

NEW YORK STATE
DIVISION OF ECONOMIC DEVELOPMENT
633 THIRD AVENUE
NEW YORK, NEW YORK 10017

In the Matter

- of -

the Application of Darr Construction Equipment Corporation
for Re-certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 1375

RECOMMENDED ORDER

- by -



Daniel P. O'Connell
Administrative Law Judge

August 30, 2022

SUMMARY

The determination of the Division of Minority and Women's Business Development (Division) of the New York State Department of Economic Development to deny Darr Construction Equipment Corporation (Darr Construction or applicant) re-certification as a woman-owned business enterprise (WBE) should be affirmed, in part, and reversed, in part, for the reasons set forth below.

PROCEEDINGS

This matter considers the appeal by Darr Construction, 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 (5 NYCRR) parts 140-144, challenging the determination of the Division that the business enterprise does not meet the eligibility criteria for re-certification as a WBE.

Maureen Cannetti, as president, applied on behalf of Darr Construction, for re-certification as a WBE on November 23, 2015 (*see* WBE Exhibit 1). In a letter dated September 13, 2018, the Division denied Darr Construction's application (*see* WBE Exhibit 2) and set forth four grounds for the denial.¹

By letter dated October 19, 2018 (*see* WBE Exhibit 60), Richard B. Ziskin, Esq. (The Ziskin Law Firm, LLP [Commack, New York]) responded, on behalf of Darr Construction, to the September 13, 2018, denial letter, and requested a hearing. Division staff issued a notice of appeal hearing dated January 20, 2021, which advised applicant that an administrative appeal hearing would be held virtually on February 4, 2021, using the Webex videoconference platform (*see* WBE Exhibit 3). A pre-hearing conference was held on January 27, 2021.

The hearing convened as scheduled at 10:00 a.m. on February 4, 2021, via the Webex videoconference platform. The hearing continued on February 11, 2021, and concluded on March 4, 2021. Richard B. Ziskin, Esq., appeared at the hearing on behalf of Darr Construction, and Maureen Cannetti testified. Fawziyyah Slavov, Esq., Counsel, New York State Department of Economic Development, appeared on behalf of Division staff. Glenn Butler, Senior Certification Analyst, testified for staff. During the hearing, the parties identified a total of 60 exhibits, of which 48 were received into evidence (Rec. II at 1:50:35-1:50:48). Attached to this recommended order is an exhibit chart.

¹ The Division's September 13, 2018 denial determination (*see* WBE Exhibit 2) and Darr Construction's October 19, 2018 appeal (*see* WBE Exhibit 60) pre-date amendments to 5 NYCRR parts 140-145 that became effective on December 2, 2020. Accordingly, the eligibility criteria set forth under the former regulations are referenced throughout this recommended order.

The parties timely filed written closing statements via email on May 28, 2021, whereupon the record of the proceeding closed. The recording consists of four segments. The first recorded segment, from February 4, 2021 (Rec. I), is 4 hours, 32 minutes, 37 seconds (4:32:37), the second recorded segment, from the morning of February 11, 2021 (Rec. II), is 3:30:27, the third recorded segment, from the afternoon of February 11 (Rec. III), is 36:33, and the fourth recorded segment, from March 4, 2021 (Rec. IV), is 2:42:28. Attached to this recommended order is a recording index. The hearing record is cited by referring to the recording segment (Rec. I, II, III, or IV), and the time at which the relevant testimony began.

ELIGIBILITY CRITERIA

The eligibility criteria for re-certification as a woman-owned business enterprise are established by regulation (*see* former 5 NYCRR 144.2). Based on the information provided during the application process, Division staff evaluate the ownership, operation, and control of the applicant to determine whether it should be re-certified as a woman-owned business enterprise. Staff reviews the business enterprise as it existed at the time the application was filed based on representations in the application materials, as well as information filed in supplemental submissions. (*See* former 5 NYCRR 144.4[e] and 144.5[a].)

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's denial of the application filed by Darr Construction for WBE re-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 staff'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 Staff

In the September 13, 2018 denial letter (WBE Exhibit 2), Division staff determined that, with respect to ownership, Darr Construction did not meet the WBE eligibility criterion related to Maureen Cannetti's contribution to the business enterprise as required by former 5 NYCRR 144.2(a)(1). In addition, Division staff determined that the application failed to meet the WBE eligibility criterion related to how Ms. Cannetti shares in the risks and profits of the business enterprise in proportion to her ownership interest as required by former 5 NYCRR 144.2(c)(2). (*See* WBE Exhibit 2.)

With respect to operations, staff determined that the application failed to meet the WBE eligibility criterion related to Ms. Cannetti's role in the company after determining that the

woman-owner does not make decisions pertaining to the operation of the business enterprise pursuant to former 5 NYCRR 144.2(b)(1). Division staff found that Ms. Cannetti performed administrative functions within the company rather than the core business functions of Darr Construction, which are performed by non-qualifying individuals. (*See* WBE Exhibit 2.)

Finally, with respect to control, staff determined that Ms. Cannetti, as the woman relied upon for re-certification, did not demonstrate control of negotiations through the production of signed contracts (*see* former 5 NYCRR 144.2[b][3]). Michael Cannetti, who is not a majority woman-owner, signed the nine purchase orders and contracts submitted as part of Darr Construction's application for WBE re-certification. (Rec. II at 1:54:46-1:56:02; *see* WBE Exhibit 2; Division Staff's Closing at 1, 5-6.)

Darr Construction Equipment Corporation

By letter dated October 19, 2018, Richard Ziskin, Esq. (The Ziskin Law Firm, LLP [Commack, New York]), responded on behalf of Darr Construction, to Division staff's September 13, 2018, denial letter, and requested a hearing. According to Darr Construction, the Division previously certified the company as a woman-owned business enterprise over 25 years ago. Darr Construction argued that with this denial, Division staff inappropriately failed to follow precedent. Darr Construction argued further that it should be re-certified as a WBE for the following reasons. First, the company timely filed a renewal application for WBE re-certification. Second, the circumstances about the business enterprise are essentially the same as when Darr Construction obtained its initial WBE certification. (*See* WBE Exhibit 60.)

Darr Construction objected to the untimely nature of Division staff's September 13, 2018, determination. Referring to Executive Law § 314(3) and implementing regulations at 5 NYCRR 144.4(a), Darr Construction noted that Division staff must make determinations within 60 days from receipt of a complete application. Darr Construction noted further that Maureen Cannetti filed the application for WBE re-certification on November 23, 2015, and that more than 1,000 days elapsed before Division staff issued the September 13, 2018, denial letter. (*See* WBE Exhibit 60.)

