



New York State
Department of Economic Development
Division of Minority and Women's
Business Development

In the matter of the appeal of

**JANUS SOFTWARE, INC. DBA JANUS
ASSOCIATES**

FINAL ORDER 26-03

From a denial of certification as a Minority and Woman-owned Business Enterprise
("MWBE") pursuant to Executive Law Article 15-A.

The attached Recommended Order is incorporated with modification, as set forth below.

This order arises from an administrative appeal brought on behalf of JANUS Software, Inc. DBA JANUS Associates ("Appellant") pursuant to parts 140-147 of title 5 of the New York Codes, Rules and Regulations. Appellant seeks reversal of the determination of the Division of Minority and Women's Business Development (the "Division"), dated July 16, 2025, to deny Appellant's MWBE certification.

The Division received the Administrative Law Judge's Recommended Order, dated January 22, 2026 (the "Recommended Order"), which recommended the Director reverse the Division's determination to deny Appellant's application for MWBE certification. Specifically, the Administrative Law Judge found that Appellant had met its burden to demonstrate that the Division's determination to deny its application for MWBE certification with respect to the eligibility criteria at 5 NYCRR §144.2(f)(2) ("Small Business Requirement") was not based on substantial evidence. "Small Business" is defined at § 140.1 (hh) as "[a] business which has a *significant business presence* in the State..[emphasis added]" and "Significant Business Presence" is defined at 140.1(gg) 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."

After considering the appeal record, I respectfully decline to accept the findings as they pertain to 5 NYCRR §§144.2(f)(2), 140.1(gg), and 140.1 (hh), set forth in the January 22, 2026, Recommended Order. Appellant has not demonstrated that it meets the foregoing criteria.

Under the Small Business Requirement, the Division must consider whether the applicant firm has a Significant Business Presence by contributing to the New York State economy through (1) the payment of taxes, (2) the purchase of made in New York State products or materials, **or** (3) by having any payroll in New York State. Applicant firms can prove a Significant Business Presence by satisfying at least one of these three prongs, and here, Appellant failed to do so.

The Payment of Taxes

In response to requests for proof of contribution to the New York State economy, applicant provided its 2023 General Business Corporation Combined Franchise Tax Return for Janus Software, Inc. and Subsidiary, reflecting a \$25 franchise tax paid to New York. The Division does not consider the \$25 franchise tax, which is a fixed dollar minimum, to qualify on its own, without corresponding New York receipts, as “payment of taxes” for purposes of meeting the Significant Business Presence requirement. When a business reports zero dollars in New York receipts, the \$25 franchise tax is essentially a filing fee, as it is not tied to meaningful business activity in New York State. Any business could simply pay the minimum dollar amount and automatically meet the criteria, which renders the requirement of *significant* business presence moot in principle. To qualify under the Significant Business Presence requirement, the payment of taxes must correspond with New York receipts reported in the same fiscal year.

Accordingly, in the *Matter of Minority Components, Inc. dba Kurrent Technology*, Recommended Order dated February 11, 2025, Final Order 25-02, dated March 4, 2025 (“*Kurrent Technology*”), the Administrative Law Judge found the applicant firm’s payment of the same \$25 franchise tax did not satisfy the first prong of Significant Business Presence, “the payment of taxes.” Specifically, the Administrative Law Judge in *Kurrent Technology* referred to such franchise tax as “a fixed dollar minimum tax, since there were no proof of sales or gross receipts.” See *Matter of Minority Components, Inc. dba Kurrent Technology*, Recommended Order dated February 11, 2025.

The Administrative Law Judge found that the matter at hand is distinguishable from *Kurrent Technology* because the applicant business there “had no payroll and no sales whatsoever.” I respectfully do not agree with this finding. First, as it pertains to payroll, the applicant firms in both matters failed to show having payroll in New York State. Second, the notion that having payroll in New York State has any impact on whether an applicant firm is found to have paid taxes in New York State is inconsistent with the Division’s standard assessment of the Significant Business Presence requirement. As stated in the Recommended Order, an applicant business may satisfy Significant Business Presence by demonstrating just one of the three prongs. The assessment of Significant Business Presence is not a balancing test: each prong is reviewed independently, therefore, the fact that Appellant may satisfy another of the three prongs has no impact on whether it satisfies the one in question. The Recommended Order itself confirms this, stating “...there is no requirement...that the business have any payroll in New York State if it pays taxes in New York.” To reiterate, Appellant also failed to show it had payroll in New York State, which is discussed below.

Third, the notion that generally having “sales” in New York State plays a role in the Division’s assessment of whether an applicant firm is found to have paid taxes in New York State

should be clarified. As previously stated, the Division specifically requires the payment of taxes to correspond with New York Receipts. While in-state “sales” could result in New York Receipts and/or the payment of income tax, which is a tax accepted by the Division as proof of contribution to the New York economy, that is not always the case. Thus, it should be clarified that having a general history of in-state “sales,” coupled with the payment of the franchise tax, does not satisfy the requirement of contribution to the New York economy through the payment of taxes. The taxes paid must directly correlate with the New York Receipts reported in the same fiscal year.

Lastly, *Matter of CCS International, Inc.*, Recommended Order dated April 26, 2024, Final Order 24-07, dated July 15, 2024 (“*CCS International*”), is distinguishable from the case at hand and its holding is not applicable here. In addition to the franchise tax, the applicant firm in *CCS International* both reported New York Receipts and paid income tax; a tax that is accepted by the Division as proof of contribution to the New York economy. Here, Appellant only paid the franchise tax, reported zero dollars in New York Receipts and did not pay any income tax, just as the applicant firm in *Kurrent Technology*. Therefore, the holding in *Kurrent Technology* should apply, not *CCS International*.

In conclusion, the record does not show that Appellant has a Significant Business Presence by contributing to the New York State economy through the payment of taxes.

The Purchase of Made in New York State Products or Materials

The record does not show that Appellant has a Significant Business Presence by contributing to the New York State economy through the purchase of made in New York State products or materials.

Having Payroll in New York State

The record does not show that Appellant has a Significant Business Presence by contributing to the New York State economy through having payroll in New York State. Appellant’s tax returns claim no New York State employees and no wages paid to New York State employees. Payment to subcontractors does not qualify as payroll. Moreover, Appellant did not submit an NYS-45 form, the main tax document that demonstrates wage reporting within New York State, to the Division.


ORDERED: The recommendation to reverse the Division’s denial determination, based on the findings pertaining to 5 NYCRR §§144.2(f)(2), 140.1(gg), and 140.1 (hh), as set forth in the attached Recommended Order, is hereby rejected.

ORDERED: The Division's determination to deny the certification of JANUS Software, Inc. DBA JANUS Associates based on the eligibility criteria at 5 NYCRR §144.2(f)(2), is hereby affirmed.

ORDERED: The Division's Directory for Minority and Women-owned Business Enterprises will reflect the determination herein; JANUS Software, Inc. DBA JANUS Associates will not be listed.

This decision is Ordered by Jason M. Clark, the Executive Vice President and Executive Director of the Division of Minority and Women's Business Development.

March 3, 2026

A handwritten signature in black ink, appearing to read "Jason M. Clark", written over a horizontal line.

Jason M. Clark
Executive Vice President and Executive Director
Division of Minority and Women's Business Development