

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

In the Matter

- of -

the Application of Connors Haas, Inc.
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 69473

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
February 6, 2024

This matter considers the written appeal by Connors Haas, Inc., (“Connors Haas” 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 woman-owned business enterprise (“WBE”).

PROCEDURAL HISTORY

1. On October 7, 2022, Ms. Linda Haas-Ayer, as President, applied on behalf of Connors Haas for certification as a woman-owned business enterprise (“WBE”) (DED Exhibit 1).
2. On March 30, 2023, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) Minority group members or women relied upon for certification do 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);
 - (b) Minority group members or women relied upon for certification do 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); and
 - (c) Minority group members or women relied upon for certification do not negotiate business contracts and represent themselves to clients as the principals of the business enterprise, as demonstrated by fully executed business agreements, as required under 5 NYCRR §144.2(d)(2).
3. Connors Haas timely filed a Request to Appeal on April 26, 2023 (APP Exhibit A).

4. A notice to proceed via written appeal was sent to Connors Haas on May 9, 2023 (DED Exhibit 3).
5. Connors Haas filed its written appeal by letter dated May 30, 2023, from its attorney, Lorisa LaRocca, Esq. of Woods Oviatt Gilman LLP (APP Exhibit B).
6. The Division filed an Affidavit of Matthew LeFebvre, Associate Certification Analyst, dated November 14, 2023, and a brief of Candace Williamson Esq., counsel for the Division, dated November 17, 2023.

FINDINGS OF FACT

7. Connors Haas is a construction-based business that provides electrical contracting services. (DED Exhibit 1).
8. Ms. Linda Haas-Ayer is the CEO and has a 100% ownership interest. (DED Exhibit 1).
9. The business was founded by Ms. Haas-Ayer's father in 1966. Ms. Haas-Ayer's brother acquired the business from their father in 2002 and operated the business until his passing in 2019, when the ownership passed equally to Ms. Haas-Ayer and her sister. In 2001, Ms. Haas-Ayer purchased her sister's interest and became the sole owner (DED Exhibit 7).
10. Ms. Haas-Ayer has an educational background in Industrial Relations and Social Work. She has spent over 30 years as a clinician in both educational settings and in health facilities. In her resume, she states that she advises the Executive Team on daily operations, participates in project management team meetings, supervises the organizational development, updates the Employee Handbook, and conducts performance reviews (DED Exhibit 4).
11. Ms. Haas-Ayer shares responsibilities with Mr. David Ayer, President; Mr. Christopher Hoot, Executive Vice President and Mr. Tom Callen, Senior Estimator in estimating, preparing bids, negotiating bonding, hiring and firing, supervising field operations, purchasing

equipment and sales, managing and signing payroll, negotiating contracts, and serving as signatory for the business accounts (DED Exhibit 1).

12. Mr. David Ayer, Ms. Haas-Ayer's husband, has worked for Connors Haas as its President since 2019. He stabilized the executive team and the employees of the business following the death of Ms. Haas-Ayer's brother. He reported to the estate representatives and the board of directors, and guided the company through COVID-19 shutdowns, while increasing sales (DED Exhibit 4).

13. Mr. Christopher Hoot has worked for Connors Haas since 1996, and he previously worked in the electrical field. He holds a master electrician license, in addition to a fire alarm and security license. He has held the position of estimator, service and customer manager, project manager, chief estimator overseeing estimates, and currently as the Executive Vice President he oversees all aspects of construction operations, including estimating and project management. (DED Exhibit 4). He is responsible for hiring and firing, supervising field operations, purchasing equipment and sales, and negotiating contracts (DED Exhibit 1). He is the signatory on the three executed contracts submitted with the application (DED Exhibit 6).

14. Mr. Effinger has worked for the business since 1994 and has held the positions as a wireman, foreman, project manager, and now serves as the Vice President. He serves as a leader/team builder, who oversees the daily operation and performance of those in his division. He assesses, evaluates, and reports on staff, strategizes, and implements operational and structural changes with fellow executives (DED Exhibit 4).

15. Mr. Callan, an employee since 2016, currently serves as a Senior Estimator who estimates projects ranging from \$10,000 to \$10 million and is involved in the designs and builds (DED Exhibit 4). He is responsible for estimating and preparing bids (DED Exhibit 1).

APPLICABLE LAW

5 NYCRR §144.2(c) states in relevant part as follows:

Operation. Minority group members and women relied upon for certification must make day-to-day decisions concerning the operation of the business enterprise for which certification is sought. The division shall evaluate whether minority group members or women operate a business enterprise for which certification is sought based upon the following criteria:

- (1) 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:
 - (i) 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;
 - (ii) The extent to which academic credentials exist for persons employed in the industry; and
 - (iii) The extent to which industry-specific expertise may be obtained via direct work experience.

- (2) 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 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.

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

Control of business negotiations. Minority group members and women relied upon for certification must negotiate business contracts and represent

themselves to clients as the principals of business entities for which certification is sought, as demonstrated by fully executed business agreements.

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 Connors Haas for certification as a WBE 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. Operation

5 NYCRR §144.2(c)(1) requires that the woman-owner possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, and that “this requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things”. In *Upstate Electrical, LLC v. N.Y. State Dept. of Economic Development*, 2020 NY Slip Op. 340 (N.Y. App. Div. 2020), 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.

