

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

**In the Matter**

**- of -**

**the Application of Multi-Phase Contracting Corp.**  
**for Certification as a Woman-owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 2168791**

**RECOMMENDED ORDER**

**-by-**



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**David A. Murad**  
**Administrative Law Judge**  
**June 20, 2025**

This matter considers the written appeal by Multi-Phase Contracting Corp (“Multi-Phase” 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 July 24, 2024, Ms. Caroline Kryzak-Johnson as President, applied on behalf of Multi-Phase for certification as a woman-owned business enterprise (“WBE”) (DED Exhibit 1).
2. On November 18, 2024, the Division denied the application on the following grounds (DED Exhibit 2):
  - (a) Minority group members or women must not be encumbered in their ability to realize the benefits of ownership of the business enterprise and/or be subject to undue restrictions against alienating such ownership interests, as required under 5 NYCRR §144.2(b)(4);
  - (b) Minority group members or women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1);
  - (c) Minority group members or 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, as required under 5 NYCRR §144.2(c)(2); and

(d) Minority group members or women relied upon for certification must be the highest-ranking officer of the business enterprise, and, where applicable, control the board of directors or serve as general partner, as required under 5 NYCRR §144.2(d)(1).

3. On December 18, 2024, Multi-Phase submitted a Request to Appeal. (DED Exhibit 17).
4. On January 7, 2025, a Notice to Proceed Via Written Appeal was sent to Multi-Phase (DED Exhibit 18).
5. Multi-Phase submitted its written appeal with exhibits dated January 17, 2025, by its attorneys, Michelle Storm, Esq. and Ahmad H. Seraj, Esq of Monaco Cooper Lamme & Carr, PLLC. (APP Exhibit A)
6. The Division filed an Affidavit of Eugenio Alcantara, Certification Director, dated April 22, 2025, and a brief of Laurel A. Wedinger-Gyimesi, Esq., counsel for the Division, dated April 22, 2025.

### **FINDINGS OF FACT**

7. Multi-Phase is engaged in the business of “other Building Finishing Contractors”, specifically, Architectural Finishes. The majority of Multi-Phase’s jobs are obtained through the bidding process. (DED Exhibits 1, 2 and 15)
8. Ms. Caroline Kryzak-Johnson is the President and 100% owner of Multi-Phase. (DED Exhibit 1)
9. The Board of Directors consists of Caroline Kryzak-Johnson, as President and Treasurer; Matthew Kryzak, as Vice President and Operations Manager and Kristi Coffey, as Corporate Secretary. (DED Exhibit 16)
10. Article III of the Bylaws entitled Directors states the following (DED Exhibit 5):
  - (a) Section 1 states “... the business of the corporation shall be managed by its board of directors...”

- (b) Section 5 states “Any or all of the directors may be removed for cause by vote of the shareholders or by action of the board. Directors may be removed without cause only by vote of the shareholders.”
- (c) Section 7 states “... a majority of the entire board shall constitute a quorum for the transaction of business or of any specified item of business.”
- (d) Section 8 states “... the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board. Each director present shall have one vote regardless of the number of shares, if any, which he may hold.”

11. Article IV of the Bylaws, entitled Officers states the following (DED Exhibit 5):

- (a) Section 2(a) states “Any officer elected or appointed by the board may be removed by the board with or without cause.”
- (b) Section 2(b) states: “In the event of the death, resignation or removal of an officer, the board in its discretion may elect or appoint a successor to fill the unexpired term.”
- (c) Section 2(d) states “The salaries of all officers shall be fixed by the board.”

