

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

In the Matter of

**the Application of JANUS Software, Inc. DBA JANUS Associates
for Certification as a Minority and Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 55531

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
January 22, 2026

This matter considers the appeal by JANUS Software, Inc. dba JANUS Associates (“JANUS Software” 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 and woman-owned business enterprise (“MWBE”).

PROCEDURAL HISTORY

1. On April 10, 2025, Patricia Fisher, as President and CEO, applied on behalf of JANUS Software for certification as a minority and woman-owned business enterprise (“MWBE”) (DED Exhibit 1).
2. On July 16, 2025, the Division denied the application on the ground that the business enterprise does not contribute to the New York State economy through the 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)
3. On August 15, 2025, JANUS Software submitted a Request to Appeal via a Hearing. (DED Exhibit 3)
4. On August 20, 2025, a Notice of Hearing was sent to all parties. (DED Exhibit 4)
5. The hearing, originally scheduled for October 28, 2025, was adjourned.
6. A hearing was held and concluded on November 19, 2025. The parties submitted written closing statements on January 6th, 2026.

FINDINGS OF FACT

7. JANUS Software is engaged in the business of IT Consultation with a specialization in cyber security. (DED Exhibit 1; Hearing Testimony of Patricia Fisher).
8. Patricia Fisher is the President and CEO and has a 93% ownership interest. Adam Fisher is the Secretary and has a 3% ownership interest. Various past employees have a 4% ownership interest. (DED Exhibit 1; Hearing Testimony of Patricia Fisher).
9. JANUS Associates (“Subsidiary”) is a 100% subsidiary of JANUS Software, Inc. (“Parent”). In the late 1990s, JANUS Software, Inc. acquired all of the shares of JANUS Associates to simplify and streamline the corporate structure, rendering JANUS Software the sole operating entity. JANUS Software, Inc. does business as JANUS Associates because it is the name recognized by its clients. JANUS Software, Inc. and JANUS Associates file joint federal tax returns under “JANUS Software, Inc. and Subsidiary” (DED Exhibits 1 and 8; APP Exhibit 19; Hearing Testimony of Patricia Fisher; Hearing Testimony of Achille Apicella)
10. JANUS Software has been doing business in New York “since the early 90’s.” It has done work for SUNY Buffalo, Health and Hospitals Corp. of New York, Long Island Home, Brunswick Hospital, Rochester Genesee Regional Transportation Authority (RGRTA), and NYS Insurance Fund (NYSIF), among other New York businesses. (DED Exhibit 1; Hearing Testimony of Patricia Fisher)
11. JANUS has provided ongoing work in cybersecurity testing and consulting services for RGRTA. As part of this work with RGRTA, JANUS subcontracts a portion of its services to a New York-based entity, enDevelopment LLC, whose work is ongoing. (Hearing Testimony of Patricia Fisher; APP Exhibits 10, 11 and 12)

12. 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 \$█ taxes paid to New York. (APP Exhibit 19; DED Exhibit 8)
13. Applicant provided proof of payment to enDevelopment LLC located in Montgomery, New York for services provided (APP Exhibit 10) and proof of purchase order, invoice and payment from New York State Insurance Fund (NYSIF) (APP Exhibits 13, 14 and 16; Hearing Testimony of Patricia Fisher)
14. For all transactions involving JANUS Software, Inc. and JANUS Associates, “everything goes through JANUS Software.” All checks written to JANUS Software or JANUS Associates are deposited into the JANUS Software account. (Hearing Testimony of Patricia Fisher)

APPLICABLE LAW

5 NYCRR §144.2(f)(2), 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 majority or woman-owned business enterprise is sought must be a small business, as that term is defined in Part 140 of this Title.”

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 JANUS Software for certification as a 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

Mr. James Youngs, Esq. of Hancock Estabrook, LLP, appeared on behalf of JANUS Software. The following witnesses testified on behalf of JANUS Software: Patricia Fisher, President of JANUS Software, and Achille Apicella, CPA of Apicella, Testa & Company, PC. JANUS Software offered the following exhibits which were entered into evidence: APP Exhibits 3, 7-17 and 19.

