

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

In the Matter

- of -

the Application of Prisma Construction, Inc.

for

**Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 72623

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
June 4, 2025

This matter considers the written appeal by Prisma Construction, Inc. (“Prisma” 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 8, 2024, Ms. Barbara Douvas, as President, applied on behalf of Prisma for certification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1)
2. On September 20, 2024, 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)¹.
3. On September 20, 2024, Prisma submitted a Request to Appeal. (DED Exhibit 3)

¹ The denial determination incorrectly stated the denial criteria under 5 NYCRR §144.2(c)(1) twice. However, the last paragraph of the denial correctly states that the applicant business has failed to demonstrate that the woman relied upon for certification makes operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise.

4. On September 24, 2024, a Notice to Proceed Via Written Appeal was sent to all parties.
(DED Exhibit 4)
5. On November 6, 2024, Prisma filed its written appeal. (APP Exhibit A)
6. The Division filed an Affidavit of Abdul Bah, Associate Certification Director, dated April 8, 2025, and a brief of Dennie Byam, Esq., counsel for the Division, dated April 8, 2025.

FINDINGS OF FACT

7. Prisma is a general contractor engaged in the business of residential building construction, including, but not limited to, the construction of single-family and multi-family buildings. Prisma does the majority of the interior construction including framing, flooring and tile work and subcontracts out the steel, plumbing and electrical work. (DED Exhibits 1 and 6)
8. Barbara Douvas is the President and 51% owner of Prisma. Ionnas (“John”) Douvas, Ms. Douvas’ father, is the Vice President and 24.5% owner of Prisma. Vasilios (“Bill”) Douvas, Ms. Douvas’ brother, is the Secretary and Treasurer, and 24.5% owner of Prisma. (DED Exhibits 1 and 6)
9. Barbara Douvas “primarily manages the administrative operation of the company. Her responsibilities include handling the accounts payable and accounts receivable. She communicates with suppliers on a daily basis. She prepares requisitions that are submitted to contractors detailing the scope of contracted work.” She is “responsible for job cost analysis, as well as aiding in the estimating of projects.” She graduated from the City University of New York, with a degree in English Literature. (DED Exhibit 9)
10. Ms. Douvas is a “project manager with 29 years of experience managing together with my team members all aspects of construction projects, from planning, estimating, and bidding through construction and closeout. I have been responsible for coordinating, managing and

executing various projects. I develop progress and baseline schedules, in line with the protocols and procedures governing work in New York City and New York State.” (DED Exhibit 8)

11. Barbara Douvas’ day-to-day is comprised of correspondence, making sure the construction schedule is being followed and overall project management for Prisma. Ms. Douvas attends the field meetings that take place every two weeks and will do a “walk of the project”. Scheduling and bringing the project to completion are Ms. Douvas’ particular expertise. (DED Exhibit 6) Her “daily activities include procurement of projects, estimating. Her duties include the coordination from start to completion. Develop schedules and execute sub contract agreements” (DED Exhibit 1)

12. Applicant’s bond agency, Acrisure, stated that “Barbara Douvas, President of Prisma Construction, Inc., in our experience, has performed the role of President admirably by negotiating amicable construction contracts, coordinating employees, subs and vendors at the various at the various jobsites, providing the necessary documents needed to secure a Bond Program (Financial Statements, Work in Progress forms, Bank Statements, etc.), leading meetings with Owners, Sureties and Subs when needed among many other leadership duties as President. Through her onsite management ... Barbara has successfully brought these Projects to completion on time.” (APP Exhibit B)

13. John Douvas “has over 35 years of construction experience. He was a sub-contractor under the company name of JD Construction Co., primarily performing work for KLM Construction for 20 years, at which time completed projects for various governmental agencies as well as for private owners.” His responsibilities include the estimating of projects and the negotiation of contracts with sub-contractors and contractors.” (DED Exhibit 9) He “is a senior project manager whose daily duties include coordination of

trades. Coordination of multiple sites. Manage all construction activities.” (DED Exhibit 1)

14. Bill Douvas has 23 years of experience with Prisma. His “responsibilities include the day-to-day activities of the operation in the field as well as the estimating of projects. He handles the coordination of trades, negotiations and the execution of contracts.” He is a NYC Site Safety Training Supervisor and has a General Contractor and Construction Superintendent license from the NYC Dept. of Buildings. (DED Exhibits 9, 14, 16 and 17) He “is a senior project manager and site supervisor whose daily activities include the coordination of trades and manages all construction activities. He communicates with architects and engineers.” (DED Exhibit 1)

15. Both John Douvas and Bill Douvas “are hands-on on the job site”, scheduling and coordinating the subcontractors, coordinating the material delivery, keeping track of the construction schedule, and making sure all of the safety protocols are being followed. (DED Exhibit 6)

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 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 Prisma 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 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. Operation

The Division found that the woman-owner does not possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR §144.2(c)(1). In *C.W. Brown, Inc. v. Canton*, 216 A.D.2d 841 (3d Dept 1995), the Court affirmed the denial where the woman-owner had no training or experience in the industry, nor could she specify the “working knowledge” necessary to review the estimates made by or evaluate the work of more experienced employees. 5 NYCRR §144.2(c)(1) states that “this requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things.”

