

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

In the Matter

- of -

the Application of **Unique Technical Services, LLC**  
for Certification as a Women-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 58712

RECOMMENDED ORDER

- by -

A handwritten signature in cursive script, reading "Maria E. Villa", is written over a horizontal line.

Maria E. Villa  
Administrative Law Judge

October 27, 2017

## **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 Unique Technical Services, LLC ("UTS" or "applicant") certification as a women-owned business enterprise ("WBE") be 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 UTS does not meet the eligibility criteria for certification as a WBE.

The Division denied UTS's application for WBE certification (Exhibit 1) by letter dated January 4, 2017. Exhibit 2. As discussed below, the letter sets forth two grounds under Section 144.2 of 5 NYCRR for the denial, based upon applicant's failure to demonstrate that the women owner operates UTS for certification purposes. By letter dated February 1, 2017, applicant appealed from the Division's determination to deny the application. Exhibit 3. The Division responded by letter dated June 20, 2017, providing information as to the appeal process, and notifying applicant of the hearing scheduled for October 3, 2017 at the Division's offices in New York City. Exhibit 4.

The hearing took place as scheduled on October 3, 2017. Applicant was represented by Michael Cahill, Esq., of the law firm of Germano & Cahill, P.C., Holbrook, New York. Danielle Ambrosio and Joseph Ambrosio testified on behalf of applicant. Division staff was represented by Phillip Harmonick, Esq., and called Cleneice Mincey, a Senior Certification Analyst for the Division, as a witness. The hearing was recorded on compact disc, and this report cites to that recording as "Hearing Recording ('HR') at \_\_\_\_."

Both applicant and Division staff offered exhibits, and those exhibits were marked and received into evidence. A chart of those exhibits is attached.

## **ELIGIBILITY CRITERIA**

The eligibility criteria pertaining to certification as a women-owned business enterprise are established by regulation (see Section 144.2 of 5 NYCRR). For the purposes of determining whether an applicant should be granted or denied WBE status, the ownership, operation, and control 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, on information revealed in supplemental submissions, and if appropriate, on interviews conducted by Division analysts.

## STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proving that the Division's denial of UTS's WBE 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 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

### *Division*

The Division argued that applicant failed to meet two operational requirements for certification as a woman-owned business, pursuant to Section 144.2 of 5 NYCRR. Specifically, the Division asserted that Danielle Ambrosio, the woman owner, did not make decisions pertaining to UTS's operation, as required by Section 144.2(b)(1). In this regard, the Division cited the following "relevant facts" in the denial letter:

- Unique Technical Services, LLC ("UTS") is primarily engaged in providing engineering services.
- Male individuals associated with UTS, including General Manager Mr. Joseph Ambrosio, Director of Engineering Michael Kuhl, and Lead Design Engineer Nicholas Adler, are primarily responsible for core functions of UTS, including proposal development, design, and project management.

Exhibit 2, at 2.

The Division went on to assert that the woman owner of the business enterprise had not demonstrated adequate managerial experience or technical competence to operate UTS (see Section 144.2(b)(1)(i)). Specifically, in its denial letter, the Division contended that:

- Ms. Ambrosio's educational background is in Cardio-Respiratory Sciences and Theology.
- Ms. Ambrosio lacked any managerial experience in engineering prior to forming UTS.
- Male officers of UTS possess relevant academic training in mechanical and electrical engineering.
- Male officers and key employees of UTS have significant prior managerial experience in proposal development, design and project management in the engineering industry.

Id.

### Applicant

In its February 2, 2017 notice of appeal, applicant contended that “the department failed to consider, or did not afford the applicant the opportunity to submit, evidence of the actual managerial performance of the applicant” when the Division denied the application. Exhibit 3, at 1. Applicant asserted further that “The evidence submitted in the application, and to be presented at a hearing, does not support the conclusions reached by the department in its letter of denial.” Id.

### **FINDINGS OF FACT**

1. Unique Technical Services, LLC is located at 34 East Main Street, Suite 302, Smithtown, New York. Exhibit 1, at 1. The business was established in 2012, and provides engineering services for product companies with a focus on transportation-related technologies. Id., at 2-3.

2. Danielle Ambrosio owns 99% of UTS. Her husband, Joseph Ambrosio, owns one percent of UTS.

3. Ms. Ambrosio has a bachelor’s degree in cardio-respiratory sciences, as well as a master’s degree in theology. Exhibit 17. Before forming UTS, she worked as a cardiac invasive specialist, and then as an office manager for Neocon Technologies Incorporated and Odyne Corporation Incorporated. Exhibit 17.

