

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

In the Matter


- of -

the Application of **Northern Pioneer Contractors, Inc.**
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 60574

RECOMMENDED ORDER

- by -

A handwritten signature in cursive script, reading "Daniel P. O'Connell". The signature is written in black ink and is positioned above a horizontal line.

Daniel P. O'Connell
Administrative Law Judge

August 31, 2017

SUMMARY

The determination of the Division of Minority and Women's Business Development (Division) of the New York State Department of Economic Development to deny Northern Pioneer Contractors, Inc. (NPC or applicant) certification as a woman-owned business enterprise (WBE) should be affirmed for the reasons set forth below.

PROCEEDINGS

In a denial letter dated July 27, 2016, the Division determined that NPC does not meet the eligibility requirements to be certified as a woman owned business enterprise, and denied NPC's application (*see* WBE Exh. 1 and 6b). In a letter dated August 21, 2016, Sharon Sauer, President and owner of NPC, appealed from the Division's determination to deny WBE certification, and requested an opportunity to file a written appeal. With the August 21, 2016 letter, Ms. Sauer enclosed two exhibits. (*See* WBE Exh. 2, 2a, and 2b.)

By notice of written appeal dated August 31, 2016, the Division acknowledged NPC's request to proceed with a written appeal, in lieu of a hearing, regarding the Division's July 27, 2016 denial. The notice of written appeal set October 14, 2016 as the due date for NPC's written appeal. The notice also reiterated the Division's bases for the denial. (*See* WBE Exh. 3.)

Ms. Sauer timely filed a written appeal on behalf of NPC in the form of a letter dated October 11, 2016. The statements and arguments outlined in the October 11, 2016 appeal are generally the same as those presented in the initial appeal letter dated August 21, 2016. With the October 11, 2016 written appeal letter, Ms. Sauer included four exhibits. (*See* WBE Exh. 4, 4a, 4b, 4c, and 4d.)

Shirley S. Paul, Esq., Special Assistant Counsel, New York State Department of Economic Development, filed the Division's response, which the Office of Hearings and Mediation Services received on July 7, 2017 (*see* WBE Exh. 5). With the July 7, 2017 response, the Division included an affidavit of Natia Simon, sworn to June 12, 2017 (*see* WBE Exh. 6), with seven exhibits. Ms. Simon is a Senior Certification Analyst with the Division. Among the exhibits included with Ms. Simon's June 12, 2017 affidavit (Simon Aff.) is a copy of NPC's completed application for WBE certification (*see* WBE Exh. 6a [Application No. 7419293, submitted May 27, 2016]), as well as other application materials (*see also* WBE Exh. 6c, 6d, 6e, 6f, and 6g). An exhibit chart is attached to this recommended order.

ELIGIBILITY CRITERIA

The eligibility criteria pertaining to certification as a woman-owned business enterprise are established by regulation (*see* Title 5 of the Official Compilation of Codes, Rules, and Regulations of the State of New York [5 NYCRR] § 144.2). To determine whether an applicant should be granted WBE status, the Division assesses the ownership, operation, and control of the business enterprise 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, information presented in supplemental submissions and, if appropriate, from interviews conducted by Division analysts.

STANDARD OF REVIEW

On this administrative appeal, NPC, as applicant, bears the burden of proving that the Division's denial of its application for 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

The Division

In the July 27, 2016 denial letter, the Division determined that the application failed to meet the WBE certification criteria associated with Sharon Sauer's contribution to the business enterprise and her ability to operate NPC (*see* WBE Exh. 1 and 6b). The Division asserted that the contribution of the woman owner is not proportionate to Ms. Sauer's equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). With respect to Ms. Sauer's ability to operate NPC, the Division asserted that NPC failed to show that Ms. Sauer makes decisions pertaining to operations of the business enterprise, as required by 5 NYCRR 144.2(b)(1). Finally, the Division determined that NPC did not demonstrate that Ms. Sauer has adequate managerial experience or the technical competence to operate the business enterprise, as well as the necessary working knowledge to operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(i) and (ii).

