

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

**In the Matter**

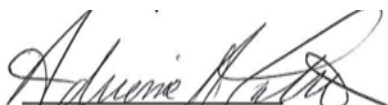
**- of -**

**the Application of Interior Installations, LLC**  
**for Certification as a Minority and Woman-owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 62355**

**RECOMMENDED ORDER**

**-by-**



**Adrienne R. Lotson**  
**Administrative Law Judge**  
**August 23, 2023**

This matter considers the written appeal by Interior Installations, LLC, (“Interior Installations” or “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 (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for certification as a minority and/or woman-owned business enterprise (“M/WBE”).

### **PROCEDURAL HISTORY**

1. On December 9, 2017, Andrea Savino, as Owner, applied on behalf of Interior Installations for certification as a minority and woman-owned business enterprise (“M/WBE”). (DED Exhibit 1).
2. On May 25, 2021, the Division denied the application on the grounds that (i) the minority group members or women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons as required under 5 NYCRR § 144.2 (c)(1); (ii) the minority group members or women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise as required under 5 NYCRR § 144.2 (c)(2); (iii) the minority group members or women relied upon for certification must devote time on an ongoing basis to the daily operation of the business enterprise as required under 5 NYCRR § 144.2 (c)(3); and (iv) the business enterprise must operate independently as required under 5 NYCRR § 144.2 (e) (DED Exhibit 2).
3. Interior Installations submitted a Letter of Intent to File Written Appeal on July 3, 2021 (APP Exhibit A).

4. A notice to proceed by written appeal was sent to Interior Installations on October 3, 2022 (DED Exhibit 3).
5. Interior Installations submitted its written appeal by letter dated December 14, 2022. (APP Exhibit B)
6. The Division filed an Affidavit of Abdul Karim Bah, Senior Certification Analyst dated May 8, 2023, and a brief of Candace C. Williamson Esq., counsel for the Division, dated May 18, 2023.

### **FINDINGS OF FACT**

7. Interior Installations is engaged in the business of providing installation services for furniture, shelving, fume hoods, tables, and workstations. (DED Exhibit 1).
8. Interior Installations' core revenue generating functions are estimating, preparing bids, supervising field operations and installations; including, but not limited to laboratory casework, lab benches, tables, shelving, fume hoods, and workstations. (DED Exhibit 1).
9. Andrea Savino is the founder and owner of Interior Installations. She holds 100 shares in the company, which represents a 100% ownership interest. Her responsibilities at Interior Installations include human resources, job scheduling, tax returns, marketing, and payroll (DED Exhibits 1 and 5).
10. Commencing in June 1999, Ms. Savino has been employed at Lab Crafters, Inc, eventually rising to the level of Chief Financial Officer (CFO). At the time of the application, she had reduced her role to a human resources and bookkeeping function, working 25 – 30 hours per week. (DED Exhibits 1 and 5).
11. In 2018, Ms. Savino earned \$ [REDACTED] from Lab Crafters, Inc. and \$ [REDACTED] from Interior Installations (DED Exhibit 11).

12. Ms. Savino is a former member of the Board of Directors of Lab Crafters, Inc. (DED Exhibit 1).
13. Lab Crafters, Inc. is a business engaged in providing laboratory casework, lab benches, tables, and chemical exhaust fume hoods (DED Exhibit 1).
14. Interior Installations does not rent, lease, or own warehouse, plant, or yard facilities or office facilities (DED Exhibit 1).
15. Interior Installations and Lab Crafters, Inc. share warehouse space (DED Exhibit 1).
16. Interior Installations' six largest accounts are the result of a unilateral sub-contractual agreement with Lab Crafters, Inc. (DED Exhibit 1)
17. Mr. James Russell is the Foreman and Road Supervisor at Interior Installations. His responsibilities include, but are not limited to, field measurements prior to commencement of jobs, review of job blueprints, layout of casework and mechanical chases prior to installation, supervising installation, and interacting and coordinating with other foremen running interior jobs (DED Exhibits 1 and 6).
18. Mr. Russell has over 30 years of experience in the installations industry (DED Exhibit 6).
19. Mr. Todd Siemers is the Construction Foreman at Interior Installations. His responsibilities include installation of laboratory casework, overhead service carriers, fume hoods, epoxy resin counter tops and equipment, reading architectural and lab casework drawings, and layout of casework for mechanical trades prior to installations (DED Exhibits 1 and 7).
20. Mr. Siemers has over 11 years of experience in the laboratory construction industry (DED Exhibit 7).

