

**NEW YORK STATE**  
**DEPARTMENT OF ECONOMIC DEVELOPMENT**  
**625 BROADWAY**  
**ALBANY, NEW YORK 12207**

**In the Matter**


**- of -**

**the Application of City Restoration and Maintenance, Inc.**  
**for Certification as a Minority Woman-Owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 65367**

**RECOMMENDED ORDER**

**-by-**



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**Deidre A. Chuckrow**  
**Administrative Law Judge**  
**December 26, 2023**

This matter considers the written appeal by City Restoration and Maintenance, Inc. (“CR&M” 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 certification as a minority woman-owned business enterprise (“MWBE”).

### **PROCEDURAL HISTORY**

1. On February 17, 2018, CR&M applied for certification as a minority women-owned business enterprise (“MWBE”). CR&M based its application on Ms. Kaukab Naveed.<sup>1</sup> (DED Exhibit 1).
2. On June 8, 2021, the Division denied the application on the following grounds (DED Exhibit 2):
  - (a) The minority woman owner relied upon for certification did not make capital contributions to the business enterprise proportionate to her equity interest therein as demonstrated by, but not limited to, contributions of money, property, equipment, or expertise (5 NYCRR § 144.2(b)(2);
  - (b) The minority woman owner relied upon for certification does not possess adequate, industry-specific competence to make critical business decisions without relying upon other persons as required under 5 NYCRR § 144.2(c)(1); and

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<sup>1</sup> The application for certification and the denial letter both address the application as to a certification as both a minority and woman owned business. The affidavit and Respondent’s brief only addresses the matter as a woman owned business. As the denial categories are identical for both a minority and woman owned business, this order will address both, as per the application and denial letter. (See DED Exhibits 1 and 2).

- (c) The minority woman owner relied upon for certification does not make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required under 5 NYCRR § 144.2(c)(2).
3. CR&M submitted a request to appeal the denial determination, dated August 4, 2021. (DED Exhibit 4).
  4. A Notice to Proceed Via Written Appeal was sent to CR&M on October 3, 2022 (DED Exhibit 3).
  5. A pre-hearing conference was conducted on June 20, 2023.
  6. No additional materials or information were submitted by CR&M to be considered in this written appeal.
  7. The Division filed an Affidavit of Abdul Karim Bah, Associate Director of Certification, dated October 11, 2023, and a brief of Anequa O. Pond, counsel for the Division, dated October 11, 2023.

### **FINDINGS OF FACT**

8. CR&M is engaged in the business of additions, alteration, and renovation construction. (DED Exhibits 1 and 5).
9. Kaukab Naveed is the minority woman owner relied upon for certification. Ms. Naveed is the President and owns 100% of CR&M. Ms. Naveed acquired her ownership interest on February 10, 2010. (DED Exhibit 1).
10. The application states that Ms. Naveed contributed \$ [REDACTED] in exchange for her ownership interest. (DED Exhibit 1).
11. The stock purchase agreement states that Ms. Naveed did not make a capital contribution when she obtained her shares in the business enterprise. (DED Exhibit 6).

12. The critical functions of the business include the interior and exterior construction services, remodeling, rehabilitation projects, and alteration and renovation construction. (DED Exhibits 1 and 5).
13. Ms. Naveed's responsibilities at CR&M include managing financial decisions, negotiating bonding, negotiating insurance, marketing and sales, hiring and firing, managing and signing payroll, and serving as the signatory for business accounts. Ms. Naveed's professional experience is in the running of a "construction office," and includes payroll reports and accounting. (DED Exhibits 1 and 7).
14. Naveed Ahmed is the Project Manager for CR&M and serves as the secretary for the business enterprise. He is responsible for managing financial decisions, supervising field operations, and purchasing equipment. He also holds a Rigger license, and has worked as a rigger foreman and brick layer. He has worked as the Office Manager, Estimator, and Project Manager for CR&M since 2010. (DED Exhibits 1 and 8).
15. Imran Chattha is responsible for estimating and preparing bids for CR&M. (DED Exhibit 1).

### **APPLICABLE LAW**

5 NYCRR § 144.2 (b)(2) states as follows:

Capital Contribution. Minority group members and women relied upon for certification must demonstrate a capital contribution to the business enterprise for which certification is sought proportionate to their equity interest therein.

- (i) Sources of capital contribution. Minority group members and women may demonstrate a capital contribution by providing documentary evidence of, for example and without limitation, one of more of the following:
  1. Money;
  2. Property;

3. Equipment; or
4. Expertise, provided that the contribution of such expertise must be uncompensated the expertise must be specialized and directly applicable to one or more critical aspects of the operation of the business enterprise, and a reasonable assessment of the fair market value of the expertise must be clearly documented.

