

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

**In the Matter**

**- of -**

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

**NYS DED File ID No. 69974**

**REVISED RECOMMENDED ORDER**

**-by-**



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**Deidre A. Chuckrow**  
**Administrative Law Judge**  
**July 24, 2024**

This matter considers the appeal by Angad Construction Corp. (“Angad” 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 21, 2022, Angad applied for certification as a minority-owned business enterprise (“MBE”). Angad based its application on Mr. Gurmeet Singh Chadha. (DED Exhibit 1).
2. On August 10, 2023, the Division denied the application on the following grounds (DED Exhibit 2):
  - a. The business enterprise must operate independently, as required under 5 NYCRR § 144.2(e).
3. Angad submitted a request to appeal the denial determination via a hearing, dated August 18, 2023. (DED Exhibit 3).
4. A Notice of Hearing was sent to all parties on March 18, 2024 (DED Exhibit 4).
5. A hearing was held and concluded on June 27, 2024.

### **FINDINGS OF FACT**

6. Angad is general contractor offering services in concrete, demolition, and interior work. The primary North American Industry Classification System number for the business is in apartment building construction general contracting, with additional codes listed in masonry,

drywall and insulation, and other specialty trade contractors. (DED Exhibit 1; Hearing Testimony of Mr. Gurmeet S. Chadha).

7. Mr. Chadha is the minority group member relied upon for certification and is the President and 100% owner of the applicant business. (DED Exhibit 1; Hearing Testimony of Mr. Gurmeet S. Chadha).
8. The business was established on June 18, 2021, and began doing business in 2022. (APP Exhibit 1; Hearing Testimony of Mr. Gurmeet S. Chadha).
9. The analyst assigned to review the application was Rajesh Shrivastava (“Analyst”), a contractor hired by the Division to review MWBE applications. The Analyst sent questions to the applicant through the application portal on May 13, 2023, which included the following statement, “If you have any questions related to this request, please reach out to me by e-mail at [REDACTED].” (DED Exhibit 1; Hearing Testimony of Mr. Gurmeet S. Chadha; Hearing Testimony of Glenn Butler).
10. Mr. Chadha replied to the Analyst on May 22, 2023, with answers to the questions asked and provided electronic copies of specific documents. (DED Exhibit 1; APP Exhibits I, J, K, L, and M; Hearing Testimony of Mr. Gurmeet S. Chadha).
11. On June 30, 2023, Mr. Chadha, on behalf of the applicant business, sent an amended response to the questions asked on May 13, 2023, via email to the Analyst, which stated, “I would like to retract the previous response to your questionnaire. The answer to Question 4b with respect to the “SELF PERFORMANCE” of our contracts, was incorrect. . . We do SELF PERFORM major portion of our contracted work. Especially in CONCRETE.” The email also included documentation which stated it was “paperwork regarding some other work that was “SELF PERFORMED” recently.” Attached to the email were three invoices from the applicant

business, respectively, for [REDACTED], dated April 14, 2023, [REDACTED], dated May 22, 2023, and [REDACTED], dated May 8, 2023. (APP Exhibits I through M; DED Exhibit 1; Hearing Testimony of Mr. Gurmeet S. Chadha)

12. The Analyst responded, via email, on July 3, 2023, stating “This documentation will suffice. We are processing the application using these documents.” (APP Exhibits M).
13. The Analyst asked additional questions, via the application portal, on July 21, 2023, regarding the application, and requested additional documentation of the applicant. The applicant replied on July 26, 2023, with written responses and the attachment of specific documents. The questions asked, answers given, and the documents sent by applicant are all part of the application file. (DED Exhibit 1).
14. All documents requested, submitted, and received by the analyst during the application process must be uploaded to the application portal and reviewed by the Division. (Hearing Testimony of Glenn Butler).
15. Documents received after an Analyst makes a determination, and forwards the determination for internal review, are generally not considered in the application process. (Hearing Testimony of Glenn Butler).
16. A Denial Determination was issued by the Division on August 10, 2023, denying certification on one ground, that Angad did not operate independently as required under 5 NYCRR § 144.2(e). The Denial Determination cites to three invoices, provided by the applicant with the application, which are described by the Division as “subcontractor invoices.” In addition, the Denial Determination states:

A narrative provided in the certification application states Angad Construction Corp is a general contractor with capability in masonry work, concrete construction, concrete foundation and carpentry work such as framing a dry wall.

A narrative provided in the certification application states all work is subbed out and presently nothing is being self-performed.

(DED Exhibits 2, 5, 7, and 8).

### **APPLICABLE LAW**

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 Angad 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**

Henry C. Chan, Esq., of Wilson & Chan, LLP, appeared at the hearing on behalf of Angad. The following witness testified on behalf of Angad: Gurmeet Singh Chadha, President, Angad. Angad offered the following exhibits which were admitted into evidence: APP Exhibits A, F, I, J, K, L, and M.

Ms. Misha Wright, Counsel, Department of Economic Development, appeared at the hearing on behalf of the Division. The following witness testified on behalf of the Division: Glenn Butler, Associate Certification Director, Division of Minority and Women Business Development. The Division offered the following exhibits which were admitted into evidence: DED Exhibits 1 through 20.

### **I. Independence**

The Division denied Angad's application for certification as an MBE on the basis that the applicant business failed to demonstrate that it operates independently, as required by 5 NYCRR § 144.2(e). (DED Exhibit 2).

