

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

In the Matter

- of -

the Application of **MC Environmental Services, Inc.**,
for Recertification as a Women-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 51298

RECOMMENDED ORDER

- by -



Richard A. Sherman
Administrative Law Judge

April 29, 2021

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 MC Environmental Services, Inc. ("MCES" or "applicant"), recertification as a women-owned business enterprise ("WBE")¹ be modified in part and, as modified, affirmed for the reasons set forth below.

PROCEEDINGS

This matter involves the appeal by 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 ("NYCRR") Parts 140-144, challenging the determination of the Division that MCES does not meet the eligibility criteria for certification as a WBE.

The Division denied the application (exhibit 1) filed by MCES for WBE recertification by letter dated September 28, 2018 (exhibit 2 ["denial letter"]). The denial letter sets forth five bases under former 5 NYCRR 144.2² for the denial. Applicant filed a notice of appeal by letter dated October 24, 2018 (exhibit 3 ["notice of appeal"]). By notice of hearing dated February 17, 2021 (exhibit 4), the Division advised applicant that the appeal hearing would be held virtually on March 16, 2021, using the Webex videoconferencing platform. At the request of the Division, and with the consent of applicant, the hearing date was moved to March 18, 2021 (*see* email exchange between the parties and the Administrative Law Judge [ALJ], dated March 8, 2021; letter from the ALJ to the parties, dated March 16, 2021).

I convened the virtual hearing at approximately 1:30 p.m. on March 18, 2021. Colleen E. Delcore, Esq., appeared on behalf of applicant and called one witness: Deirdre Diccicco-Craft, President, MCES. Meaghan M. Caltabiano, Esq., Excelsior Service Fellow, Empire State Development, represented the Division and called one witness: Matthew C. LeFebvre, Senior Certification Analyst, for the Division. All of the exhibits proffered by the parties that were before the Division at the time of the denial determination were received into evidence by stipulation of the parties. The Division objected to all other exhibits, and no other exhibits were received into evidence (*see* exhibit list appended to this report).

The virtual hearing was recorded via Webex and consists of six recorded segments. The recordings will be cited herein by reference to the specific segment and to the time at which the relevant testimony began (for example, a citation to testimony beginning ten minutes and thirty seconds into the fifth recorded segment would appear as "recording 5 at 10:30").

¹ The term "women-owned business enterprise" applies to an enterprise that meets the requisite criteria on the basis of the ownership and control of one woman or of multiple women (*see* former 5 NYCRR 140.1[tt] [defining a women-owned business enterprise as one that is, inter alia, "at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women"]).

² The Division's denial determination and applicant's appeal therefrom 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.

ELIGIBILITY CRITERIA

The eligibility criteria for a WBE are established by regulation (*see* former 5 NYCRR 144.2). For the purposes of determining whether an applicant should be granted or denied WBE status, the ownership, operation, control, and independence of the business enterprise are assessed on the basis of information supplied through the application process. The Division reviews the enterprise as it existed at the time that the application was made, based on representations in the application itself, and on information revealed in supplemental submissions or 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 WBE recertification for MCES is not supported by substantial evidence (6 NYCRR 145.2[b], [b][5]; 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

The Division cited five eligibility criteria for the denial of MCES's application. Specifically, the Division argues that applicant failed to establish that the woman owner relied upon for certification, Deirdre Diccicco-Craft, (i) made a contribution to MCES in proportion to her equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise (exhibit 2 at 2 [citing former 5 NYCRR 144.2(a)(1)]); (ii) shares in the risks and profits of the enterprise in proportion to her ownership interest (*id.* [citing former 5 NYCRR 144.2(c)(2)]); (iii) makes decisions pertaining to the operation of the business enterprise (*id.* at 3 [citing former 5 NYCRR 144.2(b)(1)]); (iv) has adequate managerial experience or technical competence to operate the business enterprise (*id.* [citing former 5 NYCRR § 144.2(b)(1)(i)]); and (v) has the working knowledge and ability needed to operate the business enterprise (*id.* [citing former 5 NYCRR 144.2(b)(1)(ii)]).

