

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

**In the Matter**  
**- of -**  
**the Application of Studio V Design & Planning, LLC**  
**for Certification as a Minority and Woman-Owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 61313**

**RECOMMENDED ORDER**

**-by-**



---

**Deidre A. Chuckrow**  
**Administrative Law Judge**  
**July 11, 2025**

This matter considers the appeal by Studio V Design & Planning, LLC (“Studio V” 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 June 28, 2024, Studio V applied for certification as a minority and women-owned business enterprise (“MWBE”). (DED Exhibit 1; APP Exhibit 32).
2. On September 18, 2024, the Division denied the application on the following grounds (DED Exhibit 2; APP Exhibit 33):
  - a. The minority group members or women 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);
  - b. The minority group members or women 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); and
  - c. The business enterprise for which certification is sought does not operate independently, as required under 5 NYCRR § 144.2(e).
3. Studio V submitted a request to appeal the denial determination via hearing, dated October 15, 2024. (DED Exhibit 3; App Exhibit 34).

4. A Notice of Hearing and Conference was sent to all parties on February 12, 2025 (DED Exhibit 4).
5. A hearing was held on May 15, 2025, and continued and concluded on June 2, 2025.

### **FINDINGS OF FACT**

6. Studio V is engaged in the business of urban design and planning. (DED Exhibit 1; APP Exhibit 32).
7. Studio V based its application on Ms. Kathy Chan Valgora (“Ms. Chan”), who is a Managing Partner and 55% owner of the applicant business. Gerald Valgora, Ms. Chan’s husband, is a Partner and 45% owner of Studio V. (DED Exhibit 1; APP Exhibit 32).
8. The critical functions of Studio V are urban planning, design services, interior design, graphic design services, architectural services, and industrial development. (DED Exhibits 1 and 2; APP Exhibits 32 and 33; Hearing Testimony of Ms. Chan; Hearing Testimony of Ms. Edwards).
9. Ms. Chan has Bachelor of Science degree in applied economics and management and worked in advertising for approximately 15 years as an account supervisor, account executive, and account director. Her work in advertising included, but was not limited to, project management, developing marketing strategies, obtaining new business, client coordination and management, and managing and leading design teams. (DED Exhibit 5; APP Exhibit 6; Hearing Testimony of Ms. Chan).
10. Ms. Chan is a certified planner with a certification from the American Institute of Certified Planners (“AICP”). The certification requires that a planner have a degree in urban planning and one or two years of experience or have a college degree with at least four years of experience, must pass an exam, and after passing an exam must undergo an experience

assessment. Ms. Chan qualified based on her experience and passed the exam for her certification. Ms. Chan acquired her experience in design and planning through her work at Studio V Architecture over a period of approximately 7 years, as well as going to training classes and attending conferences. (DED Exhibits 6 and 8; APP Exhibits 7 and 38; Hearing Testimony of Ms. Chan).

11. Ms. Chan joined Studio V Architecture, a firm formed and owned by Mr. Valgora, in August of 2007, as the Vice President of Operations and Marketing. Ms. Chan worked for Studio V Architecture full time until August 2014, at which time she stepped back to part time. Her responsibilities at Studio V Architecture included “developing communication strategies for projects and clients. . . , research. . . for concept and feasibility studies. . . , [and] [r]eview company financials and accounts with CFO for budget and projections.” Ms. Chan revamped and managed operations for Studio V Architecture, wrote copy for projects, and put presentations together for Request for Proposals (“RFP), which included both architecture projects and design and planning projects. Ms. Chan also analyzed zoning laws and resolutions for projects, to determine what is permitted to be built and cannot be built in certain locations. Ms. Chan stepped back from her full time role at Studio V Architecture to begin her own planning and design business in 2014. (DED Exhibits 5; APP Exhibit 6).

12. Ms. Chan wanted to own and run her own business, as she cannot hold an ownership interest in Studio V Architecture as she is not a licensed architect and started Studio V, as the majority owner in 2014. She has been the Managing Partner of Studio V since its creation in August of 2014 and is responsible for “firm leadership, developing new business, executing contracts, managing client relationships . . . , oversight of staff and consultants . . . , [and] of all aspects of daily operations, review and approval of financial activities, negotiating contracts, and revenue

growth.” Ms. Chan also “[p]rovide[s] leadership and supervision for a range of municipal and state planning and design projects.” She is responsible for bringing new business in, prepares all of the applicant business’ proposals, “analyzes and establishes the detailed fee requirements for every project, and personally signs and executes all contracts.” For RFPs, Ms. Chan “prepares the proposal to bid for the project, including writing the project description, detailing the scope of work, creating a preliminary schedule, and estimating a fee. . .” Ms. Chan also conducts all zoning research and analysis for all Studio V projects, creates charts to discuss project needs and goals with clients and/or regulatory authorities, does calculations relating to square footage and height needs for projects, and writes all reports required for projects. On certain projects Ms. Chan recommends and/or negotiates changes to zoning with New York City. Ms. Chan contracts out all drawing aspects of the applicant business, as she is not trained in AutoCad, but is responsible for providing all the specifications and design for the drawings and supervises and reviews them during the process and upon completion. (DED Exhibits 1, 5, and 8; APP Exhibits 6, 32, and 38; Hearing Testimony of Ms. Chan).

