

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

In the Matter

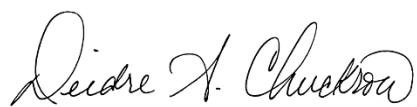
- of -

the Application of PDRight LLC
for Certification as a Minority Woman-Owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 72804

RECOMMENDED ORDER

-by-



Deidre A. Chuckrow
Administrative Law Judge
April 18, 2025

This matter considers the written appeal by PDRight LLC (“PDR” 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 August 13, 2024, PDR applied for certification as a minority and women-owned business enterprise (“MWBE”). PDR based its application on Ms. Marisol J. Sanchez. (DED Exhibit 1).
2. On November 18, 2024, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) The minority and woman owner relied upon for certification does not 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) The minority and woman owner relied upon for certification does not 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. PDR submitted a request to appeal the denial determination, dated December 11, 2024. (Tribunal Exhibit I).
4. A Notice to Proceed via Written Appeal was sent to PDR on December 12, 2024 (DED Exhibit 3).

5. Applicant submitted a written appeal letter with attachments dated January 14, 2025. (APP Exhibit A).
6. The Division filed an Affidavit of Matthew LeFebrve, Associate Certification Director, dated April 3, 2025, and a brief of Anequa O. Pond, Esq., counsel for the Division, dated April 3, 2025.

FINDINGS OF FACT

7. PDR is engaged in the business of cloud migration, application modernization, DevOps optimization, infrastructure automation, secure digital workspaces, AI/ML integration, and robust data security services. (DED Exhibit 1).
8. Ms. Sanchez, the minority woman owner relied upon for certification, is the CEO and 100% owner of the applicant business. (DED Exhibit 1).
9. PDR was established on April 1, 2023. (DED Exhibit 1)
10. The critical functions of the applicant business include cloud migration, application modernization, DevOps optimization, infrastructure automation, secure digital workspaces, AI/ML integration, and robust data security services. PDR “offers expertise in migrating businesses to cloud environments. This includes assessing current infrastructure, planning migrations, executing transitions, and optimizing performance post-migration.” (DED Exhibit 1).
11. The projects producing the most revenue for the business in 2023 were network security, upgrades to wireless devices, and product procurement. In 2024 the bulk of revenue generated is product fulfillment for the MTA. (DED Exhibit 5).
12. Mr. Michael Andujar, Mr. Bill Grant, Mr. Jerry Martinez, and Ms. Evy Martinez work as contractors for the applicant business. (DED Exhibit 1).

13. Ms. Sanchez's has a Bachelor's Degree in organizational behavior and communications and a Master's Degree in human resource management and development. She works for New York University ("NYU") as the Associate Director of Operations and Administrative Services, where her role includes managing budgets for assigned portfolio, cultivating strategic partnerships with stakeholders, vendors, project team, and end-users, and implementing internal controls and compliance. (DED Exhibit 4).
14. Ms. Sanchez's skills, as reported on her resume, include leadership, "with over ten years of facilities and asset management, operations, and administration experience including space and move planning, construction plans, furniture installation, and reconfigurations. Her competencies include, strategic development, executive level engagement, process and policy development, project management, client and vendor relationships, communications, budget management, quality control, procurement management, service delivery, change management, resource allocation, asset protection, and regulatory compliance." She is also skilled with the Microsoft Office Suite of products, Adobe Pro, internet research, and data and financial processing systems. (DED Exhibit 4).
15. Ms. Sanchez works full time for NYU and works 40 to 45 hours a week for PDR, working from 6 a.m. to 8:30 a.m. and 4:00 p.m. to 10:00 p.m. on weekdays, and works various hours on weekends. Her responsibilities for the applicant business include overseeing "all aspects of business operations, including vendor and manufacturing partnerships, the company's portfolio offerings, bill payments, and quote approvals in QuickBooks, as well as the management of tier-one accounts." She addresses emails, processing orders, engages with clients and prospects, and "is responsible for responding to requests for proposals (RFP) from major clients. . ." (DED Exhibits 5 and 7).

