

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

In the Matter

- of -

the Application of Globenet Telecommunications, LLC dba Globenet LLC
for Certification as a Minority-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 54098

RECOMMENDED ORDER

-by-

A handwritten signature in black ink, appearing to read "David A. Murad", is written over a horizontal line.

David A. Murad
Administrative Law Judge
April 16, 2025

This matter considers the appeal by Globenet Telecommunications, LLC dba Globenet LLC (“Globenet” 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-owned business enterprise (“MBE”).

PROCEDURAL HISTORY

1. On July 9, 2024, Mr. David Middleton, as President, applied on behalf of Globenet for certification as a minority-owned business enterprise (“MBE”). (DED Exhibit 1; APP Exhibit B)
2. On September 26, 2024, the Division denied the application on the ground that the business enterprise does not contribute to the New York State economy through payment of taxes, or the purchase of made in New York State products or materials, or by having any payroll in New York State, as required under 5 NYCRR §§144.2(f)(2), 140.1(gg), and 140.1 (hh). (DED Exhibit 2; APP Exhibit A)
3. On October 24, 2024, Globenet submitted a Request to Appeal via a Hearing. (DED Exhibit 4)
4. On January 21, 2025, a Notice of Hearing was sent to all parties. (DED Exhibit 3)
5. A hearing was held and concluded on April 1, 2025.

FINDINGS OF FACT

7. Globenet provides a wide range of commercial electrical contracting services, including installation of structured cabling systems for network infrastructure systems, fiber optic cables, and low voltage and electronic equipment. (DED Exhibit 1; APP Exhibit B)
8. David Middleton is the President and has a 100% ownership interest. Globenet has no payroll, generates no revenue, and pays no taxes in New York State. (DED Exhibits 1 and 14; APP Exhibit B)
9. In response to the Division's request for documentation that shows the business makes a contribution to the New York State economy through payment of business taxes, the purchase of made in New York State products or materials, or having payroll in New York State, Mr. Middleton stated "We do not have the requested information." (DED Exhibit 11)
10. Copies of the 2022 and 2023 Business Tax Returns were provided with the application. No New York State Tax Returns were provided. (DED Exhibits 5 and 8; APP Exhibit E)
11. The only W-2 issued by Globenet in 2023 was to David Middleton, a resident of North Carolina. The remaining payroll expense is subcontracted labor. (DED Exhibits 9 and 11)
12. Globenet contracted with a number of independent contractors in 2023. Although one of the 1099s was issued to a company based in New York, no income or payroll taxes were paid to New York State. (DED Exhibit 10; APP Exhibit C)

APPLICABLE LAW

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

Small business requirement. Applications to certify business enterprises as minority and women-owned business enterprises must satisfy the small business requirement. Any business enterprise for which certification as a minority or woman-owned business enterprise is sought.

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.

5 NYCRR §140.1(hh) states in relevant part as follows:

Small business. A business which has a significant business presence in the State, is independently owned and operated, and is not dominant in its field, but in no event employs more than three hundred people...

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 Globenet for certification 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

Ms. Diana Plue, Esq., of Sheats & Bailey, PLLC, appeared at the hearing on behalf of Globenet. The following witness testified on behalf of Globenet: David Middleton, President of

Globenet. Globenet offered APP Exhibits A through E, which were admitted into evidence.

Mr. Kyle Satchell, Counsel, Department of Economic Development, appeared at the hearing on behalf of the Division. The following witness testified on behalf of the Division: Glenn Butler, Associate Certification Director, Division of Minority and Women Business Development. The Division offered the following exhibits which were admitted into evidence: DED Exhibits 1 – 14.

I. Small Business

The Division denied Globenet’s application on the basis that Globenet failed to demonstrate that the business made 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 by having any payroll in New York State. The Division cited 5 NYCRR §144.2(f)(2), which states “Small business requirement. Applications to certify business enterprises as minority and women-owned business enterprises must satisfy the small business requirement. Any business enterprise for which certification as a minority or woman-owned business enterprise is sought must be a small business, as that term is defined in Part 140 of this Title.” The Division further cited 5 NYCRR §§140.1(gg) and 140.1(hh), which define “Significant business presence”, and “Small business”, respectively. (DED Exhibit 2).