Northern Pioneer Contractors, Inc.

By letter dated August 21, 2016, Ms. Sauer appealed from the Division's July 27, 2016 denial. Ms. Sauer is the president of NPC, and owns 100% of the business enterprise. Ms. Sauer argued that NPC complies with the eligibility criteria for certification as woman owned business enterprise. Ms. Sauer said that she and her three employees, one of whom is her husband, Adam Sauer, work as a team, and that she often delegates duties to her employees. In addition, Ms. Sauer said that she exclusively researched and incorporated the business, named it, created the logo, wrote the mission statement, and currently obtains all insurances, bonding, and loans, as well as reviews all bidding documents for projects. Only Ms. Sauer has authority to sign checks, enter into contracts, and apply for loans on behalf of NPC.

With NPC's written appeal papers dated October 11, 2016 (*see* WBE Exh. 4), Ms. Sauer included documentation substantiating the two capital contributions to the business enterprise identified in the WBE certification application. With respect to the first contribution of [REDACTED], NPC provided a promissory note signed by Adam Sauer on June 3, 2015 and by Sharon Sauer on

June 4, 2015 from the International Brotherhood of Electrical Workers (IBEW), Local No. 910, Annuity Fund, and a second promissory note signed by Ms. Sauer (*see* WBE Exh. 4a and 4b). The second contribution identified in the WBE certification application is a cash payment of [REDACTED]. (*See* WBE Exh. 6a [Bates No. 00011].)

In support of NPC's compliance with the operational criterion at issue in this proceeding, Ms. Sauer provided a revised copy of her résumé, which clarified her duties and responsibilities at NPC, among other things. Based on work experiences at her previous employer, Huen Electric New York (Huen Electric), Ms. Sauer contended that she manages core functions of the business enterprise. (*See* WBE Exh. 4c.)

With respect to her managerial experience and technical competence, Ms. Sauer offered a letter from John T. O'Driscoll, who is the business manager for IBEW Local Union No. 910. In this letter, Mr. O'Driscoll explained that contractors, such as NPC, can rely upon IBEW Local Union No. 910 as a source of skilled labor. According to Mr. O'Driscoll, this arrangement allows contractors to focus on other aspects of business operations. (*See* WBE Exh. 2b and 4d.)

FINDINGS OF FACT

I. General

1. Northern Pioneer Contractors, Inc. (NPC), has business offices located at 6992 Austin Road, Glenfield, New York 13343-1913. NPC is an electrical service contractor that installs wiring for residential and commercial applications, and solar energy systems. (*See* WBE Exh. 6; ¶¶ 21-23 Simon Aff.)
2. Sharon Sauer is the president of NPC, and owns 100% of the business enterprise (*see* WBE Exh. 6a [Bates Nos. 00010-00011]).

II. Contributions

3. NPC's WBE certification application identifies two capital contributions. The first, made on June 15, 2015, is a loan in the amount of [REDACTED] that Adam Sauer borrowed from the IBEW Local Union No. 910 annuity fund. After obtaining the loan from the union's annuity fund, Mr. Sauer then loaned the proceeds to Ms. Sauer to start the business enterprise. (*See* WBE Exh. 2, 2a, 4, 4a, 4b, 6a [Bates No. 00011]; ¶ 7 Simon Aff.)
4. In the WBE certification application, Ms. Sauer identified a second capital contribution of [REDACTED] to NPC on December 31, 2015. The amount was initially recorded as a loan payable to Ms. Sauer, as the sole shareholder. However, NPC's accountant advised that the cash owed to Ms. Sauer should not be paid out to her, but identified as "paid-in capital." (*See* WBE Exh. 4, 6a [Bates No. 00011], and 6e [Bates Nos. 00077-00079]; ¶ 7 Simon Aff.)

