



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

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In the matter of the appeal of

**Tri-County Excavating, Inc.**

FINAL ORDER 18-18

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

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This order arises from an administrative appeal brought on behalf of Tri-County Excavating, Inc. ("Tri-County") pursuant to section 144.4 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 October 13, 2016, to deny Tri-County certification as a Women-owned Business Enterprise ("WBE").

This appeal was assigned to Administrative Law Judge P. Nicholas Garlick. Ms. Tracey Winters submitted a written appeal on behalf of Appellant on May 22, 2017. Phillip Harmonick, Esq. submitted a response on behalf of the Division on February 01, 2018. The respective submissions of the parties are contained in the appeal record.

The issues on appeal were whether: the woman owner of Tri-County made contributions of money, property, equipment, or expertise proportionate to her equity interest in the business enterprise; women made decisions pertaining to the operations of the business enterprise; and the corporate bylaws of Tri-County permitted women to make decisions without restrictions.

On February 08, 2018, the Division received from Administrative Law Judge Garlick a Recommended Order that recommended modification of the Division's denial of the application to certify Tri-County as a WBE so as to omit the grounds set forth in the Division's October 13, 2016 denial letter concerning whether women made decisions pertaining to the operations of the business enterprise. As so modified, the Recommended Order recommended affirmation of the denial of the application to certify Tri-County as a WBE.

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 certification, dated October 13, 2016, is modified pursuant to the recommendations set forth in the Recommended Order, and, as so modified, affirmed. Accordingly, Tri-County will not be listed in the Division's directory of certified Minority and Women-owned Business Enterprises.

March 15, 2018



Nicole Stent  
Acting Executive Director  
Division of Minority and Women's  
Business Development