

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

In the Matter

- of -

the Application of NYCO Environmental & Dewatering Corp.
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 5268354

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
July 22, 2025

This matter considers the written appeal by NYCO Environmental & Dewatering Corp. (“NYCO” 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 September 16, 2024, Barbara Miltakis, as President, applied on behalf of NYCO for certification as woman-owned business enterprise (“WBE”). (DED Exhibit 1)
2. On January 7, 2025, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) 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); and
 - (b) 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).
3. NYCO filed a Request to Appeal on January 24, 2025. (DED Exhibit 14)
4. A Notice to Proceed via Written Appeal was sent to NYCO on January 28, 2025. (DED Exhibit 3)
5. NYCO filed its written appeal by letter dated March 3, 2025, with attachments. (APP Exhibit A)

6. The Division filed an Affirmation of Eugenio Alcantara, Director of Certification, dated July 2, 2025, and a brief of Lisa Berk Esq., counsel for the Division, dated July 3, 2025.

FINDINGS OF FACT

7. NYCO provides environmental contracting and consulting services, remediation services, soil sampling, dewatering and geotechnical services. (DED Exhibit 1)
8. Ms. Barbara Miltakis is the President and has a 51% ownership interest. Mr. Matthew Durcan is the Vice President and has a 49% ownership interest. (DED Exhibit 1)
9. Ms. Miltakis received a bachelor's degree in business administration from Bernard Baruch College. She is the President of K&D Equipment Leasing Corp., which provides equipment for excavation, site work, site preparation, grading, compaction, concrete and asphalt paving, trucking, and material handling. (DED Exhibit 4) She has earned the following certificates (DED Exhibit 12):
 - (a) NYS DEC Certificate "Protecting New York's Natural Resources with Better Construction Site Management";
 - (b) Port Authority of NY and NJ Certificate "Information Security Handbook Training Course";
 - (c) GEO Instruments Certificate "Best Practices for Vibration Monitoring"; and
 - (d) NYS Real Estate Institute Certificate "Construction Project Management".
10. NYCO was formed in December 2008 as Ms. Miltakis owned two Mac trucks with overweight permits that could be utilized for soil removal and Matthew Durcan also had permits. Ms. Miltakis' responsibilities at NYCO include "Generate proposals for project cost, implement cost control budgets and procure subcontractors. Environmental awareness training for waste sites and developmental projects. Manage and Implement

Human Resources Policy and Protocol. Manage all Business operation and Financial Resources. New Business Development.” (DED Exhibits 2, 4 and 7)

11. Ms. Miltakis has “over 15 years of direct industry experience in environmental contracting, remediation services, equipment purchasing, and equipment leasing, including project oversight and strategic business development. She ensures “risk mitigation, effective contract execution, and favorable contract terms and conditions. She has “successfully led and managed the company’s operations since inception.” She “approves all major business decisions, ensuring compliance with client requirements, contract execution in full compliance with terms and conditions, and operational efficiency.” (APP Exhibit A)

12. Ms. Miltakis is “actively involved in daily business operations, including contract negotiation, strategic planning, financial oversight, and risk management.” She “oversee[s] project execution, staff assignments, and subcontractor coordination.” She “authorize[s] all major business decisions, including project scope approvals, financial allocations, and compliance strategies...Every major operational decision, including project bidding, budget approvals, and compliance measures, is reviewed and approved by [Ms. Miltakis] She “approve[s] all monthly requisitions change orders, and contractual agreements.” At NYCO’s inception, [she] personally performed field tasks, including sampling, site visits, and project oversight.” (APP Exhibit A) Ms. Miltakis learned the business as it grew and in the first two years was doing everything. Additionally, Ms. Miltakis developed the vibration monitoring side of the business. (DED Exhibit 10)

13. Matt Durcan is “Vice-President – Project Management”. He “manages field operation, including installation, testing and close out phases till completion of the project.” He “assist(s) the President in estimating and bid preparation for securing additional work for

the company.” (DED Exhibit 5) “Matt Durcan is in charge of managing the Field Operations mostly for the Delta LGA and JFK Projects... Matt is the liaison between Delta and the NYCO team to cover all work as required... for projects outside LGA and JFK, Matt has almost identical responsibilities of being the liaison between Barbara/Clients and the team.” (DED Exhibit 9)