12. Ms. Kryzak-Johnson began working full-time at Multi-Phase in January 2016 as the Treasurer. She mentored with her mother and slowly took on more duties. In 2017, she began to learn the construction side of the business. On October 1, 2020, she was gifted 100% ownership of Multi-Phase and became its President. She makes all financial decisions, reviews estimates for accuracy, determines which projects to bid on, analyzes the financial impact of the bid and discusses same with Matthew Kryzak to make sure all costs are included in the bids. When Multi-Phase is awarded a project, she reviews the contracts, purchase orders, and negotiates with all parties involved. She has meetings with the estimator, project manager and foreman to discuss the job in detail. She has her DOE Security Clearance so she can enter job sites and is an On-Site Safety Representative (OSSR) for DOE sites. She is certified in asbestos handling and safety and holds the company asbestos license. She holds a certificate for Construction Health and Safety Technician (CHST) and is certified as a Limited Radiation Worker (LRW). (DED Exhibit 15)

13. Matthew Kryzak is the Estimator and Project Manager. He “has over 20 plus years of construction experience both as a field worker, foreman and project manager.” Matt works closely with Caroline to determine the projects that Multi-Phase will bid. “He then obtains the bid packages and prepares the bid. Matt does most of the estimating and bidding. When he finalizes his proposals, he sits down with Caroline to review”. Once the project is awarded, he coordinates with the foreman. “Caroline, Matt and the foreman review the necessary equipment and materials needed for the job.”... “Matt attends meetings with the owners and other subcontractors as the job progresses...prepares change orders...assists in billing...He has a good relationship with the field personnel and meets with them regularly.” (DED Exhibit 14 and 16) He is noted as the “POC” (point of contact) on all purchase orders, and the amendments to the purchase orders for “on-site” changes were all signed by him. (DED Exhibits 8 and 10)
14. Andrew Gilcrest is an estimator and a Project Manager. “Andrew assists Matt with estimating and project management. Andrew contacts vendors for pricing on bids. He attends project meetings with the owners and other subcontractors. He visits job sites and oversees the progress on jobs. He reports the job progress at the in-house company meetings.” (DED Exhibit 14)
15. James Gilcrest and Jonathan Panthen are foremen. “Our foremen have over 20 plus years’ experience running jobs and have worked as carpenters for many years... They interact with the field personnel and customers... They have daily contact with the project managers. They also attend the weekly in-house progress meeting as well as many owner project meetings. They work closely with the estimator to understand the job so they can plan the work.” (DED Exhibit 14)

16. Caroline Kryzak-Johnson and Matthew Kryzak are responsible for estimating, preparing bids, negotiating bonding, marketing & sales, supervising field operations, and are signatories on the business bank accounts. Both, along with Kristi Coffey, negotiate contracts. (DED Exhibit 1)
17. Ms. Kryzak-Johnson “gained valuable industry experience working both in the field and office during summers and school breaks. This early exposure to both field operations and administrative functions, combined with high-level security clearance, provided her with a comprehensive understanding of the construction industry from the ground up.” She “maintains multiple industry-specific certifications crucial to MPCC’s operations”, These qualifications are essential prerequisites enabling MPCC to perform work in secured government facilities, which comprises 90% of the company’s business. “Her role as an ECA Board of Directors member and Chairwoman of the ECA Membership Committee further demonstrates her industry leadership and deep engagement with construction industry practices.” (APP Exhibit A)

### **APPLICABLE LAW**

5 NYCRR §144.2(b)(4) states as follows:

Customary incidents of ownership. Minority group members and women relied upon for certification must not be encumbered in their ability to realize the benefits of ownership of the business enterprise for which certification is sought, or subject to undue restrictions against alienating such ownership interests.

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 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.

5 NYCRR §144.2(d)(1) states as follows:

Control. Minority group members or women relied upon for certification must have the power to control the business enterprise for which certification is sought. The division shall assess whether minority group members and women possess such control based upon the following criteria:

- (1) Control of business management. A minority group member or woman relied upon for certification must be the highest-ranking officer of the business enterprise for which certification is sought, and, where applicable, control the board of directors or serve as a general partner. Any agreements describing the management of the business enterprise shall be consistent with the foregoing.