III. Operation

5. Ms. Sauer earned a degree in office technology from the Howard G. Sackett Technical Center (Glenfield, New York), and her work experiences relate to office management and administration. Although Ms. Sauer worked as an assistant project manager at Huen Electric, the résumé filed with the application materials does not offer details about whether Ms. Sauer acquired any skills associated with the electrical contracting industry. Ms. Sauer has no academic credentials or training related to electrical contracting, and does not supervise field work. (*See* WBE Exh. 6f [Bates Nos. 00080-00082]; ¶¶ 19 and 26 Simon Aff.)
6. When NPC filed its WBE certification application, it employed three people. One of whom is Ms. Sauer's husband, Adam. (*See* WBE Exh. 6a [Bates No. 00010].)
7. Adam Sauer completed the electrical program at the Howard G. Sackett Technical Center, and has 30 years of managerial experience in the electrical contracting field. Mr. Sauer has worked as an electrician for several electrical contracting firms, and he has completed numerous training programs related to the industry. (*See* WBE Exh. 6g [Bates Nos. 00083-00085]; ¶ 27 Simon Aff.)

DISCUSSION

This recommended order considers NPC's August 21, 2016 appeal and subsequent written filing dated October 11, 2017 with enclosed exhibits from the Division's July 27, 2016 determination to deny certification of NPC as a woman owned business enterprise pursuant to Executive Law Article 15-A. The bases identified in the Division's July 27, 2016 denial (*see* WBE Exh. 1 and 6b) are addressed below.

I. Contributions

Division staff determined that NPC did not show that Ms. Sauer's contributions were proportionate to her equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1) (*see* WBE Exh. 1 and 6b). The Division detailed the bases for this determination in Natia Simon's June 12, 2017 affidavit (*see* WBE Exh. 6).

Division staff noted that NPC's WBE certification application identifies two capital contributions. The first, made on June 15, 2015, is characterized as a loan in the amount of [REDACTED]. The initial source of the capital was the IBEW Local Union No. 910 annuity fund. The second, made on December 31, 2015, is identified as a [REDACTED] cash contribution from Sharon Sauer. (*See* WBE Exh. 6a [Bates Nos. 00008-00017]; ¶ 7 Simon Aff.)

In response to a request for additional information concerning the capital contribution, Ms. Sauer provided Division staff with a document entitled, *7 Proof-sources capitalization investments.pdf*. The first item in this document is a receipt for the purchase of a truck, and the second item is a receipt for the purchase of a trailer. The third item is a copy of the promissory

note concerning the loan that Mr. Sauer obtained from the IBEW Local Union No. 910 annuity fund. The next items are a set of bank statements and cancelled checks; all of these documents post-date the capital contributions identified in the application at § 2.C. According to staff, none of the information presented in *7 Proof-sources capitalization investments.pdf* establishes an acceptable capital contribution by Ms. Sauer to NPC. (See WBE Exh. 4a, 6c [Bates Nos. 00023-00031]; ¶¶ 10-13 Simon Aff.)

NPC's October 11, 2016 written appeal papers include a copy of the promissory note from the IBEW Local Union No. 910 annuity fund signed by Mr. and Mrs. Sauer (see WBE Exh. 4a and 6c [Bates Nos. 00026-00027]). With NPC's August 21, 2016 appeal papers, Ms. Sauer provided a copy of a promissory note for a loan in the amount of [REDACTED] in which she agreed to pay her husband, Adam, [REDACTED] (see WBE Exh. 2 and 2a). Rather than obtaining a bank loan, Ms. Sauer explained that Adam Sauer borrowed [REDACTED] from the union's annuity fund to finance NPC. Ms. Sauer explained further that because the annuity fund is part of her husband's retirement plan, federal rules required her to consent to the loan from the union's annuity fund. After obtaining the loan, Mr. Sauer then loaned the proceeds to Ms. Sauer. Consequently, there are two different promissory notes. The first requires Adam Sauer to repay the IBEW Local Union No. 910 annuity fund, and the second requires Sharon Sauer to repay her husband, Adam. (See WBE Exh. 2, 2a, 4, 4a, 4b.)