Position of Applicant

Applicant concedes that Deirdre Diccicco-Craft is "not the person operating equipment and over-seeing the field staff" but argues that "without [her] at the helm, MCES would no longer exist" (exhibit 3 at 1). Applicant states that, to its customers, Ms. Diccicco-Craft is the "voice of MC Environmental Services," providing answers to their questions and ensuring that site work is properly scheduled and coordinated, both with the customer and with regulators

(*id.*). Applicant further argues that Ms. Diccicco-Craft "contributed monetarily – at start-up and throughout the history of the business – to the same extent as [her husband] Mr. Craft" (*id.*). With regard to salary, applicant concedes that Ms. Diccicco-Craft's "salary is lower than that of Mr. Craft" but argues that this is justified because "he is often out in the field – operating equipment and performing billable tasks" while Ms. Diccicco-Craft's "work – though critical to the smooth functioning of the business – is not directly billed to the customer" (*id.* at 2). Applicant also argues that Ms. Diccicco-Craft makes "operational decisions – from estimating and scheduling jobs, to coordinating with disposal facilities and transporters, to communicating with regulators – on a daily basis" (*id.*).

FINDINGS OF FACT

1. MCES is a corporation, established on March 8, 1995 that offers "above-ground and underground tank cleaning & removal; site remediation & restoration; transportation & disposal of non-hazardous and hazardous waste streams" and other services (exhibit 1 at 2 [application, items 1.R, 1.S]; *id.* at 4 [application, items 5.A-C]).

2. Deirdre Diccicco-Craft is the President of MCES and has held a 51 percent interest in MCES since its inception in 1995 (exhibit 1 at 2-3 [application, items 1.O, 3.A]).

3. Michael Craft, Ms. Diccicco-Craft's husband, is the Vice President and Chief Operations Officer and has held a 49 percent interest in MCES since 1995 (exhibit 1 at 3 [application, item 3.A]; exhibit 3 at 1 [noting that Ms. Diccicco-Craft and Michael Craft are "a married couple"]).

4. At its inception in 1995, MCES issued 51 shares of common stock to Ms. Diccicco-Craft and 49 shares to Mr. Craft (exhibit B-2). Ms. Diccicco-Craft and Mr. Craft paid a combined total of \$ [REDACTED] for their shares in MCES (exhibit 5 at 2 [2014 balance sheet showing \$ [REDACTED] in common stock]; exhibit 6 at 1-2 [Division inquiry regarding the \$ [REDACTED] in capital stock and MCES response]). There is no documentation of the source of the \$ [REDACTED] and there is no documentation of additional paid-in capital (recording 1 at 25:20; exhibit 6 at 1-2 [Division inquiry regarding the \$ [REDACTED] in capital stock and MCES response stating that the owners "have not contributed additional personal capital"]).

5. In February 1996, the MCES Board of Directors approved seven "officer loans" to the business, "retroactive to May 1, 1995," in the total amount of \$ [REDACTED] (exhibit 7). Of that amount, \$ [REDACTED] was from Ms. Diccicco-Craft and Mr. Craft jointly, \$ [REDACTED] was from Delia Craft (Mr. Craft's mother), \$ [REDACTED] was from Ms. Diccicco-Craft individually, and \$ [REDACTED] was from Mr. Craft individually (exhibit 6 at 1; exhibit 7).

6. In May of 1995, MCES used officer loans totaling \$ [REDACTED] to fund the purchase of certain assets of Chemical Waste Management, Inc. (CWMI), and to begin its operations as an independent environmental services company (recording 2 at 2:40 [discussion of officer loans to MCES]; exhibit 6 at 1 [stating that loans approved by the Board, totaling \$ [REDACTED] were used "for business start-up"]; exhibit 7 [Board approval of officer loans totaling \$ [REDACTED]]; exhibit 8 [stating that MCES purchased assets of Chemical Waste Management, Inc., in 1995]).

7. MCES submitted W-2s to the Division for Ms. Diccicco-Craft and Mr. Craft for the years 2012, 2013, 2016 and 2017. In each of those years, Ms. Diccicco-Craft received less than Mr. Craft in wages and compensation, as follows: in 2012 Ms. Diccicco-Craft received \$ [REDACTED] and Mr. Craft received \$ [REDACTED]; in 2013 Ms. Diccicco-Craft received \$ [REDACTED] and Mr. Craft received \$ [REDACTED]; in 2016, Ms. Diccicco-Craft received \$ [REDACTED] and Mr. Craft received \$ [REDACTED]; and in 2017 Ms. Diccicco-Craft received \$ [REDACTED] and Mr. Craft received \$ [REDACTED] (exhibits 9-12; recording 2 at 6:30).