16. Ms. Sanchez describes her direct involvement in the business as “making sure I have the right people to fulfill [a particular] service”, and ensuring that PDR has partnerships with different companies, such as Cisco, Dell, and HP, which require agreements and certifications in order to sell their products. Ms. Sanchez completes those agreements and ensures that the certifications are in place and that the company has the right people to complete services, or installations, or consultations for those products. (DED Exhibit 7).
17. Mr. Andujar is an inside sales representative for PDR and works full time for the business as an independent contractor. His role is generating new business and “building a sales pipeline through outbound prospecting, cold calling, email campaigns, and social selling. He also shadows Mr. Grant on occasion to gain experience and to provide assistance. (DED Exhibits 5 and 7).
18. Mr. Grant is a solutions architect for PDR and the lead engineer, working between 25-30 hours a week, with a fluctuating schedule depending on project demands. He has a Bachelor of Science degree in information technology and holds certifications in Fortnet NSE 7 and Cisco CCNP. He is also an AWS Certified Developer Associate and an AWS Certified Solutions Architect Associate. His prior experience includes more than 13 years as the Vice President of Information Technology at GL Wireless, over 5 years as the Network Engineer for the Township of East Brunswick, New Jersey, and experience as a Network Engineer for Spotify, ABC News, and Fortinet. He has experience in “all phases of the system development life cycle. . . [and] [s]pecializes in design, problem-solving, and presentation of solutions. [He] [e]ngages customers to determine their needs, effectively communicates technical details to clients, and interfaces with developers, stakeholders, and high-level decision-makers.” At the applicant business, Mr. Grant handles the migrations, automations, and technical issues as well

as engaging with customers during pre and post sales technical discussions. His job is going into customers systems, making upgrades and changes, and ensuring that the network is up to date and that there are no breaches. In addition, jobs that require the design of a network go to Mr. Grant, as “that’s easy for him to do.” (DED Exhibits 5, 6, and 7).

19. Mr. Martinez is an Account Manager for PDR and works approximately 30 hours a week. He has a Bachelor of Science degree in Information Systems Management, and an Executive master’s degree in business administration. His prior experience includes work as an Information Technology Associate, Senior Director of IT Operations and Security and as an account manager and system engineer for Fortinet. He holds the following certifications: Network Security Expert 4, Cisco Certified Network Association, and is a VMware Certified Associate in Cloud Fundamentals and Workforce Mobility. His role at the application business includes overseeing projects and spearheading efforts to attract new clients. His duties include “in-depth research of potential customers to discern their needs, engaging with them across various communication channels, and presenting tailored solutions from PDRight.” In addition, he “fosters client relationships to explore upselling and cross-selling opportunities and prepares customized sales proposals.” Ms. Sanchez states that his expertise as an IT engineer is important and that she relies on him to stay abreast of trends in the industry and for next steps for the business. (DED Exhibits 5, 7, and 8).

20. Ms. Sanchez is solely responsible for financial decisions, negotiating bonding, negotiating insurance, purchasing equipment and sales, managing and signing payroll, and negotiating contracts. She shares responsibility for preparing bids with Evy Martinez and Bill Grant, and with Jerry Martinez for supervising field operations and signing for business accounts.

Estimating is done by Jerry Martinez and Michael Andujar, and Jerry Martinez is solely responsible for marketing and sales. (DED Exhibit 1).