5 NYCRR § 144.2 (c)(1) states as follows:

Competence in the industry. Minority group members and women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things. In evaluating whether a minority group member or woman possesses adequate, industry-specific competence, the division shall consider factors including but not limited to:

- (ii) Whether individuals employed by the business enterprise for which certification is sought are required to obtain licenses or certifications to provide products or services to the clients of the business enterprise;
- (iii) The extent to which academic credentials exist for persons employed in the industry; and
- (iv) The extent to which industry-specific expertise may be obtained via direct work experience.

5 NYCRR § 144.2 (c)(2) states as follows:

Operational decisions. Minority group members and women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise for which certification is sought. The critical functions of a business enterprise shall be determined by the division based upon the following factors, but is not limited to:

- (i) The products or services the business enterprise provides to clients; and
- (ii) The means by which the business enterprise obtains contracts or orders.

## **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 CR&M for certification as an MWBE 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. Ownership**

The Division denied CR&M's application for certification as an MWBE on the basis that the applicant business failed to demonstrate that the party relied upon for certification made capital contributions proportionate to her equity interest therein, as required by 5 NYCRR § 144.2(b)(2). (DED Exhibit 2). The Division interprets this regulation to require an applicant to demonstrate that the minority woman owners contributed, "as demonstrated by, but not limited to, contribution of money, property, equipment, or expertise," in proportion "to their equity interest in the business enterprise." 5 NYCRR § 144.2(b)(2) and see *A.A.C. Contracting, Inc. v NYS Dept. of Economic Development*, 195 A.D. 3d 1284, 151 NYS 3d 187 (3d Dept. 2021). The applicant must

substantiate that the source of the capital contribution is by the minority group member or woman owner. See *Matter of Otone Mechanical Construction, Inc.*, Recommended Order dated April 24, 2015 (Final Order 17-28, dated May 2, 2017), *Matter of Spring Electric, Inc.*, Recommended Order dated March 17, 2017 (Final Order 17-21, dated March 27, 2017). The Division consistently denies applications for certification where an applicant fails to substantiate the source of the capital contribution consistent with the eligibility criteria. (See, *Darr Construction Equipment Corp.*, Recommended Order August 30, 2022 (Final Order 22-11, Nov. 7, 2022) and *Matter of Coverco, Inc.*, Recommended Order, Jan. 23, 2017 (Final Order 17-06, Jan. 30, 2017) aff'd by *Coverco, Inc. v. NYS Dept. of Econ. Development*, 159 AD 3d 1538 (4<sup>th</sup> Dept. 2018)).

The Applicant bears the burden in establishing that they have met this certification requirement. Failure to satisfy this burden is proof that the denial was supported by substantial evidence. See *A.A.C. Contracting, Inc. v. NYS Dept. of economic Development*, 195 A.D. 3d 1284, 151 NYS 3d 187 (3d Dept. 2021).

Here, there is no evidence to support the statement in the application that Ms. Naveed contributed \$ [REDACTED] for her ownership interest. (DED Exhibit 1). The stock purchase agreement, submitted with the application, contradicts the application itself, and states that stocks were surrendered to Ms. Naveed “for no amount due.” (DED Exhibit 6). Further, Applicant, in their request for this appeal states that they will provide “more documentation to support the figure of [REDACTED],” but have provided no further information or documentation. (DED Exhibit 4).

Based on the foregoing, I find that the applicant did not demonstrate that the minority woman owner relied on for certification made capital contributions to CR&M in proportion to her ownership interest. Thus, the Division’s determination that the party relied upon for certification failed to demonstrate that they made a capital contribution to the business enterprise proportionate

to their equity interest therein, as required under 5 NYCRR § 144.2(b)(2) is supported by substantial evidence.

## II. Industry-Specific Competence

The Division denied CR&M's application for certification as an MWBE on the basis that the applicant failed to demonstrate that Ms. Naveed possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR § 144.2(c)(1). (DED Exhibit 2). "This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things." (5 NYCRR § 144.2(c)(1)). The Division interprets this regulation to require an applicant to demonstrate that the woman-owner, relied on for certification, has the working knowledge necessary to review or evaluate the work of more experienced employees. (See *In the Matter of Upstate Electrical, LLC v New York State Department of Economic Development*, 179 AD3d 1343 (3d Dept. 2020) citing to *C.W. Brown, Inc. v Canton*, 216 AD 841, 842 (1995) (where the Court affirmed the denial where the woman-owner had no training or experience in the industry to make her qualified to supervise the work of her employees.)) The Division consistently requires that women owners be able to perform the core revenue generating functions of the business enterprise. (See *Matter of Bore Tech LLC*, Recommended Order dated June 1, 2021 (Final Order 21-05, dated December 22, 2021)), see also, *Matter of Occupational Safety & Environmental Assoc. Inc. v New York State Department of Economic Development*, 161 AD3d 1582 (3d Dept. 2019)).