### **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 Multi-Phase 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 N.Y.3d 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

NYCRR §144.2(b)(4) requires that the woman-owner must not be encumbered in her ability to realize the benefits of ownership of the business enterprise and/or be subject to undue restrictions against alienating such ownership interest. See *Matter of FIS Blue, Inc.*, Recommended Order dated February 1, 2024, Final Order 24-02 dated May 7, 2024 (“FIS is managed by the Board of Directors. The Board determines the duties and authority of all officers. The President is subject to the Board’s control. Therefore, the [woman relied upon for certification] does not control the Board.”).

Article III of the Bylaws, entitled Directors, states the following (DED Exhibit 5):

- (a) Section 1 states “... the business of the corporation shall be managed by its board of directors...”
- (b) Section 5 states “Any or all of the directors may be removed for cause by vote of the shareholders or by action of the Board. Directors may be removed without cause only by vote of the shareholders.”
- (c) Section 7 states “... a majority of the entire board shall constitute a quorum for the transaction of business or of any specified item of business.”
- (d) Section 8 states “... the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board. Each

director present shall have one vote regardless of the number of shares, if any, which he may hold.”

Article IV of the Bylaws, entitled Officers states the following (DED Exhibit 5):

- (a) Section 2(a) states “Any officer elected or appointed by the board may be removed by the board with or without cause.”
- (b) Section 2(b) states: “In the event of the death, resignation or removal of an officer, the board in its discretion may elect or appoint a successor to fill the unexpired term.”
- (c) Section 2(d) states “The salaries of all officers shall be fixed by the board.”

On appeal, applicant argues that Multi-Phase was previously certified as a WBE “under the same corporate structure and by-laws”, and “the Division’s longstanding acceptance of these by-laws demonstrates their compatibility with WBE certification requirements.” However, the regulations were amended in 2020 and the Division is not obligated to certify Multi-Phase based on its prior determinations. It is well settled that the doctrine of equitable estoppel cannot, as a general rule, be invoked against a governmental agency in the exercise of its governmental function. See *Matter of Daleview Nursing Home v. Axelrod*, 62 N.Y.2d 30 (1984); *Matter of Atlantic States Legal Found., Inc. v. New York State Dept. of Environmental Conservation*, 119 A.D.3d 1172 (2014).

With the expiration of its certification, Multi-Phase had the burden to demonstrate compliance with the eligibility criteria outlined at 5 NYCRR former §144.2 when it submitted the July 24, 2024, application and supporting materials and cannot rely on the past determinations of the Division.

The Board of Directors consists of Caroline Kryzak-Johnson, as President and Treasurer; Matthew Kryzak, as Vice President and Operations Manager and Kristi Coffey, as Corporate Secretary. (DED Exhibit 16) Ms. Kryzak-Johnson can be removed from her position as President “with or without cause” by vote of the other board members. The Board also determines her salary. She cannot make decisions regarding her salary without a majority vote of the board members. She

cannot remove officers on her own. Therefore, she is not unencumbered in her ability to realize the benefits of her ownership of the business. (DED Exhibit 5)

Applicant argues on appeal “As 100% owner of MPCC, she has exclusive authority to elect and remove directors. Should any board action threaten her control, she can immediately call a special shareholder meeting and replace the entire board”, and “board authority over officer salaries represents standard corporate governance language.” (APP Exhibit A) However, the by-laws clearly state that any officer can be removed by the board with or without cause, and upon removal of an officer, the board in its discretion may elect or appoint a successor to fill the unexpired term.”. (DED Exhibit 5)

The Division’s determination to deny the application on the basis that Multi-Phase failed to demonstrate that Caroline Kryzak-Johnson is not encumbered in her ability to realize the benefits of ownership of the business and/or be subject to undue restrictions against alienating such ownership interest, as required under 5 NYCRR §144.2(b)(4), is supported by substantial evidence.

## II. Operation

The Division found that Ms. Kryzak-Johnson does not 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.” 5 NYCRR §144.2(c)(1) In considering this regulation, the Division shall consider:

- (a) 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;
- (b) The extent to which academic credentials exist for persons employed in the industry; and
- (c) The extent to which industry-specific expertise may be obtained via direct work experience.

