF FACT

1. Friend Commercial Contracting Corp. was established on March 8, 2012 (Exh. A65). The corporation is engaged in the general construction business (Exh. DED2 at 2-3) specializing in small bridge construction and commercial buildings (Exh. A71 at 3). Beth A. Friend owns 100% of the stock of Friend Commercial Contracting Corp. and serves as its president (Exhs. DED2 at 2, A66, A67).

2. Friend Commercial Contracting Corp. has a business address of 12638 State Route 30, Malone, NY 12953.

3. Prior to starting Friend Commercial Contracting Corp. in March 2012, Ms. Friend served as Office Administrator for her father's company, J.T. Erectors, LLC and prior to that as a Park Aide (Exh. DED4 at 1).

4. In 2014, Friend Commercial Contracting Corp. paid Ms. Friend a salary of [REDACTED] and paid Mr. Todd Perry [REDACTED] (Exh. DED5 at 8 & 13). The applicant's financial statements show that the company's retained earnings grew from [REDACTED] [REDACTED] (Exh. A). Since Ms. Friend is sole owner of the company, the total benefit in 2014 she received is the total of her wages [REDACTED] plus the retained earnings the firm accumulated [REDACTED] for a total of [REDACTED]

5. Friend Commercial Contracting Corp. was formed with a total of [REDACTED] in cash and capital contributions: [REDACTED] cash and [REDACTED] in "gifts" from J.T. Erectors, LLC, a company owned by Ms. Friend's father, Jonathan Hutchins (Exh. DED2 at 2).

6. J.T. Erectors, LLC is a business owned by Jonathan Hutchins, Ms. Friend's father. This company also specialized in small bridge construction, steel erection and commercial buildings and has been inactive since 2012. In 2012, Friend Commercial Contracting Corp. was established and most of the employees of J.T. Erectors, LLC now work for the applicant. In 2014, Ms. Friend purchased the property at the business address

of the applicant from her parents (Exh. A63) and her father allows the applicant to use his equipment and warehouse while these assets are being purchased by the applicant (Exh. A71 at 2-3).

7. Ms. Friend has sole managerial responsibility for: financial decisions, negotiating bonding and insurance, marketing and sales, hiring and firing, purchasing equipment/sales, managing and signing payroll, negotiating contracts and signing for business accounts. Mr. Perry shares managerial responsibility with Ms. Friend for preparing bids and has sole responsibility for estimating. Supervision of field operations is done by Mr. Perry and another male employee (Exh. DED2 at 3-4).

DISCUSSION

This report considers the applicant's written appeal from the Division's determination to deny certification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The Division's denial letter set forth four bases related to Ms. Friend's operation and control of Friend Commercial Contracting Corp. Each basis is discussed individually, below.

Before discussing these grounds for denial, the applicant has also raised a procedural issue in its appeal, specifically, that the Division's failure to include any factual basis in its denial letter prejudiced it from being able to substantively challenge the denial. As a result, the denial must be annulled (appeal at 2.)

To support its contention, the applicant refers to the following case law. In *Doerrbecker v Saunders*, 229 AD2d 490, 492 (2d Dept. 1996), the court held that the determination made by an administrative agency was without a sound basis in reason, citing *Matter of Pell v Board of Educ.*, 34 NY2d 222, 231 (1974). In *Benson v McCaul*, 268 AD2d 756, 760 (3d Dept. 2000), *lv denied* 94 NY2d 764 (2000), the court held that the Civil Service Commission had a rational basis to determine that competitive testing was not a practical method to determine the knowledge, skills, and abilities of applicants for positions at the Banking Department. The rational basis included three separate internal

analyses with concurring recommendations conducted by the Civil Service Commission.

The Division argues in its response that the case law cited in the appeal is not relevant to this administrative proceeding because this proceeding is not one brought pursuant to Article 78 of the Civil Practice Law and Rules (CPLR). The Division continues that the appeal fails to provide any support for the theory that the denial letter (Exh. A1) was impermissibly vague (response at 6.)

In its reply, the applicant responds that the denial letter is the administrative determination of the Division, and that it is appealing the determination administratively, as a prerequisite to a challenge pursuant to CPLR Article 78. As part of the CPLR Article 78 proceeding, the applicant argues that the court would evaluate the denial letter on the grounds cited therein (see *Matter of Aronsky v Board of Educ., Community School Dist. No. 22 of City of N.Y.*, 75 NY2d 997), and that the scope of the court's review would be limited to the "facts and record adduced before the agency" (*Matter of Fanelli v New York City Conciliation & Appeals Bd.*, 90 AD2d 756, 757, *aff'd* 58 NY2d 952). (Reply at 3-4.)