**APPLICABLE LAW**

5 NYCRR § 144.2 (c)(1) states as follows:

Competence in the industry. Minority group members and women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons.

5 NYCRR § 144.2 (c)(2) states as follows:

Operational decisions. Minority group members and women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise.

5 NYCRR § 144.2 (c)(3) states as follows:

Time devoted to operation of the business enterprise. Minority group members and women relied upon for certification must devote time on an ongoing basis to the daily operation of the business enterprise

5 NYCRR § 144.2 (e) states as follows:

Independence. Business enterprises for which certification is sought must operate independently. In order to determine whether such business enterprises operate independently, the division shall consider but not be limited to the following criteria:

- (1) Whether the business enterprise shares resources with another entity, including, but not limited to, personnel, equipment, office space, warehouse and other storage space, and yard space;
- (2) Whether the business enterprise transacts business primarily with one other entity; and
- (3) Whether the business enterprise receives tangible benefits as a result of a connection to another entity, and whether such benefits are consistent with standard industry practices.

### **STANDARD OF REVIEW**

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by Interior Installations for certification as a M/WBE 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 Division staff's conclusions and factual determinations are not supported by "such relevant proof as a reasonable

mind may accept as adequate to support a conclusion or ultimate fact.” (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]).

The review is limited to such information that was before the division at the time of the denial determination (5 NYCRR 145.2(b)(1)). Evidence that seeks to clarify and explain previously submitted materials will be considered, however new evidence will not be considered. (See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

Accordingly, applicant’s Exhibit C: “Casework Installation Manual” will not be considered as it is not information that was before the Division prior to the denial determination. Further, as it does not seek to clarify or explain previously submitted materials, it does not come in as an exception under *Scherzi Systems, LLC v. White*.

## **DISCUSSION**

### **I. Industry-specific competence**

*Minority group members and women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. 5 NYCRR § 144.2 (c)(1)*

The Division argues that the party relied upon for certification, Andrea Savino, lacked the educational background and work experience to make critical business decisions. Ms. Savino’s resume indicates that she earned a degree in biology and chemistry and that her work experience is largely in the fields of finance and other administrative functions. Additionally, Interior Installation’s application indicates that Ms. Savino is responsible for the managerial operations of the business enterprise (DED Exhibits 1 and 5).

The Division further argues that the non-qualifying male employees demonstrate the industry-specific expertise that allows them to make critical business decisions. Specifically, company foreman and road supervisor James Russell brought 28 years of experience to the

position. At Interior Installations, he is responsible for pre-installation preparation, supervising the installation process, reviewing blueprints, and communicating with other workers on various projects. Mr. Todd Siemers is the construction foreman and brings 16 years of industry-specific experience to the business enterprise. His responsibilities include installing casework, overhead service carriers, and related equipment. He also reads the architectural and lab casework drawings (DED Exhibits 6 and 7).

In summary, the Division argues that Ms. Savino does not have the industry-specific competence to make critical business decisions for a business specializing in the installation of construction material. Rather, the non-qualifying male employees demonstrate the industry-specific experience that would be relied upon to make critical business decisions. Further, the Division's denial of certification has been upheld in cases where the party relied upon failed to show training or experience in the industry and failed to specify the working knowledge necessary to review or evaluate the work of more experienced employees. See *In the Matter of Upstate Electrical, LLC v. New York State Department of Economic Development*, 179 A.D.3d 1343 (3d Dep't. 2020) (citing to *C.W. Brown, Inc. v. Canton*, 216 A.D. 841, 842 (1995)).

Applicant argues that she does possess the industry-specific competence to operate the business enterprise, pointing out on appeal that she has authored a casework installation manual and supervises field operations, particularly during the illness of one, and death of another employee. Specifically, she states that she is a trained biochemist, and has held many jobs in the areas of administration, finance, and accounting. In addition, she is trained and certified in the installation of casework and fume hoods, is an installer of epoxy tops, and does calibration and training for fume hood use. (APP Exhibits B and C).

The Division argues that Ms. Savino raises the above issues for the first time upon appeal,

and therefore, these arguments, and accompanying evidence must be disregarded as they do not seek to clarify or explain previously submitted materials, but rather they represent new information asserted for the first time on appeal. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

Ms. Savino's statements and evidence regarding her training, certification, authorship, and field supervisory job functions were not before the Division at the time of the denial determination. Further, these statements and evidence do not seek to clarify information that was before the Division at the time of its certification decision. Therefore, they are excluded from consideration. In considering her educational background and work experience, I find that Ms. Savino did not demonstrate, prior to the denial determination, that she possessed the industry-specific competence needed to make critical business decisions. The Division's determination that the party relied upon for certification failed to demonstrate industry-specific competence as required by 5 NYCRR § 144.2 (c)(1) is supported by substantial evidence.