Ms. Kryzak-Johnson began working full-time at Multi-Phase in January 2016 as the Treasurer. She mentored with her mother and slowly took on more duties. In 2017, she began to learn the construction side of the business. On October 1, 2020, she was gifted 100% ownership of Multi-Phase and became its President. She makes all financial decisions, reviews estimates for accuracy, determines which projects to bid on, analyzes the financial impact of the bid and discusses same with Matthew Kryzak to make sure all costs are included in the bids. When Multi-Phase is awarded a project, she reviews the contracts, purchase orders, and negotiates with all parties involved. She has meetings with the estimator, project manager and foreman to discuss the job in detail. She has her DOE Security Clearance so she can enter job sites and is an On-Site Safety Representative (OSSR) for DOE sites. She is certified in asbestos handling and safety and holds the company asbestos license. She holds a certificate for Construction Health and Safety Technician (CHST) and is certified as a Limited Radiation Worker (LRW). (DED Exhibit 15)

The Division found that Ms. Kryzak-Johnson's duties are administrative, and that her resume gives no indication that she ever worked as a project manager. (DED Exhibit 11) The denial determination also states that her resume is devoid of work experience relating directly to architectural finishes. (DED Exhibit 2) The Division found that Ms. Kryzak-Johnson's background is in the sciences and her self-identified skills are related to general business or office management which is insufficient to establish compliance with the regulation.

A lack of hands-on experience is not enough, by itself, to deny certification. (*Matter of Era Steel Constr. Corp. v Egan*, 145 A.D.2d 795 (1988)) It is not always necessary that a woman owner have technical competence to demonstrate eligibility for certification See *Upstate Electrical, LLC v. New York State Department of Economic Development, et al*, 179 A.D.3d 1343, 1346 (3d Dept. 2020) The Division's regulations "do not require an applicant to possess formal academic training or to have completed an apprenticeship in order to demonstrate technical competence to operate a

business.” (Matter of Northern Scapes Inc., Recommended Order, May 18, 2018 (Final Order 18-31, June 5, 2018)

On appeal, applicant states Ms. Kryzak-Johnson “gained valuable industry experience working both in the field and office during summers and school breaks. This early exposure to both field operations and administrative functions, combined with high-level security clearance, provided her with a comprehensive understanding of the construction industry from the ground up.” She “maintains multiple industry-specific certifications crucial to MPCC’s operations”, including “DOE Security Clearance, On-Site Safety Representative (OSSR) certification, Construction Health and Safety Technician (CHST) certification, NYS Asbestos Contractor/Supervisor certification with company Asbestos License holder status, and Limited Radiation Worker (LRW) certification. These qualifications are essential prerequisites enabling MPCC to perform work in secured government facilities, which comprises 90% of the company’s business. “Her role as an ECA Board of Directors member and Chairwoman of the ECA Membership Committee further demonstrates her industry leadership and deep engagement with construction industry practices.” (APP Exhibit A)

The material before the Division provides sufficient detail to establish that Ms. Kryzak-Johnson has adequate industry-specific competence. (*Matter of Gilligan Electric Corp.*, Recommended Order dated January 7, 2025, Final Order 25-01, dated January 28, 2025). (DED Exhibits 1, 11, 15 and 16; APP Exhibit A)

Based on the foregoing, I find that the Division’s determination to deny Multi-Phase’s application under 5 NYCRR §§144.2(c)(1) was not based on substantial evidence.

The Division also found that Ms. Kryzak-Johnson did not make operational decisions on a day-to-day basis with respect to critical functions of the business, as required by 5 NYCRR §144.2(c)(2). The eligibility criteria for MWBE certification requires that the woman-owner

“exercises the authority to control independently the day-to-day business decisions of the enterprise”. See *In the Matter of Upstate Electrical, LLC v. New York State Department of Economic Development*, 179 A.D.3d 1343 (3<sup>rd</sup> Dept. 2020). 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 A.D.3d 1517 (4<sup>th</sup> Dept. 2018).