The applicant argues further that the denial letter (Exh. A1) was a final agency determination (reply at 2). Therefore, the case law it cites is relevant and because the denial does not identify the factual basis for rejecting the application, the denial is arbitrary and capricious.

In its sur-response, the Division states that the determination to deny an application for MWBE certification does not become final until the Director of the Division accepts or rejects the recommended order prepared by the Administrative Law Judge. Therefore, the denial letter was not a final agency action pursuant to 5 NYCRR 144.5(b)&(c). The Division concludes that because both parties have had an adequate opportunity to submit arguments related to the facts underlying the denial, the applicant has not been substantially prejudiced (sur-response at 6).

As discussed above, the denial letter states that the certification was denied on four separate grounds. The

applicant's statement that the denial letter lacked detail is accurate. The Division did not offer any additional information until its response to the appeal. The case law referenced in the appeal underscores the administrative agency's obligation to provide a rational basis for its determination (see e.g., *Pell, supra*, at 231). The case law does not speak about precisely when, during the administrative review process, the agency must provide this rational basis. The question presented here is not whether it would be more fair or more efficient for the Division to provide the factual support for its denial in the denial letter. Rather the inquiry focuses on whether the reasons set forth in the administrative record are based on substantial evidence.

Pursuant to 5 NYCRR 144.4, the denial is appealable administratively and, therefore, not a final agency determination. The applicant has chosen to exercise its right to appeal. A purpose of this administrative proceeding is to provide the parties with the opportunity to be heard and to develop a record upon which the agency's final decision will be based. In this case, the parties agreed to proceed on papers rather than to convene an administrative hearing. The effect is the same. The parties have developed the administrative record that will serve as the basis for my recommendation, as well as the Division's final determination, about whether the applicant should be certified as a women-owned business enterprise. During this administrative proceeding, the Division provided details about why it denied the application. The applicant took advantage of the opportunity to respond. Consequently, the parties have had the opportunity to develop all issues associated with the denial of the application for certification as a women-owned business enterprise and the applicant has not suffered prejudice.

Ownership

In its denial letter, the Division cited two grounds based on the applicant's failure to meet ownership criteria set forth in the applicable regulations. The first ground cited by the Division was that the applicant failed to demonstrate that the woman owner, Beth A. Friend, enjoys the customary incidents of

ownership and shares in the risks and profits in proportion with her ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2).

In the appeal, Ms. Friend states that as the sole owner, all the risks and profits of the company are hers and that she is personally liable for union benefits, invoices for materials, hired subcontractors, insurance costs and other items (appeal at 3). She continues that instead of paying herself the highest salary of any employee of the company, she takes what she needs to maintain a sustainable lifestyle while re-investing the rest of the profits to grow the company and increase its success (appeal at 3-4).

In its response, the Division explains that its determination to deny on this ground was based on the fact that the company's 2014 W-2 forms, which showed Ms. Friend was paid [REDACTED] while another employee, Mr. Todd Perry received [REDACTED] (Exh. DED5 at 8 & 14). The Division argues that this shows the division of the business's profits flow disproportionately to Mr. Perry and not the woman owner of the company (response at 3).

In its reply, the applicant argues that the Division's rationale for denial is flawed and argues that Ms. Friend, rather than taking profits out of the company in the form of salary or distribution, has chosen to reinvest these earnings so as to grow the business and increase its success (reply at 3-4). Applicant's counsel points to financial statements that show that retained earnings grew from [REDACTED] [REDACTED] (Exh. A), which, as sole owner of the company, are Ms. Friend's alone. Thus, in 2014, Ms. Friend received a total benefit that included her wages [REDACTED] plus the retained earnings the firm accumulated [REDACTED] for a total of [REDACTED] in compensation.

In its sur-reply, the Division does not address the issue of retained earnings.

Based on the evidence in the record and the discussion above, the applicant has demonstrated that the woman owner, Beth A. Friend, enjoys the customary incidents of ownership and shares in the risks and profits in proportion with her ownership

interest in the enterprise, as required by 5 NYCRR 144.2(c)(2). The Division failed to take into account Ms. Friend's decision to retain [REDACTED] of the firm's earnings in the business, rather than distribute them to herself, in making its determination to deny the application on this ground. Accordingly, I recommend that this basis for denial not be upheld.

The second ground related to the ownership criteria was that the applicant failed to demonstrate that the woman owner's, Beth A. Friend's, capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

The application states that the business was formed with a total of [REDACTED] in cash and capital contributions: [REDACTED] cash provided by Ms. Friend and [REDACTED] in "gifts" from J.T. Erectors, LLC, a company owned by Ms. Friend's father, Jonathan Hutchins (Exh. DED2 at 2). These amounts, though not their sources, are confirmed by bank records for the businesses accounts (Exh. DED3).