With respect to the ownership criteria at issue here, Darr Construction observed that Maureen Cannetti acquired 51% ownership of the business enterprise in February 1984, which was more than four years before Executive Law Article 15-A was enacted in July 1988. Darr Construction contended that Ms. Cannetti's ownership shares were not a gift. Rather, Maureen Cannetti acquired her ownership shares in exchange for agreeing to operate and manage all of Darr Construction's business activities. According to Darr Construction, the business enterprise had negative earnings in 1982. (*See* WBE Exhibit 60; Darr Construction's Closing at 5.)

Darr Construction asserted that Division staff incorrectly interpreted its 2017 W-2 Forms that the business enterprise submitted with its application for WBE re-certification. Darr Construction asserted further that Maureen Cannetti, as the woman-owner, shares in the risks and profits of the business enterprise in proportion to her ownership interest. Darr Construction noted that many of its employees are members of Local 138 of the International Union of Operating Engineers. As a result, union members are paid at hourly rates that may exceed the

compensation of the corporate officers. (See WBE Exhibit 60; Darr Construction's Closing at 5-6.)

With respect to the operation criterion at issue here, Darr Construction argued that as president of the business enterprise, Maureen Cannetti undertakes numerous business functions, among them, making all financial decisions and banking transactions, including payroll and taxes; signing and approving all purchases, such as the purchase and financing of heavy equipment and trucks; completing and filing pre-qualification packages for bids; conferring with management about scheduling and budgeting projects; managing employees, including their hiring and firing; and negotiating insurance policies. Given these responsibilities, Darr Construction argued that Maureen Cannetti makes decision pertaining to the operations of the business enterprise as required by former 5 NYCRR 144.2(b)(1). (See WBE Exhibit 60; Darr Construction's Closing at 6-7.)

Finally, Darr Construction asserted Division staff incorrectly concluded that Ms. Cannetti did not demonstrate control of negotiations through the production of signed contracts. Darr Construction argued that Ms. Cannetti has the authority to sign construction contracts, as well as the authority to direct Michael Cannetti to sign them. In addition, Darr Construction noted that it submitted numerous other documents that Ms. Cannetti signed for the purchase of trucks and heavy construction equipment, among other things. Darr Construction noted further that Maureen Cannetti is also the signatory on financially related documents, and payment applications after Darr Construction completes its field work. (Rec. I at 03:05-07:07, 3:14:52-3:15:57; see WBE Exhibit 60; Darr Construction's Closing at 8.)

FINDINGS OF FACT

1. John Cannetti is Maureen Cannetti's spouse. John Cannetti established Darr Construction Equipment Corporation (Darr Construction) in September 1975. Currently, the business enterprise has offices located at 870 Sylvan Avenue, Bayport (Suffolk County), New York 11705. (Rec. I at 09:11-09:17; see WBE Exhibit 1.)
2. Darr Construction provides excavation contractors to clear and grade new sites for construction activities, to demolish existing structures and grade sites, to dig and install underground utilities such as sewer and water mains, and to construct stormwater management systems. (Rec. I at 10:23-10:39, 3:37:53-3:39:07; see WBE Exhibits 1 and 4.)
3. At the first meeting of the Board of Directors held in February 1984, Maureen Cannetti became the President of Darr Construction and, her brother-in-law, Michael Cannetti, became the Secretary and Treasurer (Rec. I at 48:45, 3:20:29-3:20:45; see WBE Exhibits 4 and 25).
4. Since 1989, Darr Construction has been certified as a WBE business enterprise (Rec. I at 2:34:39-2:34:54). On November 23, 2015, Maureen Cannetti filed an application with the Division to re-certify Darr Construction as a woman-owned business enterprise (Rec. I at 2:34:50-2:36:30; see WBE Exhibit 1).

5. By letter dated September 13, 2018, Division staff denied Darr Construction's application for WBE re-certification (Rec. I at 3:12:10-3:13:57; *see* WBE Exhibit 2).
6. In a letter dated October 19, 2018, The Ziskin Law Firm, LLP (Commack, New York), responded, on behalf of Darr Construction, to Division staff's September 13, 2018, denial letter, and requested an administrative appeal hearing (Rec. I at 3:14:52-3:15:57; *see* WBE Exhibit 60).

I. Ownership

7. During the February 1984 board meeting, Maureen acquired 51% of Darr Construction's shares, and Michael Cannetti received 49% of the shares. Ms. Cannetti did not contribute any money to Darr Construction when she acquired her 51% ownership interest. (*See* WBE Exhibits 4.) Based on the record of this proceeding, it is not known whether Michael Cannetti made any contribution to Darr Construction when he obtained his 49% ownership interest in the business enterprise. (Rec. I at 10:39-14:16; Rec. IV at 1:00:21-1:01:48; *see* WBE Exhibits 4 and 25.)
8. In 2017, Maureen Cannetti's Medicare wages and tips from Darr Construction totaled \$██████████. (Rec. II at 04:42-05:09; *see* WBE Exhibit 5.)
9. In 2017, John Cannetti earned \$██████████ from Darr Construction. (*See* WBE Exhibit 5.)
10. In 2017, Michael Cannetti earned \$██████████ from Darr Construction. (*See* WBE Exhibit 5.)
11. In 2017, Alan Cannetti, who is Maureen Cannetti's brother-in-law, earned \$██████████ from Darr Construction. Alan Cannetti has no ownership interest in Darr Construction. (*See* WBE Exhibit 5.)

II. Operations

12. Darr Construction's core business functions are construction activities related to excavations and installations of sewer and water mains, as well as drainage structures. Darr Construction also engages in demolition activities, as well as the removal and cleanup of the debris that results from demolition activities. (Rec. II at 1:18:35-1:20:10; Rec. IV at 06:06-10:22, 1:49:24-1:50:04; *see* WBE Exhibits 1 and 4.)
13. Since 1984, Maureen Cannetti's daily duties and responsibilities, as described in her resume, are primarily administrative functions that include financial and personnel functions, accounts payable and receivables, budget management, and purchasing. Ms. Cannetti's resume does not reflect any work experience as a heavy equipment operator. (Rec. I at 2:38:51-2:41:06, 2:48:29-2:49:07, 3:39:13-3:41:30, 3:50:55-3:56:41; *see* WBE Exhibits 4, 8, and 13.)