13. The drawings that are completed for Studio V projects are not architectural drawings but are those that are more general both in bulk and in scale. The drawings are used to provide an “illustration [of] what the planning would be, the design of where placements of different objects that would make a better community.” Ms. Chan uses her skills and expertise in urban planning and design to plan and design spaces and supervises others who complete the drawings to her specifications. (Hearing Testimony of Ms. Chan).

14. Ms. Chan does not use drafting software; therefore, she provides details and specifications needed for all drawings, and reviews drawings done by contractors, and provides edits and corrections where necessary. Ms. Chan gives contractors a “brief of what [she] need[s] or

sometimes [she] . . . draws . . . on a sheet and shows them what [is] need[ed] and then they . . . take that and draw it and add details to it.” Ms. Chan “look[s] over [contractors’] shoulder[s] to look on the computer screen to see what they’ve done or [she has] them print it out so that [she] can look at [the drawing] and mark it up or make comments. (Hearing Testimony of Ms. Chan).

15. Mr. Valgora, the non-qualifying owner of the applicant business, is a licensed architect with more than 40 years of experience in the industry, and the founder and principal of Studio V Architecture. Mr. Valgora’s role in the applicant business is to provide design input and attend client meetings and presentation. He devotes between 5-10% of his time to Studio V, approximately 5-10 hours a month, and his responsibilities includes marketing and project review. He discusses potential business opportunities and “attends project meetings intermittently to review content and provide input” at Ms. Chan’s direction. Mr. Valgora primarily acts as a sounding board for Ms. Chan. (DED Exhibits 1, 5, 7, and 8; APP Exhibits 6, 7, 32 and 38; Hearing Testimony of Ms. Chan).

16. Studio V has no employees, outside of the two partners, and relies on free-lance staff as consultants on their projects. Ms. Chan hires others to do drawings for the applicant business when needed, as the business is project based, therefore it is not cost effective to have full time employees. (DED Exhibits 1 and 8; APP Exhibits 32 and 38; Hearing Testimony of Ms. Chan).

17. Studio V has a Secondment Agreement with Studio V Architecture which allows the applicant business to use employees of Studio V Architecture, when available, for certain projects. Under the Secondment Agreement, Studio V pays Studio V Architecture for the services provided at market set rates and the employees of Studio V Architecture are deemed agents of the applicant business while working on the applicant business’ project(s). Studio V Architecture’s staff,

when working for Studio V, provide drawing services. (DED Exhibits 8 and 11; APP Exhibit 38; Hearing Testimony of Ms. Chan)

18. Studio V has entered into a Consulting Services Agreement with Giovanni Gioia for certain projects. Mr. Gioia is a registered architect, and has approximately 20 years of experience in architecture, design and construction, and planning and development. Mr. Gioia uses design tools such as Adobe Suite, AutoCAD, Autodesk Revit, and Microstation, and is training on other software applications. Mr. Gioia provided drawings for Studio V on one of their projects. Ms. Chan oversees all of Mr. Gioia's work. (DED Exhibits 8 and 11; APP Exhibit 38; Hearing Testimony of Ms. Chan).

19. Studio V entered into a Consulting Services Agreement with Marcus Colonna, a licensed architect with more than 20 years of experience, for his services in design and planning. Mr. Colonna has experience using Revit, SketchUp, AutoCAD, photoshop, and other software programs. Mr. Colonna provided drawings on several projects for the applicant business. Ms. Chan oversees all of Mr. Colonna's work. In 2023 Studio V paid Mr. Colonna \$ [REDACTED] for his services. (DED Exhibits 8, 11, and 13; APP Exhibits 10 and 38; Hearing Testimony of Ms. Chan).

20. No licensure or certifications are required for urban design and planning businesses. Architecture is not a part of Studio V's business as it does not play a role in the design and planning work done by the applicant business. Studio V's business involves looking at neighborhoods and communities to assess how to develop areas, based on community needs and zoning regulations. (DED Exhibit 8; APP Exhibit 38; Hearing Testimony of Ms. Chan).

21. Studio V contracted with Parsons Transportation Group of New York, Inc. ("Parsons") as a subconsultant on a project to replace escalators at a number of subway stations in New York

City. Ms. Chan was the primary contact with Parsons and “supervise[d] her team on all aspects . . . including reviewing [the] scope, drawings, and related technical matters. . .” The Friday Group was retained by Studio V as a consultant and the scope of their services was the preparation of architectural specifications for the project “in accordance with drawings and direction of Studio V.” Within the scope was the “coordination of consultant’s specifications.” (DED Exhibits 14 and 15; APP Exhibits 13 and 18).