In the appeal, the Ms. Friend states that she started the company with [REDACTED] cash contribution on May 3, 2012. She also states that the contributions from J.T Erectors, LLC were not "gifts" as listed in the application, but rather loans, which she has since been repaying. She offers to provide additional information, but none is included with the appeal (appeal at 3).

In its response, the Division notes that the source of Ms. Friend's [REDACTED] contribution is not identified and no proof of the source of this money was provided with the application. This lack of evidence was one of the bases for the Division's denial of the application on this ground. A second basis for denial based on the capital contribution test was the "gifts" identified in the application from a company owned by Ms. Friend's father, J.T. Erectors, LLC. This information provided by the applicant shows that Ms. Friend did not supply the majority of the capital to form the applicant. The Division notes that the appeal claims, without substantiation, that the "gifts" were in fact loans and urges that little or no weight be given to this claim (response at 2).

In its reply, the applicant restates that the \$ [REDACTED] contribution on May 3, 2012 was made by Ms. Friend, and cites bank records showing this deposit (Exhs. A64 & DED3). The record does not show that the source of these funds was, in fact, Ms. Friend; only that money was deposited in the business account. The reply argues that additional contributions were made through the reinvestment of retained earnings in the company (Exh. A28 at 5), which are not identified in the application (Exh. DED2 at 2), and again states that the "gifts" listed in the application were in fact loans, again failing to point to any record evidence to support this claim. Finally, the reply states that Ms. Friend contributed "sweat equity" in the form of time and effort (reply at 4-5).

In its sur-response, the Division again notes that the source of Ms. Friend's initial [REDACTED] contribution is not identified and the record lacks proof that she made this contribution herself. The Division again notes that the applicant's claim that money was loaned from J.T. Erectors, LLC is not supported by any evidence and directly contradicts information in the application itself. The Division continues that the applicant's claim of capital contribution in the form of expertise or "sweat equity" was not made during the application process and is not quantified in the appeal (sur-response at 1-2).

Based on the evidence in the record and the discussion above, the applicant has failed to demonstrate that the woman owner, Beth A. Friend's, capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). The application states that contributions of [REDACTED] were made to applicant and the record lacks proof establishing that any of these funds were provided by Ms. Friend herself. Rather, the evidence in the record shows that most of the contributions made to begin the business were gifts from Ms. Friend's father and that Ms. Friend put little or nothing at risk when starting the business. Substantial evidence in the record supports the Division's conclusion that the applicant failed meet this eligibility criteria.

Operation

The first ground for denial is that the applicant failed to demonstrate that the woman owner, Beth A. Friend, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(i) & (ii).

In the appeal, Ms. Friend states that she has been around the construction business all her life and has had her father as a teacher. Citing her Bachelor of Science from SUNY Plattsburg and her experience, she states she fully understands how projects are constructed and knows how to breakdown a set of construction documents to bid and build complex projects.

In its response, the Division argues that Ms. Friend has no demonstrated technical training in construction-related disciplines or prior managerial experience (response at 3). Nothing in the record indicates that her college degree is related to the construction industry. Her resume states that prior to forming the applicant, she was an office administrator for J.T. Erectors, LLC and before that she was employed as a park aide (Exh. DED4 at 2). The response continues that the Division determined, based upon the application materials, that the applicant relies upon former employees of J.T. Erectors, LLC to perform the technical functions of the business (response at 3), specifically, Mr. Todd Perry who trained as a civil engineer and possesses twenty years of experience in the construction business as an estimator and project manager (Exh. DED4 at 3). The Division concludes that nothing in the record indicates that Ms. Friend has the ability or training to evaluate work done by Mr. Perry (response at 3).

In its reply, the applicant cites a letter sent to the Division during the application process which set forth Ms. Friend's duties at both J.T. Erectors, LLC (Exh. A71 at 2) and with the applicant (Exh. A71 at 3). These duties include office management, contract management, accounting, bonding, insurance and budget management. The reply also cites Ms. Friend's OSHA training as evidence of her technical training (reply at 6) and argues that her successful experience in running the company since its inception in 2012 demonstrate her managerial experience (reply at 7).

In its sur-response, the Division states that it gave minimal weight to Ms. Friend's college degree because she did not show that it was related to highway and bridge construction. With respect to the claimed OSHA training, no proof of this training was provided with the application materials. Finally, with respect to claims regarding Ms. Friend's experience, the Division again points to her resume which describes her experience in the construction field prior to starting the applicant as office administrator (sur-response at 5).