5 NYCRR §140.1(hh) states that a small business is “a business which has a significant business presence in the State...”

5 NYCRR §140.1(gg) states a “significant business presence” includes making “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.”

During his interview with the Division, Mr. Middleton stated that Globenet has no payroll, generates no revenue, and pays no taxes in New York State. (DED Exhibit 14)

In response to the Division's request for documentation that shows the business makes a contribution to the New York State economy through payment of business taxes, the purchase of made in New York State products or materials, or having payroll in New York State, Mr. Middleton stated "We do not have the requested information." (DED Exhibit 11)

Copies of the 2022 and 2023 Business Tax Returns were provided with the application. No New York State Tax Returns were provided. (DED Exhibits 5 and 8; APP Exhibit E)

The only W-2 issued by Globenet in 2023 was to David Middleton, a resident of North Carolina. No payroll information was provided to show any payroll in New York State. (DED Exhibit 9) Globenet contracted with a number of independent contractors in 2023. Although one of the 1099s was issued to a company based in New York, no income or payroll taxes were paid to New York State. (DED Exhibit 10; APP Exhibit C)

Mr. David Middleton testified that Globenet has conducted business in New York State since 2008. He stated that in 2023, Globenet provided services to Verizon, and purchased steel fabrication and materials in New York State for the project. He further testified that an amended return was filed after the denial determination showing taxes paid to New York State. (Hearing Testimony of David Middleton) However, applicant's counsel indicated that only a franchise tax return, Form CT-3 had been filed and the taxes paid, and that the full amended return including the federal portion had not been finalized.

Mr. Glenn Butler testified that no information or documentation was provided at the time of the application to show that Globenet paid any payroll or business taxes in New York State or purchased any made in New York State materials or products. The Verizon contract merely shows

that Globenet conducted business in New York State, which is a requirement of 5 NYCRR §144.2(f)(3). This section was not part of the denial determination. Mr. Butler testified that had applicant stated on the application that fabrication materials were purchased in New York, that the Division would have requested documentation to corroborate this statement. He testified that Mr. Middleton's testimony that Globenet paid taxes by an amended tax return filed after the denial determination, and purchased products and materials in New York, information not provided in the application, cannot now be considered. 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) This new evidence contradicts Mr. Middleton's statements at the time of the application, where he stated that Globenet has no payroll, generates no revenue, and pays no taxes in New York State (DED Exhibit 14), and "We do not have the requested information." (DED Exhibit 11) (Hearing Testimony of Glenn Butler)

The Division's determination to deny the application on the basis that Globenet failed to demonstrate that the business contributes to the New York State economy through payment of taxes, or the purchase of made in New York State products or materials, or by having any payroll in New York State, as required under 5 NYCRR §§144.2(f)(2), 140.1(gg), and 140.1 (hh), is supported by substantial evidence.

CONCLUSION

Globenet did not meet its burden to demonstrate that the Division's determination to deny its application for certification as a minority-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(f)(2), 140.1(gg), and 140.1 (hh), 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 Globenet's application for certification as a minority-owned business enterprise.

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 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Denial Letter	Y	Y
APP B	Application for Certification	Y	Y
APP C	1099's submitted with the application	Y	Y
APP D	Contracts submitted with the application	Y	Y
APP E	2023 Tax Return	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Notice of Hearing	Y	Y
DED 4	Request to Appeal	Y	Y
DED 5	2022 Tax Return Globenet	Y	Y
DED 6	2022 Tax Return David Middleton	Y	Y
DED 7	2023 Tax Extension David Middleton	Y	Y
DED 8	2023 Tax Return Globenet	Y	Y
DED 9	David Middleton W2	Y	Y
DED 10	Globenet 1099 forms	Y	Y
DED 11	Narrative NYS Questions	Y	Y
DED 12	LLC/LLP Request for Information	Y	Y

DED 13	Form W-9	Y	Y
DED 14	Interview of David Middleton	Y	Y