With respect to other potential capital contributions made to NPC, staff also reviewed NPC's 2015 US Corporation Income Tax Return, which identified a capital stock contribution of [REDACTED], and additional paid-in capital in the amount of [REDACTED] (see WBE Exh. 6d [Bates Nos. 00032-00076]). After requesting clarification about these two entries on the tax forms, staff received a copy of a journal that described NPC's transactional activities from April 13, 2015 to December 31, 2015 (see WBE Exh. 6e [Bates Nos. 00077-00079]). According to staff, the transactional journal does not clarify either the capital stock contribution of [REDACTED], or the additional paid-in capital in the amount of [REDACTED] shown in the 2015 income tax return.¹ (See ¶¶ 14-17 Simon Aff.)

In NPC's October 11, 2016 written appeal, Ms. Sauer explained that the December 2015 contribution in the amount of [REDACTED] was cash that she used to purchase items for the business enterprise. Referring to the transactional journal, Ms. Sauer said that the amount was initially recorded as a loan payable to her as the sole shareholder. However, NPC's accountant advised that the cash owed to Ms. Sauer should not be paid out to her, but identified as "paid-in capital." (See WBE Exh. 4 and 6e [Bates Nos. 00077-00079].)

The issue on appeal is whether NPC's WBE certification application and supporting materials demonstrate that it complies with the requirement at 5 NYCRR 144.2(a)(1). This eligibility criterion states, in full, that:

[t]he 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.

¹ Based on the record of this proceeding, nothing establishes that the [REDACTED] entry on the tax forms is derived from the sum of the [REDACTED] loan from the annuity fund, and the purported [REDACTED] cash contribution.

Pursuant to the regulation, the woman owner's contribution need not be limited to capital contributions. In the response to the appeal, the Division commented about potential contributions of equipment² and expertise.³ Because the Division's July 27, 2016 determination did not identify these alternative contributions as additional bases for the denial, any consideration of them is beyond the scope of this appeal. Rather, the application materials and the record of this proceeding focus exclusively on Ms. Sauer's capital contributions to the business enterprise.

In the WBE certification application, NPC characterized the first capital contribution of [REDACTED] as a loan from the IBEW Local No. 910 annuity fund (*see* WBE Exh. 6a [Bates No. 00011]). This does not comply with the eligibility criterion for the following reasons. First, a loan is not a contribution to the business enterprise. A loan must be repaid, as demonstrated in this matter by the two promissory notes offered with NPC's appeal papers. A contribution, however, is a grant or gift that remains with, or becomes part, of the business enterprise.

Second, when evaluating whether the woman owner has made a capital contribution proportionate to her ownership interest in the business enterprise, the source of the potential contribution must be funds personally held by the woman owner. The Division considers capital contributions of marital assets, such as Adam Sauer's annuity with IBEW Local Union No. 910, to be held jointly by both husband and wife rather than solely owned by the woman owner.⁴ Therefore, Division staff correctly determined that the [REDACTED] loan identified in NPC's WBE certification application is not consistent with the requirement at 5 NYCRR 144.2(a)(1).

The record with respect to the December 2015 contribution in the amount of [REDACTED] from Ms. Sauer is not complete. For example, other than the transactional journal (*see* WBE Exh. 6e [Bates Nos. 00078-00079]), which shows a lump sum amount of [REDACTED] Ms. Sauer did not provide any documentation to substantiate the source of the contribution. For example, NPC offered no cancelled checks totaling [REDACTED] drawn on Ms. Sauer's personal account made

² The first two documents included with WBE Exhibit 6c (Bates Nos. 00023-00025) are receipts for a truck and a trailer.