14. Samuel McTavey is a senior project manager. He has “18 years of experience in providing professional project management services during the many phases of construction with a focus on environmental compliance. He has spent the last seven years as Delta’s environmental consultant on the New Terminal C Program at LaGuardia Airport, as well as also spending the past three years heavily involved with redevelopment work at JFK Airport. Mr. McTavey’s experience includes several airport megaprojects as well as numerous industrial, commercial, and residential sites requiring analytical, technical, and regulatory knowledge to develop and manage a wide variety of environmental planning and actions to satisfy regulatory agency and stakeholder requirements.” (DED Exhibit 6)
15. Vincent Barone “is a specialty consultant who has made a career with managing special inspections for large projects. Delta’s multi-billion dollar projects required this specialty management that no one at NYCO would have been able to provide... Without Vincent, NYCO would not have been able to provide the Special Inspection Management and Project Certification services we have provided... NYCO required Vincent Barone’s knowledge and expertise in the special inspections arena to be considered for the contacts.” (DED Exhibit 8)
16. Ms. Miltakis stated “Matthew is situated in LaGuardia Airport in New York City and the JFK Airport. He pretty much does the field control over there for the NYCO team members.

He has Sam McTavey that reports to him on the environmental end.” He has Diana Lomeli (VM Manager) that will report to him on vibration and he’s pretty much the liaison between Delta...” (DED Exhibits 10 and 11)

APPLICABLE LAW

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.

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 NYCO 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

Operation

5 NYCRR §144.2(c)(1) requires that the woman-owner possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, and that "this requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things". In *Upstate Electrical, LLC v. New York State Department. of Economic Development*, 2020 N.Y. Slip Op. 00340 (N.Y. App. Div. 2020), the Court affirmed the denial where the woman-owner had no training or experience in the industry to make her qualified to supervise the work of her employees.

In *C.W. Brown, Inc. v. Canton*, 216 A.D.2d 841 (3d Dept 1995), although the Court affirmed the denial where the woman-owner had no training or experience in the industry, the Court also stated that (“[S]o long as the woman seeking certification retains operational control of the enterprise, technical expertise is not necessary . . .”).

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)

Ms. Miltakis received a bachelor’s degree in business administration from Bernard Baruch College. She is the President of K&D Equipment Leasing Corp., which provides equipment for excavation, site work, site preparation, grading, compaction, concrete and asphalt paving, trucking, and material handling. Her responsibilities at NYCO include “Generate proposals for project cost, implement cost control budgets and procure subcontractors. Environmental awareness training for waste sites and developmental projects. Manage and Implement Human Resources Policy Protocol. Manage all Business operation and Financial Resources.” (DED Exhibit 4) She has earned the following certificates (DED Exhibit 12):

- (a) NYS DEC Certificate “Protecting New York’s Natural Resources with Better Construction Site Management”;
- (b) Port Authority of NY and NJ Certificate “Information Security Handbook Training Course”;
- (c) GEO Instruments Certificate “Best Practices for Vibration Monitoring”; and
- (d) NYS Real Estate Institute Certificate “Construction Project Management”.

Ms. Miltakis has “over 15 years of direct industry experience in environmental contracting, remediation services, equipment purchasing, and equipment leasing, including project oversight and strategic business development. She ensures “risk mitigation, effective contract execution, and favorable contract terms and conditions. She has “successfully led and managed the company’s operations since inception.” She “approves all major business decisions, ensuring compliance with client requirements, contract execution in full compliance with terms and conditions, and operational efficiency.” (APP Exhibit A)

Ms. Miltakis is “actively involved in daily business operations, including contract negotiation, strategic planning, financial oversight, and risk management.” She oversee[s] project execution, staff assignments, and subcontractor coordination.” She “authorize[s] all major business decisions, including project scope approvals, financial allocations, and compliance strategies...Every major operational decision, including project bidding, budget approvals, and compliance measures, is reviewed and approved by [Ms. Miltakis] ... She “approve[s] all monthly requisitions change orders, and contractual agreements.” At NYCO’s inception, [she] personally performed field tasks, including sampling, site visits, and project oversight.” (APP Exhibit A) Ms. Miltakis learned the business as it grew and in the first two years was doing everything. Additionally, Ms. Miltakis developed the vibration monitoring side of the business. (DED Exhibit 10)

Ms. Miltakis has the necessary adequate, industry-specific competence to make critical business decisions without relying upon other persons. (DED Exhibits 1 and 4, APP Exhibit A)

The Division’s determination to deny the application on the basis that NYCO failed to demonstrate that Barbara Miltakis possesses adequate, industry-specific competence to make

critical business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1), is not supported by substantial evidence.