Ms. Amy O'Connor, Counsel, Department of Economic Development, appeared at the hearing on behalf of the Division. The following witnesses testified on behalf of the Division: Raymond Emanuel, Senior Director of Quality Assurance, Division of Minority and Women Business Development, and Brian Cooke, Senior Certification Analyst, Division of Minority and Women Business Development. The Division offered the following exhibits which were admitted into evidence: DED Exhibits 1 - 8.

Small Business

The Division denied JANUS Software's application on the basis that JANUS Software 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 majority 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.”

JANUS Associates (“Subsidiary”) is a 100% subsidiary of JANUS Software, Inc. (“Parent”). In the late 1990s, JANUS Software, Inc. acquired all of the shares of JANUS Associates to simplify and streamline the corporate structure, rendering JANUS Software the sole operating entity. JANUS Software, Inc. does business as JANUS Associates because it is the name recognized by its clients. JANUS Software, Inc. and JANUS Associates file joint federal tax returns under “JANUS Software, Inc. and Subsidiary” (DED Exhibits 1 and 8; APP Exhibit 19; Hearing Testimony of Patricia Fisher; Hearing Testimony of Achille Apicella)

For all transactions involving JANUS Software, Inc. and JANUS Associates, “everything goes through JANUS Software.” All checks written to JANUS Software or JANUS Associates are deposited into the JANUS Software account. (Hearing Testimony of Patricia Fisher)

JANUS Software has been doing business in New York “since the early 90’s.” It has done work for SUNY Buffalo, Health and Hospitals Corp. of New York, Long Island Home, Brunswick Hospital, Rochester Genesee Regional Transportation Authority (RGRTA), NYS Insurance Fund (NYSIF), among other New York businesses. (DED Exhibit 1; Hearing Testimony of Patricia Fisher)

Ms. Fisher also testified regarding JANUS’ ongoing work in cybersecurity testing and consulting services for the Rochester Genesee Regional Transportation Authority (“RGRTA”). As part of its work with RGRTA, JANUS subcontracts a portion of its services to a New York-based entity, enDevelopment LLC. Ms. Fisher testified that JANUS’ business relationship with

enDevelopment LLC, including payments, is ongoing. (Hearing Testimony of Patricia Fisher; APP Exhibits 10, 11 and 12)

Applicant provided proof of payment to enDevelopment LLC for services provided (APP Exhibit 10) and proof of purchase order, invoice and payment from NYSIF (APP Exhibits 13, 14 and 16; Hearing Testimony of Patricia Fisher)

In response to requests for proof of contribution to the New York State economy, applicant provided its 2023 Tax Returns for JANUS Software, Inc. and Subsidiary, reflecting \$█ taxes paid to New York. (DED Exhibit 8; APP Exhibit 19) Ms. Fisher testified that JANUS Software operated at a loss in 2023, resulting in negative taxable income (Hearing Testimony of Patricia Fisher)

Raymond Emanuel testified that JANUS Software failed to show that it contributed to the New York economy through the payment of taxes, payroll in New York, or purchase of made in New York products or services. He noted that line 25 on the 2023 New York State Tax Return reflected no New York receipts. He testified that if no receipts are recorded, then there's no contribution to the New York State economy. When questioned on cross-examination, he testified that the \$█ tax payment is not considered a tax which qualifies as payment of taxes unless receipts are reflected on the tax return. He acknowledged that JANUS Software has business activity in New York but did not show receipts on the tax return. **He could not identify any regulatory requirement that JANUS Software must demonstrate "New York receipts."** (emphasis added) (Hearing Testimony of Raymond Emanuel)

Brian Cooke testified that a business can actively conduct business in New York State but not contribute to the New York State economy. He testified that no New York State receipts were provided. He stated that if the company paid the \$█ tax and reported New York receipts, it would be qualified. He acknowledged proof of payment of the NYSIF contract, but since it wasn't

reported on the New York State return, it doesn't prove contribution to the New York State economy. (Hearing Testimony of Brian Cooke)