4. Mr. Ambrosio has a bachelor’s degree in mechanical engineering. Exhibit 17. He holds several patents, and has worked in the engineering field since the early 1990s. Id. Before joining UTS, among other positions, he was the president/chief technology officer at Neocon, and the chief technology officer/vice president at Odyne. Exhibit 17.

### **DISCUSSION**

This report considers applicant's appeal from the Division's determination to deny certification to UTS as a women-owned business enterprise<sup>1</sup> pursuant to Executive Law Article 15-A. Section 144.2(b)(1) of 5 NYCRR requires that an applicant demonstrate that decisions pertaining to the operations of the business enterprise are made by the woman claiming ownership of the business. Moreover, the woman owner must have adequate managerial experience or technical competence in the business enterprise seeking certification, pursuant to Section 144.2(b)(1)(i).

As an initial matter, applicant argued that the Division should have conducted an interview, or made a site visit. In applicant’s view, this would have provided the Division with essential information that was not apparent based upon the documents submitted with the

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<sup>1</sup> 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 Section 140.1(tt) of 5 NYCRR (defining a women-owned business enterprise as one that is, among other things, “at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women”)).

application. The Division responded that an interview or site visit was not required. Moreover, the Division argued that the analyst solicited written narratives to supplement the information provided with the initial application, and that there was no prejudice to applicant. Although applicant maintained that the testimony at hearing was the core of applicant's case, that testimony was consistent with the information in the application and the supplemental information provided, and was not sufficient to establish that the Division's denial was not based upon substantial evidence.

Applicant maintained that Ms. Ambrosio made decisions pertaining to UTS's operations. According to applicant, although her responsibilities as managing member involved operations, human resources, accounts payable and receivable, vendor management and proposal development rather than engineering, it was also her role "to create a fertile environment for the engineering team to do what they do best by 'letting them be engineers' while I lead the organizational efforts." Exhibit 17; Exhibit 5, at 2; HR at 52:42. At the hearing, Ms. Ambrosio testified about her years as a cardiac invasive specialist at Winthrop Hospital, on Long Island. During that time, the cardiac catheterization unit expanded its specialty to include renal angiograms and stents, and Ms. Ambrosio was responsible for collecting data, attending mortality/morbidity meetings, value analysis, and other significant duties as a result of the unit's expansion. From that experience, she concluded that a business can benefit from a broader focus, and generate increased revenues, when team members are able to step out of their "comfort zone." HR at 33:20-39:32; Exhibit 5. When Ms. Ambrosio formed UTS, she applied this knowledge and determined that "[j]ust like with the doctors, there was a wealth of knowledge and skill with the engineers that could be applied to other areas of engineering. This would expand our reach and bring in more jobs equaling more revenue for the company." Exhibit 5.

Applicant argued that it was not necessary for Ms. Ambrosio to have an engineering background, and asserted further that her office manager experience at Neocon and Odyne provided her with a very effective working knowledge of the technical side of the business. Applicant also maintained that, given the relatively new technologies involved, it would be an error to look for a technical background and experience when the field is continually evolving and changing. In applicant's view, Ms. Ambrosio's ability to assign the appropriate person to a particular project was as important as the technical background of Mr. Ambrosio and UTS's employees.

In response, the Division contended that, given the information provided with the application, it was reasonable for the Division to conclude that Mr. Ambrosio and other male employees were actually operating the business. The Division noted that the regulatory criteria are intended to address the remedial purposes of the WBE program, specifically, to direct benefits to those firms most likely to have experienced discrimination in the State's contracting market. Ms. Mincey, the Division's witness and the analyst who reviewed the application, testified that the business performs engineering services, and noted that the male employees have an engineering background, while Ms. Ambrosio had experience in the medical field, and as an office manager. HR at 5:15-7:30. Ms. Mincey went on to testify that based upon her review, Mr. Ambrosio was the lead with respect to customer relations, proposal development, and product design and development. HR at 7:45; Exhibit 17.

On this record, the Division's determination to deny UTS's application was reasonable and supported by substantial evidence. Ms. Ambrosio does not have training or experience as an engineer, which is the primary focus of the business enterprise. Ms. Ambrosio's testimony concerning her work experience in the medical field and her application of that experience when she founded UTS was compelling, but was not sufficient to overcome the fact that Mr. Ambrosio, and other employees of UTS, have worked together for many years and are all in possession of technical qualifications that are essential to the operation of the business enterprise. The revenue-generating aspects of the business are attributable to the male employees' training and expertise, and given Ms. Ambrosio's educational background and work history, she is not a position to meaningfully evaluate their work.

