



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

In the matter of the appeal of

MS Analytical, LLC

FINAL ORDER 18-47

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

This order arises from an administrative appeal brought on behalf of MS Analytical, LLC ("MS Analytical") pursuant to section 144.2 of title 5 of the New York Codes, Rules and Regulations. Appellant seeks reversal of the decision of the Division of Minority and Women's Business Development (the "Division"), dated June 14, 2017, to deny MS Analytical certification as a Minority and Women-owned Business Enterprise ("MWBE").

Appellant initiated this appeal and requested a hearing on July 17, 2017. On February 8, 2018, the Division acknowledged Appellant's request and scheduled a hearing for March 6, 2018, for this matter to be heard. The hearing occurred as scheduled before Administrative Law Judge Lisa A. Wilkinson. Michael R. Zosh, Esq., appeared on behalf of Appellant, and Phillip Harmonick, Esq., represented the Division. The hearing concluded on that date and the record closed on or about June 25, 2018, upon receipt of the parties' closing briefs.

The issues on appeal with regard to the Minority Business Enterprise (MBE) application was whether MS Analytical demonstrated that Ms. Rebecca Maisonet, as the woman and minority owner relied upon for certification, made capital contributions in proportion to her equity interests in the business enterprise as required by 5 NYCRR § 144.2(a)(1); and with respect to the MWBE application, whether MS Analytical demonstrated that Ms. Maisonet, as the woman-and minority owner, shares in the risks and profits in proportion with her majority ownership interest in the business enterprise, as required by 5 NYCRR § 144.2(c)(2); whether she makes decisions pertaining to the daily operation of the business as required by 5 NYCRR § 144.2(b)(1); whether she devotes time on an ongoing basis to the daily operation of the business as required by 5

NYCRR § 144.2(b)(1)(iii); and whether MS Analytical is an independent business as required by 5 NYCRR §§ 144.2(a)(2) and 144.2(c)(2).

On August 6, 2018, the Division received a Recommended Order from Administrative Law Judge Wilkinson that recommended affirmation of the Division's denial of the application to certify Business Environments as a MWBE on the grounds set forth in the Division's July 14, 2017 denial letter.

After considering the entire record, I accept the recommendation of the Administrative Law Judge as it pertains to eliminating criteria cited for ownership under 5 NYCRR § 144.2(a)(1) in the MBE application because such criteria for ownership was not also presented as a ground for denial in the WBE application.¹

As it pertains to the operation criteria under 5 NYCRR §§ 144.2(b)(1) and 144.2(b)(1)(iii), I accept the recommendation of the Administrative Law Judge as it pertains to eliminating said criteria.

I further accept the recommendations of the Administrative Law Judge as they pertain to the Division's determination to deny certification of MS Analytical as an MBE and WBE, based on the substantial evidence presented to the Division in the application and appeal, which the Administrative Law Judge correctly accepted. 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 June 14, 2017, is hereby modified as stated above, and affirmed. Accordingly, MS Analytical will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

January 30, 2019



Valerie White
Executive Director
Division of Minority and Women's
Business Development

¹ The Division does not recognize promissory notes as a form of capital contribution for certification purposes under Article 15-A.