

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

In the Matter

- of -

the Application of Indigo River Architecture and Engineering, D.P.C.
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 70182

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
April 28, 2025

This matter considers the written appeal by Indigo River Architecture and Engineering, D.P.C. (“IRAE” 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 May 20, 2024, Ms. Dena Prastos as CEO, and Ms. Domenica Stasiak, as Chairperson of the Board, applied on behalf of IRAE for certification as a woman-owned business enterprise (“WBE”) (DED Exhibit 1).
2. On September 4, 2024, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) Minority group members or women relied upon for certification have not demonstrated having made a capital contribution to the business enterprise proportionate to their equity interest therein, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required under 5 NYCRR § 144.2(b)(2); and
 - (b) The business enterprise does not operate independently, as required under 5 NYCRR § 144.2(e).
3. IRAE filed a Request to Appeal on October 2, 2024 (DED Exhibit 19).
4. A notice to proceed via written appeal was sent to IRAE on October 3, 2024 (DED Exhibit 20).

5. IRAE filed its written appeal by letter dated November 1, 2024, with attachments (APP Exhibit A).
6. The Division filed an Affidavit of Glenn Butler, Associate Certification Director, dated March 25, 2025, and a brief of Laurel Wedinger-Gyimesi Esq., counsel for the Division, dated March 31, 2025.

FINDINGS OF FACT

7. IRAE is engaged in the business of waterfront architectural and engineering services (DED Exhibit 1).
8. Dena Prastos is the President and CEO and has a 38% ownership interest. Domenica Stasiak is the Vice President and Chairperson of the Board and has a 38% ownership interest. Both Ms. Prastos and Ms. Stasiak were relied upon for certification. Mr. Shea Thorvaldsen is the Managing Member and has a 24% ownership interest and was brought on for his mentorship and advisement on business proceedings. (DED Exhibits 1 and 12; APP Exhibit A).
9. Dena Prastos contributed \$██████ to the business by check dated March 8, 2022, which was drawn from her personal account and made payable to IRAE. Domenica Stasiak contributed \$██████ to the business by check dated May 27, 2022, which was drawn from a joint account in the name of Domenica Stasiak and Stephen Stasiak and made payable to Domenica Stasiak, with a memo stating "IRAE Deposit." (DED Exhibits 1 and 8)
10. IRAE's 2022 and 2023 tax returns show total capital contributions of \$██████. (DED Exhibit 9)
11. IRAE has no employees and has paid no wages. (DED Exhibits 1 and 11) "The owners aren't taking draws since IRAE is a young company in its infancy. We are getting paid as

salaried employees from a separate entity, Littoral Group LLC, which Dana Prastos and Shea Thorvaldsen have shared ownership in.” (DED Exhibit 12)

12. IRAE leases employees from Littoral Group LLC. Dena Prastos and Shea Thorvaldsen are partners in Littoral Group LLC. Littoral Group LLC administers the benefits and holds the contracts for the labor staff utilized by IRAE. (DED Exhibits 1 and 18)
13. Applicant submitted two contracts reflecting active projects on The Trust for Governors Island: one involving Yankee Pier and one involving Lima Pier, for which IRAE is the design consultant. IRAE’s “consulting team” comprises TMS Waterfront, with Shea Thorvaldsen serving as the maritime advisor and lead estimator and Buckman Engineering with Brian Buckman, PE serving as the lead structural engineer. Also included are Collectif Engineering, PG Environmental Services Inc. and Control Point Associates, with all of the companies listed as “sub-consultants” (DED Exhibit 6)
14. Resumes of “key personnel” working on the projects were provided (DED Exhibit 14)
An organizational chart lists leading personnel for the project: Domenica Stasiak, Project Executive and Marine Engineer, Anand Agerwal, Geotechnical Engineer, Alex Haubrich, Coastal Engineer, Dena Prastos, Lead Architect, Daryl Zuk, Architectural Designer, and Matthew McEnemy, Climate Adaptation Specialist (DED Exhibit 15)
15. The “Team Organization” information for the project states: “On our staff are project managers, flood plain management professionals, WEDG certified designers, architects, a naval architect, engineers, permitting specialists, and planners. This staff, ably supplemented by our subconsultants with whom we work with extensively, will drive the project to successful completion.” (DED Exhibit 16)

