

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
625 BROADWAY
ALBANY, NEW YORK 12207

In the Matter

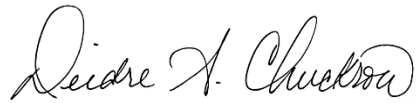
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the Application of NEXT SOLUTIONS C.S. INCORPORATED
for Certification as a Minority-Owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 7319262

RECOMMENDED ORDER

-by-



Deidre A. Chuckrow
Administrative Law Judge
January 21, 2025

This matter considers the written appeal by Next Solutions C.S. Incorporated (“Next Solutions” 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-owned business enterprise (“MBE”).

PROCEDURAL HISTORY

1. On February 9, 2024, Next Solutions applied for certification as a minority-owned business enterprise (“MBE”)¹. Next Solutions based its application on Mr. Manuel Chimbo. (DED Exhibit 1).
2. On June 4, 2024, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) The minority owner relied upon for certification does not negotiate business contracts and represent themselves to clients as the principals of the business enterprise, as demonstrated by fully executed business agreements, as required under 5 NYCRR § 144.2(d)(2); and
 - (b) The business enterprise for which certification is sought does not operate independently, as required under 5 NYCRR § 144.2(e).

¹ The Division’s brief provides different application dates, February 9 and February 24, 2024, and the affidavit states that the date of application was February 24, 2024, however, the application lists February 9 as the date of application. (DED Exhibit 1).

3. Next Solutions submitted a request to appeal the denial determination, dated June 11, 2024. (DED Exhibit 3).
4. A Notice to Proceed Via Written Appeal was sent to Next Solutions on June 12, 2024 (DED Exhibit 4).
5. A written appeal, with exhibits, dated August 2, 2024, was filed by Emanuel Kataev, Esq., of Sage Legal LLC. (APP Exhibit A).
6. The Division filed an Affidavit of Abdul Bah, Associate Certification Director, dated December 31, 2024, and a brief of Anequa Pond, Esq., counsel for the Division, dated January 3, 2025.

FINDINGS OF FACT

7. Next Solutions is engaged in the business of general contracting, telecommunications tower construction and maintenance. (DED Exhibits 1).
8. Manuel Chimbo is the minority owner relied upon for certification. Mr. Chimbo is the President, CEO, and 100% owner of Next Solutions. (DED Exhibits 1 and 2; APP Exhibit A).
9. Amit Saha is the Chief of Operations for the applicant business, and oversees the business operations and expansion, and branding. Amit Saha is responsible for negotiating contracts on behalf of the applicant business. (DED Exhibit 1; Tribunal I).
10. Diego Chimbo, the son of Manuel Chimbo, is part of the applicant business' management team, and works as a consultant for the applicant business, and is also the Secretary of the Board of Directors for Next Solutions. Diego Chimbo has knowledge and experience in the field, and "is the safety person responsible for training, mentoring, and teaching as well as consulting and advising on any field situations." (DED Exhibit 1; Tribunal II).

11. Jenny Soria-Espinoza “is an employee of the management team” and “is responsible for assisting Next Solutions C.S. Incorporated and Mr. Manuel Chimbo in all day-to-day tasks running the office. She is responsible for completing and documenting all clerical tasks as well as reporting to Mr. Chimbo on all operations.” (DED Exhibit 1).
12. Amit Saha, Diego Chimbo, and Jenny Soria-Espinoza all report to Manuel Chimbo. (DED Exhibit 1).
13. Manuel Chimbo “alone controls the decisions made by the Applicant, and no decision can be made without his approval.” Manuel Chimbo relies on key employees, including Diego Chimbo and Amit Saha to execute his decisions. The size of the applicant business’ team requires Manuel Chimbo to delegate responsibilities. Manuel Chimbo states that none of Next Solutions’ employees, including Diego Chimbo and Amit Saha, can make any decisions on behalf of Next Solutions without his approval. (APP Exhibit A).
14. Five purchase orders, provided with the application, between Next Solutions and three different vendors, all list Diego Chimbo as the project manager. The approval signatures by Next Solutions are not legible and no printed name is provided to identify the signature. (DED Exhibit 6).
15. A contract, provided with the application, between Next Solutions and Jacobs Telecommunications, Inc. (“Jacobs”), dated June 6, 2023, is signed by Amit Saha, C.O.O. for Next Solutions. A lease between Next Solutions and Milea Leasing Corp. (“Milea”), provided with the application, is signed by Amit Saha, C.O.O. for Next Solutions, and witnessed by someone whose signature is not legible and who is not identified in print. (DED Exhibit 7).
16. Next Solutions Group LLC (“NSG”) is a start-up management company run by Diego Chimbo, who is its managing member. Diego Chimbo “brought with him the office staff that assists

Manuel Chimbo.” NSG manages “the office personnel with file tracking, safety and training” for Next Solutions. NSG is “responsible for review and accommodating leases for printers, computers, inventory in [Next Solutions’] office as well as providing uniform, safety equipment to [Next Solutions] employees.” NSG provides services so that “[Manuel Chimbo] can concentrate more on the trade itself and not the office administration part of [the] business.” Next Solutions paid NSG over \$ [REDACTED] in management fees in 2022. (DED Exhibits 1 and 8; Tribunal I).

