



New York State
Department of Economic Development
Division of Minority and Women's
Business Development

In the matter of the appeal of

EIA Datacom, Inc.

FINAL ORDER 23-09

From a denial of certification as a Minority-owned Business Enterprise pursuant to Executive Law Article 15-A.

This order arises from an administrative appeal brought on behalf of EIA Datacom, Inc. (“EIA” or “Appellant”) pursuant to section 144.2 of title 5 of the New York Codes, Rules and Regulations.¹ Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated November 12, 2020, to deny EIA’s December 8, 2017 certification application as a Minority-owned Business Enterprise (“MBE”).

Applicant submitted a written appeal, dated March 26, 2021. The Division submitted its response to the appeal, dated May 19, 2023, together with the affidavit of Glenn Butler, Associate Certification Director, dated May 26, 2023, on May 31, 2023. Administrative Law Judge (“ALJ”) David Murad presided over the appeal. The issues on appeal was whether the minority owners relied upon for certification (1) made a capital contribution to the business enterprise in proportion to their equity interest demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR § 144.2(a)(1); (2) shared in the risks and profits in proportion to their ownership interest in the business enterprise, as required by 5 NYCRR § 144.2(c)(2); (3) made decisions pertaining to the operation of the business enterprise, as required by 5 NYCRR § 144.2(b)(1); (4) demonstrated adequate managerial experience or technical competence, and working knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR § 144.2(b)(1)(i) and 144.2(b)(1)(ii); and (5) devoted time on an ongoing basis to the daily operation of the business enterprise, as required by 5 NYCRR § 144.2(b)(1)(iii).

¹ The Division’s November 12, 2020 denial determination pre-dates the December 2, 2020 amendments made to 5 NYCRR Parts 140 et al. Accordingly, the eligibility criteria set forth under the former regulations are referenced throughout this final order.

On September 5, 2023, the Division received a Recommended Order from Judge Murad that recommended affirmation of the Division's denial of the application to certify Appellant as an MBE on the grounds set forth in the Division's November 12, 2020 denial letter.

After considering the appeal record, I accept the recommendation of the Administrative Law Judge as it pertains to the facts of this case. Incorporation by reference is hereby made with respect to the findings and conclusions of the Recommended Order.

It is hereby **ORDERED** that the decision to deny certification, dated November 12, 2020, is affirmed. Accordingly, EIA Datacom, Inc. will not be listed on the Division's directory for Minority and Women-owned Business Enterprises.

September 22, 2023

A handwritten signature in black ink, appearing to read "Jason Clark", with a long horizontal stroke extending to the right.

Jason Clark, EVP and Executive Director
Division of Minority and Women's Business Development