21. PDR's primary North American Industry Classification System ("NAICS") Codes requested are Engineering Consulting Service, Sales and Resales of Cyber Security / Network Equipment. (DED Exhibit 5).
22. PDR has contracts with the YMCA of Greater New York ("YMCA") for wireless access point replacement ("WAP") at all of their branches, which includes the removal of WAPs, labeling new WAPS, documenting their location on floorplans, and installing the WAPS. The installation process includes a comprehensive site assessment for each location, updating floorplans to include the WAPs locations, removal of WAPs, and the labeling and installation of new WAPs. PDR will also test each installed WAP to verify its functionality and performance. PDR also contracted for the sale of certain products for the project which includes professional service hours and the sale of Fortinet products, for which Mr. Grant has a certification. (DED Exhibits 6, 10, 11, 12, and 13).
23. PDR has contracts with Metro North Railroad ("MNR") for the purchase of replacement parts to vehicles and train transmissions from Mitchell Rail Gear. (DED Exhibits 13 and 14; APP Exhibit A).
24. PDR has a contract with FuboTV for the purchase of products and professional service hours for a surveillance camera system. PDR conducted a walk-through of the premises before providing a recommended solution. (DED Exhibits 12 and 13).

APPLICABLE LAW

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

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.

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

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 PDR for certification as an 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

I. Industry-Specific Competence and Day-to-Day Operations

PDR's application for certification as an MWBE was denied on the basis that the applicant failed to demonstrate that Ms. Sanchez possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR § 144.2(c)(1) and that the applicant failed to demonstrate that she makes operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise as required by 5 NYCRR § 144.2(c)(2). (DED Exhibit 2).

The Division interprets these regulations to require an applicant to demonstrate that the owner, relied on for certification, has the working knowledge necessary to review or evaluate the work of more experienced employees. See *In the Matter of Upstate Electrical, LLC v New York State Department of Economic Development*, 179 A.D.3d 1343 (3d Dept. 2020) citing to *Matter of C.W. Brown, Inc. v Canton*, 216 A.D.2d 841, 842 (1995) (where the Court affirmed the denial where the owner had no training or experience in the industry to make her qualified to supervise the work of her employees.) The Division consistently denies applications for certification where an applicant fails to demonstrate that they possess adequate industry competence. See *Matter of cSide Tech, LLC*, Recommended Order, August 14, 2023 (Final Order 23-08, August 17, 2023) (Certification denied where owner relied on for certification for an IT services company handled accounts payable and receivable, marketing, execution and proposal development, and had no

degrees or work experience in IT, and the non-qualifying owner held degrees in electrical engineering and computer software engineering and had over twenty years of experience in IT).

The Division requires that owners be able to perform the core revenue generating functions of the business enterprise. See *Matter of CCS Custom Construction Services Corp.*, Recommended Order, March 25, 2025 (Final Order 25-04, April 11, 2025) (Construction and mill work company where owner relied on for certification reviewed and signed contracts, discussed contract details, and hired subcontractors and employees, but did not possess appropriate licenses or certifications, and had no experience in construction or millwork, owner relied on for certification was determined to not possess adequate industry competence, without relying on others), see also, *Matter of Bore Tech, LLC*, Recommended Order, June 1, 2021 (Final Order 21-05, February 7, 2022), see also, *Matter of Occupational Safety & Environmental Assoc., Inc. v New York State Department of Economic Development*, 161 A.D.3d 1582 (4th Dept. 2018). Expertise or experience in office management or general business administration will not satisfy these requirements. 5 NYCRR § 144.2(c)(1).

In considering 5 NYCRR § 144.2(c)(1), regarding industry-specific competence, the Division shall consider:

- (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.

The regulation under 5 NYCRR 144.2(c)(2) provides that in determining whether a person relied on for certification makes critical business decisions on a day-to-day basis without relying

on others, the critical functions of the business enterprise shall be determined by the Division based upon, but not limited to, the following factors: (1) “The products or services the business enterprise provides to clients; and” (2) “The means by which the business enterprise obtains contracts or orders.” 5 NYCRR § 144.2 (c)(2). The Division consistently denies certification where the owner has no training, experience, or working knowledge in the core business functions and other employees or owners have more significant or substantive experience, and exercise that experience, such as by supervising or controlling field operations. *Matter of Panko Electrical and Maintenance Corp. v Zapata et. al*, 172 A.D.3d 1682 (3d Dept. 2019), see also *Matter of Upstate Electrical, supra*.