17. The Management Services Agreement between Next Solutions and NSG provides that all marketing and advertising materials developed by the NSG “shall be reviewed and approved by [Next Solutions] . . . prior to the use of such materials,” and that if Next Solutions objects to marketing materials used by NSG, NSG “shall work with [Next Solutions] to revise the offending marketing materials to [Next Solutions’] satisfaction.” Second, Applicant cites to the clause governing cooperation and communication which provides that Next Solutions must provide information requested by NSG and that the two will cooperate and communicate to “discuss any problems. . .” and that NSG will make best efforts to accommodate any changes “reasonably requested by [Next Solutions]. . .” (APP Exhibit A; DED Exhibit 5).

18. NSG’s main client is Next Solutions, and the two companies are both located at the same address. NSG’s office is separate from Next Solutions, and NSG is currently looking for new office space. NSG is intending to provide “consulting services to other companies that have a hard time with paperwork, staffing for office positions, trainings and record keeping.” (DED Exhibit 1; APP Exhibit A).

APPLICABLE LAW

5 NYCRR § 144.2 (d)(2) states as follows:

Control. Minority group members and 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:

- (2) Control of business negotiations. Minority group members and women relied upon for certification must negotiate business contracts and represent themselves to clients as the principals of business entities for which certification is sought, as demonstrated by fully executed business agreements.

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 Next Solutions for certification as an MBE 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. Control

Minority owners, relied upon for certification, must demonstrate control of negotiations through the production of signed contracts, as required by 5 NYCRR §144.2(d)(2). Negotiating and executing contracts are related to the core business functions. See *Matter of C EZ Key Service*, Recommended Order, January 5, 2024 (Final Order 24-01, February 22, 2024). Signing contracts demonstrates that a minority owner exercises appropriate control over a business enterprise with respect to business negotiations. See *Matter of Darr Construction Equipment Corp.*, Recommended Order, August 30, 2022 (Final Order 22-11, November 7, 2022). Substantial evidence supports the Division’s denial where no evidence was presented that the minority owner signs contracts on behalf of the business. (See *Matter of Jaclyn Building Services, Inc.* Recommended Order, May 23, 2016 (Final Order 16-21, May 25, 2016).

The application provides that Amit Saha is responsible for negotiating contracts for Next Solutions. (Tribunal I). Applicant produced contracts and purchase orders with their application. (DED Exhibits 6 and 7). A contract between Next Solutions and Jacobs, included with the application, is signed by Amit Saha, C.O.O., and a lease between the applicant business and Milea

is also signed by Amit Saha, C.O.O. (DED Exhibit 7). The purchase orders all list Diego Chimbo as the project manager, but the signatures on those documents are not legible nor do they identify the approval signature. (DED Exhibit 6).

The Division argues that the contracts and purchase orders provided with the application are not signed by Manuel Chimbo, and instead are evidence that Manuel Chimbo has delegated his authority to others, a point which Manuel Chimbo concedes in the appeal. (DED Exhibits 5, 6, and 7; APP Exhibit A). The Division also argues that the application provides that Amit Saha is responsible for negotiating contracts and that the management agreement between Next Solutions and NSG gives NSG “the right to negotiate contracts for the applicant business’ leased properties...” and thus, is further evidence that Manuel Chimbo has delegated his authority and is not the individual executing contracts on behalf of the applicant business, as required under the regulation. (DED Exhibit 5; APP Exhibit A; Tribunal Exhibit I). The Division contends that the regulation requires the owner relied upon for certification to negotiate contracts and does not make allowances for the delegation of such authority. See 5 NYCRR § 144.2(d)(2), and see *Matter of BIB Services Corp.*, Recommended Order, December 12, 2023 (Final Order 24-01, February 7, 2024); *Matter of Enterprise Solution Providers, Inc.*, Recommended Order, September 27, 2023 (Final Order 23-10, March 27, 2024); and *Matter of Tri-County Heating & A/C of Oneida, Inc.*, Recommended Order, January 26, 2024 (Final Order 24-02, May 6, 2024) (all affirming denial where contracts submitted by applicants were signed and/or negotiated by non-minority owners).