16. IRAE's 2022 tax returns reflect that the business generated gross receipts of \$ [REDACTED] and paid administrative fees of \$ [REDACTED]. The 2023 tax returns reflect gross receipts of \$ [REDACTED] and administrative fees of \$ [REDACTED]. (DED Exhibit 9) The administrative fees are primarily paid to Littoral Group for labor. (DED Exhibit 18)
17. IRAE's 2022 tax returns show an address of 1 Van Houten Street, Nyack, New York, and its 2023 tax returns show an address of P.O. Box 731, Nyack, New York. (DED Exhibit 9) IRAE has no lease and no deed (DED Exhibit 1) When asked by the Division as to the address from which the business operates, applicant stated "not applicable at this time. IRAE operates remotely/virtually." (DED Exhibit 7)
18. The 2023 Form 1099's issued to Torvalsen Consulting LLC and Torvalsen Marine Group show both companies having an address of P.O. Box 731, Nyack, New York. (DED Exhibit 10) Shea Thorvaldsen is a 99% owner of Torvalsen Consulting LLC dba TMS Waterfront and Dena Prastos is a 1% owner. Shea Thorvaldsen is a 51% owner of Torvalsen Marine Group LLC and Dena Prastos is a 39% owner. (DED Exhibit 12)
19. Torvalsen Consulting dba TMS Waterfront is identified as one of the subconsultants on the project. The address used for TMS Waterfront is 1 Van Houton Street, Nyack, New York, the same address as used by IRAE in its incorporation documents, 2022 tax filing and resumes of "key personnel" submitted with the contracts listing active projects. (DED Exhibits 4, 9, 14, and 17)

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 a 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(e) states as follows:

Independence. Business enterprises for which certification is sought must operate independently. In order to determine whether such business enterprises operate independently, the division shall consider but not be limited to the following criteria:

- (1) Whether the business enterprise shares resources with another entity, including, but not limited to, personnel, equipment, office space, warehouse and other storage space, and yard space;
- (2) Whether the business enterprise transacts business primarily with one other entity; and
- (3) Whether the business enterprise receives tangible benefits as a result of a connection to another entity, and whether such benefits are consistent with standard industry practices.

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 IRAE 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. Ownership

The Division interprets 5 NYCRR §144.2(b)(2) to require an applicant to demonstrate that the woman-owner’s contribution came from assets belonging solely to the woman-owner. Given this criterion, the Division consistently denies applications for WBE certification where, as here, an applicant fails to substantiate the source of the capital contribution by the 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 Applicant bears the burden in establishing that she has 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).

It is the responsibility of the applicant “to clearly identify, quantify, and explain on the certification application, what is to be considered a capital contribution.” *Matter of Scherzi*

Systems, Final Order 19-16, dated September 6, 2019, *Scherzi Systems, LLC v. White*, 197 AD 3d 1466 (3d Dept. 2021).

Section 2.E of the certification application states that Dena Prastos contributed \$ [REDACTED] to the business by check dated March 8, 2022, for a 38% ownership interest, and Domenica Stasiak contributed \$ [REDACTED] to the business by check dated May 27, 2022, for a 38% ownership interest. (DED Exhibit 1) Ms. Prastos' check was drawn from her personal account and made payable to IRAE. Ms. Stasiak's check was drawn from a joint account in the name of Domenica Stasiak and Stephen Stasiak and made payable to Domenica Stasiak, with a memo stating "IRAE Deposit." (DED Exhibit 8) The contributions made by the woman-owners were disproportionate for the same equity interest.