³ With NPC's October 11, 2016 written appeal papers, Ms. Sauer provided a revised résumé (*see* WBE Exh. 4c), and explained that while working as an assistant project manager at Huen Electric, she learned how to do estimates and prepare bids for projects (*see* WBE Exh. 4).

⁴ *See e.g., Matter of Blackstone Advanced Technologies, LLC* (https://esd.ny.gov/sites/default/files/070517_BlackstoneAdvancedTechnologies_RecommendedOrder.pdf); *Matter of National Recovery Solutions, LLC* (https://esd.ny.gov/sites/default/files/052517_NationalRecoverySolutions_RO.pdf); *Matter of OTONE Mechanical Construction, Inc.* (https://cdn.esd.ny.gov/mwbe/Data/Hearings/05022017_OTONEMechanicalConstruction_RecommendedOrder.pdf); *Matter of Fiddlehead Creek, LLC* (https://cdn.esd.ny.gov/mwbe/Data/Hearings/04112017_FiddleheadCreek_RecommendedOrder.pdf); *Matter of Caster, Wheels, and Industrial Handling, Inc.* (https://cdn.esd.ny.gov/mwbe/Data/Hearings/03132017_CastersWheels_IndustrialHandling_RecommendedOrder.pdf). For the Final Orders associated with these matters, contact the New York State Department of Economic Development, Division of Minority and Woman's Business Development, 625 Broadway, Albany, New York 12245.

payable to NPC. Moreover, the cancelled checks included with *7 Proof-sources capitalization investments.pdf* are drawn from NPC's account. Absent any documentation from NPC that identifies the source of the funds totaling ██████ NPC failed to meet its burden to show that Ms. Sauer made a capital contribution of this amount.

Based on the forgoing, I conclude that the Division's determination to deny WBE certification to NPC because Ms. Sauer did not make any contributions of capital, property, or expertise in proportion to her equity interest in the enterprise, as required by 5 NYCRR 144.2(a)(1), is supported by substantial evidence.

II. Operation

Division staff determined that NPC did not demonstrate that Ms. Sauer makes decisions pertaining to operations of the business enterprise, as required by 5 NYCRR 144.2(b)(1). To evaluate NPC's compliance with this eligibility criterion, Division staff considered whether Ms. Sauer had prior managerial experience in the industry that demonstrated her ability to operate the business without relying on others. In addition, staff reviewed who manages the core functions at NPC. (*See* WBE Exh. 5 at 5.)

Upon review of the WBE certification application, staff determined that NPC is an electrical service contractor that installs wiring for residential and commercial applications, as well as solar energy systems. Therefore, staff concluded that the core functions are estimating and supervising electric work in the field. (*See* WBE Exh. 6a [Bates No. 00013]; ¶¶ 21-23 Simon Aff.) Core functions generate revenue for the business enterprise. According to the application, Adam Sauer, rather than the woman owner, makes decisions on behalf of NPC with respect to these functions (*see* WBE Exh. 6a [Bates Nos. 00011-00012]; ¶ 24 Simon Aff.).

As noted above, Ms. Sauer provided a revised résumé with NPC's October 11, 2016 written appeal. According to the revised résumé, Ms. Sauer developed the expertise to prepare estimates while working at Huen Electric. (*See* WBE Exh. 4c.) In NPC's October 11, 2016 written appeal, Ms. Sauer explained that she is responsible for preparing estimates at NPC, and that Mr. Sauer provides assistance. Ms. Sauer also explained that she uses a team approach to managing NPC. As a result, Ms. Sauer said that she relies on the foremen, whom she assigns, to supervise the field work. (*See* WBE Exh. 4.)