The Applicant bears the burden of establishing that the minority-woman group member relied upon for certification has met this requirement. Failure to satisfy this burden is proof that the denial was supported by substantial evidence. See *Matter of A.A.C. Contracting, Inc. v. New York State Dept. of Economic Development*, 195 A.D.3d 1284 (3d Dept. 2021).

Here, Ms. Sanchez does not possess adequate, industry-specific competence to make critical business decisions without relying upon other persons and does not maintain independent operational control of the business. Ms. Sanchez’s education and professional background, prior to starting the applicant business two years ago, is in organizational behavior and human resources. Her resume lists no work experience, courses or trainings relating to the field of information technology, cloud migration, application modernization, infrastructure automation, or secure digital workspaces. (DED Exhibit 5).

The Division determined that the critical functions of PDR, based on the application and what products and services the applicant business provides to clients, are cloud migration, application modernization, DevOps optimization, and infrastructure automation, secure digital

workspaces, AI/ML integration, and robust data security services. (DED Exhibits 1 and 2). Included in the Division's evaluation were the three largest active projects for the applicant business at the time of the application, which include work in conducting a network revamp for approximately 60 locations for the YMCA of Greater New York and work for the Teachers Federal Credit Union involving switch upgrades and updates to data center and wireless. (DED Exhibit 1).

According to section 4.a of the application, Ms. Sanchez is solely responsible for financial decisions, negotiating bonding and insurance, hiring and firing, signing payroll, and negotiating contracts. (DED Exhibit 1). Ms. Sanchez shares responsibilities for preparing bids and supervising field operations with Bill Grant, Evy Martinez, and Jerry Martinez and has no responsibility for estimating or for marketing and sales, which are handled exclusively by Jerry Martinez and Michael Andujar. (DED Exhibit 1). Nowhere in the application, nor in the appeal is there any information regarding Ms. Sanchez performing any technical work relating to critical functions of the business.

During an interview with the Division, Ms. Sanchez explained that her day-to-day work for the business included managing her emails, logging into the CRM system for her to-do list, strategizing on what the next steps for the company may be, such as evaluating what partnerships or new vendors the business may need to grow the business.. Ms. Sanchez described the business as a solution provider, and explained that PDR does anything from consulting, cloud migration, network security automation, and product fulfillment, which can include providing installation services. Ms. Sanchez described her direct involvement in the business as "making sure I have the right people to fulfill [a particular] service", and ensuring that PDR has partnerships with different companies, such as Cisco, Dell, and HP, which require agreements and certifications in order to sell their products. Ms., Sanchez explained that she completes those agreements and ensures that

the certifications are in place and that the company has the right people to complete services, installations, or consultations for those products. (DED Exhibit 7).

The application identifies Bill Grant, Jerry Martinez, and Michael Andujar as contractors working for PDR. (DED Exhibits 1 and 5). Both Mr. Grant and Mr. Martinez hold certifications from Cisco. Mr. Grant also has certifications from Fortinet and AWS, while Mr. Martinez has additional certificates from VMware. Mr. Grant and Mr. Martinez have education and experience in information technology, and Mr. Grant has extensive experience in systems engineering. (DED Exhibits 6 and 8).

While there is ample evidence to support a finding that Ms. Sanchez controls the administrative and financial side of the business, the record is devoid of evidence that indicates that she has anything to do with system design, installation of systems, or update to existing systems, conducted by the applicant business. (DED Exhibits 1, 4, 5, 6, 7, and 8). The evidence establishes that it is Mr. Grant who performs most of the technical work, including network design and conversions, and Mr. Martinez who determines customer needs, oversees projects, and prepares sales proposals and computer related work relating to the business. (DED Exhibits 1, 5, 6, 7, and 8).

The applicant argues, for the first time on appeal, that the core function of the business is in the fulfillment business, stating that it constitutes 98% of the business done by PDR, and that Ms. Sanchez's expertise is in the core operations and decision making for fulfillment. (APP Exhibit A). Applicant concedes that Ms. Sanchez "may not have technical expertise in certain specialized areas," but asserts that her leadership role, as relating to vendor management, contract fulfillment, and value proposition, is evidence of her expertise in product fulfillment. (APP Exhibit A).