In addition, the alleged contribution made by Ms. Stasiak did not show that it came from assets belonging solely to her. (DED Exhibits 1, 8 and 9) Contributions made from a joint account shared with an ineligible party do not represent a capital contribution made by the woman-owner seeking certification. *Matter of Bore Tech LLC*, Recommended Order dated June 1, 2021, Final Order 21-05, dated February 7, 2022

IRAE's 2022 and 2023 tax returns show total capital contributions of \$ [REDACTED], which contradicts the information provided in the application. (DED Exhibits 1 and 9),

On appeal, applicant states, "Dena Prastos and Domenica Stasiak started the company with 76% ownership with Shea Thorvaldsen brought on for the remaining 24% ownership for his mentorship and advisement on business proceedings, demonstrating the expertise contribution by the woman owners and that 76% of IRAE is owned by women, Dena Prastos and Domenica Stasiak..." (APP Exhibit A) However, 5 NYCRR §144.2(b)(2) requires that the women relied upon for certification must demonstrate a capital contribution to the business enterprise

proportionate to their equity interest therein, which the women owners did not establish. (DED Exhibit 1)

Additionally, applicant's argument on appeal that there was an expertise contribution by the woman-owners, is new information that was not before the Division at the time of the denial determination and will not now be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021). Also, there is no valuation of the alleged expertise and no indication that it was uncompensated. 5 NYCRR §144.2(b)(2)(i) states that "Minority group members or women may demonstrate a capital contribution by providing documentary evidence of ... (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." Where applicant provided no valuation of the owner's expertise, the Division was not able to ascertain whether the contribution was proportionate. *Matter of JVR Electric, Inc.*, Recommended Order dated August 31, 2016, Final Order 16-43 dated September 9, 2016.

The Division's determination to deny the application on the basis that IRAE failed to demonstrate that the woman-owners made capital contributions to IRAE in proportion to their ownership interest, as required under 5 NYCRR §144.2(b)(2), is supported by substantial evidence.

II. Independence

The Division further found that IRAE is not an independent business enterprise, as required under 5 NYCRR §144.2(e). This section considers "(1) whether the business enterprise shares resources with another entity, including, but not limited to, personnel, office space, warehouse and other storage space, and yard space; (2) whether the business enterprise transacts business

primarily with one other entity; and (3) whether the business enterprise receives tangible benefits as a result of a connection to another entity.”

IRAE has no employees and has paid no wages. (DED Exhibits 1 and 11) “The owners aren’t taking draws since IRAE is a young company in its infancy. We are getting paid as salaried employees from a separate entity, Littoral Group LLC (Littoral), which Dana Prastos and Shea Thorvaldsen have shared ownership in.” Applicant stated that the hours spent on IRAE by each owner varies weekly depending on the project and business development needs and that these hours can range anywhere from 40-50 hours a week. (DED Exhibit 12) Section 6.J of the certification application states the applicant business relies on Littoral for management functions/employee payroll. (DED Exhibit 1) Accordingly, the two entities share personnel and applicant receives a tangible benefit from Littoral. 5 NYCRR §144.2(e).

IRAE’s 2022 tax returns reflect that the business generated gross receipts of \$ [REDACTED] and paid administrative fees of \$ [REDACTED]. The 2023 tax returns reflect gross receipts of \$ [REDACTED] and administrative fees of \$ [REDACTED]. (DED Exhibit 9) Applicant indicated the administrative fees are primarily paid to Littoral Group LLC for labor. (DED Exhibit 18)

During the interview, applicant stated that the leased employees perform the work and Ms. Prastos, who is a Registered Architect, and Ms. Stasiak, who is a Professional Engineer, sign off on the work. If something small can be done individually, the women owners may do that work on their own; everything else is done by the employees and signed by the women owners. (DED Exhibit 18)