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 AD3d, 1517 (4th Dept. 2018).

The eligibility criteria for WBE 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 AD 3d 1343 (3rd 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...” *J.C. Smith, Inc. v. New York State Department of Economic Development*, 163 AD 3d 1517 (4th Dept. 2018).

With regard to technical competence, where the woman-owner has no training or experience, and the operations staff have more substantive and more significant experience, the Division’s determination denying certification is supported. See *In the Matter of Upstate*

Electrical, LLC, Recommended Order dated June 11, 2018, Final Order 18-39, dated August 20, 2018.

Barbara Douvas “primarily manages the administrative operation of the company. Her responsibilities include handling the accounts payable and accounts receivable. She communicates with suppliers on a daily basis. She prepares requisitions that are submitted to contractors detailing the scope of contracted work.” She is “responsible for job cost analysis, as well as aiding in the estimating of projects.” She graduated from the City University of New York, with a degree in English Literature. (DED Exhibit 9) She is a “project manager with 29 years of experience managing together with my team members all aspects of construction projects, from planning, estimating, and bidding through construction and closeout. I have been responsible for coordinating, managing and executing various projects. I develop progress and baseline schedules, in line with the protocols and procedures governing work in New York City and New York State.” (DED Exhibit 8) She is responsible for the administrative functions, business development, and overall project management for Prisma. Her primary responsibilities are business management and administrative duties rather than direct oversight of construction projects. (DED Exhibit 6) Her “daily activities include procurement of projects, estimating. Her duties include the coordination from start to completion. Develop schedules and execute sub contract agreements.” (DED Exhibit 1)

John Douvas “has over 35 years of construction experience. He was a sub-contractor under the company name of JD Construction Co., primarily performing work for KLM Construction for 20 years, at which time completed projects for various governmental agencies as well as for private owners.” His responsibilities include the estimating of projects and the negotiation of contracts with sub-contractors and contractors.” (DED Exhibit 9) He “is a senior project manager whose

daily duties include coordination of trades. Coordination of multiple sites. Manage all construction activities.” (DED Exhibit 1)

Bill Douvas has 23 years of experience at Prisma. His “responsibilities include the day to day activities of the operation in the field as well as the estimating of projects. He handles the coordination of trades, negotiations and the execution of contracts.” He is a NYC Site Safety Training Supervisor and has a General Contractor and Construction Superintendent license from the NYC Dept. of Buildings. (DED Exhibits 9, 14, 16 and 17) He “is a senior project manager and site supervisor whose daily activities include the coordination of trades and manages all construction activities. He communicates with architects and engineers.” (DED Exhibit 1)

Both John Douvas and Bill Douvas “are hands-on on the job site”, scheduling and coordinating the subcontractors, coordinating the material delivery, keeping track of the construction schedule, and making sure all of the safety protocols are being followed (DED Exhibit 6) When evaluating industry-specific competence the Division considers “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” 5 NYCRR §144.2(c)(1)(i) Bill Douvas is a NYC Site Safety Training Supervisor and has a General Contractor and Construction Superintendent license from the NYC Dept. of Buildings. (DED Exhibits 9, 14, 16 and 17) Barbara Douvas does not maintain any licenses or certifications; they are held by Bill Douvas. (DED Exhibit 6)

On appeal, Ms. Douvas argues that “I handle critical responsibilities, both in the office and on the field, which include managing active projects, directing team activities, and making key decisions to ensure each project’s success” She states her duties include project oversight and management, on-site leadership, decision-making authority, operational coordination, and strategic planning and business growth. (APP Exhibit A)

On appeal, applicant submitted a letter from its bond agency, Acrisure. The agency stated that “Barbara Douvas, President of Prisma Construction, Inc., in our experience, has performed the role of President admirably by negotiating amicable construction contracts, coordinating employees, subs and vendors at the various at the various jobsites, providing the necessary documents needed to secure a Bond Program (Financial Statements, Work in Progress forms, Bank Statements, etc.), leading meetings with Owners, Sureties and Subs when needed among many other leadership duties as President. Through her onsite management ... Barbara has successfully brought these Projects to completion on time. “(APP Exhibit B)

However, Ms. Douvas cannot make critical business decisions regarding residential building construction without relying upon John Douvas and/or Bill Douvas. (DED Exhibits 1, 6, 8, and 9)

Based on the foregoing, I find that the Division’s determination to deny Prisma’s application under 5 NYCRR §§144.2(c)(1) was based on substantial evidence.