14. Michael Cannetti serves as the Secretary and Treasurer of the business enterprise, and is responsible for sales, estimates, personnel, and purchasing (Rec. I at 3:46:42-3:47:56; *see* WBE Exhibit 9).
15. John Cannetti serves as the General Manager for Darr Construction, and is responsible for all phases of site work, such as field coordination, scheduling, and equipment rental or purchasing (Rec. I at 3:47:56-3:49:40; *see* WBE Exhibit 10).
16. Roy Cannetti serves as a Supervisor and General Foreman for Darr Construction. He is responsible for daily communications and coordination with the property owners and their representatives. Roy Cannetti is responsible for schedules, field personnel, as well as ordering materials and equipment. (Rec. I at 3:49:40-3:50:32; *see* WBE Exhibit 11.)
17. Alan Cannetti also serves as a Supervisor and General Foreman for Darr Construction. He is responsible for daily communications and coordination with the property owners and their representatives. Alan Cannetti is responsible for schedules, field personnel, and coordinates the delivery of supplies and equipment to the work sites. Alan Cannetti is a heavy equipment operator. (*See* WBE Exhibit 12.)
18. Michael Cannetti, and the other male employees, perform and supervise all core functions of the business enterprise (Rec. II at 1:32:37-1:33:30).

III. Control

19. In response to Division staff's inquiry, Darr Construction provided copies of purchase orders and contracts (*see* WBE Exhibits 14-22, inclusive). The terms and conditions of the contracts outline the scope of work, timelines for completing substantial elements of the jobs, insurance and bonds requirements, and dispute resolution procedures, among other things. Michael Cannetti signed each and every one of these documents as Darr Construction's Vice President and Secretary.² (Rec. II at 1:34:10-1:47:33.)

DISCUSSION

I. Prior WBE Certifications

As noted above, Darr Construction argued that Division staff failed to follow precedent when determining not to re-certify the business enterprise as a WBE for the following reasons. First, Darr Construction had been previously certified for more than 20 years, and the company timely submitted a renewal application. Second, the circumstances about the business enterprise

² Based on the minutes from the February 1984 board meeting (*see* WBE Exhibit 25), Michael Cannetti serves as Darr Construction's Secretary and Treasurer. The office of Vice-President is vacant. (*See also* WBE Exhibit 9.) However, Michael Cannetti used the title "Vice-President and Secretary" when he signed the documents identified as WBE Exhibits 15, 16, 17, 18, 19, and 20.

have remained essentially the same since Darr Construction obtained the initial WBE certification in 1989. (See WBE Exhibit 60.)

Division staff acknowledged that Darr Construction was previously certified as a woman-owned business enterprise. Staff argued, however, that it is not bound to re-certify a previously certified business enterprise if the Division's prior determinations were made in error. Division staff argued that based on the renewal application and supplemental materials, staff correctly determined that Darr Construction was not eligible for re-certification as a WBE. (See Division Staff's Closing at 5.)

The Division is correct that it is not obligated to re-certify Darr Construction as a WBE based on prior determinations for the following reasons. First, pursuant to Executive Law § 314(5), a WBE certification is effective for three years. Therefore, business enterprises must periodically re-apply to extend the certification, as Darr Construction did here. During the re-certification process, Darr Construction has the burden to demonstrate that it complies with the eligibility criteria outlined at 5 NYCRR 144.2.³ Second, it is well settled that the doctrine of equitable estoppel cannot be invoked against a governmental agency in the exercise of its governmental function.⁴

Based on the referenced case law, Darr Construction's arguments related to its prior WBE certifications are without merit. Therefore, I conclude that within the context of this renewal application for WBE re-certification, Division staff may properly consider the woman-owner's compliance with the eligibility criteria outlined at former 5 NYCRR 144.2. Applicant's compliance with the eligibility criteria specifically identified in Division staff's September 13, 2018, denial letter are at issue in this proceeding, and are addressed below.

II. Ownership

The Division interprets former 5 NYCRR 144.2(a)(1) to require an applicant to demonstrate that the woman-owner's contribution came from assets belonging solely to the woman-owner. For long-established business enterprises that seek WBE re-certification, the Division requires applicants to demonstrate that the woman-owners made contributions of

³ See *Matter of Coverco, Inc.*, Recommended Order, dated January 23, 2017, at 7-8; Final Order 17-06, dated January 30, 2017; *aff'd Matter of Converco, Inc. v New York State Dept. of Economic Dev.*, 159 AD3d 1538, 1539 (2018).

⁴ See e.g. *Matter of Daleview Nursing Home v Axelrod*, 62 NY2d 30, 33 [1984]; *Matter of Parkview Assoc. v City of New York*, 71 NY2d 274, 282 [1988] [State could correct and retroactively reduce nursing home reimbursement rates which had been calculated in error]; *Matter of Dear v New York State & Local Retirement Sys.*, 115 AD3d 1141, 1143 [2014], lv denied 23 NY3d 905 [2014]; *Matter of Atlantic States Legal Found., Inc. v New York State Dept. of Env'tl. Conservation*, 119 AD3d 1172, 1173 [2014]).

money, property, equipment, or expertise in proportion to their ownership interest.⁵ (Rec. IV at 1:01:27-1:02:19, 1:59:33-2:00:56.) The Division consistently denies applications for WBE certification where, as here, an applicant fails to substantiate the source of the capital contributions by the woman-owner consistent with this eligibility criterion.

After reviewing Darr Construction's application for re-certification, Division staff requested additional information on July 27, 2018. Among other things, Division staff inquired how the business enterprise was established, and what was Maureen Cannetti's contribution of money, property, equipment, or expertise to the business enterprise. (See WBE Exhibit 1.) On August 17, 2018, Ms. Cannetti provided a response, which is summarized below (Rec. I at 3:25:08-3:28:17; see WBE Exhibit 4).

The response states that Maureen Cannetti's husband, John Cannetti, established Darr Construction in September 1975. Then, as now, the company provides excavation contractors to clear and grade new sites for construction activities, to demolish existing structures and grade sites, to dig and install underground utilities such as sewer and water mains, and to construct stormwater management systems. John Cannetti operates the equipment for these construction activities. Initially, Maureen Cannetti performed all of the office duties required to operate the business enterprise. (See WBE Exhibit 4.)

The response continues that in 1982, John Cannetti continued to do the field work. However, the business enterprise was not profitable. John Cannetti asked Maureen Cannetti to undertake all the clerical and financial aspects of the business in order to return Darr Construction to profitability. Maureen Cannetti took on the business duties related to banking and other financial responsibilities, such as taxes and insurance, as well as purchasing equipment. (See WBE Exhibit 4.)