22. Studio V leases offices from J + K Ventures, LLC, a company owned by Mr. Valgora. Studio V has a lease for the space and pays rent and utilities for their office. While Mr. Valgora is the owner of J + K Ventures, both Ms. Chan and Mr. Valgora are personal guarantors on the loan for the building. Studio V’s office is located on the second floor and Studio V Architects offices are located on the first floor of the building. The offices have separate entrances. (DED Exhibit 10; APP Exhibit 11; Hearing Testimony of Ms. Chan).

23. Ms. Allison Ruddock is the Director of Planning – NYC for VHB, a 2,000 person engineering, planning, and environmental services firm. She has a master’s degree in urban planning, is a certified planner under AICP, and has worked in the field for twenty years. Ms. Ruddock stated that it is not unusual for a certified planner to not engage in creating drawings themselves, but instead to oversee those projects as a manager. Ms. Ruddock has worked with Ms. Chan and Studio V on several projects where Studio V was integral. Ms. Chan is the primary contact for Studio V on all projects with VHB, attends all meetings, and ensures that all deliverables are completed on time. Ms. Ruddock describes Ms. Chan as responsive, and integral in the projects worked on together. (APP Exhibit 23; Hearing Testimony of Ms. Ruddock).

24. Mr. John Lewandowski, Senior Project Manager at Parsons, an international, technology-focused engineering firm, provided a letter of support which states that Ms. Chan has worked

with Parsons since 2022 and is the primary point of contact for Studio V. Ms. Chan attended meetings and “supervise[d] her team on all aspects with which [Studio V] assist[ed] including reviewing scope, drawings, and related technical matters. . .” Ms. Chan “also leads [Parsons’] Quality Assurance and Quality Control process to ensure the drawings pick up comments from the client or rebuts the comments.” (APP Exhibit 24).

25. Mr. Adam Jacoby, P.E., Program Director, Waterway Infrastructure, NY Power Authority, Canal Corporation (NYSCC) provided a letter of support which states that Studio V is an on-call firm with NY Power Authority and receives requests for planning and design. “Studio V’s procurement and management of [a] specialized team of subconsultants is within the scope of the on-call contract.” Ms. Chan was the only person with which NYSCC worked. She managed the consultants, flow of the project, and was responsible for all deliverables, including the scope, material, schedule, and content. (APP Exhibit 25).

26. Ms. Wina Wu, an architectural designer for Studio V Architecture, provided a letter of support which describes Ms. Chan as a “mentor and inspiration” and provided information on her work for Studio V. Ms. Wu worked for Ms. Chan on the Scientific Park and Research Center (SPARC) project, providing services to develop drawings for a large scale rezoning project. Ms. Wu states that Ms. Chan led the project and was the main contact with the prime consultant and client. Ms. Chan directed Ms. Wu on the required tasks for the project and reviewed her work for quality assurance and quality control. (APP Exhibit 27).

### **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 the means by which the business enterprise obtains contracts or orders.

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 Studio V 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 N.Y.3d 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. *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

## **DISCUSSION**

James P. Youngs, Esq., of Hancock Estabrook, LLP, appeared at the hearing on behalf of Studio V. The following witnesses testified on behalf of Studio V: Kathy Chan, Managing Partner, Studio V and Allison Ruddock, Director of Planning – NYC, VHB. Studio V offered the following exhibits which were admitted into evidence: APP Exhibits 1 through 38.

Amy O'Connor, Senior Counsel, Department of Economic Development, appeared at the hearing on behalf of the Division. The following witness testified on behalf of the Division: Rasheda Edwards, Senior Certification Analyst, Division of Minority and Women Business Development. The Division offered the following exhibits which were admitted into evidence: DED Exhibits 1 through 15.

I. Industry-Specific Competence

The Division denied Studio V's application for certification as an MWBE on the basis that the applicant business failed to demonstrate that Ms. Chan possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR § 144.2(c)(1).

The Division has interpreted this regulation 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). The Division's regulations, however "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) (applicant relied on for certification, with more than 20 years in the industry, who has managed projects through oversight of project managers and possesses managerial experience has the competence to operate the applicant business). What is required is that the woman owner possesses adequate competence to make decisions without having to rely on others. (See *Northern Scapes*, supra).

The Applicant bears the burden of establishing that the woman-owner relied upon for certification has met this requirement. Failure to satisfy this burden is proof that the denial was supported by substantial evidence. See *A.A.C. Contracting, Inc. v. NYS Dept. of Economic Development*, 195 A.D. 3d 1284, 151 NYS 3d 187 (3d Dept. 2021).

The Division argued that the applicant failed to provide sufficient evidence to establish that Ms. Chan possesses adequate, industry-specific competence to make critical business decisions

without relying upon other persons. The Division acknowledges Ms. Chan's competence in urban planning but determined that she does not have competence in design. Ms. Edwards testified that the determination was made because Ms. Chan cannot use AutoCAD, and hires others to do the drawings which are sometimes part of the deliverables on contracts for Studio V. The Division determined that an inability to use design software equates to lack of experience or expertise in urban planning and design. (DED Exhibit 2; APP Exhibit 33; Hearing Testimony of Ms. Edwards).