Division staff did not have the benefit of Ms. Sauer's revised résumé and the additional information outlined in the October 11, 2016 written appeal prior to staff's July 27, 2016 determination (*compare* WBE Exh. 4c and 6f [Bates Nos. 00080-00082]). Due to the limited scope of this appeal proceeding, Ms. Sauer's revised résumé and the accompanying explanation outlined in the October 11, 2016 written appeal cannot be considered. Therefore, I conclude that the Division's determination that NPC does not comply with the eligibility criterion at 5 NYCRR 144.2(b)(1) is based on substantial evidence. Accordingly, this basis for denial should be affirmed.

The Division determined further that NPC did not show that Ms. Sauer has managerial experience or technical competence to operate the business enterprise, as well as the necessary

working knowledge to operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(i) and (ii). To evaluate NPC's compliance with these eligibility criteria, Division staff considered whether Ms. Sauer possesses training and certification in disciplines related to providing electrical contracting services (*see* WBE Exh. 5 at 5-6), by comparing the duties and responsibilities outlined in Ms. Sauer's résumé (*see* WBE Exh. 6f [Bates Nos. 00080-00082]), with those in Mr. Sauer's (*see* WBE Exh. 6g [Bates Nos. 00083-00085]).

Staff observed that Ms. Sauer earned a degree in office technology from the Howard G. Sackett Technical Center, and that her work experiences, as outlined in her original résumé, were related to office management and administration. Although Ms. Sauer worked as an assistant project manager at Huen Electric, staff observed further that the résumé, filed with the application materials, did not offer details about whether Ms. Sauer acquired any skills associated in the electrical contracting industry. According to Division staff, Ms. Sauer has no academic credentials or training related to electrical contracting, and does not supervise field work. (*See* WBE Exh. 6f [Bates Nos. 00080-00082]; ¶¶ 19 and 26 Simon Aff.)

Upon review of Adam Sauer's résumé, staff concluded that his work experiences showed 30 years of managerial experience in the electrical contacting field. To support this conclusion, staff observed that Mr. Sauer completed the electrical program at the Howard G. Sackett Technical Center and, over the years, has worked as an electrician for several electrical contracting firms. In addition, Mr. Sauer's résumé notes that he has completed numerous training programs related to the industry. According to Division staff, Mr. Sauer, rather than the woman owner, has the technical competence needed to perform NPC's core functions. (*See* WBE Exh. 6g [Bates Nos. 00083-00085]; ¶ 27 Simon Aff.)

To support the determination to deny NPC's WBE certification application, Division staff cited *Matter of Northeastern Stud Welding Corp. v Webster*, 211 AD2d 889 (1995). In *Northeastern Stud Welding*, the court determined that the Division properly denied WBE certification because the woman owner's husband supervised all field operations, among other things (211 AD2d at 891). Because the factual circumstances in *Northeastern Stud Welding*, and the captioned matter are similar, staff argued that the court's determination to deny WBE certification in *Northeastern Stud Welding* should likewise apply here.

With its correspondence dated August 21, 2016 and October 11, 2016, NPC included a copy of a letter dated August 17, 2016 from John T. O'Driscoll, Business Manager, IBEW Local Union No. 910 (*see* WBE Exh. 2b and 4d). Without being a trained electrician, Ms. Sauer argued that NPC can be a successful electrical contracting business. As explained in Mr. O'Driscoll's letter, NPC has access, through IBEW Local Union No. 910, to a highly skilled electrical workforce to do field work, which allows NPC's owner to focus on other business operations. Because Ms. Sauer has focused her attention on managing NPC, Mr. O'Driscoll observed that the business enterprise has made significant gains in a short time, and that NPC will continue to grow given Ms. Sauer's management skills.

The business practice outlined in NPC's appeal and Mr. O'Driscoll's August 17, 2016 letter are similar to the factual circumstances considered in *Matter of Era Steel Constr. Corp. v Egan*, 145 AD2d 795 (1988). In *Era Steel*, the woman owner relied upon a professional

estimator on an hourly basis and, when awarded jobs, hired a foreman and crew from the local union for each project. The court determined that the woman owner controls the business enterprise when she has the ultimate power to hire and fire the managers (*Era Steel*, 145 AD2d at 797, 799).

