

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

**In the Matter**

**- of -**

**the Application of RB Associates**  
**for Certification as a Minority Owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 11019**

**RECOMMENDED ORDER**

**-by-**



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**Deidre A. Chuckrow**  
**Administrative Law Judge**  
**March 12, 2024**

This matter considers the written appeal by RB Associates (“RB Assoc.” 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 October 28, 2022, RB Assoc. applied for certification as a minority owned business enterprise (“MBE”). RB Assoc. based its application on Jayesh Sanghvi (DED Exhibit 1).
2. On June 5, 2023, the Division denied the application on the following grounds (DED Exhibit 2):
  - (a) The business enterprise failed to demonstrate that it made a contribution to the New York State economy through payment of taxes, or the purchase of made in New York State products or materials, or by having any payroll in New York State as required under 5 NYCRR §§ 144.2(f)(2), 140.1(hh) and 140.1(gg); and
  - (b) The business enterprise failed to demonstrate that it is authorized to do business in the state of New York as required under 5 NYCRR §§ 144.2(f)(3).
3. RB Assoc. submitted a request to appeal the denial determination, dated June 19, 2023. (DED Exhibit 4).
4. A Notice to Proceed Via Written Appeal was sent to RB Assoc. on June 22, 2023 (DED Exhibit 3).

5. No additional materials or information were submitted by RB Assoc. to be considered in the written appeal.
6. The Division filed an Affidavit of Glenn Butler, Associate Director, dated December 29, 2023<sup>1</sup>, and a brief of Lisa S. Berk, counsel for the Division, dated January 3, 2024.

### **FINDINGS OF FACT**

7. RB Assoc. is engaged in the business of performing fixed assets surveys for the water and wastewater treatment plant projects for the New York City Department of Environmental Protection. (DED Exhibit 1).
8. Jayesh Sanghvi, the minority relied upon for certification is the President and 100% owner of RB Assoc. The applicant business is based in Dumont, New Jersey (DED Exhibit 1).
9. The application states that RB Assoc. is able to conduct business activity in New York City and is authorized to do business in New York State. (DED Exhibit 1).
10. A narrative, provided with the application, states that RB Assoc. does not collect taxes in New York State and therefore does not have a New York State Vendor tax number. (DED Exhibit 5).
11. An additional narrative, provided with the application, states that RB Assoc. is not registered to conduct business in New York, and that it is registered in Bergen County, New Jersey. A copy of a New Jersey Business Registration Certificate, stating that RB Assoc. is registered with the New Jersey Division of Revenue was submitted with the application. (DED Exhibits 5 and 7).

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<sup>1</sup> Affidavit incorrectly stated year as 2020.

12. An Agreement for Subcontractor Services between applicant and Arcadis of New York, Inc. was provided. The agreement was not executed, and no proof of payment for the contract was provided with the application. (DED Exhibit 6).

### **APPLICABLE LAW**

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

Small business requirement. Any business enterprise for which certification as a minority or women-owned business enterprise is sought must be a small business, as that term is defined in Part 140 of this Title.

5 NYCRR § 144.2(f)(3) states as follows:

Authorization to do business. Any business enterprise for which certification as a minority or women-owned business enterprise is sought must be authorized to do business, and demonstrate that it actively conducts business, in the State of New York.

5 NYCRR § 140.1(gg) states as follows:

Significant business presence. A business authorized to do business in New York State, and that makes a contribution to the New York State economy through payment of taxes, or the purchase of made in New York State products or materials, or has any payroll in New York State.

5 NYCRR § 140.1(hh) states as follows:

Small business. A business which has a significant business presence in the State, is independently owned and operated, and is not dominant in its field, but in no event employes more than three hundred people.