Further, Ms. Edwards testified that notwithstanding Ms. Chan's narrative responses to the application and her interview responses which provided that she managed all the work for the applicant business and that Mr. Valgora is only incidentally involved, she did not believe Ms. Chan, nor did she believe that Ms. Chan was capable of reviewing the work of contractors hired to do the drawings. (DED Exhibits 1 and 8; APP Exhibits 22, 32, and 38; Hearing Testimony of Ms. Edwards).

The applicant argued that the evidence provided in the application, in conjunction with the testimony of Ms. Chan at the hearing, support a finding that the Division did not have substantial evidence that Ms. Chan lacks adequate industry-specific competence as required under 5 NYCRR § 144.2(c)(1). Applicant argues that the Division focused on the information included in both Ms. Chan's and Mr. Valgora's resumes but did not give any weight to Ms. Chan's prior experience in marketing and design, nor to her answers to questions regarding her role in supervising those hired to produce drawings and mischaracterized the nature of the business of urban planning and design. (DED Exhibit 2; APP Exhibit 33; Hearing Testimony of Ms. Edwards).

Ms. Chan has been the managing partner of Studio V since 2014, she is an expert in zoning, a certified planner, obtains all work for the applicant business and oversees all work produced by Studio V. No licensure or certifications are required for urban design and planning businesses,

though Ms. Chan is a certified urban planner. Architecture is not a part of Studio V's business as it does not play a role in the design and planning work done by the applicant business. (Hearing Testimony of Ms. Chan). Ms. Chan testified in detail regarding the nature of urban design and planning and explained that "urban design and planning is mostly studies of areas that are either previously industrial or manufacturing or areas that are neighborhoods that are blighted or disadvantaged and how it can be changed or planned to be transformed into a more productive use for a community." Ms. Chan's work involves the design and planning of these spaces. She oversees daily operations including the assignment and review of all work produced by all contractors, as well as the creation of reports, and meeting with clients. Ms. Chan supervises a range of municipal and state planning and design projects and prepares all proposals to bid for projects, including "writing the project description, detailing the scope of work, creating a preliminary schedule, and estimating a fee. . ." While Ms. Chan contracts out all drawing aspects of the applicant business, she provides the detailed specs for those drawings, provides edits and corrections where necessary, and conducts all quality control over the products produced. (DED Exhibits 1, 5, and 8; APP Exhibits 6, 24, 25, 27, 32, and 38; Hearing Testimony of Ms. Chan).

Narratives provided with the application, an interview conducted by the Division, and the testimony of Ms. Chan all establish that Ms. Chan has worked in the industry of design and planning since 2007, has taken trainings and attended conferences, gained experience in design during her time working in advertising, is a certified urban planner, and manages all aspects of the applicant business, including the oversight of all contractors. Ms. Chan explained in detail the process of obtaining her planning certification, which included having a bachelor's degree, at least four years of experience in the industry, a lengthy examination, and a detailed submission of her

experience in the field. (DED Exhibits 1 and 8; APP Exhibits 22, 32, and 38; Hearing Testimony of Ms. Chan).

Ms. Chan in both the application and in her testimony at the hearing, stated that she runs the applicant business and is responsible for staffing and workflow and “oversees the work of all consultants” including all free-lance staff. She testified that Mr. Valgora spends very little time on the business, acting as a sounding board for her more than anything else, which is consistent with the information she provided with the application and during her interview with the Division. (DED Exhibits 1 and 8; APP Exhibits 32 and 38; Hearing Testimony of Ms. Chan)

Ms. Chan testified that while she does not use drafting software, she provides the details and specifications needed for all drawings and is capable of and does review those drawings and provides edits and corrections where necessary. Ms. Chan explained that she gives her contractors a “brief of what I need or sometimes I . . . draw it again on a sheet and show them what I need and then they . . . take that and draw it and add details to it.” She testified that she “look[s] over their shoulder to look on the computer screen to see what they’ve done or [she has] them print it out so that [she] can look at [the drawing] and mark it up or make comments. (Hearing Testimony of Ms. Chan).

Ms. Chan “personally review[s] all deliverables, documents, and conduct[s] quality assurance reviews of all deliverables – interim and final. [She is] the final decision maker on all aspects/deliverables related to Studio V Design + Planning projects.” (DED Exhibit 1; APP Exhibits 22 and 32; Hearing Testimony of Ms. Chan.) While Ms. Chan acknowledged that she does not draw using AutoCAD, she testified that she provides information required to produce the drawings, including numerical calculations and zoning specifications, and evaluates, edits, and

requests corrections to drawings. (DED Exhibit 8; APP Exhibit 38; Hearing Testimony of Ms. Chan).