The response states further that at a board meeting held in February 1984, Maureen Cannetti became the President of Darr Construction, and took over all management responsibilities. Maureen Cannetti acquired 51% ownership interest in Darr Construction. As an incentive to join the business enterprise, Ms. Cannetti, offered her brother-in-law, Michael Cannetti, a 49% ownership interest in Darr Construction. Michael Cannetti accepted, and became the Secretary and Treasurer. Ms. Cannetti hired Michael Cannetti as an estimator to assist her with bidding and acquiring jobs. John Cannetti continued to do all construction-related activities in the field. (See WBE Exhibits 4 and 24.) The August 2018 response concludes with the following statement:

There was never an actual transaction of monies from me into the business. However, my diligent, professional involvement in Darr Construction since 1975, along with my ownership since 1984 more than justifies my equity interest. (WBE Exhibit 4.)

⁵ See e.g. *Matter of Beam Mack Sales & Service, Inc.*, Recommended Order dated March 9, 2017, at 9-11, Final Order 16-55, dated November 1, 2016; *Matter of Coverco, Inc.*, Recommended Order, at 11-12, *affd Coverco.*, 159 AD 3d 1538.

Consistent with the August 2018 response to Division staff's inquiry, Maureen Cannetti testified at the hearing that Darr Construction was not profitable from 1982 to 1984, that her shares of Darr Construction were not a gift, and that the value of the shares in the business enterprise was zero dollars. (Rec. I at 10:39-14:16; *see also* Darr Construction's Closing at 24.)

The absence of profits does not mean that the shares in the business enterprise had no value. Rather, Darr Construction owned equipment, and the value of the equipment, as well as any other assets of the business enterprise, extended to the value of the company's shares. In addition, Darr Construction offered no documentary evidence either as part of the application materials for WBE re-certification, or during the administrative appeal hearing to corroborate Ms. Cannetti's testimony about the financial status of the business enterprise from 1982-1984.

The eligibility criterion outlined at former 5 NYCRR 144.2(a)(1) provides for a consideration of the woman-owner's contribution of expertise. However, to establish whether an owner's contribution of expertise to the business enterprise is proportionate to her equity interest, an applicant must provide evidence of the value of the woman-owner's contributions.⁶ Maureen Cannetti did not do that here; she did not quantify her contribution of expertise to the business enterprise. Although Ms. Cannetti may have applied a keen business acumen to return the company to profitability, Ms. Cannetti did not demonstrate that she contributed any expertise to the core functions of the business enterprise when she acquired 51% of the shares in 1984. (Rec. I at 10:39-14:16; Rec. IV 1:00:21-1:01:48; *see* WBE Exhibits 4 and 25.)

Therefore, I conclude that Maureen Cannetti did not demonstrate that her contribution of money, property, equipment, or expertise was proportionate to her equity interest in the business enterprise, as required by former 5 NYCRR 144.2(a)(1). I recommend that the Director affirm Division staff's determination about Darr Construction's lack of compliance with the eligibility criterion.

Former 5 NYCRR 144.2(c)(2) requires that the woman-owner must enjoy the customary incidents of ownership, and must share in the risks and profits in proportion to her ownership interest in the business enterprise. This provision ensures that the woman owner receives the benefits that accrue to a business as a result of State contracting preferences from a WBE certification, and that non-qualifying persons do not receive a disproportionate share of such benefits. In *Matter of C.W. Brown, Inc. v Canton* (216 AD2d 841, 843 [3d Dept 1995]), the Court held that staff's review of tax returns, such as those considered during the review of Darr Construction's application for WBE re-certification, was substantial evidence to support the Division's consideration whether a woman-owned business enterprise meets the eligibility criterion at former 5 NYCRR 144.2(c)(2).

With respect to this eligibility criterion, Division staff reviewed the 2017 W-2 forms for Darr Constructions' owners and employees. In 2017, Maureen Cannetti's Medicare wages and

⁶ *See Matter of JVR Electric, Inc.*, dated August 31, 2016, at 5, Final Order 16-43, dated September 9, 2016.

tips totaled \$ [REDACTED].⁷ John Cannetti earned \$ [REDACTED]. Michael Cannetti earned \$ [REDACTED] from Darr Construction. Alan Cannetti, who is Maureen Cannetti's brother-in-law, earned \$ [REDACTED]. Alan Cannetti has no ownership interest in Darr Construction. (Rec. I at 2:12:36-2:23:45, 3:28:17; *see* WBE Exhibit 5.)

Division staff initially determined, however, that Maureen Cannetti did not demonstrate compliance with the eligibility criterion outlined at former 5 NYCRR 144.2(c) for the following reasons. First, staff argued that Alan Cannetti's compensation in 2017 exceeded Maureen Cannetti's. Staff acknowledged that Alan Cannetti does not have an ownership interest in the business enterprise, however. (*See* Division Staff's Closing at 8). Second, although staff acknowledged that Maureen Cannetti's compensation in 2017 exceeded Michael Cannetti's, the difference in earned compensation between the owners is \$ [REDACTED]. According to staff, the difference is not significant because it is not proportional to the ownership interests of the two owners. (*See* Division Staff's Closing at 8-9.)

Finally, with the application for WBE re-certification, Darr Construction provided a lease effective May 1, 2004. The lease shows that Darr Construction rented its premises from CB Realty Group, LLC, for \$ [REDACTED] per month in 2004, \$ [REDACTED] per month for the second year, and \$ [REDACTED] per month for years three through ten. Michael Cannetti signed the lease as a Member of CB Realty Group, LLC, and Maureen Cannetti signed the lease as President of Darr Construction. The original lease was modified on April 28, 2014, and extended the lease from May 1, 2014 through April 30, 2024. During this period, the monthly rent will be \$ [REDACTED] per month. (Rec I at 1:13:45-1:37:49, 3:33:58-3:37:38; *see* WBE Exhibit 6.)

Based on the lease, and the subsequent modification and extension, Division staff argued that Michael Cannetti, as a member of CB Realty Group, LLC, would have received additional compensation in the form of rent payments to him when Darr Construction paid its rent to the CB Realty Group (Rec. I at 2:31:31-2:33:46, 3:32:55-3:33:58; Rec. IV at 2:00:56-2:01:42; *see* WBE Exhibit 7). Maureen Cannetti, however, is not identified as a member of CB Realty Group, LLC, in the application materials for WBE re-certification. Therefore, staff concluded that for 2017, Michael Cannetti's additional compensation as a member of CB Realty Group, LLC, would have exceeded Maureen Cannetti's compensation, absent a showing that Ms. Cannetti is also a member of CB Realty Group, LLC. (*See* Division Staff's Closing at 9.)

