

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

In the Matter

- of -

the Application of **DMR Trucking, LLC**
for Certification as a Women-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 56724

RECOMMENDED ORDER

- by -

A handwritten signature in blue ink that reads "Maria E. Villa". The signature is written in a cursive style and is positioned above a horizontal line.

Maria E. Villa
Administrative Law Judge

August 4, 2017

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 DMR Trucking, LLC ("DMR" or "applicant") certification as a woman-owned business enterprise ("WBE") be affirmed, for the reasons set forth below.

PROCEEDINGS

This matter involves the appeal by applicant, pursuant to New York State Executive Law 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, challenging the determination of the Division that DMR does not meet the eligibility criteria for certification as a WBE.

The Division denied DMR's application for WBE certification (Exhibit 1) by letter dated June 13, 2016. Exhibit 5. According to the Division, DMR's application was denied because applicant failed to show that DMR was an independent business enterprise, as required by 5 NYCRR 144.2(c)(2). By letter dated July 10, 2016, applicant appealed from the Division's denial. Exhibit 7. The Division responded by letter dated August 16, 2016, providing information as to the appeal process. Exhibit 8. DMR's undated appeal was received on September 30, 2016 (Exhibit 9), and on July 18, 2017, the Division filed its response to the appeal ("Division Response").

The Division Response included several exhibits. Applicant did not provide any exhibits as part of its appeal. All of the exhibits offered by the Division were marked and received into evidence, and an exhibit chart is attached.

ELIGIBILITY CRITERIA

The eligibility criteria pertaining to certification as a women-owned business enterprise are established by regulation (see 5 NYCRR 144.2). For the purposes of determining whether an applicant should be granted or denied WBE status, the ownership, operation, and control of the business enterprise are assessed on the basis of information supplied through the application process. The Division reviews the enterprise as it existed at the time that the application was made, based on representations in the application itself, on information revealed in supplemental submissions, and if appropriate, on interviews conducted by Division analysts.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proving that the Division's denial of DMR'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

Division

In its denial letter, the Division argued that applicant failed to demonstrate that the minority or woman applicant is an independent business enterprise, pursuant to Section 144.2(c)(2) of 5 NYCRR. Exhibit 3, at 2. The Division cited the following “relevant facts” in its denial letter:

- DMR Trucking, LLC is engaged in brokering trucking services and providing aggregates.
- DMR Trucking, LLC does not own any vehicles, own or operate any facilities for the extraction of aggregates, or employ staff.
- Ms. Daniella Redgrave is employed by R.J. Valente Industries.
- R.J. Valente Industries is owned by Ms. Redgrave’s father, Roderick Valente.
- Mr. Valente owns Valente Materials Group, a business entity that owns and operates a mine.
- Valente Materials Group supplies aggregates to DMR Trucking, LLC.

Exhibit 3, at 2. According to the Division, DMR is not eligible for certification because it is “little more than a shell of a business, lacking employees, business facilities, or significant assets, which obtains contracts and passes them over to non-MWBE businesses for a small fee.” Division Response, at 2. The Division went on to assert that “DMR Trucking is not an independent business enterprise because it lacks the capacity to complete its contracts, and inappropriately relies upon businesses owned by Mr. Roderick Valente.” *Id.*, at 4.

Applicant

Applicant did not address the Division’s denial letter, other than to acknowledge the first relevant fact, and to say that “[i]t is my hope that you will allow DMR Trucking LLC to continue with its recertification as a certified WBE, under the original codes of BROKER TRUCKING and BROKER HAULING. Upon my next renewal, I now know better what I would need to provide or prove in order to request additional certifications.” Exhibit 9, at 1.

FINDINGS OF FACT

1. DMR was established in 2010. Exhibit 1, at 2. DMR is a single-member limited liability company, owned by Daniella Redgrave, and doing business from a residential address at 57 Candlewood Drive, Ballston Lake, New York. *Id.* at 3.

2. DMR has no employees. In addition to operating DMR, Ms. Redgrave is employed by R.J. Valente Industries. R.J. Valente Industries is part of a group of companies owned by Ms. Redgrave’s father, Roderick Valente. Exhibit 2; Exhibit 1 at 2-3.

3. In its application, DMR stated that the services it offered are “BROKER – Hauling,” “BROKER – Trucking,” “material handler,” and “operator of gravel pits.” Exhibit 1, at 3.