8. Ms. Diccicco-Craft's day-to-day responsibilities at MCES include managing all administrative operations (e.g., payroll, staffing, accounting, customer service, etc.), preparing service quotations and contracts for small and moderate-sized projects and working with Mr. Craft preparing quotations for larger projects; managing and coordinating project scheduling and activities; preparing waste profiles and manifests; preparing tank closure and site assessment letters and reports; and networking (exhibit 13 at 1; exhibit 14; recording 2 at 15:30).

9. Mr. Craft's day-to-day responsibilities at MCES include preparing service quotations for small and large projects; making site visits to determine field staff, equipment and materials needed for a job; engaging with customers, vendors and regulators; managing projects; overseeing site work; supervising personnel; collecting and preparing soil and water samples of laboratory analysis; preparing draft tank closure and site assessment reports for review by Ms. Diccicco-Craft; overseeing all training of field personnel; operating vehicles and heavy equipment in the field; and conducting accident and incident investigations and reviewing incidents with staff, when necessary (exhibit 13 at 2; exhibit 15; recording 2 at 17:20).

10. Prior to November 2004, when Ms. Diccicco-Craft began working fulltime for MCES, she worked in senior roles for over ten years in waste management, reduction, reuse, and recycling. From 1997 to 2004 she was Executive Director for the Eastern Rensselaer County ("ERC") Solid Waste Management Authority and the ERC Community Warehouse. She was responsible for financial and personnel management at both entities. From 1991 to 1997, Ms. Diccicco-Craft was the proprietor of Environmentally Yours where she assisted businesses in becoming more environmentally responsible through waste audits and implementation of reduction, reuse, and recycling programs. Ms. Diccicco-Craft also worked as a process and technical services engineer from 1984 to 1991. (Exhibit 14 at 1-2; recording 2 at 24:05.)

11. Ms. Diccicco-Craft holds a Bachelor of Science Degree in Chemical Engineering. She has completed the 40-hour hazardous waste operator training, Exxon Mobile Loss Prevention System training, and the Saratoga County Chamber of Commerce Business Development Program (exhibit 14 at 2).

12. Michael Craft was the operations manager for Chemical Waste Management, Inc., from 1991 to 1995, the years immediately prior to MCES's purchase of certain CWMI assets (exhibit 15 at 1; recording 3 at 0:20). At CWMI, Mr. Craft's responsibilities included managing and supervising all aspects of certain services within his geographic area, including, health and safety, environmental compliance, and hiring and training of all subordinates (exhibit 15 at 1).

13. From the inception of MCES through 2004, Mr. Craft "[m]anaged all aspects of [MCES] including field operations, business development, finance, cost estimating, purchasing, safety, compliance, staffing and training" (exhibit 15 at 1). In 2005, responsibility for administrative functions, new business development, safety and compliance and certain other duties were transferred to Ms. Diccicco-Craft (*id.*; *see also* exhibit 14 at 1). Mr. Craft continues to manage "all field and shop operations" (exhibit 8; *see also* exhibit 13 at 2).

DISCUSSION

This report considers applicant's appeal from the Division's determination to deny recertification of MCES as a WBE pursuant to Executive Law Article 15-A. As discussed below, the Division cites two "ownership" criteria and three "operations" criteria in support of upholding the denial.

Ownership: Contribution Proportionate to Equity Interest

The eligibility criterion at issue requires that "the contribution of the minority group member(s) or woman owner must be proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise" (former 5 NYCRR 144.2[a][1]).