Staff's arguments are without merit for the following reasons. First Alan Cannetti's compensation is not relevant to determining compliance with the eligibility criterion outlined at former 6 NYCRR 144.2(c). This eligibility criterion applies to owners and, consistent with the requirement, the woman-owners must demonstrate how they share in the risks and profits in

⁷ Prior to Division staff's September 13, 2018, determination, Division staff reviewed and compared "wages, tips and other compensation," which are reported in Box 1 on the 2017 W-2 forms for Darr Construction's employees (*see* WBE Exhibit 5). During the hearing, Maureen Cannetti explained that she has earnings deducted from her gross pay, and deposited into her 401K account. (Rec I at 2:12:36-2:23:45, 3:31:40-3:32:17; Rec. II at 04:42-05:09; Rec. IV at 1:28:51-1:29:48.)

proportion to the other owners. Alan Cannetti, however, is not an owner of the business enterprise.

Contrary to Division staff's contention, I am not persuaded that the difference in earned compensation between the owners, Maureen Cannetti and Michael Cannetti, is insignificant. As noted above, Maureen Cannetti's compensation in 2017 from Darr Construction exceeded Michael Cannetti's by \$[REDACTED]. At the hearing and in the closing statement, Division staff did not quantify what the corporate officers' compensation should have been based on the 51% to 49% ownership distribution between them.

Finally, I reject, as speculative, Division staff's argument concerning the additional compensation that Michael Cannetti may have received in the form of lease payments made by Darr Construction to CB Realty Group, LLC. The lease (*see* WBE Exhibit 6) is the only evidence in the record of this proceeding which demonstrates that Michael Cannetti is a member of CB Realty Group, LLC. In the absence of any additional evidence, the identity of any other members of CB Realty Group, LLC, is unknown, and cannot be reasonably inferred.

Therefore, Darr Construction's application materials for WBE re-certification demonstrate that in 2017, Maureen Cannetti's compensation from Darr Construction was \$[REDACTED] greater than that received by Michael Cannetti (*see* WBE Exhibit 5). Given Maureen Cannetti's 51% ownership interest in the business enterprise, I conclude that she shares in the risks and profits in proportion to her ownership interest in the business enterprise, as required by former 5 NYCRR 144.2(c)(2). Accordingly, the Director should conclude the same, and reverse staff's determination with respect to this eligibility criterion.

III. Operations

Former 5 NYCRR 144.2(b)(1) requires that "[d]ecisions pertaining to the operations of the business enterprise must be made by minority group members or women claiming ownership of that business enterprise." To evaluate compliance with this eligibility criterion, Division staff reviewed Section 5 of the application to identify the significant business operations (*see* WBE Exhibit 1). Significant business operations, or core functions, generate revenue for the business enterprise, and are unique to the industry compared to administrative functions, such as personnel and payroll management, and accounting, which are common to most businesses.⁸

Section 5.A of Darr Construction's application for WBE re-certification states that it provides services related to excavation, instillation of sewer and water mains, as well as drainage structures, and demolition. Section 5.B describes the enterprise's business operations, or core functions, as "construction related." In the application for WBE re-certification, Darr Construction lists the following North American Industry Classification System (NAICS) Numbers: 238910 (excavation contractors), 237110 (sewer main, pipe and connection,

⁸ *See Matter of J.C. Smith, Inc. v New York State Dept. of Economic Dev.*, 163 AD 3d 1517, 1519 *lv denied* 32 NY 3d 1191 (2019) (it is not irrational or unreasonable for the Division to require that a woman-owner must exercise independent operational control over core functions of the business in order to establish the requisite control for WBE certification).

construction), 237110 (utility line [*i.e.*, sewer and water] construction), 237990 (drainage project construction), and 238910 (demolition contractors). (Rec. II at 1:20:26-1:23:06; *see* WBE Exhibit 1.)

Based on the application materials, Division staff said that a business enterprise's core functions generate income, and include securing business, as well as performing the actual work or providing specified services associated with the enterprise. With respect to Darr Construction, the core business functions are preparing bids, securing contracts, excavations, as well as the construction activities identified in the preceding paragraph. (Rec. II at 1:18:35-1:20:10; Rec IV at 06:06-10:22, 1:49:24-1:50:04; *see* WBE Exhibits 4 and 25.)

In response to staff's July 27, 2018, request for information, Ms. Cannetti provided a copy of her resume that included a description of her daily duties and responsibilities at Darr Construction (*see* WBE Exhibit 8), as well as copies of the resumes of Michael Cannetti, John Cannetti, Roy Cannetti, and Alan Cannetti. These also include descriptions of the respective daily duties and responsibilities for these individuals (*see* WBE Exhibits 9, 10, 11, and 12).

Based on her resume, Maureen Cannetti's daily duties and responsibilities are primarily administrative functions that include financial and personnel functions, accounts payable and receivables, budget management, and purchasing (Rec. II at 14:06-16:58, 1:25:50-1:28:40; *see* WBE Exhibits 8 and 13.) Division staff observed that the work experiences outlined on Ms. Cannetti's resume are limited to administrative duties and financial work (Rec. III at 10:15-10:24).

In contrast, Michael Cannetti's description of his duties and responsibilities in his resume show that, as the Secretary and Treasurer of the business enterprise, he is responsible for sales, estimates, personnel, and purchasing (Rec. II at 17:14-17:40, 1:29:04-1:30:30; Rec. IV at 2:06:50-2:07:09; *see* WBE Exhibits 9 and 13). As outlined in his resume, John Cannetti serves as the General Manager for Darr Construction, and is responsible for all phases of site work, such as field coordination, scheduling, and equipment rental or purchasing (Rec. II at 1:30:30-1:32:31; *see* WBE Exhibit 10).

Roy Cannetti serves as a Supervisor and General Foreman for Darr Construction. He is responsible for daily communications and coordination with the property owners and their representatives. Also, Roy Cannetti is responsible for schedules, field personnel, as well as ordering materials and equipment. (*See* WBE Exhibit 11.)

Alan Cannetti also serves as a Supervisor and General Foreman for Darr Construction. He is responsible for daily communications and coordination with the property owners and their representatives. Also, Alan Cannetti is responsible for schedules, field personnel, and coordinates the delivery of supplies and equipment to the work sites. Alan Cannetti is a heavy equipment operator. (*See* WBE Exhibit 12.)

Darr Construction contended that since Maureen Cannetti became president, the business enterprise has grown significantly. According to Darr Construction, it now employs project managers, superintendents, estimators, mechanics, clerks to review accounts payable and

receivable, foreman, laborers and operating engineers. Darr Construction notes that such departments did not exist in 1982, some of which now contribute significantly to the success of the business enterprise. (*See* Darr Construction's Closing at 12-13.)

