

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
207 GENESEE STREET
UTICA, NEW YORK 13501

In the Matter

- of -

the Application of CCS International, Inc.
for Recertification as a Minority-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 51895

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
April 26, 2024

This matter considers the written appeal by CCS International, Inc. (“CCS” or “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 (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for recertification as a minority-owned business enterprise (“MBE”).

PROCEDURAL HISTORY

1. On October 3, 2022, Mr. Ian Parr, as President, applied on behalf of CCS for recertification as a minority-owned business enterprise (“MBE”) (DED Exhibit 1).
2. On August 8, 2023, the Division denied the application on the following ground (DED Exhibit 2):
 - (a) The business enterprise does not actively conduct business in the State of New York, as required under 5 NYCRR § 144.2(f)(3).
3. CCS timely filed a Request to Appeal on August 9, 2023 (APP Exhibit A, DED Exhibit 15).
4. A notice to proceed via written appeal was sent to CCS on August 14, 2023 (DED Exhibit 16).
5. CCS filed its written appeal by letter dated September 20, 2023, with attachments (APP Exhibit B).
6. The Division filed an Affidavit of Matthew LeFebvre, Associate Certification Director, dated February 15, 2024, and a brief of JaMone Turner Esq., counsel for the Division, dated February 16, 2024.

FINDINGS OF FACT

7. CCS provides engineers, architects, developers and owners with objective cost estimating/management and capital project management services at all project phases from initial conception through design, construction and occupancy (DED Exhibit 1).
8. Mr. Ian Parr is the President and has a 86.71% ownership interest. Mr. Clive Bransby is the Vice President and has a 12.38% ownership interest. Mr. Graham Harwood is a Director and has a 0.91% ownership interest (DED Exhibit 1).
9. In response to the Division's request to provide its largest signed contracts and/or agreements, applicant provided (1) an agreement dated November 22, 2016, between CCS and Mercy Health Corporation ("Mercy Health Agreement") (DED Exhibit 3). In the agreement, CCS was to provide professional services in connection with a Rockford Memorial Hospital project, located in Rockford, Illinois (DED Exhibit 4); (2) an agreement dated March 20, 2022, between CCS and T.Y. Lin International Great Lakes Inc., in which CCS was to provide professional services in connection with a Chicago Transit Authority project, located in Chicago, Illinois ("T.Y. Lin International Agreement") (DED Exhibit 5); and an agreement dated March 5, 2020, between CCS and the Village of Woodbridge, Illinois, in which CCS was to provide professional services in connection with the design and construction of a police facility and public works buildings, located in Woodbridge, Illinois ("Woodbridge Village Agreement") (DED Exhibit 6).
10. In response to the Division's request for copies of signed contracts for work to be performed in New York State and copies of proposals submitted for work to be performed in New York State, the applicant provided an agreement dated February 15, 2022, between CCS and HDR Architecture, Inc. in which CCS was to provide professional services in

connection with a Geneva Pesticide Facility located in Geneva, New York (DED Exhibit 7); and an agreement dated April 9, 2023, between CCS and Affiliated Engineers, Inc., in which CCS was to provide professional services in connection with a University of Rochester Cooling Tower and Chiller Electrification project, located in Rochester, New York (DED Exhibit 8). Applicant also provided two agreements, dated October 5, 2020 (“USDA NGIC Agreement I”) and January 27, 2023 (“USDA NGIC Agreement II”), respectively, between CCS and HDR Architecture, Inc., in which CCS was to provide professional services in connection with a National Grape Improvement Center, located in Geneva, New York (DED Exhibits 9 and 10).

11. Applicant provided its 2020 and 2021 New York State General Business Corporation Franchise Tax Returns. CCS paid █████ in New York State Corporation Tax in 2020, based on total New York receipts of █████. In 2021, CCS paid █████ in New York State Corporation Tax based on New York receipts of █████ (DED Exhibits 11 and 12).
12. Applicant provided its 2022 New York State General Business Corporation Franchise Tax Return and W-2 forms for thirty-nine (39) employees, who received wages from California, Idaho, Illinois, Indiana, Maryland, Massachusetts, New Jersey, Virginia, or Wisconsin (DED Exhibits 13 and 14).