The Division argues that applicant failed to demonstrate that Deirdre Diccicco-Craft made contributions to MCES in proportion to her ownership interest in the enterprise (exhibit 2 at 2 [citing former 5 NYCRR 144.2(a)(1)]). Specifically, the Division asserts that "[t]he Company balance sheet shows capital stock of \$100 and no additional paid-in capital has been contributed" and further asserts that the application "shows no evidence of an independent capital contribution from [Ms. Diccicco-Craft]" (exhibit 2 at 2; *see also* recording 1 at 23:00 [LeFebvre testimony that funds contributed from jointly held sources are not evidence of an independent contribution, and that there is no documentation of the source of the \$█ paid-in capital in this case]). The Division also states that there "is no evidence that Deirdre Diccicco-Craft has contributed money, property, or expertise to a greater dollar value than Michael Craft" (exhibit 2 at 2).

The Division determined that the total paid-in capital for the 100 shares of MCES common stock issued in 1995 was \$█. Ms. Diccicco-Craft holds 51 shares and Michael Craft owns 49 shares. Accordingly, to be proportionate to their respective ownership interests, the application should show that Ms. Diccicco-Craft contributed \$█ and that Mr. Craft contributed \$█. The Division determined, however, that there is no documentation of the source of the paid-in capital in the application materials (findings of fact ¶ 4).

Although the Division established that the application materials do not identify the source of the \$█ capital contribution made by Ms. Diccicco-Craft and Mr. Craft for their respective shares of MCES, I hold that this is not an adequate basis to deny the application under the circumstances presented here. As was made clear during the hearing, the \$█ capital contribution was not a significant source of funding for MCES at its inception. Rather, MCES utilized officer loans totaling \$█ to fund the purchase of certain assets of Chemical Waste

Management, Inc., and begin operating as an independent environmental services company (findings of fact ¶¶ 5, 6).

In the absence of documentation to the contrary, a reasonable inference may be drawn that Ms. Diccicco-Craft and Mr. Craft, as wife and husband, jointly contributed the \$ [REDACTED] of paid-in capital. As the Division notes, joint contributions do not demonstrate that Ms. Diccicco-Craft contributed capital in proportion to her 51% ownership interest. Nevertheless, given that the capital contribution occurred more than 20 years prior to the denial determination and that the dollar amount is trivial, the failure of MCES to document that Ms. Diccicco-Craft independently paid \$ [REDACTED] for her 51% interest is not a reasonable basis upon which to deny the application.

With regard to the officer loans, I note that the Division's witness testified that exhibit 7 (the schedule of officer loans approved by the MCES Board in 1996) shows "various contributions to the business" by the owners (recording 2 at 3:25). He also testified that the majority of these officer loans were jointly contributed and were not independent contributions to MCES by Ms. Diccicco-Craft (recording 3 at 16:45). To the extent that this testimony equates loans to qualifying contributions under 5 NYCRR 144.2(a)(1), that testimony is in error.

A loan, whether from a bank, a corporate officer, or another source, is not a "contribution" to a business enterprise. Rather, it is an extension of credit in anticipation of repayment (*see Matter of PamTen, Inc.*, Recommended Order, June 26, 2018, at 4 [stating that "[a]s noted by the Division, . . . loans do not constitute contributions to the enterprise. Therefore, the loans are not relevant to determining whether applicant satisfied the subject criterion"] [adopted by Final Order of the Executive Director, July 30, 2018]). Accordingly, the discussion of the source of the officer loans is not relevant to the eligibility criterion at issue here.

On this record, the only capital contribution at issue is the \$ [REDACTED] used to purchase 100 shares of MCES in 1995. Given this small dollar amount and the age of the transaction, I conclude that the Division's determination to deny the application on the basis that MCES failed to demonstrate that Deirdre Diccicco-Craft made contributions to MCES in proportion to her ownership interest, as required under former 5 NYCRR 144.2(a)(1), is not supported by substantial evidence.

Ownership: Risks and Profits

The eligibility criterion at issue requires that the "woman owner . . . must share in the risks and profits, in proportion with [her] ownership interest" (former 5 NYCRR 144.2[c][2]).

As previously noted, Ms. Diccicco-Craft holds a 51% ownership interest in MCES and Mr. Craft holds a 49% interest. Division staff argues that Ms. Diccicco-Craft's compensation from MCES is not proportionate to her 51 percent ownership interest in the enterprise. Staff asserts that Ms. Diccicco-Craft's total compensation is less than that of Mr. Craft (exhibit 2 at 2). Staff further asserts that this determination is supported by the four years of W-2s for Ms. Diccicco-Craft and Mr. Craft that were provided by MCES (recording 2 at 9:20). The W-2s show that, in each of the four years provided, Mr. Craft's total wages and compensation exceeded that of Ms. Diccicco-Craft by amounts ranging from nearly \$ [REDACTED] to more than \$ [REDACTED] (findings of fact ¶ 7).