4. DMR does not own any vehicles. Exhibit 1, at 7. DMR leases its trucks from R.J. Valente Gravel, Inc. Exhibit 6, at 111-116. DMR does not own or operate a mine, and depends on a Valente family business to obtain aggregates. Exhibit 5.

DISCUSSION

This report considers applicant's appeal from the Division's determination to deny certification to DMR as a women-owned business enterprise¹ pursuant to Executive Law Article 15-A. Section 144.2(c)(2) of 5 NYCRR states that “an eligible minority group member or woman applicant must be an independent business enterprise.” The Division stated in its denial letter that applicant failed to demonstrate that the business enterprise for which certification is sought is an independent business enterprise. Exhibit 3, at 2.

The applicant did not offer any exhibits or specific argument in response to the denial. Applicant stated that “I started DMR Trucking when my husband and I had started our family. I am employed by my father’s company, R.J. Valente Industries, and have been for almost 20 years. It is what I know and it is in my blood. I have cut back my hours at R.J. Valente Industries, so I can stay home with my kids part time. DMR Trucking LLC has provided additional income with the means of working from home.” Exhibit 9, at 1. These statements do not address the basis for the Division’s denial, and are not sufficient to meet applicant’s burden on appeal.

The Division asserted that DMR “has no employees, facilities, equipment or supplies of aggregates, and therefore cannot fulfill its contracts with clients without the assistance of other firms; particularly firms owned by Mr. Roderick Valente.” Division Response, at 4. The Division pointed out that DMR does not own or operate a mine, and must obtain aggregates from another source, specifically, a Valente family business. The Division went on to note that DMR does not own any trucks, and the only business address associated with DMR is Ms. Redgrave’s personal residence. As a result, the Division stated that “DMR Trucking lacks yard space for the storage of trucks and equipment necessary to operate a business of this nature.” Id.

The Division argued that “[t]he documents supplied by Ms. Redgrave in response to [the Division’s request] for copies of contracts with clients of DMR Trucking clearly demonstrate that DMR Trucking acts as an intermediary between general contractors and the subcontractors and suppliers actually performing work on the contracts to provide the appearance of MWBE participation.” Division Response, at 5; Exhibit 4, at 81-89; 98-101. The Division maintained that DMR relies entirely on other firms to deliver services.

¹ The term “women-owned business enterprise” applies to an enterprise that meets the requisite criteria on the basis of the ownership and control of one woman or of multiple women (see Section 140.1(tt) of 5 NYCRR (defining a women-owned business enterprise as one that is, among other things, “at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women”)).

Consequently, the Division concluded that its determination that DMR is not an independent business enterprise was supported by substantial evidence.

The Division's arguments are persuasive, and applicant offered no evidence in support of its appeal. As the Division pointed out, the requirement that a business enterprise be independent "ensures that the Division confers program benefits do not flow to business enterprises that inordinately benefit from an impermissible connection to a non-MWBE firm." Division Response, at 3; see Matter of Skyline Specialty, Inc. v. Gargano, 294 A.D.2d 742, 742 (3rd Dept. 2002) (statute requires that business enterprise be independently owned and operated). Based upon the information provided in the application, it was reasonable for the Division to conclude that DMR was not independently operated. The Division's determination was supported by substantial evidence.

CONCLUSION

As discussed above, applicant did not meet its burden to demonstrate that the Division's determination to deny DMR's WBE application for certification was not based on substantial evidence.

RECOMMENDATION

The Division's determination to deny DMR's application for certification as a women-owned business enterprise should be affirmed.

**Matter of DMR Trucking, LLC
DED File ID No. 56724**

Exhibit List

Exhibit No.	Description
1	March 31, 2016 application
2	2014 Individual income tax return
3	June 13, 2016 denial letter
4	Invoices/Documents – Middlesex Corporation and Rifenburg Contracting
5	March 23, 2016 letter from Nancy Baker, Deputy Regional Permit Administrator, NYSDEC Region 4, to Daniella M. Redgrave, re: application for modification of mining permit
6	January 1, 2012 equipment lease between RJ Valente Gravel and DMR Trucking
7	July 10, 2016 letter from Daniella M. Redgrave to NYSDED appeals unit
8	August 16, 2016 letter from NYS DED to Daniella Redgrave re: submission of written appeal
9	Undated letter from Daniella Redgrave (received stamp dated September 30, 2016) re: response to notice of written appeal