Allison Ruddock, Director of Planning-NYC at VHB, a large engineering, planning, and environmental services firm, testified at the hearing. Ms. Ruddock has a master's degree in urban planning and is a certified planner under AICP. She testified that she has worked with Ms. Chan and Studio V for several years and that on those projects Ms. Chan was the only point person, that Ms. Chan defined deliverables and the process, and created a schedule for any work needed by Studio V. She further testified that Ms. Chan directed and delivered planning and zoning analysis and visualizations to interpret zoning on projects. Ms. Ruddock testified that deliverables provided by the applicant business included graphics and visualizations, drawings, zoning plans, site plans, tables of calculations, and a summary memo. (Hearing Testimony of Ms. Ruddock).

Letters of support were also provided by other companies and all reference the fact that Ms. Chan is the only point of contact for the applicant business, and manages and oversees all deliverables for Studio V, including quality assurance of the products produced. (APP Exhibits 24, 25, 26, and 27).

Mr. John Lewandowski, Senior Project Manager at Parsons, an international, technology-focused engineering firm, states that Ms. Chan has worked with Parsons since 2022 and is the primary point of contact for Studio V. He states that Ms. Chan attended meetings and “supervise[d] her team on all aspects with which [Studio V] assist[ed] including reviewing scope, drawings, and related technical matters. . .” and “also leads [Parsons’] Quality Assurance and Quality Control process to ensure the drawings pick up comments from the client or rebuts the comments.” (APP Exhibit 24).

Mr. Adam Jacoby, P.E., Program Director, Waterway Infrastructure, NY Power Authority, Canal Corporation (NYSCC), states that Studio V is an on-call firm with NY Power Authority and receives requests for planning and design. He states that “Studio V’s procurement and management of [a] specialized team of subconsultants is within the scope of the on-call contract . . . ,” and Ms. Chan was the only person with which NYSCC worked. She managed the consultants and the flow of the project, and was responsible for all deliverables, including the scope, material, schedule, and content. (APP Exhibit 25).

Ms. Wina Wu, an architectural designer for Studio V Architecture, describes Ms. Chan as a “mentor and inspiration” and provided information on her work for Studio V. Ms. Wu worked for Ms. Chan on the Scientific Park and Research Center (SPARC) project, providing services to develop drawings for a large scale rezoning project. Ms. Wu states that Ms. Chan led the project and was the main contact with the prime consultant and client. Ms. Chan directed Ms. Wu on the required tasks for the project and reviewed her work for quality assurance and quality control. (APP Exhibit 27).

The regulation provides that industry specific experience obtained through direct work experience shall be considered by the Division in their evaluation for certification. 5 NYCRR § 144.2(c)(1)(iii). Here the material before the Division along with the testimony of the applicant’s witnesses, provides credible detail regarding the extent of Ms. Chan’s adequate industry-specific competence, without the need to rely on others, and clarifies information already before the division at the time of application. Under *Scherzi* “it is not only appropriate for an agency to consider the testimony offered at an administrative hearing in rendering its determination, it is required, as ‘[n]o decision, determination or order shall be made except upon consideration of the record as a whole.’” *Scherzi, supra*, citing *Matter of Haug v State Univ. of NY at Potsdam*, 32

NY3d 1044, 1046 [2018]; *Matter of A.A.C. Contr., Inc. v NYS Dept. of Economic Dev.*, 179 AD3d 1343, 1344 [2020]; and SAPA § 306[1].

In this instance, as in *Scherzi*, the testimony regarding Ms. Chan’s knowledge of the industry and of the applicant business “did not constitute new evidence previously unavailable at the time of the application but, instead, served to explain and clarify” information “submitted as part of [the] application . . .” *Scherzi, supra*, at 1469. Ms. Chan has almost 20 years of experience in the industry, passed a rigorous examination to become a certified urban planner, presented information regarding her competency from others within the industry and testified credibly as to her experience in providing all of the information for the drawings including “looking over the shoulder” of the consultants. (DED Exhibits 1, 5, and 6; APP Exhibits 6, 7, and 32; Hearing Testimony of Ms. Chan).

I find the application, the resumes and the narrative provided with the application, along with the testimony of Ms. Chan and Ms. Ruddock persuasive that there was substantial evidence before the Division that Ms. Chan has adequate, industry-specific competence to make critical decisions without relying on other persons, as required under 5 NYCRR §§ 144.2(c)(1). Based upon the foregoing, the applicant has met its burden. The Division’s denial is not supported by substantial evidence.

## II. Operation

The Division also denied Studio V’s application for certification on the basis that applicant failed to demonstrate that Ms. Chan makes operational decisions on a day-to-day basis, with respect to the critical functions of the business, as required by 5 NYCRR § 144.2(c)(2). The Division will deny 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)). This regulation has been interpreted to require that the owner relied on for certification “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 A.D.3d 1343 (3rdDept. 2020). The owner relied upon “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 (4thDept. 2018). Further, even where a woman-owner had no training or experience in the industry, and was denied certification, the Court still found that “so long as the woman seeking certification retains operational control of the enterprise, technical expertise is not necessary . . .” (*C.W. Brown, Inc. v Canton*, 216 AD 841, 842 (3d Dept 1995)).