MCES concedes that Ms. Diccicco-Craft's salary is lower than that of Mr. Craft, but argues that the disparity is justified because, unlike Ms. Diccicco-Craft, Mr. Craft is "often out in the field – operating equipment and performing billable tasks" (exhibit 3 at 2). MCES states that it could adjust the owners' salaries but, because the owners are wife and husband, "the money is going to the same household in any case" (*id.*).

The arguments raised by applicant do not undermine the Division's determination that Ms. Diccicco-Craft does not share in the risks and profits of MCES in proportion to her ownership interest. The wage and compensation documentation that was before the Division at the time of the denial supports the Division's determination on this issue and applicant did not proffer evidence of other compensation.

Applicant failed to meet its burden to demonstrate that the record that was before the Division at the time of the denial did not contain substantial evidence to support the Division's determination that Ms. Diccicco-Craft does not share in the risks and profits of MCES in proportion to her ownership interest as required by former 5 NYCRR 144.2(c)(2).

Operation: Decision Making, Managerial/Technical, Working Knowledge

The Division cites three separate operational criteria under former 5 NYCRR 144.2(b) as bases for the denial (*see* exhibit 2 at 3). The operational criteria cited by the Division are:

- "women do not make decisions pertaining to the operation of the business enterprise. [Former] 5 NYCRR § 144.2(b)(1);"
- "women relied upon for certification have not demonstrated adequate managerial experience or technical competence to operate the business enterprise. [Former] 5 NYCRR § 144.2(b)(1)(i);" and
- "women relied upon for certification have not demonstrated the working knowledge and ability needed to operate the business enterprise. [Former] 5 NYCRR § 144.2(b)(1)(ii)"

(exhibit 2 at 3).

To determine who makes decisions pertaining to an enterprise's operations, the Division first identifies the core revenue generating functions of the enterprise, and then assesses who within the enterprise is primarily responsible for performing those functions and who has the expertise and knowledge necessary to perform and oversee those functions (exhibit 2 at 3; recording 2 at 10:20, 11:30). The Division states that MCES is an environmental remediation firm and that its core revenue generating functions are site remediation, tank cleaning and removal, and the transportation and disposal of hazardous and non-hazardous waste streams (exhibit 2 at 3; recording 2 at 14:20 [citing exhibit 8 ¶ 4]; *see also* findings of fact ¶ 1).

The resumes of applicant's two owners indicate that Mr. Craft has considerably more experience and training than does Ms. Diccicco-Craft in relation to MCES's core revenue

generating functions. For example, Mr. Craft's resume states that he was the operations manager for Chemical Waste Management, Inc., from 1991 to 1995 (exhibit 15 at 1). As previously noted, MCES began operations after it purchased certain assets of CWMI (*supra* at 5-6; *see also* findings of fact ¶ 6). From the inception of MCES through 2004 Mr. Craft "[m]anaged all aspects of [MCES] including field operations, business development, finance, cost estimating, purchasing, safety, compliance, staffing and training" (exhibit 15 at 1; *see also* recording 3 at 3:35). In contrast, Ms. Diccicco-Craft's resume states that, prior to joining MCES fulltime in 2004, she worked in senior roles for over ten years in waste management, reduction, reuse, and recycling (findings of fact ¶ 10). The resumes also indicate that Mr. Craft received more relevant training over more years than did Ms. Diccicco-Craft (exhibit 14 at 2; exhibit 15 at 3).

The Division also cites the narratives that were provided by MCES regarding the day-to-day responsibilities of Ms. Diccicco-Craft and Mr. Craft. The Division's witness testified that Ms. Diccicco-Craft's duties, as described by MCES, are largely administrative (recording 2 at 15:30; recording 4 at 7:30 [citing exhibit 13]). The narratives confirm that the day-to-day responsibilities of Ms. Diccicco-Craft are primarily administrative (exhibit 13 at 1; *see also* findings of fact ¶ 8). In contrast, the narrative states that Mr. Craft's day-to-day responsibilities include site visits, managing projects, overseeing on-site work, supervising personnel, resolving on-site issues, operating vehicles and heavy equipment, and other activities in the field (exhibit 13 at 2; *see also* findings of fact ¶ 9).