On appeal, Applicant argues that the Division’s findings were made in error. Applicant asserts that Manuel Chimbo “alone controls the decisions made by the Applicant, and no decision can be made without his approval.” (APP Exhibit A). An affidavit of Manuel Chimbo states that

he relies on key employees, including Diego Chimbo and Amit Saha to execute his decisions, and that the size of the applicant business' team requires him to delegate responsibilities. In addition, he states that none of Next Solutions' employees, including Diego Chimbo and Amit Saha, can make any decisions on behalf of Next Solutions without his approval. (APP Exhibit A). This information provided by Manuel Chimbo in the affidavit clarifies information already provided to the Division in the application, and as such, is admissible on appeal. *Scherzi Systems, supra*.

In support of Applicant's argument that Manuel Chimbo controls all decisions, even those delegated to NSG, Applicant cites to two sections of the Management Services Agreement. The first states that all marketing and advertising materials developed by the NSG "shall be reviewed and approved by [Next Solutions] . . . prior to the use of such materials," and that if Next Solutions objects to marketing materials used by NSG, NSG "shall work with [Next Solutions] to revise the offending marketing materials to [Next Solutions'] satisfaction." Second, Applicant cites to the clause governing cooperation and communication which provides that Next Solutions must provide information requested by NSG and that the two will cooperate and communicate to "discuss any problems. . ." and that NSG will make best efforts to accommodate any changes "reasonably requested by [Next Solutions]. . ." (APP Exhibit A; DED Exhibit 5).

Applicant, for the first time on appeal, also provides a copy of a sublease agreement, executed in September of 2018, signed by Manuel Chimbo, as proof that he signs contracts for the business. (APP Exhibit A). However, this document constitutes new information, and was not before the Division at the time of application, and therefore cannot now be considered. See *Scherzi Systems, supra*.

Here, the information contained in the record before the Division at the time of its determination, even with the clarifying information provided by the applicant, does not demonstrate that Manuel Chimbo engages in negotiations or executes contracts. All of the contracts provided with the application are signed by others, and the purchase orders provided, list Diego Chimbo as project manager and have approval signatures which are illegible and not identified. (DED Exhibits 6 and 7). Thus, the MWBE application contains substantial evidence to support the Division's finding that Next Solutions failed to demonstrate that Manuel Chimbo negotiates business contracts, as required by 5 NYCRR §144.2(d)(2).

II. Independence

The Division denied Next Solutions' application for certification as an MBE on the basis that the applicant business failed to demonstrate that it operates independently, as required by 5 NYCRR § 144.2(e). (DED Exhibit 2). To determine whether a business operates independently the Division shall consider, but is not limited to the following: "(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, and whether such benefits are consistent with standard industry practices." 5 NYCRR § 144.2 (e).

The Division regularly denies certification where the applicant business is so entwined with another business, such as operating out of the same space, where one business leases the space to the other under unusually favorable terms, where the applicant business is dependent on the other for capitalization and other basic functions, or where a business primarily transacts with one other business entity. See *Matter of Acme Lightning Rod, LLC*, Recommended Order dated February 25,

2020, (Final Order 20-02, April 21, 2020) (applicant denied certification where it shared board members, personnel, office space, etc., and paid that same entity as a subcontractor to perform majority of work) See also, *Matter of Skyline Specialty Systems, Inc. v. Gargano*, 294 AD 2d 742 (3rd Dept. 2002) (holding the applicant business was so entangled with another business by sharing personnel, offices, etc. that it clearly was not independent).

Here, the applicant business is engaged in the business of general contracting and telecommunications tower construction and maintenance. (DED Exhibit 1). The business shares an address with NSG, which is a business operated by Diego Chimbo, Manuel Chimbo's son. (DED Exhibit 1). NSG is a consulting firm that Next Solutions contracts with for a variety of services which include, but are not limited to: marketing, advertising and promotional services; management of all leased property owned and let by Next Solutions, including performing or hiring others to perform maintenance, repairs and other obligation of the leased property tenants; supervising and monitoring the construction of leased property; financial services, including accounting and financial support services, financial record keeping, and accounts receivable and payable; managing supplies and software; monitoring and supervising all shipping and delivery functions; administering Next Solutions contracted relationship with third parties, including monitoring and enforcing compliance; providing human resources support services; services relating to Next Solutions' insurance policies and obligations; and additional other services "otherwise necessary for the uninterrupted and continuous operation of 'Next Solutions' operations." (DED Exhibit 5).