Here, the Division argued that the applicant failed to provide sufficient evidence to establish that Ms. Chan makes operational decisions, on a day-to-day basis with respect to the critical functions of the business. The Division determined the critical functions to be “Urban Planning, Design Services, Interior Design, Graphic Design Services, Architectural Services, and Industrial Development.” (DED Exhibit 2; APP Exhibit 33). While the Division acknowledges Ms. Chan’s competence in urban planning, its determination rests on their finding that she does not have competence in design. The Division focused on contracts where some of the deliverables included drawings, the fact that Ms. Chan hires free-lancers to produce drawings, and on the experience and background of Mr. Valgora, notwithstanding testimony that he is only incidentally

involved in Studio V, and primarily provides a sounding board for Ms. Chan, and does not oversee the work itself. (DED Exhibits 2 and 8; APP Exhibits 33 and 38; Hearing Testimony of Ms. Edwards). In its determination the Division did not believe that Ms. Chan was capable of reviewing the work of contractors hired to do drawings and relied instead on Mr. Valgora's educational background and experience as an architect, and discredited Ms. Chan's statements that she oversaw the work of all contractors. (DED Exhibits 2 and 8; APP Exhibits 33 and 38; Hearing Testimony of Ms. Edwards).

The applicant argued that all of the work of Studio V is managed solely by Ms. Chan, and that it includes a variety of types of work under the umbrella of urban design and planning. Applicant asserts that the evidence produced with the application, and clarified through the testimony of its witnesses, clearly demonstrates that Ms. Chan makes all operational decisions relating to all the work done by the business, including the critical functions of the business. Applicant concedes that some of the deliverable in the contracts submitted include drawings, which Ms. Chan hires others to create using software programs such as AutoCAD. Applicant, however, argues that as Ms. Chan is the one who provides all the research into the projects, which includes comprehensive zoning analysis and computations of square footage, provides details to those contractors, and then oversees, supervises, and reviews their work, she is in effect controlling the production of the product and managing the operations of the business. Applicant asserts that Ms. Chan does have experience in design, as evidenced by her more than 15 years working in advertising, and also has experience in designing spaces as an urban planner as evidenced by her AICP certification. (DED Exhibits 5 and 6; APP Exhibits 6 and 7; Hearing Testimony of Ms. Chan).

Ms. Chan testified that the drawings that are completed for these projects are not architectural drawings but are those that are more general both in bulk and in scale. The drawings are used to provide an “illustration [of] what the planning would be, the design of where placements of different objects that would make a better community.” Ms. Chan testified that she uses her skills and expertise in urban planning and design to plan and design spaces and supervises others who complete the drawings to her specifications. (Hearing Testimony of Ms. Chan).

Ms. Chan’s narrative provided with the application stated that she:

meets with her team to discuss the work required and directs them on specific design and tasks deliverables for each week. She meets with other consultants to coordinate work and drawings, review and update schedules as needed. She reviews and responds to emails to keep projects on target, present work to clients, attends bi-weekly meetings with the client/team, and resolves design and technical issues that arise. [Ms. Chan] reviews work for quality assurance and quality control, and sends out materials to ensure deliverables are met, among other project tasks.

(DED Exhibits 1 and 2; APP Exhibits 32 and 33).

Ms. Chan’s narrative also states that she works with her “team on a day-to-day basis to review and answer detailed questions on zoning, code, and design matters.” (DED Exhibit 1; APP Exhibits 22 and 32). She has “learned to review documents, drawing, and technical documents for quality control with regard to planning practices, design and drawings, re-zoning documents, and related documents.” (DED Exhibit 1; APP Exhibits 22 and 32).

Ms. Chan testified that she oversees all work produced by Studio V. Ms. Chan’s work in overseeing daily operations includes the assignment and review of all work produced by all contractors, as well as the creation of reports, and meeting with clients. Ms. Chan supervises a range of municipal and state planning and design projects and prepares all proposals to bid for projects, including “writing the project description, detailing the scope of work, creating a preliminary schedule, and estimating a fee. . .” While Ms. Chan contracts out all drawing aspects

of the applicant business, she provides the details specs for those drawings and provides edits and corrections where necessary. (DED Exhibits 1, 5, and 8; APP Exhibits 6, 22, 32, and 38; Hearing Testimony of Ms. Chan).

Ms. Chan is responsible for bringing in new business and prepares all of the applicant business' proposals. "She analyzes and establishes the detailed fee requirements for every project, personally signs and executes all contracts, "prepares the proposal to bid . . . , including writing the project description, detailing the scope of work, creating a preliminary schedule, and estimating a fee." (DED Exhibit 1; APP Exhibits 22 and 32; Hearing Testimony of Ms. Chan).