Ms. Diccicco-Craft's resume states that she "[m]anage[s] all administrative functions for [MCES] including accounting; payroll and human resources; safety, regulatory compliance and reporting; advertising, marketing and customer service; contract and office management" (exhibit 14 at 1; recording 2 at 16:20). The Division states that Ms. Diccicco-Craft's role at MCES continues to be primarily administrative while Mr. Craft manages the field operations (recording 4 at 4:30 [citing exhibit 8 ¶ 5]). This is further supported by Ms. Diccicco-Craft's statement that prior to being named President of MCES in 2008, she "had assumed a leadership role in administrative/marketing/customer service/human resources and safety aspects of the company [while] Mike Craft continued in his role, managing the operational side of the business" (exhibit 6 at 1).

I note that Ms. Diccicco-Craft holds a Bachelor of Science Degree in Chemical Engineering. The Division's witness testified, however, that he did not consider a chemical engineering degree to be consistent with the qualifications needed to provide or supervise MCES's core revenue generating functions (recording 3 at 6:20; recording 4 at 0:30). He also testified that the application materials did not indicate that Ms. Diccicco-Craft's chemical engineering degree is necessary to run the business (recording 3 at 6:00; recording 4 at 0:40). Notably, in its notice of appeal, MCES argues that Ms. Diccicco-Craft's chemical engineering degree "combined with [her] organizational, written and verbal communication skills, are invaluable to the company" but also acknowledges that MCES is "not an engineering firm" (exhibit 3 at 1).

Ms. Diccicco-Craft testified in detail with regard to how the work she performs contributes to MCES. For example, she testified that she handles "all the administrative aspects" for MCES and that, without proper administration, the enterprise "would not exist" (recording 5

at 22:10). She also testified that she develops MCES's service quotations³ (recording 5 at 48:00). She further testified that appropriately detailed service quotations are important to both MCES and its customers, and that it takes understanding and technical knowledge to generate the service quotes (recording 5 at 41:25).

Notably, however, preparation of service quotations or cost estimates is not mentioned on Ms. Diccicco-Craft's resume while, in contrast, "cost estimating" is noted on Mr. Craft's resume (exhibit 14 at 1; exhibit 15 at 1). Moreover, the narrative detailing Mr. Craft's day-to-day responsibilities lists preparation of service quotations for "small and large projects" first among his responsibilities (exhibit 13 at 2). The narrative for Ms. Diccicco-Craft's responsibilities list administrative functions first among her responsibilities and lists preparation of "service quotations/contracts for small and moderate-sized projects" second, thereafter noting that she "works in conjunction with [Mr. Craft] to prepare quotations for larger projects" (exhibit 13 at 1).

Although it is clear that Ms. Diccicco-Craft's contributions to the success of MCES are significant, the Division's determination that Mr. Craft is the primary decision maker with respect to the core revenue generating functions of the enterprise, and has the necessary experience, technical competence, and working knowledge to perform and oversee those functions, is supported by substantial evidence.

Applicant failed to demonstrate that the record that was before the Division at the time of its determination to deny the WBE application does not contain substantial evidence to support the Division's determination that Deirdre Diccicco-Craft does not (i) make decisions pertaining to the operation of the business enterprise (*see* former 5 NYCRR 144.2[b][1]); (ii) have adequate managerial experience or technical competence to operate the business enterprise (*see* former 5 NYCRR 144.2[b][1][i]); and (iii) have the working knowledge and ability needed to operate the business enterprise (*see* former 5 NYCRR 144.2[b][1][ii]).

CONCLUSION

I conclude that applicant met its burden to demonstrate that the record lacks substantial evidence to support the Division's determination to deny MCES's WBE recertification application on the basis of whether the woman owner, Deirdre Diccicco-Craft, made contributions to MCES in proportion to her equity interests in the enterprise (*see* former 5 NYCRR 144.2[a][1]).