The Division also found that Ms. Douvas 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 AD 3d 1343 (3rd 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...” *J.C. Smith, Inc. v. New York State Department of Economic Development*, 163 A.D. 3d 1517 (4th Dept. 2018).

With regard to managerial experience, the owner relied upon for certification must identify the management experience and day-to-day management activities she engages in. See *Scherzi*

Systems, LLC v. White, 197 AD 3d 1466 (3d Dept. 2021). The Division consistently denies certification where the owner relied upon for certification 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. *Panko Electrical and Maintenance Corporation v. Zapata*, 172 A.D. 3d 1682 (3d Dept. 2019).

Prisma subcontracts all construction work except for interior tasks and those performed by John Douvas and Bill Douvas. John Douvas and Bill Douvas are on-site, overseeing daily operations, including ordering materials, scheduling subcontractors, and ensuring safety protocols. Barbara Douvas manages correspondence, contractual agreements, labor force adjustments, and business development. She attends field meetings every two weeks, engaging with architects, banks, and owners to review project progress. (DED Exhibit 6)

Barbara Douvas' day-to-day responsibilities include handling accounts payable and receivable, communicate with suppliers, prepare requisitions, job cost analysis, and aiding in the estimating of projects. include developing schedules and executing subcontract agreements. John Douvas' day-to day responsibilities include estimating of projects and the negotiations of contracts with sub-contractors and contractors. Bill Douvas' "responsibilities include the day-to-day activities of operation in the field as well as the estimating of projects. He handles the coordination of trades, negotiations and the execution of contracts." (DED Exhibit 9)

On appeal, Ms. Douvas argues "I am directly involved in the daily management of our construction sites and handle the logistical and strategic elements required to keep each project on track." (APP Exhibit A) However, the application, resume, interview, and Narrative reflect that John Douvas and Bill Douvas make operational decisions on a day-to-day basis with respect to critical functions of the business. (DED Exhibits 1, 6, 8, and 9)

John Douvas manages all construction activities. Bill Douvas is the site supervisor. He communicates with architects and engineers. (DED Exhibit 1) John Douvas and Bill Douvas perform the revenue-generating functions of Prisma by working directly in the field and overseeing field operations. Barbara Douvas handles the administrative tasks of the business. (DED Exhibits 1, 6, 8, and 9)

Based on the foregoing, I find that the Division's determination to deny Prisma's application under 5 NYCRR §§144.2(c)(2) was based on substantial evidence.

CONCLUSION

Prisma 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)(1) and 144.2(c)(2) was not based on substantial evidence.

RECOMMENDATION

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

In the Matter of Prisma Construction, Inc.
DED File ID No. 72623
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Written Appeal Submission	Y	Y
APP B	Acrisure letter dated October 30, 2024	Y	Y
DED 1	Certification Application	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Request to Appeal	Y	Y
DED 4	Notice to Proceed Via Written Appeal	Y	Y
DED 5	Stock Ledger	Y	Y
DED 6	Phone Interview	Y	Y
DED 7	Certification Application Affidavit	Y	Y
DED 8	Barbara Douvas Resume	Y	Y
DED 9	Day to Day Responsibilities Narrative	Y	Y
DED 10	Proof of Capitalization Narrative	Y	Y
DED 11	Restoring Urban Neighborhoods LLC Engagement Letters	Y	Y
DED 12	December 6, 2022 50 th Street Housing Development Fund Corporation Construction Contract	Y	Y
DED 13	Draft December, 2022 50 th Street Housing Development Fund Corporation Assignment of Construction Contract	Y	Y
DED 14	Vasilios Douvas NYC Dept. of Buildings General Contractor License	Y	Y
DED 15	Prisma Construction Inc. Home Improvement Contractor License	Y	Y

DED 16	Vasilios Douvas NYC Site Safety Supervisor Identification Card	Y	Y
DED 17	Vasilios Douvas NYC Dept. of Buildings Construction Superintendent License	Y	Y
DED 18	Proof of Capitalization Narrative	Y	Y