Ms. Chan explained in detail, having been questioned at length regarding her husband's role in the applicant business, that Mr. Valgora only spends about 5-10 hours a month in work for Studio V, and that most of that work is in being a sounding board for her, in relation to her decisions for the company. She also testified to her ability to supervise all work done by the business, to provide the exact specifications required for any drawings, and to review and correct errors to drawings. (DED Exhibit 8; APP Exhibit 38; Hearing Testimony of Ms. Chan).

In addition, the testimony of Ms. Ruddock, and the letters of support provided with the application, all corroborate the information provided in the application regarding Ms. Chan's abilities, and the fact that she alone supervises and manages the day to day operations of the applicant business. Ms. Ruddock, a certified urban planner, testified that Ms. Chan has the technical ability and technical knowledge to do the work and that the AICP certification covers urban design and planning. (Hearing Testimony of Ms. Ruddock).

Based upon the application, resumes and the narrative provided, along with the credible testimony of Ms. Chan and Ms. Ruddock, I find that Ms. Chan makes 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). Based upon the foregoing, the applicant has met its burden. The Division's denial is not supported by substantial evidence.

### III. Independence

The Division denied Studio V's application for certification as an MWBE 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; APP Exhibit 33) 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 March 6, 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 A.D.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).

The Division argues that the applicant business shares employees and office space with Studio V Architecture and receives a tangible benefit, outside of the standard industry practice, through the Secondment Agreement, also with Studio V Architecture. In support of the determination the Division cites to Ms. Chan's position at Studio V Architect as a consultant for operations, that Studio V Architect employees are used for some of the applicant business' projects, and that the offices are located at the same location. (DED Exhibit 2; APP Exhibit 33; Hearing Testimony of Ms. Edwards). The Division also determined that because Ms. Chan retained other free-lancers to do drawings, and because it decided that she did not have competence to oversee those free-lancers, that also demonstrated a dependence on others.

Ms. Edwards testified that as she had never seen a contract like the Secondment Agreement in any of her prior case reviews, she deemed it unusual and outside of standard industry practice. She testified that the only reason for the agreement was based on the relationship between Ms. Chan and Mr. Valgora, her husband, and that the Agreement demonstrated a dependence by the applicant business on Studio V Architecture. Ms. Edwards testified that she found it concerning that Mr. Valgora was an architect with a design background, thus implying that a dependent relationship existed between the applicant and Studio V Architect. Ms. Edwards also testified that "[it's not a standard industry practice for firms to use employees from other firms to do their – to provide services for them]", and that existence of a secondment agreement would be disqualifying in every instance for certification. (Hearing Testimony of Ms. Edwards).

The applicant argues that the fact that the offices of Studio V and Studio V Architecture are in the same building is immaterial as the offices are located on separate floors, have different entrances, and each has its own lease with the lessor. In addition, Ms. Chan testified that she pays rent for the space to J + K Ventures, LLC, subject to a lease, which was provided to the Division

with the application. Ms. Chan testified that the applicant business has their own equipment and software and does not share equipment with any other business entity. Applicant also argues that the Secondment Agreement is an arm's length transaction, for fair consideration, which allows Studio V to use employees of Studio V Architecture, when and if they are available for specific projects. (DED Exhibit 10; APP Exhibit 11; Hearing Testimony of Ms. Chan).

Ms. Chan also testified that due to the project-based nature of the work, most of the contracts the business enters into are subconsultant or subcontractor agreements, which is normal practice in the industry, and that each project may differ in specific deliverables, and therefore hiring contractors on an as needed basis is most cost effective. She further testified that the Secondment Agreement with Studio V Architecture was a way for her to secure staff, on an as needed basis without having to enter into individual contracts, but that the Agreement did not guarantee that staff would be available or interested. She testified that she was not reliant on Studio V Architecture, and provided examples of her use of free-lancers, outside of Studio V Architecture, including consulting services agreements with Giovanni Gioia and Marcus Colonna. (DED Exhibits 11 and 13; APP Exhibit 10; Hearing Testimony of Ms. Chan).

Studio V has a Consulting Services Agreement with Giovanni Gioia for certain projects. Mr. Gioia is a registered architect, and has approximately 20 years of experience in architecture, design and construction, and planning and development. Mr. Gioia used design tools and provided drawings for Studio V on one of their projects, and all of his work was both assigned and overseen by Ms. Chan. (DED Exhibits 8 and 11; APP Exhibit 38; Hearing Testimony of Ms. Chan).

Studio V also has a Consulting Services Agreement with Marcus Colonna, a licensed architect with more than 20 years of experience, for his services in design and planning. Mr. Colonna used design tools to provide drawings on several projects for the applicant business. Ms.

Chan assigned and oversaw all of Mr. Colonna's work. In 2023 Studio V paid Mr. Colonna \$ [REDACTED] for his services. (DED Exhibits 8, 11, and 13; APP Exhibits 10 and 38; Hearing Testimony of Ms. Chan).

Ms. Ruddock testified that working with others, such as subcontractors and subconsultants is common practice in the industry, thus adding additional weight to Ms. Chan's testimony. (Hearing Testimony of Ms. Ruddock).