Applicant failed, however, to meet its burden to demonstrate that the record lacks substantial evidence to support the Division's determination to deny MCES's WBE application on the bases that the woman owner, Deirdre Diccicco-Craft, does not (i) share in the risks and profits of the enterprise in proportion to her ownership interest (*see* former 5 NYCRR 144.2[c][2]); (ii) make decisions pertaining to the operation of the business enterprise (*see* former 5 NYCRR 144.2[b][1]); (iii) have adequate managerial experience or technical competence to operate the business enterprise (*see* former 5 NYCRR 144.2[b][1][i]); or (iv) have

³ Service quotations set forth the proposed work to be done by MCES and the estimated cost.

the working knowledge and ability needed to operate the business enterprise (*see* former 5 NYCRR 144.2[b][1][ii]).

RECOMMENDATION

For the reasons stated herein, the determination of the Division to deny MC Environmental Services, Inc., recertification as a women-owned business enterprise should be modified by striking the ownership ground under former 5 NYCRR 144.2(a)(1) as a basis for the denial and, as so modified, affirmed.

**Matter of MC Environmental Services, Inc.
DED File ID No. 51298**

Exhibit List

Exhibit No.	Description	Received (Y/N)*
1	MCES WBE Application, electronic signature dated January 14, 2015	Y
2	Division Denial Letter, dated September 28, 2018	Y
3	Applicant Notice of Appeal, dated October 24, 2018	Y
4	Division Notice of Hearing to MCES, dated February 17, 2021	Y
5	MCES Balance Sheet as of December 31, 2014	Y
6	Email exchange between Deirdre Diccicco-Craft and the Division	Y
7	Annual Meeting of the Board, dated February 20, 1996	Y
8	Brief Narrative History of MCES	Y
9	2012 W-2	Y
10	2013 W-2	Y
11	2016 W-2	Y
12	2017 W-2	Y
13	Narrative Description of Each Owner's Responsibilities	Y
14	Resume of Deirdre A. Diccicco-Craft	Y
15	Resume of Michael G. Craft	Y
A-1	Applicant Notice of Appeal, dated October 24, 2018	Y
A-2	Applicant Letter Submitting 2018 Application and Narratives	Y
A-3	Division Letter Granting MCES WBE Certification (2008)	Y
A-4	Narratives Submitted by Applicant, dated September 17, 2018	Y
A-5	Division Letter Granting MCES WBE Recertification (2011)	Y
B-1	MCES Officer Laon Schedule	Y
B-2	MCES Stock Certificates	Y
B-3a	MCES K-1s (2010)	N
B-3b	MCES K-1s (2017)	Y
B-4	W-2s For Deirdre Diccicco-Craft and Michael Craft (2020)	N
C-1	Service Quotation (2014)	N
C-2	Service Quotation (2014)	N
C-3	Bid Form and Invoice (2014)	Y
C-4	Service Quotation (2018)	N

C-5	Draft and Final Site Assessment Report (2020)	N
C-6	Wastestream Information Profile (2020)	N
C-7	Waste Profile (undated)	N
C-8	Job Safety Analysis Form (2021)	N
C-9	Safety/Training Submittals (2019)	N
C-10	OSHA Training Certificates for Deirdre Diccicco-Craft (1997, 2008)	Y

*All of the exhibits admitted into evidence (marked "Y") were documents that were before the Division at the time of the denial determination. The parties stipulated to the receipt of these exhibits into the evidentiary record. The Division objected to the remainder of the exhibits that were proffered by MCES on the basis that the documents were not before the Division at the time of the denial determination, and those exhibits (marked "N") were not admitted. Generally, applicant did not seek to overcome the Division's objection. Applicant did, however, seek to introduce exhibit B-3a over the Division's objection. Applicant argued that, although the exhibit was not before the Division, it "is consistent . . . with the information that was before the Division" (recording 5 at 16:00). Because exhibit B-3a was not before the Division, I sustained the Division's objection (recording 5 at 16:35; *see* 5 NYCRR 145.2[b][1] [stating that "the evidence presented shall be limited to such relevant documentation that, in the case of a denial, was before the division at the time of the denial determination"]).