In addition to the factual arguments raised above regarding the technical competence of Ms. Friend, the applicant also cites *Era Steel Constr. Corp v. Egan*, 145 A.D.2d 795 (3d Dep't 1988) as supporting the approval of its certification application. In this case, the Third Department annulled a denial of MWBE certification based on the woman owner's lack of technical knowledge and experience in the steel erection business. The Division responds that *Era Steel* is factually distinct from the instant matter because the woman owner did not rely on the technical knowledge and experience of male employees of the firm. The Division points to another case, *Northeastern Stud Welding v. Webster*, 211 A.D.2d 889 (3d Dep't 1995), in which the determination to deny certification was upheld by the Third Department. The facts in *Northeastern* are closer to those in this administrative matter. Specifically, in *Northeastern*, a woman owner relied on the technical knowledge and experience of two male employees in order to operate the business.

Based on the evidence in the record, the applicant has failed to demonstrate that the Ms. Friend has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(i) & (ii). Nothing in this record shows that Ms. Friend has the experience, technical competence, or working knowledge required for certification as a WBE. The Division's denial was based upon substantial evidence. The applicant's argument that certification was improperly denied in light of the court's holding in *Era Steel* is misplaced and should be rejected.

The second ground for denial is that the applicant failed to demonstrate that the woman owner, Beth A. Friend, makes decisions pertaining to the operations of the enterprise or

devotes time on an ongoing basis to the daily operation of the business, as required by 5 NYCRR 144.2(b)(1) & (b)(1)(iii).

In the appeal, Ms. Friend states that the size of the company does not permit her to perform all its administrative functions and also supervise the daily activities on the construction site; this is the responsibility of the site superintendent, who she supervises. She lists her responsibilities at the company including: accounting, budgeting, and insurance (appeal at 4). Attached to the appeal, Ms. Friend provides a list of responsibilities she performed on one job (appeal, attachment A). She also supplies a series of letters from an engineering firm, a heavy equipment firm, an insurance agent, a bank, certified public accountants, and a lumber company (Exh. A2). These letters all identify Ms. Friend as the point of contact with the applicant.

In its response, the Division argues that Ms. Friend does not operate the core functions of the applicant and plays no role in managerial functions central to the provision of services to the applicant's clients (response at 4-5). These core functions, including estimating and supervising field operations are performed by male employees of the company (Exh. DED2 at 3-4). The Division argues that Ms. Friend's supervisory role is primarily oriented around office administrative tasks while the substantive management of the day-to-day operations of the business are undertaken by male employees (response at 5). The Division argues that the list of job functions provided by the applicant in its appeal (Exh. Attachment A) does not refute the information provided in the application.

In its reply, the applicant cites a letter sent to the Division during the application process which set forth Ms. Friend's duties at both J.T. Erectors, LLC (Exh. A71 at 2) and with the applicant (Exh. A71 at 3). These duties include office management, contract management, accounting, bonding, insurance and budget management. The reply argues that these administrative functions are the core functions of the business, while not contesting the fact that estimating and supervision of the field construction operations is done by Mr. Perry and other male employees (reply at 6-7). The reply also notes that Ms.

Friend retains the authority to fire the men performing the technical functions (reply at 8).

In its sur-response, the Division restates its position that two functions are performed at the applicant: the office/administrative function (performed by Ms. Friend) and the core function of construction activities (performed by male employees). Since Ms. Friend does not perform the core functions of the business related to construction, the application was properly denied. The Division concludes the fact that Ms. Friend has the authority to fire employees making the core decisions of the business does not mean that she is making the decisions herself (sur-response at 5).

No factual disputes exists regarding this basis for denial, only a dispute regarding the definition of the core functions of the business. The application describes the company as being in the construction business (Exh. DED2 at 3) and based on this it is reasonable to conclude that the core functions of the business relate to construction, specifically estimating and supervising field operations. Because these core functions are performed by male employees of the company, the applicant has failed to demonstrate that the woman owner, Beth A. Friend, makes decisions pertaining to the operations of the enterprise or devotes time on an ongoing basis to the daily operation of the business, as required by 5 NYCRR 144.2(b)(1)(i)-(iii). The core functions of the business, the source of its revenue, estimating and supervising field operations, are not undertaken by the woman owner. The Division's denial on this ground was based upon substantial evidence.