With respect to scheduling field operations, Darr Construction contended that Maureen Cannetti was initially responsible. However, as business operations expanded, Ms. Cannetti has delegated those responsibilities to other employees. (*See* Darr Construction's Closing at 3.)

In addition, Darr Construction asserted that reviewing project estimates requires substantial knowledge of construction equipment, labor, and materials. According to Darr Construction, Ms. Cannetti reviews each project estimate, but she must rely on estimators, project managers, and other employees to inform the decision-making process. Because any material error associated with the bid preparations and estimates would result in adverse financial impacts, Ms. Cannetti must conduct a thorough review of all project estimates and bids. (*See* Darr Construction's Closing at 13.) However, these assertions are inconsistent with the initial argument presented in Darr Construction's October 19, 2018, response where applicant argued that the business enterprise has remained essentially unchanged since the initial WBE certification (*cf.* WBE Exhibit 60).

During the hearing, Maureen Cannetti credibly testified that she can operate heavy equipment, but does not do so now (Rec. I at 19:16-19:33). As noted above, operating heavy equipment is related to the core business functions and would be relevant to the operations criteria at issue here. However, the application materials for the WBE re-certification do not include any documentation about Ms. Cannetti's ability to operate heavy equipment (Rec. IV at 1:49:03-1:49:31). Because this information was not before Division staff prior to the September 13, 2018, determination, it cannot be considered in this administrative appeal.

The resumes of Maureen Cannetti and Darr Construction's employees, which Division staff considered during the review of the application for WBE re-certification, demonstrate that Michael Cannetti, and the other male employees, perform and supervise all core functions of the business enterprise. Their work experiences show they are engaged in excavation and construction activities (Rec. III at 10:48-10:57). Based on the foregoing, I conclude that Maureen Cannetti, as the woman-owner of Darr Construction does not make decisions pertaining to the operations of the business enterprise, as required by former 5 NYCRR 144.2(b)(1) (*see J.C. Smith*, 163 AD 3d at 1520). Accordingly, I recommend that the Director affirm Division staff's determination with respect to this eligibility criterion.

IV. Control

The WBE re-certification eligibility criteria require, among other things, that women owners demonstrate control of negotiations through the production of signed contracts (*see* former 5 NYCRR 144.2[b][3]). To determine whether Maureen Cannetti exercises the appropriate control over the business enterprise with respect to negotiations, Division staff requested copies of the three signed contract agreements that Darr Construction completed in 2017. In response, Ms. Cannetti submitted nine documents. With respect to the contracts and purchase orders provided in response to staff's inquiry (*see* WBE Exhibits 15-20), Michael

Cannetti signed each and every one of them as Vice-President and Secretary of Darr Construction.⁹

WBE Exhibit 14 is a copy of Purchase Order 1624-17-66, dated May 16, 2017 to Commander Electric totaling \$[REDACTED]. Michael Cannetti signed this purchase order. (See WBE Exhibit 14.)

WBE Exhibit 15 is a copy of a subcontract between Darr Construction and EB Construction Group, LLC, executed on August 10, 2016 (Job Number WB-15002-000). The subcontract sum is \$[REDACTED], and Michael Cannetti signed the subcontract. Mr. Cannetti's initials (MC) appear throughout the document, which reflect subsequent edits and additions to the terms and conditions of the agreement. (Rec. I at 3:56:58-4:03:38; see WBE Exhibit 15.)

WBE Exhibit 16 is a copy of an American Institute of Architects (AIA) standard form agreement between Darr Construction and Feil Business Center Associates, LLC, for a sewer system upgrade in Great River, New York. The agreement is dated April 16, 2015, and Michael Cannetti signed as Darr Construction's Vice-President and Secretary. Throughout the agreement and appended documents, Mr. Cannetti's initials (MC) appear, which reflect subsequent edits and additions to the terms and conditions of the agreement and related documents that he approved. (Rec. I at 4:03:08-4:10:49; see WBE Exhibit 16.)

WBE Exhibit 17 is a copy of Letter of Transmittal dated June 8, 2015 from J. Petrocelli Contracting, Inc. to Michael Cannetti that includes a copy of the contract between Darr Construction and J. Petrocelli Contracting, Inc. for a project located in Farmingdale, New York. The contract is dated June 2, 2015, and Michael Cannetti signed as Darr Construction's Vice-President and Secretary. Throughout the agreement and appended documents, Mr. Cannetti's initials (MC) appear, which reflect subsequent edits and additions to the terms and conditions of the agreement and related documents that he approved. (Rec. I at 4:11:00-4:12:55; see WBE Exhibit 17.)

WBE Exhibit 18 is a copy of an AIA standard form agreement between Darr Construction, as a subcontractor, and March Associated Construction, Inc. for the Costco project in Oceanside, New York. The agreement is dated April 17, 2015, and Michael Cannetti signed as Darr Construction's Vice-President and Secretary. Throughout the agreement and appended documents, Mr. Cannetti's initials (MC) appear, which reflect subsequent edits and additions to the terms and conditions of the agreement and related documents that he approved. (Rec. I at 4:13:55-4:16:32; see WBE Exhibit 18.)

WBE Exhibit 19 is a copy of Contract No. 1558-20 between Darr Construction and TRITEC Building Company, Inc, for a project located in Patchogue, New York. On June 4, 2014, Michael Cannetti signed the contract as Darr Construction's Vice-President and Secretary. Throughout the contract and appended documents, Mr. Cannetti's initials (MC) appear, which reflect subsequent edits and additions to the terms and conditions of the contract and related documents that he approved. (Rec. I at 4:16:36-4:18:44; see WBE Exhibit 19.)

⁹ See note 2, *supra*.

WBE Exhibit 20 is a copy of cover letter dated July 1, 2013 from Shawn Kachnowski, Project Manager, at The Whiting-Turner Contracting Company to Michael Cannetti at Darr Construction. Enclosed is a copy of the subcontract for a Target store located in Sayville, New York. On June 25, 2013, Michael Cannetti signed the contract as Darr Construction's Vice-President and Secretary. (Rec. I at 4:18:44-4:23:48; *see* WBE Exhibit 20.)

WBE Exhibit 21 is a copy of Purchase Order 1624-17-71, dated May 16, 2017 to M. Cary Markings, Inc. totaling \$[REDACTED]. Michael Cannetti signed this purchase order. (Rec. I at 4:23:51-4:24:59; *see* WBE Exhibit 21.)

