

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

In the Matter

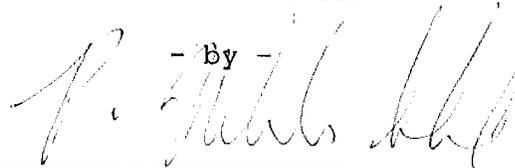
- of -

the Application of  
**Total Maintenance Solution LLC**  
For Certification as a Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 60257

RECOMMENDED ORDER

- by -



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P. Nicholas Garlick  
Administrative Law Judge

June 5, 2019

## **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 the application of Total Maintenance Solution LLC ("applicant") for certification as a woman-owned business enterprise ("WBE") be affirmed for the reasons set forth below.

## **PROCEEDINGS**

This matter involves the appeal, pursuant to New York State Executive Law ("EL") 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, by Total Maintenance Solution LLC challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Total Maintenance Solution LLC's application was submitted on August 4, 2016 (Exh. DED1).

The application was denied by letter dated November 25, 2016, from Bette Yee, Director of Certification Operations (Exh. DED8). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet two eligibility criteria related to Rivka Weber's ownership of the applicant.

In a five-page document dated March 3, 2017, Rivka Weber submitted an appeal. Attached to the appeal were four exhibits described in the exhibit chart as A1 - A4.

In an six-page memorandum dated May 10, 2019, the Division responded to the applicant's appeal. Included with the Division's papers were the affidavit of Francisco Guzman, a senior certification analyst employed by the Division, and nine exhibits described in the attached exhibit chart as DED1-DED9.

On May 10, 2019, this matter was assigned to me.

## ELIGIBILITY CRITERIA

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status, regulatory criteria regarding the applicant's ownership, operation, control, and independence are applied on the basis of information supplied through the application process.

The Division reviews the enterprise as it existed at the time the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and 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 applicant'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

### Position of the Division

In its denial letter, the Division asserts that the application failed to meet two separate criteria for certification. First, the Division found that the applicant failed to show that the contribution of the woman owner, Rivka Weber, was 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).

Second, the Division found that the woman owner, Rivka Weber does not share in the risks and profits in proportion to her equity interest, as required by 5 NYCRR 144.2(c)(2).

### Position of the Applicant

Total Maintenance Solution LLC asserts that it meets the criteria for certification and that the Division erred in not granting it status as a woman-owned business enterprise pursuant to Executive Law Article 15-A. It also argues that the Division failed to inquire regarding Ms. Weber's historic, undercompensated labor as part of her contribution to the firm and that the Division's denial was arbitrary, capricious and contrary to law.

### **FINDINGS OF FACT**

1. Total Maintenance Solution LLC is in the business of providing janitorial and facility maintenance services (Exh. DED1 at 3). The firm has a business address of 184 Admore Avenue, Staten Island, New York (Exh. DED1 at 1).

2. Total Maintenance Solution LLC was established on July 25, 2007 (Exh. DED1 at 2) by Dennis Hasher, Reginald Tartaglione, and Aron Weber (Exh. DED2). At the time of the application, 51% of Total Maintenance Solution LLC was owned by Paramount Consulting Services Corp. (which in turn was wholly-owned by Rivka Weber) and 49% was owned by HMR Consulting Group (which was owned by Reginald Tartaglione) (Exh. DED1 at 3).

3. Total Maintenance Solution LLC's 2015 tax forms show that both of the firm's owners received [REDACTED] in income and that HMR Consulting Group received a cash distribution of [REDACTED] while Paramount Consulting Services Corp. received [REDACTED] (Exh. DED3 at 1-2).

### **DISCUSSION**

This recommended order considers the appeal of the applicant from the Division's determination to deny certification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The Division's denial letter set forth two bases related to Rivka Weber's ownership of Total Maintenance Solution LLC. Each is discussed separately, below.

The first denial ground is that the applicant failed to show that the contribution of the woman owner, Rivka Weber, was 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). The relevant facts cited in the denial letter are: (1) Paramount Consulting Services Corp. owns 51% of the applicant and HMR Consulting Group, Inc. owns 49%; (2) Ms. Weber is the sole owner of Paramount Consulting Services Corp. and Reginald Tartaglione is the sole owner of HMR Consulting Group, Inc.; (3) the application contains conflicting representations that Ms. Weber invested either [REDACTED] in cash in the applicant in 2012 or [REDACTED] in 2017, and in any event, no documentation was provided with the application; and (4) HMR Consulting Group, Inc. made a greater capital contribution to the applicant than did Paramount Consulting Services Corp. according to the firm's 2015 Form 1065 (Exh. DED8).

On her appeal, Ms. Weber states that Total Maintenance Solutions LLC was established on July 25, 2007 by Dennis Hasher, Reginald Tartaglione, and Aron Weber (Exh. DED1 at 2). When Mr. Hasher retired in December 2013, ownership was transferred to Paramount Consulting Services Corp., which is wholly owned by Rivka Weber, and HMR Consulting Group, Inc. which is wholly owned by Reginald Tartaglione, in equal amounts (Exh. DED2). The appeal states that the transfer of half the company to Ms. Weber was deemed fair and reasonable as consideration because she had devoted all her time to managing the firm since its inception. Then, in September 2015, Paramount Consulting Services Corp. purchased 1% of Total Maintenance Solution LLC from HMR Consulting Group, Inc. for [REDACTED], an amount arrived at by the firm's CPA (Exh. A1) and memorialized by action of the directors and members of the applicant (Exh. A2).

