

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

In the Matter

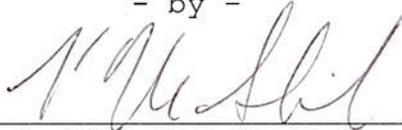
- of -

the Application of
Crane Industry Services, LLC
For Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 59872

RECOMMENDED ORDER

- by -



P. Nicholas Garlick
Administrative Law Judge

August 19, 2019

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 Crane Industry Services, LLC ("applicant") for certification as a woman-owned business enterprise ("WBE") be 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 Crane Industry Services, LLC challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Crane Industry Services, LLC's application was submitted on May 27, 2015 (Exh. DED5).

The application was denied by letter dated February 8, 2017, from Bette Yee, Director of Certification Operations (Exh. DED11). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet one eligibility criterion related to Deborah Dickinson's ownership of the applicant.

By letter dated March 17, 2017, the applicant notified the Division of its intent to file a written appeal.

In a letter dated May 22, 2017, the Division responded and set a deadline of July 31, 2017 for receipt of the applicant's written appeal.

In a two-page letter dated June 7, 2017, the applicant submitted its appeal. With the appeal were four exhibits, described in the attached exhibit chart as A1-A4.

With a cover letter dated July 16, 2019, the Division responded in a fifteen-page memorandum of law. Included with the Division's papers was the affidavit of Abdul Karim Bah,

Senior Certification Analyst, and ten exhibits described in the attached exhibit chart as DED1-DED10.

On July 17, 2019, this matter was assigned to me.

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 one criterion for certification. Specifically, the Division found that the applicant failed to demonstrate that the contribution of the woman owner, Deborah Dickinson, is 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).

Position of the Applicant

Crane Industry Services, LLC asserts that it misunderstood a question on the application regarding Ms. Dickinson's capital contribution to the firm and provides additional documentation of such with its appeal. When this new information is considered, the applicant contends it meets the criteria for certification and that the Division should grant it status as a woman-owned business enterprise, pursuant to Executive Law Article 15-A.

FINDINGS OF FACT

1. Crane Industry Services, LLC provides crane safety consulting services to the material handling and lifting industry (Exh. DED5 at 3). The firm has a business address of 364 West Bankhead Highway, Villa Rica, Georgia (Exh. DED5 at 1).

2. Deborah Dickinson owns 51% of Crane Industry Services, LLC and her husband, William Dickinson, owns 49% (Exh. DED 5 at 3).

3. On December 23, 2008, William Dickinson made a contribution to the firm in the amount of [REDACTED] (Exh. DED5 at 3 & DED4).

DISCUSSION

This report considers the appeal of the applicant 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 one basis related to Ms. Dickinson's ownership Crane Industry Services, LLC.

In its denial, the Division found that the applicant failed to demonstrate that the contribution of the woman owner, Deborah Dickinson, is 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 relevant facts cited in the denial letter are: (1) Ms. Deborah Dickinson owns 51% of

Crane Industry Services, LLC and William Dickinson owns 49%; and (2) documents submitted with the application indicate that Mr. Dickinson contributed [REDACTED] to the firm but do not show any contribution by Ms. Dickinson.

On appeal, the applicant explains that it incorrectly interpreted question 2C on the Divisions WBE application and failed to understand the purpose of the question was to verify the contribution of Ms. Dickinson. In an attempt to correct this misunderstanding, the applicant provides four additional documents which purport to show her contribution. The first document is [REDACTED]

[REDACTED]

[REDACTED] Based on this new information, applicant requests that the denial be reversed.

In its response, the Division argues, in relevant part, that the four documents included with the appeal (Exhs. A1-A4) cannot be considered because they were not before the Division at the time of the denial, citing 5 NYCRR 144.4(e). The Division points to information in the application stating that the only contribution made to the firm was made by William Dickinson on December 23, 2008 in the amount of [REDACTED] (Exh. DED5 at 3) as well as documents supporting this contribution (Exh. DED4). The Division also notes that no claim of a contribution in the [REDACTED] has been made in this case.

In addition to arguing that the applicant's new evidence cannot be considered on appeal, the Division also argues that the new evidence does not show Ms. Dickinson's contribution to the firm is in proportion to her equity interest because the new documents: lack substantiation; are unreliable; and, show the contributions are [REDACTED]

[REDACTED] None of these arguments need be

considered because the new evidence cannot be considered on appeal.

Based on the evidence in the record, specifically the fact that the only information before the Division at the time of the denial showed a single contribution made to the firm by William Dickinson on December 23, 2008 in the amount of [REDACTED] (Exh. DED5 at 3, DED4), the applicant has failed to demonstrate that the contribution of the woman owner, Deborah Dickinson, is 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 Division's denial on this ground was based on substantial evidence.

CONCLUSION

The applicant failed to demonstrate that the contribution of the woman owner, Deborah Dickinson, is 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).

RECOMMENDATION

The Division's determination to deny Crane Industry Services, LLC's application for certification as a woman-owned business enterprise should be affirmed for the reasons stated in this recommended order.

**Matter of
Crane Industry Services, LLC**

**DED File ID No. 59872
Exhibit List**

Exh. #	Description
DED1	Certificate of Organization
DED2	Resume of William Dickinson, Jr.
DED3	Resume of Deborah Dickinson
DED4	Checking account information
DED5	Application
DED6	Operating Agreement
DED7	NYSDOS application
DED8	Denial letter
DED9	Accounting information
DED10	2015 W2 for Deborah Dickinson
A1	Letter from [REDACTED]
A2	[REDACTED] made to the firm
A3	[REDACTED] information
A4	[REDACTED] owed Ms. Dickinson