WBE Exhibit 22 is a copy of Purchase Order 1461-09, dated January 23, 2015 to Antonino Sewer and Drain, Inc. to use a clam shell crane with an operator and helper at a daily rate of \$[REDACTED]. Michael Cannetti signed this purchase order. (Rec. I at 4:24:59-4:26:04; *see* WBE Exhibit 22.)

Division staff considers business activities associated with contract negotiations to be a core function (Rec. III at 07:49-08:03). After reviewing the copies of the contracts provided by Darr Construction (*i.e.*, MWB Exhibits 14 through 22, inclusive), which Michael Cannetti signed and initialed throughout, Division staff determined that Maureen Cannetti, as the woman-owner, does not actively engage in this core business function on behalf of Darr Construction, and reasonably concluded that Ms. Cannetti does not meet the eligibility requirement at former 5 NYCRR 144.2(b)(3).

During the hearing, Maureen Cannetti testified that she has authority to sign construction contracts,¹⁰ as well as the authority to direct Michael Cannetti to sign them (Rec. I at 1:41:49-1:41:59; 1:45:35-1:47:23; Rec. II at 21:00-22:05, 23:27-24:07, 25:46-25:56, 28:44-29:09, 30:30-31:39, 32:55-33:23). During her testimony, Maureen Cannetti did not identify anything in the application materials for WBE re-certification to show that she has authorized Michael Cannetti to sign contracts, on behalf of Darr Construction, after Ms. Cannetti has reviewed and approved them.

As previously discussed, negotiating and executing contracts are related to the core business functions. Who performs this core function for the business enterprise is relevant to determining compliance with the control criterion outlined at former 5 NYCRR 144.2(b)(3). Darr Construction's application materials for WBE re-certification, which are identified in the hearing record, demonstrate that Michael Cannetti negotiates and executes contracts on behalf of Darr Construction. WBE Exhibit 39, which is a copy of the contract executed by Maureen

¹⁰ *See e.g.* WBE Exhibit 39. This exhibit is a copy of a contract dated May 19, 2014 between Darr Construction and J. Petrocelli Contracting, Inc., for the Stop & Shop expansion located in Merrick, New York. Maureen Cannetti signed as Darr Construction's President. Throughout the agreement and appended documents, Maureen Cannetti's initials (MC) appear, which reflect subsequent edits and additions to the terms and conditions of the agreement and related documents, which she approved. (Rec. I at 1:39:07-1:42:44; Rec. II at 3:12:44-3:16:18; Rec. IV at 17:52-19:42.)

Cannetti, is the only example in the hearing record compared to the nine other contracts and purchase orders that Michael Cannetti signed.

Darr Construction also identified additional documents submitted with the application for WBE re-certification that Maureen Cannetti signed. For example, Ms. Cannetti signed contracts to purchase trucks and other equipment for the business enterprise (Rec. at I 19:47-30:00, 33:28-36:30; *see* WBE Exhibits 38, 42, 44, and 45), and the lease agreement, discussed above (*see* WBE 6). Maureen Cannetti is also the signatory on Darr Construction's banking documents, loan documents, lines of credit, and special hauling permits (Rec. I at 30:03-33:28, 1:48:34-1:56:39; *see* WBE Exhibits 37, 40, and 41.) Finally, Ms. Cannetti credibly testified that she signs the payment applications to certify that Darr Construction duly completed the work outlined in the contract documents. Darr Construction files the payment applications with the owner for each job to receive payment (Rec. I at 4:26:13-4:28:52; *see* WBE Exhibit 23).

Division staff argued, however, that these documents (*i.e.*, WBE Exhibits 37, 38, 40, 41, 42, 44, and 45) are generally associated with the administrative functions of running a business enterprise, and do not relate to the core business functions (Rec. III at 07:36-07:49). Staff argued further that dividing these responsibilities between Maureen Cannetti and Michael Cannetti reflects the family nature of this business, which does not meet the eligibility requirements for WBE certification. (*See* Division Staff's Closing at 12).

I agree. I find that upon review of the record developed during this administrative appeal hearing that Michael Cannetti, as a corporate officer, exercises a high level of control over Darr Construction's core business functions with respect to contract negotiations. I, therefore, conclude that Darr Construction is more in the nature of a family-owned business enterprise where Maureen and Michael Cannetti share control such that Maureen Cannetti cannot be considered to exert independent control as required by the regulations.¹¹

Based on the record developed during the administrative appeal hearing, Division staff's conclusions and factual determinations with respect to this eligibility criterion are reasonable and plausible. Accordingly, I conclude that Darr Construction failed to rebut staff's conclusions with respect to the eligibility criterion outlined at former 5 NYCRR 144.2(b)(1). I recommend that the Director affirm staff's determination with respect to this eligibility criterion.

CONCLUSIONS

1. With respect to the ownership criterion at former 5 NYCRR 144.2(a)(1), Darr Construction did not meet its burden to show that Division staff's September 13, 2018, determination to deny the application for WBE re-certification is not based on substantial evidence.

¹¹ *See Matter of Panko Electrical and Maintenance, Inc.*, Recommended Order dated August 17, 2017, at 5, Final Order 17-49 dated September 5, 2017; *affd Matter of Panko Elec. & Maintenance Corp. v Zapata*, 172 AD 3d 1682, 1683-1684 (2019).

2. With respect to the ownership criterion at former 5 NYCRR 144.2(c)(2), which requires the woman-owner to share in the risks and profits in proportion to her ownership interest in the business enterprise, I conclude that Darr Construction did meet its burden.
3. With respect to the operational criterion at former 5 NYCRR 144.2(b)(1), Darr Construction did not meet its burden to show that Division staff's September 13, 2018, determination to deny the application for WBE re-certification is not based on substantial evidence.
4. With respect to demonstrating control of negotiations, as required by former 5 NYCRR 144.2(b)(2), Darr Construction did not meet its burden to show that Division staff's September 13, 2018, determination to deny the application for WBE re-certification is not based on substantial evidence.

RECOMMENDATION

Division staff's September 13, 2018, determination to deny Darr Construction's application for re-certification as a woman-owned business enterprise should be affirmed, in part, and reversed, in part, for the reasons stated in this recommended order.