Applicant argues that the Division should not have placed a “heavy reliance” on its answers to question 3C of the application, which asks for a description of the principal products and commodities sold, and what specialties or services are offered, stating “that the description provided was intended to project the company’s potential capabilities and attract customer interest.” (DED Exhibit 1; APP Exhibit A). Applicant further argues that the professional services offered by the company “constitutes a very small percentage of contracts and revenue.” Applicant states, on appeal, that the reason for listing “multiple NAICS codes was to ensure eligibility for future opportunities while accurately reflecting our existing scope of work.” (APP Exhibit A). The information provided on appeal is considered clarifying and not new information and is therefore admissible under *Scherzi*.

In this case, at the time of the application, PDR stated their business was to “unify Information Technology (IT) and Operational Technology (OT) to enhance business efficiency and innovation” and that their services included “cloud migration, application modernization, DevOps optimization and infrastructure automation.” They also stated that the business has expertise in IT consulting, implementation, and managed services, and that it has specific expertise in migrating business to cloud environments, including the “assess[ment of] current infrastructure, planning migrations, executing transitions, and optimizing performance post-migration.” (DED Exhibit 1).

While there is evidence in the application that some of the work done by PDR includes the fulfillment of orders of equipment, which may, or may not require any expertise, there is also significant information regarding products which require the ability to assess current systems, to develop new networks, to remove and install IT equipment, and the need for specific certifications to be able to act as a reseller. (DED Exhibits 5, 7, 10, 11, 12, and 13).

The record taken as a whole indicates that Ms. Sanchez must rely on her contractors to fulfill contract requirements. (DED Exhibits 1, 4, 5, 6, 7, 8, 10, 11, 12, 13, and 14). Specifically, several contracts, including the YMCA contract and the FuboTV contract include some kind of professional services to be performed by the applicant business, either for an assessment of what equipment is needed or for the installation of those system, or both. (DED Exhibits 10 – 13). Here, Ms. Sanchez acknowledged that she relies on both Mr. Grant and Mr. Hernandez for their technical expertise. (DED Exhibit 7). In addition, the applicant admits that the business must have certifications with many of their equipment providers in order to engage in the resale of their products and here the only evidence presented is that Mr. Grant and Mr. Hernandez have those certifications. (DED Exhibits 4, 6, 7, and 8).

Based on the foregoing, I find that the Division’s determination that PDR has not demonstrated that the minority-woman owner relied upon for certification possesses adequate industry competence without relying on others and makes operational business decisions as to the critical functions of the applicant business, as required under 5 NYCRR §§ 144.2(c)(1) and (2) is supported by substantial evidence.

CONCLUSION

PDR did not meet 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(c)(1) and 144.2(c)(2) was not based on substantial evidence.

RECOMMENDATION

The Division’s determination to deny PDRight LLC’s application for certification as a minority and woman-owned business enterprise should be affirmed.

In the Matter of PDRight LLC
DED File ID No. 72804
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Applicant Appeal Letter and Submissions	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	Marisol Sanchez Resume	Y	Y
DED 5	Narrative of Duties and Responsibilities	Y	Y
DED 6	Bill Grant Resume	Y	Y
DED 7	Site Interview between the Division and Appellant	Y	Y
DED 8	Jerry Martinez Resume	Y	Y
DED 9	Michael Andujar Resume	Y	Y
DED 10	YMCA Scope of Work Document	Y	Y
DED 11	YMCA Invoices	Y	Y
DED 12	Fubo TV Invoices	Y	Y
DED 13	NAICS Code Information Document	Y	Y
DED 14	MTA Invoices	Y	Y
Tribunal I	Request to Appeal	N	Y
Tribunal II	Sanchez, Marisol 2023 Amended Tax Return	N	N
Tribunal III	Sanchez Resale Certificate	N	Y