Applicant submitted two contracts reflecting active projects on The Trust for Governors Island: one involving Yankee Pier and one involving Lima Pier, for which IRAE is the design consultant. IRAE’s “consulting team” comprises TMS Waterfront, with Shea Thorvaldsen serving

as the maritime advisor and lead estimator and Buckman Engineering with Brian Buckman, PE serving as the lead structural engineer. Also included are Collectif Engineering, PG Environmental Services Inc. and Control Point Associates, with all of the companies listed as “sub-consultants” (DED Exhibit 6) Leading personnel for the project include: Domenica Stasiak, Project Executive and Marine Engineer, Anand Agerwal, Geotechnical Engineer, Alex Haubrich, Coastal Engineer, Dena Prastos, Lead Architect, Daryl Zuk, Architectural Designer, and Matthew McEnemy, Climate Adaptation Specialist (DED Exhibit 15) The individuals other than Domenica Stasiak and Dena Prastos are not owners or employees of IRAE.

The “Team Organization” information for the projects state: “On our staff are project managers, flood plain management professionals, WEDG certified designers, architects, a naval architect, engineers, permitting specialists, and planners. This staff, ably supplemented by our subconsultants with whom we work with extensively, will drive the project to successful completion.” (DED Exhibit 16)

Torvalsen Consulting dba TMS Waterfront is identified as one of the subconsultants on the project. Shea Thorvaldsen is a 99% owner and Dena Prastos is a 1% owner. The address used for TMS Waterfront is 1 Van Houton Street, Nyack, New York, the same address as used by IRAE in its incorporation documents, 2022 tax filing and resumes of “key personnel” submitted with the contracts listing active projects. (DED Exhibits 4, 9, 12, 14, and 17)

IRAE cannot independently perform the work under the contracts provided. The business relies on Littoral Group LLC for its labor and administrative functions and does not operate independently. IRAE does not have employees, and all labor is leased through Littoral Group LLC. The leased employees perform the work for IRAE. Therefore, IRAE shares resources with Littoral Group LLC inclusive of personnel and receives a tangible benefit from its relationship with Littoral

Group LLC. In addition, IRAE is using “sub-consultants” to be able to perform under the active contracts provided, including TMS Waterfront, which is located at the same address as IRAE and shares ownership.

The Division’s determination to deny the application on the basis that IRAE failed to demonstrate that the business operates independently, as required under 5 NYCRR §144.2(e) is supported by substantial evidence.

CONCLUSION

IRAE 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(b)(2), and 144.2(e) 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 IRAE’s application for certification as a woman-owned business enterprise.

In the Matter of Indigo River Architecture and Engineering, D.P.C.
DED File ID No. 70182
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Appeal Submission	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Agreement to be Bound by Certification Affidavit	Y	Y
DED 4	Certificate of Incorporation	Y	Y
DED 5	Bank Signatory Document	Y	Y
DED 6	IRAE's May 2024 Responsive Letter	Y	Y
DED 7	IRAE's June 2024 Responsive Letter	Y	Y
DED 8	Checks re: Capital Contribution	Y	Y
DED 9	2022 and 2023 IRAE Federal and State Tax Returns	Y	Y
DED 10	2023 1099's issued by IRAE to Torvalsen Marine and Torvalsen Consulting LLC	Y	Y
DED 11	IRAE Letter re: no employees and no wages paid	Y	Y
DED 12	IRAE's July 2024 Responsive Letter	Y	Y
DED 13	2021 and 2022 personal tax returns of Dena Prastos and Domenica Stasiak	Y	Y
DED 14	Resumes of Indigo River Key Personnel Pier Project	Y	Y
DED 15	Organizational Chart Identifying Leading Personnel Pier Project	Y	Y
DED 16	"Team Organization" Information for the Prime Work Pier Project	Y	Y

DED 17	Resume of Shea Thorvaldsen	Y	Y
DED 18	Recording of Applicant's Interview	Y	Y
DED 19	Request to Appeal	Y	Y
DED 20	Notice to Proceed Via Written Appeal	Y	Y