Attachments: Exhibit Chart
Recording Index

Exhibit Chart
Matter of Darr Construction Equipment Corporation
MWBE File No. 1375

Adjudicatory Appeal Hearing dates: February 4, 2021
February 11, 2021
March 4, 2021

WBE Exhibit Number	Applicant's Exhibits	Bates Nos.	Division's Exhibits	Bates Nos.	Description	Status
1	41	1013-1020	1	001-013	Recertification Application filed on November 23, 2015	Received
2	47	1030-1033	2	014-018	Division's denial letter dated September 13, 2018	Received
3	49	1036-1038	3	019-022	Division's Notice of Hearing dated January 20, 2021	Received
4	44	1025	4	023-024	Narrative of History and Contribution July 30, 2018 Response to WBE Questions 2 and 3	Received
5	35	875-901	5	025-052	2017 W-2's Darr Construction	Received
6	17	470-513	6	053-097	2014 Darr Construction Office Lease Signed by Maureen Cannetti	Received

WBE Exhibit Number	Applicant's Exhibits	Bates Nos.	Division's Exhibits	Bates Nos.	Description	Status
7	40	1011-1012	7	098-100	Darr Construction Rent Checks to CB RealtyGroup, LLC	Received
8			8	101-102	Resume of Maureen Cannetti	Received
9			9	103-104	Resume of Michael Cannetti	Received
10			10	105-106	Resume of John Cannetti	Received
11			11	107-108	Resume of Roy Cannetti	Received
12			12	109-110	Resume of Alan Cannetti	Received
13	43	1024	13	111-112	Narrative of Responsibilities July 30, 2018 Response to WBE Question 1	Received
14			14	113-114	Purchase Order for Commander Electric	Received
15			15	115-158	EB Construction Agreement	Received
16	23	641-688	16	159-207	Fell Business Associates Agreement (Sunrise Business Center)	Received
17	22	609-640	17	208-240	J. Petrocelli Contract	Received

WBE Exhibit Number	Applicant's Exhibits	Bates Nos.	Division's Exhibits	Bates Nos.	Description	Status
18	21	545-576 duplicate 577-608	18	241-305	March Associates Construction Agreement (Costco)	Received
19			19	306-350	Tritec Contract	Received
20	15	459-467	20	351-360	Whiting Turner Construction Contract (Sayville Target)	Received
21			21	361-362	M. Cary Markings Purchase Order	Received
22			22	363-364	Antonino Sewer and Drain Purchase Order	Received
23			23	365-384	Payment Applications	Received
24	1	001-002			1975 Darr Minutes - Organization Meeting	ID only
25	2	003-007			1984 Darr Minutes of First Meeting with Shareholder Certificates	Received
26	3	008-062			2012 Corporate Tax Return	Received
27	4	063-123			2013 Corporate Tax Return	Received

WBE Exhibit Number	Applicant's Exhibits	Bates Nos.	Division's Exhibits	Bates Nos.	Description	Status
28	5	124-152			2013 Personal Income Tax Return for John and Maureen Cannetti	Received
29	6	153-203			2014 Corporate Tax Return	Received
30	7	204-247			2014 Joint Personal Income Tax Return for John and Maureen Cannetti	Received
31	8	248-273			2014 Financial Statement for Darr Construction	Received
32	9	274-280			2015 Personal Net Worth	Received
33	10	281-306			2015 Interim 6-month Financial Statement	ID only
34	11	307-376			2017 Corporate Tax Return	Received
35	12	377-402			2017 Financial Statement for Darr Construction	ID only
36	13	403-456			2017 Joint Personal Tax Return for John and Maureen Cannetti	ID only
37	14	457-458			2013 Ford Credit signed by Maureen Cannetti	Received

WBE Exhibit Number	Applicant's Exhibits	Bates Nos.	Division's Exhibits	Bates Nos.	Description	Status
38	16	468-469			2014 Caterpillar signed by Maureen Cannetti	Received
39	18	514-529			2014 Merrick Stop 'n Shop signed by Maureen Cannetti	Received
40	19	530-533			2014 Signature Financial signed by Maureen Cannetti	Received
41	20	534-544			Special Hauling Permit signed by Maureen Cannetti	Received
42	24	689-691			2017 HO Penn Sales Contract signed by Maureen Cannetti (WBE Loans 20172)	Received
43	25	692-708			Line of Credit for Darr signed by Maureen Cannetti (WBE NYCB Loc 2017-7.18)	ID only
44	26	709-710			2018 HO Penn Sales Contract signed by Maureen Cannetti (WBE Loans 20163)	Received
45	27	711-712			Ford Credit Loan dated March 28, 2016, signed by Maureen Cannetti	Received
46	28	713-744			2015 Payroll Quarter 1	Received

WBE Exhibit Number	Applicant's Exhibits	Bates Nos.	Division's Exhibits	Bates Nos.	Description	Status
47	29	745-764			2015 Payroll Quarter 2	ID only
48	30	765-769			2015 Payroll Quarter 3	ID only
49	31	770-793			2017 Federal 941 First Quarter	ID only
50	32	794-822			2017 Federal 941 Second Quarter	ID only
51	33	823-849			2017 Federal 941 Third Quarter	ID only
52	34	850-874			2017 Federal 941 Fourth Quarter	Received
53	36	902			August 10, 2018 List of Darr Employees	ID only
54	37	903-925			2015 Invoiced Payments Received	ID only
55	38	926-1004			2015 Vendor Management Detail	ID only
56	39	1005-1010			2015-2017 Vehicle Registration	Received
57	42	1021-1023			2015 WBE Recertification Affidavit	Received
58	45	1026-1027			January 19, 2016 Status Email from Gwendolyn Brunson	Received

WBE Exhibit Number	Applicant's Exhibits	Bates Nos.	Division's Exhibits	Bates Nos.	Description	Status
59	46	1028-1029			February 7, 2017 Recertification Status Email	Received
60	48	1034-1035			Darr's Request for Hearing dated October 19, 2018	Received

Division of Minority and Women's Business Development

Recording Index
Matter of Darr Construction Equipment Corporation
NYS File No. 1375

Hearing Dates: February 4, 2021
 February 11, 2021
 March 4, 2021

February 4	Recording I		
	4:32:37	Applicant's Opening Statement	03:05-07:07
		Direct of M. Cannetti	08:10-3:16:09
		Cross of M. Cannetti	3:18:26-4:28:52
February 11	Recording II	Re-Direct of M. Cannetti	02:49-42:41
(morning)	3:30:27	Re-Cross of M. Cannetti	43:04-45:32
		Division Staff's Opening Statement	46:00
		Direct of G. Butler	46:27-1:56:02
		Cross of G. Butler	1:56:16-3:28:10
February 11	Recording III		
(afternoon)	0:36:33	Cross of G. Butler (con't.)	01:20-28:24
March 4	Recording IV	Cross of G. Butler (con't.)	05:05-1:47:54
	2:41:28		
		Re-Direct of G. Butler	1:48:09-2:14:31
		Re-Cross of G. Butler	2:14:46-2:33:46