Here, the applicant business does not share resources with another. It pays to use resources, including through the Secondment Agreement with Studio V Architecture, and by hiring free-lance workers as well, however paying for work is not a sharing of resources. As Ms. Chan testified, the business operates this way because the nature of the work is project oriented and therefore it is most cost effective. Further, while the applicant business rents space from the same lessor as Studio V Architecture, it pays fair value for a space that is not shared. (DED Exhibits 1, 10, and 11, APP Exhibits 11, and 32; Hearing Testimony of Ms. Chan).

Studio V does not transact business with only one other entity. It is not reliant on Studio V Architecture to staff projects, as demonstrated by its hiring of free lancers outside of Studio V. In addition, it contracts with a variety of vendors on its projects. (DED Exhibits 1, 8, 11, and 13; APP Exhibits 10, 32 and 38; Hearing Testimony of Ms. Chan)

Finally, Studio V does not receive tangible benefits, outside of standard industry practice. The Secondment Agreement with Studio V Architecture is a contract, used to formalize its ability to hire staff without having to enter into individual contracts, for which it pays fair value. This relationship could exist with any number of entities and is not the only way that the applicant business retains staff to assist with its projects.

Based on the foregoing, there is not substantial evidence to support the Division's determination to deny Studio V's certification on the grounds of independence.

### **CONCLUSION**

Applicant met its burden with respect to the eligibility criteria at 5 NYCRR §§ 144.2(c)(1), 144.2(c)(2), and 144.2(e).

### **RECOMMENDATION**

The Division's determination to deny Studio V Design and Planning, LLC's application for certification as a minority-woman owned business enterprise should be reversed and a Final Order issued.

Matter of Studio V Design & Planning, LLC  
 DED File ID No. 61313  
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP 1	Stock Ledger or Narrative	Y	Y
APP 2	Membership Ledger	Y	Y
APP 3	2023 Business Tax Return	Y	Y
APP 4	2022 Business Tax Return	Y	Y
APP 5	W2 Alternative/Submissions re: staffing	Y	Y
APP 6	Partner Resumes	Y	Y
APP 7	Certifications	Y	Y
APP 8	Articles of Organization	Y	Y
APP 9	Operating Agreement	Y	Y
APP 10	1099 and corresponding 1096	Y	Y
APP 11	Office Lease	Y	Y
APP 12	Wild Blue Industrial Contract	Y	Y
APP 13	Parsons Contract with proof of payment	Y	Y
APP 14	New York Power Authority contract with proof of payment	Y	Y
APP 15	VHB Contract with proof of payment	Y	Y
APP 16	Via Collective contract with proof of payment	Y	Y
APP 17	Moey Contract with proof of payment	Y	Y

APP 18	The Friday Group contract with proof of payment	Y	Y
APP 19	Seta Associates contract with proof of payment	Y	Y
APP 20	STUDIO V's Response to RFP by NYPA	Y	Y
APP 21	NYCSBS MWBE Certification Letter	Y	Y
APP 22	Narrative by Kathy Chan	Y	Y
APP 23	Letter from Allison Ruddock	Y	Y
APP 24	Letter from John Lewandowski	Y	Y
APP 25	Letter from Adam Jacoby	Y	Y
APP 26	Letter from Katie Osborn	Y	Y
APP 27	Letter from Wina Wu	Y	Y
APP 28	MTA DBE letter dated April 12, 2024	Y	Y
APP 29	Addendum for Port Authority	Y	Y
APP 30	Invoices and Payments	Y	Y
APP 31	Invoice and Payment with Studio V Architecture; Invoice and payment with G. Gioia	Y	Y
APP 32	Application submitted June 28, 2024	Y	Y
APP 33	Denial letter dated September 18, 2024	Y	Y
APP 34	Request to Appeal dated October 15, 2024	Y	Y
APP 35	Screenshot of <a href="http://www.planning.org">www.planning.org</a> – One Path to AICP	Y	Y
APP 36	Screenshot of <a href="http://www.planing.org">www.planing.org</a> – Why AICP	Y	Y
APP 37	APA Experience Assessment Template	Y	Y

APP 38	Recording of Division Interview of Kathy Chan	Y	Y
DED 1	Application for MWBE Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Request to Appeal	Y	Y
DED 4	Notice of Hearing	Y	Y
DED 5	Resumes of Kathy Chan Valgora and Gerald Valgora	Y	Y
DED 6	Certifications	Y	Y
DED 7	Architect License - Gerald Valgora	Y	Y
DED 8	Site Visit Interview Zoom Recording	Y	Y
DED 9	Interview Transcript Auto Generated by Zoom	Y	Y
DED 10	Office Lease	Y	Y
DED 11	Secondment Agreement	Y	Y
DED 12	2023 Business Tax Returns	Y	Y
DED 13	2023 Business 1099 Forms	Y	Y
DED 14	Contracts - Parsons, NYPA, and VHB	Y	Y
DED 15	Subcontracts - Via Collective, Moey, Friday Group, and Frank Seta	Y	Y