## II. Operation

*Minority group members and women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise. 5 NYCRR § 144.2 (c)(2)*

The Division argues that Ms. Savino does not perform the core revenue-generating functions of the business enterprise, namely reviewing blueprints, planning and reviewing project details, and installing laboratory furniture and equipment without relying heavily on two of her male employees: Mr. Russell and Mr. Siemers. Referencing Ms. Savino's application responses, Division's counsel stated that Ms. Savino does not claim responsibility for field operations, but rather managerial operations. (DED Exhibit 1). Further in her personal income tax filings, Ms. Savino lists her occupation as "Office Manager" (DED Exhibits 8 and 9). Additionally, while Ms.



Savino's resume points to her fulfilling administrative and financial functions at the business enterprise, those of her male employees show experience at every stage of the installation process (DED Exhibits 5, 6 and 7).

Finally, the Division noted that eligibility criteria requires that the party relied upon for certification "must exercise independent operational control over the core functions of the business in order to establish the requisite control for WBE certification..." *J.C. Smith, Inc. V. New York State Department of Economic Development*, 163 A.D.3d 1517, 1519 (4<sup>th</sup> Dept. 2018) (holding that DED's decision to deny the recertification application of a woman-owned business was supported by a rational basis), *lv. den.*, 32 N.Y.3d 1191 (2019).

On appeal, Ms. Savino argues she makes daily decisions, supervises field operations, and manages the operation of the business enterprise. Her employees, as carpenter installers, are not responsible for the revenue-generating functions of the business enterprise. Rather, she started Interior Installations and has been involved in every aspect of the business. This includes, but is not limited to, employing union workers, holding weekly coordination meetings, and being in constant communication with foreman in order to make decisions regarding field issues and customer requests. She reviews all estimates, contracts, purchase and change orders. Finally, she is responsible for purchasing all hardware, tools and safety equipment. Upon the death of one of her employees, Jimmy Kitanoff, she "continued" to supervise work in the field. This was also the case, she noted, when Mr. Russell was away on an extended medical leave and the business enterprise continued to function. Ms. Savino stated that she does not, however, layout the casework, nor set and level cabinets as these are installation functions. (APP Exhibit B).

Where casework and other installations are identified as a core revenue-generating function of the business enterprise, I find Ms. Savino's argument that her installer employees are not

responsible for the revenue-generating functions of the business enterprise to be without merit. Although Ms. Savino did indicate in her application that Mr. Kitanoff had passed away, she did not assert in said application that she was responsible for field operations. Rather, she indicated in the application and on her resume that she was responsible for managerial and administrative operations (DED Exhibits 1 and 5). She also identified herself in personal income tax records as an office manager (DED Exhibits 8 and 9). As to the role she played upon the illness and medical leave of Mr. Russell, I find that this is new information not presented to the Division prior to the denial determination. Further, it also does not seek to clarify or explain previously submitted materials. This information is therefore excluded from consideration. See Scherzi Systems, LLC v. White, 197 A.D.3d 1466 (3d Dept 2021).

For the above-mentioned reasons, I find that the Division's determination that the party relied upon for certification failed to demonstrate that she makes operational decisions on a day-to-day basis with respect to critical functions of the business enterprise as required by 5 NYCRR § 144.2 (c)(2) is supported by substantial evidence.

### III. Time devoted to operation of the business enterprise

*Minority group members and women relied upon for certification must devote time on an ongoing basis to the daily operation of the business enterprise. 5 NYCRR § 144.2 (c)(3)*

The Division argues that Ms. Savino is concurrently employed by Lab Crafters and Interior Installations. Further, Ms. Savino's work as the one-time CFO of Lab Crafters, Inc., as well as her current role of handling bookkeeping and human resources matters for 25 – 30 hours per week, preclude her from devoting time on an ongoing basis to Interior Installations. Additionally, they argue, that since the nature of Ms. Savino's work typically takes place during standard working hours, it is unlikely that she was available to operate the business enterprise during the workday. In 2018 Ms. Savino earned more compensation from Lab Crafters, Inc (\$ [REDACTED] ) than Interior

Installations (\$ [REDACTED]), suggesting, Counsel asserts, that Ms. Savino devotes significant time to her outside employment (DED Exhibits 1, 8, 9, 10 and 11).