Matthew Kryzak is the Estimator and Project Manager. He “has over 20 plus years of construction experience both as a field worker, foreman and project manager.” Matt works closely with Caroline to determine the projects that Multi-Phase will bid. “He then obtains the bid packages and prepares the bid. Matt does most of the estimating and bidding. When he finalizes his proposals, he sits down with Caroline to review”. Once the project is awarded, he coordinates with the foreman. “Caroline, Matt and the foreman review the necessary equipment and materials needed for the job.”... “Matt attends meetings with the owners and other subcontractors as the job progresses...prepares change orders...assists in billing...He has a good relationship with the field personnel and meets with them regularly.” (DED Exhibit 14 and 16) He is noted as the “POC” (point of contact) on all purchase orders, and the amendments to the purchase orders for “on-site” changes were all signed by him. (DED Exhibits 8 and 10)

Andrew Gilcrest is an estimator and a Project Manager. “Andrew assists Matt with estimating and project management. Andrew contacts vendors for pricing on bids. He attends project meetings with the owners and other subcontractors. He visits job sites and oversees the progress on jobs. He reports the job progress at the in-house company meetings.” (DED Exhibit 14)

James Gilcrest and Jonathan Panthen are foremen. “Our foremen have over 20 plus years’ experience running jobs and have worked as carpenters for many years... They interact with the

field personnel and customers... They have daily contact with the project managers. They also attend weekly in-house progress meeting as well as many owner project meetings. They work closely with the estimator to understand the job so they can plan the work.” (DED Exhibit 14)

Caroline Kryzak-Johnson and Matthew Kryzak are responsible for estimating, preparing bids, negotiating bonding, marketing & sales, supervising field operations, and are signatories on the business bank accounts. Both, along with Kristi Coffey, negotiate contracts. (DED Exhibit 1)

On appeal, applicant states “Ms. Kryzak-Johnson maintains comprehensive oversight and personal involvement” in the shared managerial responsibilities listed in the application.” “Ms. Kryzak-Johnson personally reviews all estimates for accuracy, analyzes the financial impact of bids, determines projects to bid based on bonding capacity and expertise, and conducts weekly progress meetings to address any delays, change orders or problems. Mr. Kryzak’s role in estimating and project management is subordinate to Ms. Kryzak-Johnson’s authority – she reviews that work product, discusses in depth with him to ensure all costs are included, and maintains final approval over all estimates, bids and project decisions. Far from passive oversight, Ms. Kryzak-Johnson’s involvement includes regular job site visits to verify completed work, evaluate material installations, and assess overall project progress.” “She conducts site visits 2-3 times weekly to verify completed work against submitted hours, review material installations for specification compliance, and assesses overall project progress. Her operational oversight includes direct coordination with union representatives for workforce staffing, review of project schedules, assessment of equipment needs, and evaluation of safety protocols.” (APP Exhibit A)

In *Panko*, the Court found that the woman-owner shared “control of its operations and management, and responsibility for managerial decisions and business transactions, ... such that she cannot be considered to exert independent control as required by the regulations”. (*Panko*

*Electrical and Maintenance Corporation v. Zapata*, 172 A.D.3d 1682, 1684 (2019) (DED Exhibit 15)

Here, Ms. Kryzak-Johnson shares many operational and managerial responsibilities with Mr. Kryzak, including estimating, bidding, and supervising field operations. During her interview, Ms. Kryzak-Johnson stated that Matt does most of the estimating and bidding, although she oversees it all. The majority of Multi-Phase’s jobs are obtained through the bidding process. “Caroline, Matt and the foreman review the necessary equipment and materials needed for the job” Mr. Kryzak is noted as the “POC” (point of contact) on all purchase orders, and the amendments to the purchase orders for “on-site” changes were all signed by him. (DED Exhibits 8, 10, 14, 15 and 16) Therefore, Ms. Kryzak-Johnson does not exert independent operational control of the business on a day-to-day basis. See *Matter of C.W. Brown, Inc v. Canton*, 216 A.D.2d 841 (3d Dept. 1995). (“...the structure of the business as evidenced by the testimonial and documentary evidence indicate that both Brown and her husband operate petitioner more in the form of a family-owned business.”)