Division staff, however, did not have the benefit of the additional information outlined in the NPC's August 21, 2016 and October 11, 2016 correspondence including Mr. O'Driscoll's August 17, 2016 letter (*see* WBE Exh. 2, 2b, 4 and 4d) prior to issuing the July 27, 2016 determination. Due to the limited scope of this appeal proceeding, Mr. O'Driscoll's August 17, 2016 letter cannot be considered. Therefore, I conclude that the Division's determination that NPC does not comply with the eligibility criteria at 5 NYCRR 144.2(b)(1)(i) and (ii) is based on substantial evidence. Accordingly, this basis for denial should be affirmed.

CONCLUSIONS

1. With respect to the ownership criterion at 5 NYCRR 144.2(a)(1), NPC did not meet its burden to show that the Division's July 27, 2016 determination to deny the application for WBE certification is not based on substantial evidence.
2. With respect to the operational criterion at 5 NYCRR 144.2(b)(1), NPC did not meet its burden to show that the Division's July 27, 2016 determination to deny the application for WBE certification is not based on substantial evidence.
3. With respect to the operational criteria at 5 NYCRR 144.2(b)(1)(i) and (ii), NPC failed to meet its burden to show that the Division's July 27, 2016 determination to deny the application for WBE certification is not based on substantial evidence.

RECOMMENDATION

The Division's determination to deny NPC's application for certification as a woman-owned business enterprise should be affirmed for the reasons discussed above.

Attachment: Exhibit Chart

Division of Minority and Women's Business Development

Exhibit Chart
Matter of Northern Pioneer Contractors, Inc.

NYS DED File ID No.: 60574

WBE Exhibit No.	Description
1	Division's denial letter dated July 27, 2016. (<i>See also</i> WBE Exh. 6b.)
2	NPC's notice of written appeal dated August 21, 2016.
2a	Promissory Note Payable dated June 4, 2015 (██████). (<i>See also</i> WBE Exh. 4b.)
2b	Letter dated August 17, 2016 from John O'Driscoll, Business Manager & Financial Secretary, International Brotherhood of Electrical Workers (IBEW), Local Union No. 910. (<i>See also</i> WBE Exh. 4d.)
3	Division's notice of written appeal dated August 31, 2016.
4	NPC's written appeal dated October 11, 2016.
4a	IBEW Local Union No. 910 annuity fund, Promissory Note, Signed June 3 and 4, 2015.
4b	Promissory Note Payable dated June 4, 2015 (██████). (<i>See</i> WBE Exh. 2a.)
4c	Résumé of Sharon M. Sauer (revised). (<i>Compare</i> WBE Exh. 6f.)
4d	Letter dated August 17, 2016 from John O'Driscoll, Business Manager & Financial Secretary, International Brotherhood of Electrical Workers (IBEW), Local Union No. 910. (<i>See</i> WBE Exh. 2b.)
5	Division's Response received at NYS DEC OHMS on July 7, 2017.
6	Affidavit of Natia Simon, sworn to June 12, 2017. (Bates Nos. 00001-00007.)
6a	WBE certification application (Application No. 7419293), filed May 27, 2016. (Bates Nos. 00008-00017.)

6b	Division's denial letter dated July 27, 2016. (Bates Nos. 00018-00022) (<i>See</i> WBE Exh. 1.)
6c	7_Proof-sources_capitalization_investments.pdf. (Bates Nos. 00023-00031.)
6d	2015 US Corporation Income Tax Return. (Bates Nos. 00032-00076.)
6e	Proof of Cash Contribution. Transactional journal from April 13, 2015 to December 31, 2015. (Bates Nos. 00077-00079.)
6f	Résumé of Sharon M. Sauer (original). (Bates Nos. 00080-00082.)
6g	Résumé of Adam M. Sauer. (Bates Nos. 00083-00085.)