APPLICABLE LAW

5 NYCRR §144.2(f)(3) states as follows:

Authorization to do business. Any business enterprise for which certification as a minority or women-owned business enterprise is sought must be authorized to do business, and demonstrate that it actively conducts business, in the State of New York.

5 NYCRR § 140.1(gg) states as follows:

Significant business presence. A business authorized to do business in New York State, and that makes a contribution to the New York State economy through payment of taxes, or the purchase of made in New York State products or materials, or that has any payroll in New York State.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by CCS for recertification as a MBE 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 Division staff's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]).

The review is limited to such information that was before the division at the time of the denial determination (5 NYCRR 145.2(b)(1)). Evidence that seeks to clarify and explain previously submitted materials will be considered, however new evidence will not be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

DISCUSSION

I. Prior Certification

The Division acknowledges that CCS was previously certified as a minority-owned business enterprise. The Division asserts that it is not bound to recertify a MBE if its prior determinations were made in error. The Division argues that based on the application and

supplemental material submitted by applicant, Division staff correctly determined that applicant was not eligible for recertification.

The Division is correct that it is not obligated to certify CCS based on its prior determinations. It is well settled that the doctrine of equitable estoppel cannot, as a general rule, be invoked against a governmental agency in the exercise of its governmental function. See *Matter of Daleview Nursing Home v. Axelrod*, 62 NY2d 30 (1984); *Matter of Atlantic States Legal Found., Inc. v. New York State Dept. of Environmental Conservation*, 119 AD3d 1172 (2014).

With the expiration of its certification, CCS had the burden to demonstrate compliance with the eligibility criteria outlined at 5 NYCRR former §144.2 when it submitted the October 3, 2022, application and supporting materials and cannot rely on the past determinations of the Division.

II. Authorization to do business

The Division found that CCS failed to demonstrate that the business actively conducts business in the State of New York, as required under 5 NYCRR § 144.2(f)(3). The regulations define a significant business presence as “A business authorized to do business in New York State, and that makes a contribution to the New York State economy through payment of taxes, or the purchase of made in New York State products or materials, or that has any payroll in New York State.” 5 NYCRR § 140.1(gg).

In response to the Division’s request to provide its largest signed contracts and/or agreements, applicant provided (1) an agreement dated November 22, 2016, between CCS and Mercy Health Corporation (“Mercy Health Agreement”) (DED Exhibit 3). In the agreement, CCS was to provide professional services in connection with a Rockford Memorial Hospital project, located in Rockford, Illinois (DED Exhibit 4); (2) an agreement dated March 20, 2022, between

CCS and T.Y. Lin International Great Lakes Inc., in which CS was to provide professional services in connection with a Chicago Transit Authority project, located in Chicago, Illinois (T.Y. Lin International Agreement”) (DED Exhibit 5); and an agreement dated March 5, 2020, between CCS and the Village of Woodbridge, Illinois, in which CCS was to provide professional services in connection with the design and construction of a police facility and public works buildings, located in Woodbridge, Illinois (“Woodbridge Village Agreement”) (DED Exhibit 6). These contracts would not result in CCS actively conducting business in the State of New York.

In response to the Division’s request for copies of signed contracts for work to be performed in New York State and copies of proposals submitted for work to be performed in New York State, the applicant provided an agreement dated February 15, 2022, between CCS and HDR Architecture, Inc. in which CCS was to provide professional services in connection with a Geneva Pesticide Facility located in Geneva, New York (DED Exhibit 7); and an agreement dated April 9, 2023, between CCS and Affiliated Engineers, Inc., in which CCS was to provide professional services in connection with a University of Rochester Cooling Tower and Chiller Electrification project, located in Rochester, New York (DED Exhibit 8). Applicant also provided two agreements, dated October 5, 2020 (“USDA NGIC Agreement I”) and January 27, 2023 (“USDA NGIC Agreement II”), respectively, between CCS and HDR Architecture, Inc., in which CCS was to provide professional services in connection with a National Grape Improvement Center, located in Geneva, New York (DED Exhibits 9 and 10). These contracts all show that CCS does actively conduct business in New York. The Division’s argument that no proof was submitted to show that CCS performed the services and received payment for its services is unavailing. This information was not requested by the Division and is not required under the regulations. 5 NYCRR § 140.1(gg).