Based on the foregoing, I find that the Division’s determination to deny Multi-Phase’s application under 5 NYCRR §144.2(c)(2) is supported by substantial evidence.

### III. Control

The Division also denied certification on the ground that Caroline Kryzak-Johnson does not control the board of directors, as required under 5 NYCRR §144.2(d)(1).

The Board of Directors consists of Caroline Kryzak-Johnson, Matthew Kryzak, and Kristi Coffey. (DED Exhibit 16)

Article III of the Bylaws states the following (DED Exhibit 5):

- (a) Section 1 states “... the business of the corporation shall be managed by its board of directors...”

- (b) Section 5 states “Any or all of the directors may be removed for cause by vote of the shareholders or by action of the Board. Directors may be removed without cause only by vote of the shareholders.”
- (c) Section 7 states “... a majority of the entire board shall constitute a quorum for the transaction of business or of any specified item of business.”
- (d) Section 8 states “... the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board. Each director present shall have one vote regardless of the number of shares, if any, which he may hold.”

Article IV of the Bylaws states the following (DED Exhibit 5):

- (a) Section 2(a) states “Any officer elected or appointed by the board may be removed by the board with or without cause.”
- (b) Section 2(d) states “The salaries of all officers shall be fixed by the board.”

The Division argued in its brief “Since the By Laws requires the presence of a majority of the Directors to constitute a quorum for the transaction of business, and there are three Directors, each of whom is only entitled to one vote, the By Laws restrict the Woman Owner from controlling the Board of Directors.”

On appeal, applicant argues that “As 100% owner of MPCC, she has exclusive authority to elect and remove directors. Should any board action threaten her control, she can immediately call a special shareholder meeting and replace the entire board... as sole shareholder, she retains absolute authority over board composition and decisions.” (APP Exhibit A) However, the By Laws clearly state that a majority of the board is necessary to transact business. Each director has one vote regardless of share ownership. Ms. Kryzak-Johnson does not have control of the board since she can be outvoted by the other two directors. (DED Exhibit 5)

The Division’s determination that Multi-Phase failed to demonstrate that Caroline Kryzak-Johnson controls the Board of Directors, as required under 5 NYCRR §144.2(d)(1), is supported by substantial evidence.

## **CONCLUSION**

Multi-Phase met 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) was not based on substantial evidence. Multi-Phase 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)(4), 144.2(c)(2) and 144.2(d)(1), was not based on substantial evidence.

## **RECOMMENDATION**

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

In the Matter of Multi-Phase Contracting Corp.  
DED File ID No. 2168791  
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Written Appeal	Y	Y
DED 1	Certification Application	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Agreement to be Bound by Certification Affidavit	Y	Y
DED 4	Bank Signatory Document	Y	Y
DED 5	Multi-Phase By-Laws	Y	Y
DED 6	Narrative stating no amendments to current By Laws	Y	Y
DED 7	Signed Purchase Order 151291	Y	Y
DED 8	Signed Amendments to Purchase Order 151291	Y	Y
DED 9	Signed Draft Purchase Orders PO 153152 and 151480	Y	Y
DED 10	Signed Amendments to PO 151480	Y	Y
DED 11	Resume of Caroline Kryzak-Johnson	Y	Y
DED 12	Resumes of Mathew Kryzak, Andrew Gilchrist, James Gilchrist, Jonathan Panthen and Kristi Coffey	Y	Y
DED 13	Narrative Business Description	Y	Y
DED 14	Narrative Describing Duties and Responsibilities of Employees	Y	Y
DED 15	Narrative Description Duties and Responsibilities of Ms. Kryzak-Johnspn	Y	Y
DED 16	Recording of Applicant Interview	Y	Y
DED 17	Request to Appeal	Y	Y
DED 18	Notice to Proceed Via Written Appeal	Y	Y