NYCRR §144.2(c)(2) requires that the woman-owner 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(c)(2)

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 (4th Dept. 2018).

Matthew Durcan is “Vice-President – Project Management”. He “manages field operation, including installation, testing and close out phases till completion of the project.” He “assist(s) the President in estimating and bid preparation for securing additional work for the company.” (DED Exhibit 5) “Matt Durcan is in charge of managing the Field Operations mostly for the Delta LGA and JFK Projects... Matt is the liaison between Delta and the NYCO team to cover all work as required... for projects outside LGA and JFK, Matt has almost identical responsibilities of being the liaison between Barbara/Clients and the team.” (DED Exhibit 9)

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includes several airport megaprojects as well as numerous industrial, commercial, and residential sites requiring analytical, technical, and regulatory knowledge to develop and manage a wide variety of environmental planning and actions to satisfy regulatory agency and stakeholder requirements.” (DED Exhibit 6)

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Ms. Miltakis stated “Matthew is situated in LaGuardia Airport in New York City and the JFK Airport. He pretty much does the field control over there for the NYCO team members. He has Sam McTavey that reports to him on the environmental end.” He has Diana Lomeli (VM Manager) that will report to him on vibration and he’s pretty much the liaison between Delta...” (DED Exhibits 10 and 11)

Ms. Miltakis argues on appeal that she is actively involved in the daily business operations involving contract negotiation, strategic planning, financial oversight, and risk management. These responsibilities are general administrative duties and do not involve the critical functions of the business. Ms. Miltakis also claims to make the day-to-day decisions because she oversees project execution, staff assignments, and subcontractor coordination. However, the application and narratives submitted demonstrates that she does not supervise the work of her employees in the field. Matthew Durcan, Samuel McTavey, Vincent Barone, and other field managers supervise the work in the field. (DED Exhibits 1, and 4 -11)

Ms. Miltakis further argues on appeal that “it would be impractical or inefficient for me, as President, to personally perform tasks such as: Soil sampling and field inspections, Setting up vibration monitors, Performing SWPP Inspections, Attending daily on-site field meetings.” (APP Exhibit A) However, she does not specify in her application or appeal that she possessed the technical expertise to supervise or evaluate the work in the field. (DED Exhibits 1, 4 and 10; APP Exhibit A)

The Division’s determination to deny the application on the basis the NYCO failed to demonstrate that Ms. Miltakis makes operational decisions on a day-to-day basis with respect to the critical functions of the business, as required under 5 NYCRR §144.2(c)(2), is supported by substantial evidence.

CONCLUSION

NYCO 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 eligibility criteria at 5 NYCRR §144.2(c)(1) was not based on substantial evidence. NYCO 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(c)(2), 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 NYCO’s application for certification as a woman-owned business enterprise, and as modified, affirm the determination.

In the Matter of NYCO Environmental & Dewatering Corp.
 DED File ID No. 5268354
 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	Notice to Proceed via Written Appeal	Y	Y
DED 4	Barbara Miltakis Resume	Y	Y
DED 5	Matthew Durcan Resume	Y	Y
DED 6	Samuel McTavey Resume	Y	Y
DED 7	Barbara Miltakis Work Narrative	Y	Y
DED 8	Narrative dated October 2, 2024	Y	Y
DED 9	Work Narrative for Samuel McTavey, Matt Durcan and team members	Y	Y
DED 10	Recorded Interview	Y	Y
DED 11	Delta Contracts	Y	Y
DED 12	Construction Management Certification	Y	Y
DED 13	Narrative re: self-performance of work	Y	Y
DED 14	Request to Appeal	Y	Y