Applicant provided its 2020 and 2021 New York State General Business Corporation Franchise Tax Returns. CCS paid █████ in New York State Corporation Tax in 2020, based on total New York receipts of █████. In 2021, CCS paid \$33 in New York State Corporation Tax based on New York receipts of █████ (DED Exhibits 11 and 12). The Division's argument that the receipt amounts and tax payments are insufficient to show that CCS did not have a significant business presence in New York State, as defined under 5 NYCRR § 140.1(gg) is again unavailing. 5 NYCRR § 140.1(gg) defines a significant business practice as one that makes a contribution to the New York State economy through payment of taxes. It does not specify the amount of taxes that need to be paid.

Applicant provided its 2022 New York State General Business Corporation Franchise Tax Return and W-2 forms for thirty-nine (39) employees, who received wages from California, Idaho, Illinois, Indiana, Maryland, Massachusetts, New Jersey, Virginia, or Wisconsin (DED Exhibits 13 and 14). CCS paid █████ in New York State Corporation Franchise Tax, based on total New York receipts of █████. The Division's argument that these amounts again show that CCS did not have a significant business presence in New York State in 2022 and that the W-2s show that CCS did not have any payroll in New York State is misplaced. There is no requirement that a minimum amount of taxes be paid or that the business have any payroll in New York State if it pays taxes in New York. 5 NYCRR § 140.1(gg).

On appeal, applicant listed three additional contracts:

“1. Northeastern Conference Corporation (NECC) of Seventh-Day Adventists Church – Lighthouse SDA, with a planned address of 92 Utica, Brooklyn, New York. CCS was a key subcontractor for Pacific Program Management on this project. The fully executed sub-agreement and invoices document our involvement in the project and are attached here for your reference.

2. USACE Louisville District Geneva Pesticide Facility, with a planned address in Geneva, New York. CCS was a key subcontractor for HDR, Inc. on this project. The fully executed sub-agreement and invoices document our involvement in the project and are attached here for your reference.

3. USACE Louisville National Grape Improvement Center USDA/Cornell University, with a planned address in Geneva, New York. CCS was a key subcontractor for HDR, Inc. on this project. The fully executed sub-agreement and invoices document our involvement in the project and are attached hereto for your reference.”

The Division’s argument that the invoices are not supported with bank statements that show that CCS performed on these contracts and received payment for the services, and that the tax returns for 2020, 2021 and 2022, and the 2022 W-2s, reflect that CCS did not have a significant business presence in New York State, as defined under 5 NYCRR § 140.1(gg) is again misplaced. The Division did not request bank statements to support the invoices and the tax returns prove that CCS paid taxes in New York State. (DED Exhibit 1).

The Division’s determination to deny the application on the basis that CCS failed to demonstrate that it actively conducts business in the State of New York, as required under 5 NYCRR §144.2(f)(3), is not supported by substantial evidence.

CONCLUSION

CCS did meet its burden to demonstrate that the Division’s determination to deny its application for recertification as a minority-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(f)(3), was not based on substantial evidence.

RECOMMENDATION

For the reasons set forth above, I recommend that the Director reverse the Division's determination to deny CCS's application for recertification as a minority-owned business enterprise.

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DED File ID No. 51895
Exhibit Chart

Exhibit #	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Request to Appeal	Y	Y
APP B	Appeal Submission	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Fourth Amendment to Shareholder Agreement	Y	Y
DED 4	Mercy Health Agreement	Y	Y
DED 5	T.Y. Lin International Agreement	Y	Y
DED 6	Woodbridge Village Agreement	Y	Y
DED 7	Geneva Facility Agreement	Y	Y
DED 8	AEI Subconsultant Agreement	Y	Y
DED 9	USDA NGIC Agreement I	Y	Y
DED 10	USDA NGIC Agreement II	Y	Y
DED 11	2020 NYS Tax Return	Y	Y
DED 12	2021 NYS Tax Return	Y	Y
DED 13	2022 NYS Tax Return	Y	Y
DED 14	2022 W-2 Forms	Y	Y
DED 14	Applicant's Request to Appeal	Y	Y
DED 15	Notice to Proceed via Written Appeal	Y	Y