Diego Chimbo works for Next Solutions, through NSG, as a contractor, and performs various roles for the applicant business, including as a project manager. (DED Exhibits 1 and 5).

Next Solutions' total sales for 2022 was more than \$ [REDACTED] and it paid NSG \$ [REDACTED] in management fees in 2022. (DED Exhibit 8).

Applicant states in its appeal that the Division is mistaken in their findings that the applicant and NSG share office and personnel, and that the applicant transacts business primarily with NSG. (APP Exhibit A). Next Solutions asserts that while the businesses are at the same address they have separate offices and separate staff. Manuel Chimbo, in an answer to questions posed by the Division during the application process, stated that the two businesses are located at the same address, but that NSG was actively looking for different office space. In addition, while Next Solutions concedes that it is the main source of business for NSG, it also states that Next Solutions conducts its business with "hundreds of customers" and cites to its contracts with other entities and the amount of its sales as evidence and provides that its contract with NSG costs less than a third of overall sales for the business. (APP Exhibit A; DED Exhibits 6 and 7).

In addition, Applicant argues that it does not receive a tangible benefit from its work with NSG. In support of its position Applicant states that NSG is an independent contractor under an agreement with NSG that is "terminable upon notice," that Applicant could perform the work without NSG, if NSG were not available, and that NSG is a "mere agent" of Next Solutions. (APP Exhibit A). Regardless of NSG's status as an independent contractor or agent, whether Next Solutions can perform without NSG, or can terminate their contractual agreement at any time, the applicant business still receives a tangible benefit from NSG. NSG provides many benefits to Next Solutions, handling most, if not all, of the applicant business' human resource activities, including but not limited to hiring and firing, managing and signing payroll, and managing office personnel and inventory. (DED Exhibits 1 and 5). According to the application, the office personnel include staff brought in by Diego Chimbo from NSG. (DED Exhibit 1). NSG also handles all of Next

Solutions property management responsibilities and provides office staff which both allows Manuel Chimbo to focus on “the trade itself and not the office administration part of the business.” (DED Exhibits 1 and 5). Diego Chimbo “brought with him the office staff that assist Manuel Chimbo,” and it is this office staff, from NSG that is responsible for the office equipment, office inventory, the provision of uniforms and safety equipment to the applicant business’ employees, among other tasks. (DED Exhibit 1) These facts all represent tangible benefits received by the applicant business from NSG.

Here, the information provided both with the certification application and on appeal indicates that NSG is a consulting firm that provides office support and administrative functions for the applicant business. (DED Exhibit 1; APP Exhibit A). Diego Chimbo, who is on the Board of Next Solutions, serving as its secretary, works for the applicant business as a project manager and manages the administration of the applicant business, as a contractor through NSG. (DED Exhibit 5; APP Exhibit A; Tribunal Exhibit II). Diego Chimbo is responsible for all office administration, including HR and payroll, as well as managing properties owned by the applicant business, and also serves in field operations for the applicant. (APP Exhibit A; DED Exhibit 1). Diego Chimbo’s role, accompanied by the fact that his company, NSG, runs the administration of the applicant business is substantial evidence that the applicant business shares personnel with NSG and receives a tangible benefit from NSG.

The information provided, that Next Solutions shares personnel with NSG, and that NSG employees are heavily involved in the administration of the applicant business, provides substantial evidence that the applicant business shares personnel and is intertwined with NSG outside of standard industry practice. Thus, the applicant has not demonstrated that Next Solutions operates independently, as required under 5 NYCRR § 144.2(e).

CONCLUSION

Next Solutions did not meet its burden to demonstrate that the Division's determination to deny its application for certification as a minority owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§ 144.2(d)(2) and 144.2(e) was not based on substantial evidence.

RECOMMENDATION

The Division's determination to deny Next Solutions' application for certification as a minority owned business enterprise should be affirmed.

In the Matter of Next Solutions C.S. Incorporated
 DED File ID No. 7319262
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Applicant Appeal Submission with Exhibits	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Determination	Y	Y
DED 3	Request to Appeal Denial	Y	Y
DED 4	Notice to Proceed Via Written Appeal	Y	Y
DED 5	Management Services Agreement	Y	Y
DED 6	Invoices	Y	Y
DED 7	Contracts	Y	Y
DED 8	Next Solutions 2022 Taxes	Y	Y
TRIBUNAL I	Port Authority MWBE Application	N	Y
TRIBUNAL II	Next Solutions 1 st , 4 th , and 5 th Meeting Minutes	N	Y