

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

In the Matter

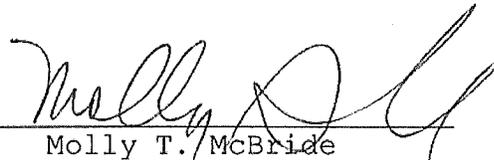
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the Application of **Battery Buyers, Inc.**
for Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A

NYS DED File ID No. 62096

RECOMMENDED ORDER

- by -



Molly T. McBride
Administrative Law Judge
November 6, 2018

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 ("NYSDED") to deny Battery Buyers, Inc. ("BBI" or "applicant") certification as a woman-owned business enterprise ("WBE") be vacated and the matter remanded to staff for further review upon receipt of the entire application package that was submitted by applicant in March 2017, 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 BBI challenging the determination of the Division that applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

The following is not in dispute: (1) BBI submitted a fast track application requesting women-owned business enterprise certification from New York City Small Business Services, New York/New Jersey Port Authority, and the Division in March 2017; (2) one application may be filed requesting certification from the three entities listed above; (3) applicant submitted the application with the assistance of and through the Brooklyn Chamber of Commerce; (4) by letter dated December 21, 2017, the Division denied the application for WBE certification. Applicant filed an appeal from the denial and requested a hearing by letter dated January 9, 2018 and a hearing was held on September 11, 2018 at the New York City office of the NYSD. Applicant appeared by Jessica Kessler, the woman owner. The Division appeared by Gretchen Robinson, Esq., Division counsel and Francisco Guzman, certification analyst and Program Director for Small Business Development (T. at 0.50)¹

¹ References location on audio transcript of the hearing held on September 11, 2018.

ELIGIBILITY CRITERIA

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status, regulatory criteria regarding, among other things, the applicant's contributions and independence, are applied on the basis of information supplied through the application process (see 5 NYCRR 144.2[a]).

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.

In this case, the application was first submitted to New York City Small Business Services for review, which was then responsible for forwarding the application and attachments to the NY/NJ Port Authority for review which, in turn, was then responsible for forwarding the package to the Division. The application was approved by both New York City Small Business Services and the Port Authority. The entire package was not submitted to the Division or, if it was forwarded, was not provided to the certification analyst for his review prior to the denial being issued (T. at 9:00 and Exhibit E). This was not communicated to applicant until after the denial was issued by the Division.

As noted above, pursuant to 5 NYCRR 144.2 the Division is to make a determination on certification on the basis of information supplied in relation to the application. Since the entire application and documents submitted with the application were not available to the certification analyst for review, I recommend that the denial determination be vacated and the application be remanded to Division staff for a review of the complete application package that was submitted by applicant through the Brooklyn Chamber of Commerce in March 2017 and a determination on eligibility be issued by the Division based upon a review the complete submission.

RECOMMENDATION

For the reasons stated herein, I recommend that the determination of the Division to deny Battery Buyers, Inc. certification as a women-owned business enterprise be vacated and the application remanded to Division staff for review on the complete application.