The Division relied upon Matter of Northeast Stud Welding Corp., 211 A.D.2d 889 (3<sup>rd</sup> Dept. 1995), in which the court concluded that an application for certification as a women-owned business was properly denied. The court reasoned that, although the woman applicant performed some functions, and made some decisions on her own, significant operations were shared and still others were performed solely by her husband. Noting that, while not dispositive, the woman owner had no training or expertise in welding, which was the construction service provided by the business, the court observed that she lacked the technical ability to evaluate her husband's work, "be it stud welding, training others to do so or supervising field operations." Id. at 891 (citations omitted). The court concluded that the enterprise was a family business, rather than woman-owned.

The second ground for denial was Ms. Ambrosio's lack of technical competence, and the same facts discussed above formed the basis for the Division's denial on that basis. In that regard, applicant cited to Matter of Era Steel Construction Corp., 145 A.D.2d 795 (3<sup>rd</sup> Dept. 1988), for the proposition that technical competence was not a *sine qua non* to establish eligibility. In that case, although the woman owner had "no special technical expertise as to the actual phases of physically erecting steel beams and columns," she nevertheless had no other full time employees (other than a secretary and bookkeeper) and hired a foreman and crew for each job, as was required because the business was a union shop. 145 A.D.2d at 797-98. The woman owner employed a professional estimator on an hourly basis, and she then visited the project site and prepared a final bid based upon the estimator's data and her figures for labor, equipment and overhead expenses. Id. at 797. She rented the equipment necessary for each job, and visited the jobsites about three times a week to confer with the foreman. Id. In addition, she attended all job meetings, unaccompanied by the foreman, to the extent any complaints arose or issues concerning Era Steel's part of the general contract. Id. The court in Era Steel held that the agency was arbitrary and capricious in denying the application for certification as a woman-owned business.

The facts in Northeast Stud Welding more closely resemble this case than those relied upon by the court in Era Steel. UTS has several full-time engineers on staff, and Ms. Ambrosio therefore does not hire a crew for each job, nor does she prepare bids, rent equipment, or visit job sites on a regular basis. The company relies upon the expertise of Mr. Ambrosio and other employees in order to obtain work and generate revenue. Applicant introduced into evidence a proposal to E-Z Pulley that was authored by Ms. Ambrosio, but the testimony was clear that she called upon her husband's input in order to develop that document, and that her primary role was to prepare a cost summary. HR at 1:02:48 – 1:07:13; Exhibit 15. The court in Era

Steel also observed that “the enterprise had been awarded a number of structural steel supply and erection contracts on its bids on relatively simple projects, generally for one-story buildings.” 145 A.D.2d at 797. The degree of technical competence required for the woman owner in Era Steel differs significantly from the engineering expertise necessary for UTS employees to perform their jobs, and this distinction is significant in this case, where Ms. Ambrosio does not have the educational background or work history of the male employees of UTS.

The Division’s arguments on this point are persuasive. As the Division argued, the individuals who manage the significant operations of UTS’s business are men who possess the requisite expertise to perform the core functions of the business, as opposed to Ms. Ambrosio, whose role is primarily management of financial matters. As was the case in Matter of Northeast Stud Welding, UTS is a family business, rather than a women-owned business enterprise.

The Division’s determination was supported by substantial evidence, and should be affirmed.

### **CONCLUSION**

As discussed above, applicant did not meet its burden to demonstrate that the Division’s determination to deny UTS’s WBE application for certification was not based on substantial evidence.

### **RECOMMENDATION**

The Division's determination to deny UTS’s application for certification as a women-owned business enterprise should be affirmed.

**Matter of Unique Technical Services, LLC**  
**DED File ID No. 58712**  
**Exhibit List**

Exhibit No.	Description	Received?
1	June 9, 2014 application	✓
2	January 4, 2017 denial letter	✓
3	February 1, 2017 notice of appeal	✓
4	June 20, 2017 notice of hearing	✓
5	UTS and Danielle Ambrosio personal background	✓
6	UTS Team Members Background and Responsibilities	✓
7	UTS Operating Agreement	✓
8	UTS Articles of Organization and Filing Receipts	✓
9	UTS Internal Revenue Service EIN Assignment and E-filing authorizations with gross revenue 2014-2016, New York State and NYC E-filing authorizations	✓
10	UTS Membership Draw to Danielle Ambrosio (July 2015-September 15, 2017)	✓
11	Office Lease between SUNY Stony Brook Advanced Research and Technology Center and UTS (July 1, 2017)	✓
12	List of UTS Customers (September 2017)	✓
13	Sample vendor and employee e-mails with Danielle Ambrosio	✓
14	SUNY RD Subrecipient Commitment	✓
15	UTS Contract (E-Z Pulley Inc.)	✓
16	UTS webpage bio (Danielle Ambrosio)	✓
17	Resumes: Danielle Ambrosio, Joseph M. Ambrosio, George W. Allen V, Michael J. Kuhl	✓