In its response, the Division states that the application materials contain conflicting representations regarding Ms. Weber's contributions to Total Maintenance Solution LLC. The application states that Ms. Weber contributed [REDACTED] to the firm on January 4, 2012 (Exh. DED1 at 3). However, in response to a written question from the Division's Senior Certification Analyst Francisco Guzman, Ms. Weber stated that in 2007 she invested [REDACTED], but did not have proof of this contribution

(Exh. DED1 at 8). With respect to Ms. Weber's claim that her 50% ownership interest in the firm that she received in 2013 was in recognition of her past work, the Division states that this claim was not made in the application (nor has it been quantified) and could not be evaluated prior to the denial. The Division also points to the firm's 2015 Form 1065 which shows Paramount Consulting Services Corp. (Ms. Weber) contributed less than did HMR Consulting Group, Inc. (Mr. Tartaglione) (Exh. DED at 6).

Based on the evidence in the record, specifically the lack of proof regarding Ms. Weber's contribution for her original 50% share of the applicant and conflicting information about the amount and timing of such contribution, the applicant has failed to show that the contribution of the woman owner, Rivka Weber, was 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). The Division's denial on this ground was based on substantial evidence. With respect to the argument that the Division failed to inquire and evaluate Ms. Weber's claim that her management of the firm should have been considered when evaluating her contribution, this claim was not made in the application, but only on the appeal. Accordingly, the Division could not have evaluated the claim prior to its denial, and it is, therefore, irrelevant on appeal.

The second ground for denial cited in the denial letter was that the woman owner, Rivka Weber does not share in the risks and profits in proportion to her equity interest, as required by 5 NYCRR 144.2(c)(2). The relevant fact cited in the denial letter is that the applicant allocated equal shares of profit to Paramount Consulting Services Corp. and HMR Consulting Group, Inc. in 2015 and made greater distributions to HMR than Paramount (Exh. DED8).

On the appeal, Rivka Weber states that the Division failed to apply proper accounting standards in its review of the firm's 2015 business tax returns. She states that she was advised by her accountant that ownership interests in an LLC, such as the applicant, is a weighted-average formula based on the number of days an owner possesses its ownership interest and that this

interest is properly stated in the firm's 2015 tax forms. Because of this, Ms. Weber argues that the Division erred in its denial on this ground. Nothing in the appeal purports to show that Ms. Weber received a majority share of the firm's profits.

In its response, the Division argues that because the applicant's tax returns, submitted with the application, show that Mr. Tartaglione, through HMR Consulting Group, Inc., received greater compensation than Ms. Weber, through Paramount Consulting Services Corp., that the application was properly denied. In his affidavit, Mr. Guzman states that the applicant allocated equal shares of its profit to HMR Consulting Group, Inc. (Mr. Tartaglione) and Paramount Consulting Services Corp. (Ms. Weber) and made a greater distribution to Mr. Tartaglione's company than Ms. Weber's (Guzman affidavit ¶12). The applicant's 2015 tax forms show that each of the firm's owners received [REDACTED] in income and that HMR Consulting Group, Inc. received a cash distribution of [REDACTED] while Paramount Consulting Services Corp. received [REDACTED] (Exh. DED3 at 1-2). This evidence shows that the minority owner of the applicant received a majority of the profits in 2015.

Based on the evidence in the record, specifically the fact that HMR Consulting Group, Inc. received a larger share of the applicant's profits than did Paramount Consulting Services Corp., the applicant has failed to show that the woman owner Rivka Weber shares in the risks and profits in proportion to her equity interest, as required by 5 NYCRR 144.2(c)(2). The Division's denial on this ground was based on substantial evidence.

#### CONCLUSIONS

1. The applicant failed to show that the contribution of the woman owner, Rivka Weber, was 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).

2. The applicant failed to show that the woman owner, Rivka Weber, shares in the risks and profits in proportion to her equity interest, as required by 5 NYCRR 144.2(c)(2).

### **RECOMMENDATION**

The Division's determination to deny Total Maintenance Solution LLC's application for certification as a woman-owned business enterprise should be affirmed for the reasons stated in this recommended order.

Matter of  
Total Maintenance Solution LLC

DED File ID No. 60257  
Exhibit List

Exh. #	Description
DED1	Application
DED2	Applicant's narrative dated 2/7/16
DED3	2015 Federal tax forms
DED4	Bank statement for 12/15
DED5	Bank signature forms
DED6	Cancelled check for \$5,137.00
DED7	2015 federal tax forms (personal)
DED8	Denial letter
DED9	Appeal
A1	Estimated value of the applicant
A2	Minutes of directors meeting dated 9/15/15
A3	Same as A1
A4	Same as DED2