Ms. Savino argues that although she was at one time CFO of Lab Crafters, Inc., as Interior Installations' business increased, she minimized her functions and transitioned to part-time employment. This allowed her to devote long hours to the operation of Interior Installations (APP Exhibit B). In addition to the functions discussed earlier, she reviews all projects before they are quoted, coordinates which workers go to a job site, and handles payroll among other tasks. I find that this information was not before the Division at the time of Interior Installations' certification application. As this is new information that does not seek to clarify or explain previously submitted materials, it is excluded from consideration. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

Accordingly, I find that the Division's determination that the party relied upon for certification failed to demonstrate that she devotes time on an ongoing basis to the daily operation of the business enterprise as required by 5 NYCRR § 144.2 (c)(3) is supported by substantial evidence.

#### IV. Independent operation

*Business enterprises for which certification is sought must operate independently. In order to determine whether such business enterprises operate independently, the division shall consider but not be limited to the following criteria:*

- (1) Whether the business enterprise shares resources with another entity, including, but not limited to, personnel, equipment, office space, warehouse and other storage space, and yard space;*
- (2) Whether the business enterprise transacts business primarily with one other entity; and*
- (3) Whether the business enterprise receives tangible benefits as a result of a connection to another entity, and whether such benefits are consistent with standard industry practices. 5 NYCRR § 144.2 (e)*

Finally, the Division states that in considering whether a business enterprise operates independently, it looks at whether the business "shares resources with another entity, including but

not limited to, personnel, equipment, office space, warehouse and other storage space, and yard space.” 5 NYCRR § 144.2 (e)(1). In the present matter, they argue, Interior Installations shares warehouse space with Lab Crafters.<sup>1</sup> Further, they argue, there is no evidence that Interior Installations pays for the use of the shared space (DED Exhibit 1). Additionally, Division argues that since Interior Installations has a unilateral sub-contractual relationship to Lab Crafters, and Lab Crafters generates Interior Installations’ six largest projects, it raises doubts as to whether Interior Installations is an independent business. I take note that the certification application indicates that Ms. Savino is a former Board member of Lab Crafters.

Ms. Savino does not challenge this ground for denial. Accordingly, I find that applicant has not met its burden to show that the denial on the grounds that the business does not operate independently as required by 5 NYCRR § 144.2 (e) was not based on substantial evidence.

### **CONCLUSION**

Interior Installations, Inc. did not meet its burden to demonstrate that the Division’s determination to deny its application for certification as a minority and woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR § 144.2 (c)(1), 5 NYCRR § 144.2 (c)(2), 5 NYCRR § 144.2 (c)(3), and 5 NYCRR § 144.2 (e) was not based on substantial evidence.

### **RECOMMENDATION**

The Division’s determination to deny Interior Installations application for certification as a minority and woman-owned business enterprise should be affirmed.

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<sup>1</sup> The Division also argues that Interior Installations shares personnel with Lab Crafters, Inc. However, I do not see any evidence in the record that supports this assertion.

In the Matter of Interior Installations, LLC  
DED File ID No. 62355  
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
DED 1	Application for Certification, Dated December 9, 2017	Y	Y
DED 2	Denial Determination Letter, Dated May 25, 2021	Y	Y
DED 3	Notice to Proceed Via Written Appeal, Dated October 3, 2022	Y	Y
DED 4	<i>See APP B</i>	Y	Y
DED 5	Resume of Ms. Andrea Savino	Y	Y
DED 6	Resume of Mr. James Russell	Y	Y
DED 7	Resume of Mr. Todd Siemers	Y	Y
DED 8	2015 Individual Tax Return: Andrea Savino	Y	Y
DED 9	2016 Individual Tax Return: Andrea Savino	Y	Y
DED 10	2017 Individual Tax Return: Andrea Savino	Y	Y
DED 11	2018 Individual Tax Return: Andrea Savino	Y	Y
DED 12	Subcontract Agreement with Lab Crafters, Inc., Dated September 1, 2015	Y	Y
DED 13	Ms. Savino's Response for Additional Documents, Dated April 1, 2018	Y	Y
APP A	Applicant's Letter of Intent to File Written Appeal, Dated July 3, 2021	Y	Y
APP B	Written Appeal Submission, Dated December 14, 2022	Y	Y
APP C	Casework Installation Manual	Y	N