Finally, the applicant argues that pursuant to 5 NYCRR 144.2(c)(3) that the applicant may contract out the actual management of the business, because Ms. Friend retains the ultimate power to hire and fire these managers and she makes substantive decisions which reflect control of the business enterprise (reply at 8). The Division responds that if the applicant's interpretation of this provision were adopted, significant portions of eligibility criteria in 5 NYCRR 144 would be rendered null and void. The Division states that the correct interpretation of 5 NYCRR 144.2(c)(3) would allow delegation provided she met the eligibility criteria. The

Division's interpretation is the most reasonable because it allows the woman owner to delegate only when she meets the certification criteria. In this case, as discussed above, the applicant has not shown that Ms. Friend meets three of the eligibility criteria.

CONCLUSIONS

1. The applicant failed to demonstrate that the woman owner's, Beth A. Friend's, capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

2. The applicant failed to demonstrate that the woman owner, Beth A. Friend, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(i) & (ii).

3. The applicant failed to demonstrate that the woman owner, Beth A. Friend, makes decisions pertaining to the operations of the enterprise or devotes time on an ongoing basis to the daily operation of the business, as required by 5 NYCRR 144.2(b)(1) & (b)(1)(iii).

RECOMMENDATION

The Division's determination to deny Friend Commercial Contracting Corp.'s application for certification as a woman-owned business enterprise should be modified and, as so modified, affirmed, for the reasons stated in this recommended order.

**Matter of
Friend Commercial Contracting Corp.**

**DED File ID No. 59440
Exhibit List**

Exh. #	Description	# of pages
A1	Denial letter dated August 27, 2015 (same as DED1)	3
A2	Six letters regarding control of applicant	6
Attachment A	Listing of responsibilities of Ms. Friend on a typical project	1
A3	Bricklayer's agreement	27
A4	Deed for business premises	3
A5	Ironworkers working agreement	46
A6	2015 Form 941	8
A7	2011 corporate tax returns	6
A8	2012 corporate tax returns	20
A9	2012 W-2 for Beth A. Friend	1
A10	2012 W-2 for Bruce A. Friend	1
A11	2013 business tax return	24
A12	2013 personal tax return	19
A13	2013 list of subcontractors	1
A14	2013 W-2s for Beth and Bruce Friend	1
A15	2014 personal tax return	18
A16	Various invoices	18

A17	Various invoices	18
A18	Rental documents with Anderson Equipment	5
A19	Letter from M&T Bank	1
A20	Tax documents from 2012	33
A21	Birth certificate for Beth Ann Hutchins	1
A22	Invoices from JPW Riggers	6
A23	Contract with Carpenter's Union	30
A24	Certificate of incorporation for applicant	1
A25	Invoices from Watson Electric	2
A26	Corporate by-laws for applicant	11
A27	Various invoices	39
A28	Financial statements for 2013-2014	15
A29	Information regarding Dairy Queen contract	46
A30	Various invoices	2
A31	NYS DOS information	2
A32	Dairy Queen contract	18
A33	Credit application	1
A34	Various invoices	27
A35	Closing documents for purchase of business address	54
A36	2011 tax return for applicant	23
A37	Recorded deed for business address	23
A38	HUD settlement statement for property purchase (partial copy of A63)	3

A39	Jade rental invoices	2
A40	JPW riggers invoices	9
A41	Laborer's Union working agreement (odd numbered pages only)	9
A42	M&T letter	1
A43	Midstate credit application	1
A44	Milton CAT letter valuing various equipment	1
A45	Minutes of organizational meeting	1
A46	NES rentals invoice	2
A47	NYS vendor tax registration	2
A48	MWBE application affidavit	2
A49	MWBE net worth affidavit	1
A50	ESD Personal financial statement worksheet	4
A51	NYS-45WEB form	13
A52	Lease for premises	3
A53	Operating Engineers agreement	40
A54	Project reference sheets	3
A55	Ragged Lake Road contract	16
A56	Red Roof contract	14
A57	Red Roof contract	12
A58	Resumes of Beth A. Friend and Todd M. Perry (same as DED4)	3
A59	ROK agreement	17
A60	Safe route to schools agreement	35

A61	Sample Lumber Credit Application	3
A62	Santa Clara Agreement	8
A63	Settlement Statement for purchase of real property (business address)	11
A64	Sources of capitalization (same as DED3)	6
A65	State filing receipt	1
A66	Stock certificates	3
A67	Stock ledger	1
A68	Taylor rental contracts	5
A69	W-2s and W-3s (same as DED5)	23
A70	Application (same as DED2)	11
A71	WBE response letter	4
DED1	Denial letter dated August 27, 2015 (same as A1)	3
DED2	Application (same as A70)	10
DED3	M&T bank records (same as A64)	6
DED4	Resumes of Beth A. Friend and Todd M. Perry (same as A58)	3
DED5	2014 wage information submitted to the IRS (same as A69)	23