Achille Apicella, CPA testified that he has prepared the applicant's business tax returns "since before 2009." He testified that the \$■■ tax payment was a New York franchise tax payment. He acknowledged that line 25 on the tax return reflecting New York receipts was blank but stated that the receipts recorded under JANUS Associates should have been reflected on line 25 of the combined tax return since it is "all the same company" and was probably a "software issue" that caused this line to be blank. He further testified that he didn't think to "override the program" to show the receipts on line 25, since it was a combined tax return and had "no impact" whether it was reported as separate or combined, since it had no taxable income that year. (Hearing Testimony of Achille Apicella)

Section 140.1(gg) does not specify the amount of taxes that need to be paid. The company's tax returns showed payment of New York State Corporate Franchise Tax, and there is no requirement that a minimum amount of taxes be paid or that the business have any payroll in New York State if it pays taxes in New York. The Division, in its argument, tried to nullify the payment of the corporate franchise tax by reading a requirement into the statute that is simply not there, e.g. New York "receipts". 5 NYCRR §140.1(gg) defines a "significant business presence" as 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." (emphasis added) The Division, in its closing statement affirms: "These are the only three ways this requirement can be met, per the plain language of the regulations." Yet, the Division argues in their closing statement that what applicant paid is a corporate franchise tax and "not a pure income tax". However, the regulation simply states the payment of taxes and the Division cannot

read a requirement into the statute that is simply not there. The Corporate Franchise tax payment is payment of a tax! N.Y. Tax Law Article 9-A, Section 209 states “Imposition of tax”. JANUS Software has established that it does actively conduct substantial business in New York and has been doing so for many years, by providing contracts for services performed in New York. (APP Exhibits 10-16) See *Matter of CCS International, Inc.*, Recommended Order dated April 26, 2024, Final Order 24-07, dated July 15, 2024.

Matter of Minority Components, Inc. dba Kurrent Technology, Recommended Order dated February 11, 2025, Final Order 25-02, dated March 4, 2025, is distinguishable from the current matter. *Kurrent Technology* had no payroll and no sales whatsoever. Here, the record establishes that JANUS Software conducts substantial business in New York State. (DED Exhibit 1, APP Exhibits 10-16, Hearing Testimony of Patricia Fisher)

The Division’s determination to deny the application on the basis that JANUS Software 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 not supported by substantial evidence.

CONCLUSION

JANUS Software met its burden to demonstrate that the Division’s determination to deny its application for certification as a minority and woman-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 reverse the Division's determination to deny JANUS Software's application for certification as a minority and woman-owned business enterprise.

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Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP 1	JSI Stock Ledger	N	N
APP 2	JANUS Software and Sub CT State Tax Return FYE 9/30/23	N	N
APP 3	Software and Subsidiary Tax Return 2022	Y	Y
APP 4	Patricia Fisher Resume	N	N
APP 5	NYC WBE Certification	N	N
APP 6	Port Authority WBE Certificate	N	N
APP 7	Application for Authority	Y	Y
APP 8	NYS DOS Corporations Biennial E-Filing submission	Y	Y
APP 9	NYS Filing Receipt	Y	Y
APP 10	enDevelopment Check transacted	Y	Y
APP 11	Fully Executed RGRTA– Extension Year 1	Y	Y
APP 12	Fully Executed RGRTA– Extension Year 3	Y	Y
APP 13	NYSIF PO	Y	Y
APP 14	NYSIF Line Item 5 Invoice	Y	Y
APP 15	NYSIF Project Scope	Y	Y
APP 16	NYSIF Proof of Payment	Y	Y
APP 17	2022 W-2s	Y	Y

APP 18	Software and Subsidiary Tax Return 2022	N	N
APP 19	NYS Janus Software and Sub Tax Return FYE 9/30/24	Y	Y
DED 1	Application for WBE Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Request to Appeal	Y	Y
DED 4	Notice of Hearing	Y	Y
DED 5	2022 W-2s	Y	Y
DED 6	2023 W-2s	Y	Y
DED 7	2024 W-2s	Y	Y
DED 8	2023 NYS Corporate Tax Return	Y	Y