The Applicant bears the burden of establishing that the woman-owner relied upon for certification has met this requirement. Failure to satisfy this burden is proof that the denial was supported by substantial evidence. See *A.A.C. Contracting, Inc. v. NYS Dept. of Economic Development*, 195 A.D. 3d 1284, 151 NYS 3d 187 (3d Dept. 2021).



Nowhere in the materials before the Division is there any evidence that Ms. Naveed has adequate, industry-specific competence in construction or restoration. Ms. Naveed's experience is in administrative work and accounting. There is no evidence that she has any expertise in the core revenue generating functions of the applicant business. (DED Exhibit 7). The only evidence regarding anyone having industry experience and competence is the resume for Naveed Ahmed, who has experience as a rigger and brick layer, holds a rigger's license and is responsible for all field supervision. (DED Exhibits 1 and 8). Here, the only additional information supplied by the applicant is in the request for appeal, where the applicant states that they will provide an "updated resume and proof of work done on sites." (DED Exhibit 4). However, no additional information has been provided by the applicant.

Thus, the Division's determination that the party relied upon for certification does not possess adequate, industry-specific competence to make critical business decisions without relying on others, as required under 5 NYCRR § 144.2(c)(1) is supported by substantial evidence.

### III. Operation

The Division also denied CR&M's application for certification as an MWBE on the basis that the applicant failed to demonstrate that Ms. Naveed makes operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise as required by 5 NYCRR § 144.2(c)(2). According to the regulation, the critical functions of the business enterprise shall be determined by the Division based upon, but not limited to, the following factors: (1) "The products or services the business enterprise provides to clients; and" (2) "The means by which the business enterprise obtains contracts or orders." 5 NYCRR § 144.2 (c)(2). The Division consistently denies certification where the woman-owner has no training, experience, or working knowledge in the core business functions and other employees or owners have more significant or substantive

experience, and exercise that experience, such as by supervising or controlling field operations. (See *Matter of Panko Electrical and Maintenance Corp. v Zapata et. al*, 172 AD3d 1682 (3d Dept. 2019), see also *Matter of Upstate Electrical, supra*).

In its evaluation, the Division reviewed, in addition to the application, contracts submitted by CR&M to determine what products and services the applicant business provides to clients. (DED Exhibits 1 and 5). CR&M's business is engaged in construction, and they offer interior and exterior construction services, demolition, remodeling, and rehabilitation projects. (DED Exhibit 5). Ms. Naveed's prior experience is in managing payroll reports, accounts, and in QuickBooks. (DED Exhibit 7). Her role at CR&M is purely administrative in nature and involves general office management and the overseeing of project accounts, managing inventory, and attending meetings to obtain new projects. (DED Exhibit 7). She is not involved in the bidding processing, negotiating contracts, purchasing equipment/sales or in field supervision. (DED Exhibit 1). Her duties are administrative and have nothing to do with the critical functions of the applicant business.

It is well settled that where the owner relied upon for certification has no training or experience in the critical functions of the business enterprise and others, with more significant experience, such as an employee or non-qualifying owner, actively engage in the core functions of the business, denial based on lack of operational control is appropriate. (See *Matter of Panko, supra*, and *Matter of Upstate Electrical, supra*). Here, the evidence presented establishes, unequivocally, that Ms. Naveed's role at CR&M is administrative while others, not relied on for certification, are responsible for the day-to-day operations of the business enterprise.

Based on the foregoing, I find that the Division's determination that CR&M has not demonstrated that the minority woman owner relied upon for certification makes operational

decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required under 5 NYCRR § 144.2(c)(2) is supported by substantial evidence.

### **CONCLUSION**

CR&M did not meet its burden to demonstrate that the Division's determination to deny its application for certification as a minority woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§ 144.2(b)(2), 144.2(c)(1), and 144.2(c)(2) was not based on substantial evidence.

### **RECOMMENDATION**

The Division's determination to deny City Restoration and Maintenance, Inc.'s application for certification as a minority woman-owned business enterprise should be affirmed.

In the Matter of City Restoration and Maintenance, Inc.  
 DED File ID No. 65367  
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
DED 1	Application for Certification	Y	Y
DED 2	Denial Determination	Y	Y
DED 3	Notice to Proceed by Written Appeal Submission	Y	Y
DED 4	Appellant's Appeal Request Form	Y	Y
DED 5	Astor Place and Williams Street Contracts	Y	Y
DED 6	Stock Purchase Agreement	Y	Y
DED 7	Resume of Kaukab Naveed	Y	Y
DED 8	Resume of Naveed Ahmed	Y	Y