### **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 RB Assoc. 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. Prior Certification**

Applicant states in their request to appeal that they have been granted MBE Certification several times in the past. However, no information was provided regarding prior certifications and in any event, the Division is not bound to recertify an MBE. It is well settled that the doctrine of equitable estoppel cannot, as a general rule, be invoked against a governmental agency in the exercise of its governmental function. See *Matter of Daleview Nursing Home v. Axelrod*, 62 NY2d 30 (1984); *Matter of Atlantic States Legal Found., Inc. v. New York State Dept. of Environmental Conservation*, 119 AD3d 1172 (2014). Additionally, qualification under another WBE, or similar program does not estop the Division from denying certification nor does it guarantee certification.

Even if RB Assoc. had been previously certified by New York State, with the expiration of its certification, the applicant business had the burden to demonstrate compliance with the eligibility criteria outlined at 5 NYCRR §144.2 when it submitted the October 28, 2022, application and supporting materials and cannot rely on the past determinations of the Division.

II. Standing as a Small Business

The Division denied RB Assoc.'s application for certification as an MBE on the basis that the applicant failed to demonstrate that they have a significant business presence in New York State by being authorized to do business in New York State, and making a contribution to the New York State economy through the payment of taxes, the purchase of products or materials made in New York, or having payroll in New York as required by 5 NYCRR §§ 144.2(f)(2), 140.1(gg) & (hh). (DED Exhibit 2).

Here, RB Assoc. has not submitted any proof of payment of taxes to New York nor any documentation demonstrating that the business applicant purchased products or materials made in New York. Instead, the applicant admits in narratives submitted with the application that they do not collect taxes in New York and therefore do not have a New York State Vendor Tax Number. (DED Exhibit 5). In addition, applicant states in their appeal that the business does not pay taxes in New York, and instead subcontracts with consulting services in New York who pays taxes in New York. (DED Exhibit 4). The applicant also asserts in their request to appeal that they can provide signed and dated agreements, and lists firms to whom they have provided services, however, no additional documents have been submitted by the applicant. (DED Exhibit 4)

Thus, the Division's determination that the applicant business failed to demonstrate that it makes a contribution to New York State through payment of taxes, or the purchase of made in New York products or materials, or by having any payroll in New York State, as required under 5 NYCRR §§ 144.2(f)(2), 140.1(gg) and (hh) is supported by substantial evidence.

### III. Authorized to Do Business in New York

The Division also denied RB Assoc.'s application for certification as an MBE on the basis that the applicant failed to demonstrate that they are authorized to do business in New York as required by 5 NYCRR §§ 144.2(f)(3) and 140.1(hh). (DED Exhibit 2).

Though the application states that the applicant business is authorized to do business in New York, there is no documentation to support that assertion. (DED Exhibit 1). Instead, the application includes a narrative which states that RB Assoc. is not registered to conduct business in New York, but is registered in New Jersey, and provides a copy of the business' New Jersey registration certificate. On appeal the applicant states that RB Assoc. subcontracts with a consulting service in New York, and as part of the application, included An Agreement for Subcontractor Services; however, this does not establish that applicant is authorized to do business in New York. (APP Exhibit A; DED Exhibit 6).

Based on the foregoing, the Division's determination that the applicant business is not authorized to do business in New York, as required under 5 NYCRR §§ 144.2(f)(3) and 140.1(hh), is supported by substantial evidence.

### **CONCLUSION**

RB Assoc. 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(f)(2), 140.1(gg) and (hh), and 144.2(f)(3) was not based on substantial evidence.

## **RECOMMENDATION**

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



In the Matter of RB Associates  
 DED File ID No. 11019  
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
DED 1	Application for Certification	Y	Y
DED 2	Denial Determination	Y	Y
DED 3	Notice to Proceed Via Written Appeal	Y	Y
DED 4	Applicant's Request for Appeal	Y	Y
DED 5	NJ Business Registration Certificate and Narrative	Y	Y
DED 6	Arcadis-Subcontract Agreement	Y	Y
DED 7	Narrative about Business Registration	Y	Y