Ms. Haas-Ayer does not have any industry-specific expertise; her skills are related to general business or office management. She does not possess any academic or technical training relevant to the business' industry. She has an educational background in Industrial Relations and Social Work. She has spent over 30 years as a clinician in both educational settings and in health facilities. While she claims to provide advice to the team on daily operations, her resume does not reflect that she is qualified to do so. (DED Exhibit 4). She shares responsibilities with Mr. David Ayer, President; Mr. Christopher Hoot, Executive Vice President and Mr. Tom Callen, Senior Estimator in estimating, preparing bids, negotiating bonding, hiring and firing, supervising field operations, purchasing equipment and sales, managing and signing payroll, negotiating contracts, and serving as signatory for the business accounts (DED Exhibit 1).

Ms. Haas-Ayer's resume does not reflect any experience or training in the critical functions of the business (DED Exhibit 5). She does not have experience working in the construction industry or performing electrical work. She therefore must rely on others to perform the critical functions of the business. Her role at the business is primarily business management and administrative and does not reflect any academic or technical training to manage the employees of the business (DED Exhibits 1, 4 and 5).

In evaluating whether a minority group member or woman possesses adequate, industry-specific competence, one of the factors that the division considers includes "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" (5 NYCRR

§144.2(c)(1)). Ms. Haas-Ayer does not hold any individual licenses in the electrical or construction industry (DED Exhibit 4).

On appeal, applicant states the Ms. Haas-Ayer's father taught her how to code blueprints, she assisted her mother with payroll and completing union reports, and she spent summers learning how the business operated. She states that she participated in a leadership academy sponsored by a National Electrical Contractors Association (APP Exhibit B). This information was not part of the application and is therefore new evidence that will not be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

5 NYCRR §144.2(c)(2) states that "... 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".

The woman-owner "must exercise independent operational control over the core functions of the business in order to establish the requisite control for WBE certification". See *J.C. Smith, Inc. v. New York State Department of Economic Development*, 163 AD3d, 1517 (4th Dept. 2018).

The core functions of Connors Haas include securing contracts for electrical contracting and providing the electrical services to its clients (DED Exhibit 1). Mr. Christopher Hoot has worked for Connors Haas since 1996, and he previously worked in the electrical field. He holds a master electrician license, in addition to a fire alarm and security license. He has held the position of estimator, service and customer manager, project manager, chief estimator overseeing estimates, and currently as the executive vice president he oversees all aspects of construction operations,

including estimating and project management. (DED Exhibit 4). He is responsible for hiring and firing, supervising field operations, purchasing equipment and sales, and negotiating contracts (DED Exhibit 1).

Although Ms. Haas-Ayer states in her appeal that she participates in regular team meetings with project managers, reviews all proposals and bids and consults with Connors Haas' estimators, Ms. Haas-Ayer still relies on others for overseeing the critical functions of the business, including estimating, preparing bids, negotiating contracts, and supervising field operations (APP Exhibit B; DED Exhibit 1).

The Division's determination to deny the application on the basis that Connors Haas failed to demonstrate that Ms. Haas-Ayer possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1), and make operational decisions on a day-to-day basis with respect to the critical functions of the business, as required under 5 NYCRR §144.2(c)(2), is supported by substantial evidence.

II. Control

Women-owners must demonstrate control of negotiations through the production of signed contracts, as required by 5 NYCRR §144.2(d)(2). Negotiating and executing contracts are related to the core business functions. Signing contracts demonstrates that a woman-owner exercises appropriate control over a business enterprise with respect to business negotiations. See *Matter of Darr Construction Equipment Corp.*, Recommended Order dated August 30, 2022, Final Order 22-11, dated November 7, 2022.

Mr. David Ayer serves as signatory on business documents – commercial lease agreement and performance bond for the Standby Generator Optimization contract – and signs as the

President of Connors Haas. Mr. Christopher Hoot has signed three of the contracts submitted with the application, including the subcontractor agreement (DED Exhibit 6). No contracts were submitted with the application to show Ms. Haas-Ayer as signatory.

On appeal, applicant argues that it would not be rational for Ms. Haas-Ayer as CEO to sign every contract “after she has approved it for execution.” (APP Exhibit B). However, Ms. Haas-Ayer is not the signatory on any of the contracts submitted (DED Exhibit 6). Applicant further argues that the contracts provided represent the biggest contracts, as prompted by the application, and Mr. Hoot’s signature is on them because these contracts were executed before Ms. Haas-Ayer’s arrival. However, additional documents could have been provided, and the contract with Thermal Fisher Scientific was signed on October 6, 2021, six months after Ms. Haas-Ayer became the CEO, the contract with COR Catholic Protection was executed on November 15, 2021, seven months after Ms. Haas-Ayer became the CEO, and the contract with Standby Generator Optimization was executed on June 8, 2021, two months after Ms. Haas-Ayer became the CEO (DED Exhibit 6).

On appeal, applicant also submitted newly produced contracts signed by Ms. Haas-Ayer that were not provided with the application. This information was not part of the application and is therefore new evidence that will not be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

Therefore, applicant failed to demonstrate appropriate control of the business by the woman-owner as required by 5 NYCRR §144.2(d)(2). See *Matter of Jaclyn Building Services*, Recommended Order dated May 23, 2016, Final Order 16-21 dated May 25, 2016 (substantial evidence supported denial where no evidence was presented that the woman-owner signs contracts on behalf of the business).

CONCLUSION

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

RECOMMENDATION

For the reasons set forth above, I recommend that the Director affirm the Division's determination to deny Connors Haas' application for certification as a woman-owned business enterprise.

In the Matter of Connors Haas, Inc.
DED File ID No. 69473
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	Notice to Proceed Via Written Appeal	Y	Y
DED 4	Resumes and Duties of Executive Members	Y	Y
DED 5	Narrative Response	Y	Y
DED 6	Business Contracts and Lease Agreement	Y	Y
DED 7	Narrative of the History of Connors Haas, Inc.	Y	Y