



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

In the matter of the appeal of

Suffolk Systems, Inc.

FINAL ORDER 23-07

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

This order arises from an administrative appeal brought on behalf of Suffolk Systems, Inc. (“SSI” or “Appellant”) pursuant to section 144.2 of title 5 of the New York Codes, Rules and Regulations.¹ Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated April 21, 2020 to deny SSI’s January 13, 2017 recertification application as a Woman-owned Business Enterprise (“WBE”).

Applicant submitted a written appeal, dated July 15, 2021. The Division submitted its response to the appeal, dated February 16, 2023. Administrative Law Judge (“ALJ”) David A. Murad presided over the appeal. The issues on appeal were whether Appellant sufficiently demonstrated that the woman owner relied upon for certification (1) makes a capital contribution to the business enterprise in proportion to her equity interest demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1); (2) shares in the risks and profits in proportion to her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2); (3) makes decisions pertaining to the operation of the business enterprise, as required by 5 NYCRR § 144.2(b)(1); and (4) demonstrates adequate managerial experience or technical competence, and working knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR §§ 144.2(b)(1)(i) and 144.2(b)(1)(ii).

¹ The Division’s April 21, 2020 denial determination pre-date the December 2, 2020 amendments made to 5 NYCRR Parts 140 et al. Accordingly, the eligibility criteria set forth under the former regulations are referenced throughout this final order.

On March 30, 2023, the Division received a Recommended Order from Judge Murad that recommended affirmation of the Division's denial of the application to certify Appellant as an WBE on the ground set forth in the Division's April 21, 2020 denial letter. Although the case is not specifically mentioned in the Recommended Order, it is important to note that under *Scherzi Sys., LLC v. White*, information that was before the Division as part of its review at the time of the application as well as materials which seek to clarify and explain are in fact relevant to whether the DED's denial determination was supported by substantial evidence. *Scherzi Sys., LLC v. White*, 197 A.D.3d 1466 (3d Dep't 2021). While an agency is required to consider the testimony offered at an administrative hearing in rendering its determination, only evidence which seeks to clarify and explain previously submitted materials will be considered and new evidence shall not be considered. Here, the owner relied upon for certification does not offer clarification materials, instead, Ms. Kempf provides new information not mentioned in Appellant's application or supporting documents.

After considering the appeal record, I accept the recommendation of the Administrative Law Judge as it pertains to the facts of this case. 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 recertification, dated April 21, 2020, is affirmed. Accordingly, Suffolk Systems, Inc. will be removed from the Division's directory for Minority and Women-owned Business Enterprises.

July 10, 2023



Jason M. Clark
Executive Vice President and Executive Director
Division of Minority and Women's Business Development