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

Counsel for the applicant argued that the Division’s denial determination articulated only one, narrow, reason for denial under independence; that the applicant business, a general contractor, subcontracted all its business, did not self-perform any work, and therefore did not operate independently. Based on the language of the denial letter, counsel contends that other considerations relating to independence, such as whether Angad shares resources with another entity, or whether the business enterprise transacts business primarily with one other entity should not now be considered, as the applicant had insufficient notice as to any other reasons, aside from the one articulated in the denial determination, for denial. (See, 5 NYCRR §§ 144.2(e)(1) and (2) and 145.2(a)(2)(ii)(4); NYS Administrative Procedures Act (“SAPA”) § 301.2).

The Division’s position is that the “lynch pin” of the denial is that the applicant business subcontracts all of its work, but in addition, argues that there is also substantial evidence that Angad is reliant on other businesses, also owned by Mr. Chadha, for which Angad receives a benefit inconsistent with standard industry practice, and for these reasons, Angad was appropriately denied certification. Counsel for the Division intimates that not all the reasons for denial need to be articulated in the denial letter, and on that basis argues there is no notice issue. In addition, the Division dismisses the documents and statements emailed by the applicant to the Analyst during the application process, amending their response to questions regarding the self-

performance of work, stating that because those documents and information were provided outside of the application portal they were not “properly” before the Division, and therefore were appropriately withheld from the application and not considered.

Preliminarily, the issue of notice must be addressed as it relates to the denial determination. When an application for certification is denied by the Division, a business enterprise may appeal the denial pursuant to 5 NYCRR § 145.2. “Upon receipt of a timely request for an appeal” the Division “shall . . . provide the business enterprise . . . with a notice of hearing. . .” (“Notice”). (5 NYCRR § 145.2(a)(2)). The Notice is required to contain specific information, including, but not limited to, the time and place of the hearing, the identity of the hearing officer, the legal authority for the hearing, and “[t]he certification criteria at issue.” (emphasis added, 5 NYCRR § 145.2(a)(2)(ii)). In this instance, I agree with the applicant that the denial determination only states one basis for denial, and only cites to information regarding one narrow “certification criteria at issue,” whether the Division had substantial evidence to deny Angad certification because it subcontracted all its work, and therefore, testimony regarding any other basis for denial will be disregarded as irrelevant.

Here, the denial determination sent to the applicant business limits its reasoning, and the facts behind it, to only one item, a finding that the applicant business “subbed out” all its work, and that, at the time of application, nothing was “being self-performed.” (DED Exhibit 2). In support of this finding the Division cited to three invoices and a statement provided in answer to a question asked by the Analyst, on May 13, 2023, and received by the Division on May 22, 2023, which stated that “All work is subbed out and presently nothing is being “Self Performed.” (DED Exhibit 1). Included in the Analyst’s request for additional information was the following statement, “If you have any questions related to this request, please reach out to me by e-mail” and



provided the email address. (DED Exhibit 1). On June 30, 2023, Mr. Chadha, on behalf of Angad, sent an email to the Analyst, at the aforementioned email address, which read in part:

I would like to retract the previous response to your questionnaire. The answer to Question 4b with respect to the “SELF PERFORMANCE” of our contracts, was incorrect and not sure how this happened. We do SELF PERFORM major portion of our contracted work. Especially in CONCRETE. Please review the additional paperwork regarding some other work that was “SELF PERFORMED” recently.

(APP Exhibits I, J, K, L, and M).

In response to Mr. Chadha’s email, the Analyst responded, via email, on July 3, 2023, and stated, “This documentation will suffice. We are processing the application using these documents.” (APP Exhibit M). This exchange is not documented anywhere in the application, nor are the documents, provided with this answer, attached to the application. (DED Exhibit 1; APP Exhibits I, J, K, L, and M). Additional questions were asked by the Analyst on July 21, 2023, unrelated to the above referenced exchange, answered in full by the applicant on July 26, 2023, and this exchange and relevant documents were attached to the application.

Associate Director of Certification, Glenn Butler, testified for the Division and explained the process for obtaining MWBE certification, including the application and review process. (Hearing Testimony of Glenn Butler). The Division offered Mr. Butler as an expert in the MWBE certification process, with no objection from applicant’s counsel and is accepted as an expert for this limited scope. Mr. Butler testified that as part of the application process certain mandatory documents are required to be submitted by the applicant, and that an Analyst may request additional documents through a “Q and A” process. (Hearing Testimony of Glenn Butler). Mr. Butler explained that additional documents are requested as part of a “due diligence” process by an analyst, and used when an analyst needs more information about the nature of the applicant business or a business owner. (Hearing Testimony of Glenn Butler).

Mr. Butler testified that all the documentation collected in reference to any application should be reflected on the application, stating: “All the documentation should be uploaded and submitted as Q and A responses, and they have to be uploaded. So, everything should be right there on the application.” (Hearing Testimony of Glenn Butler). Mr. Butler also stated that “it’s mandatory for [the] analyst to do his due diligence and review everything that is submitted.” (Hearing Testimony of Glenn Butler). In reference to denial determinations, Mr. Butler testified that the contents of the determination contains the regulation sections under which the denial is based and the grounds on which the denial is based, including “the most substantial facts” that “defends the Division’s position”. (Hearing Testimony of Glenn Butler). While Mr. Butler conceded that not all facts are contained in denial determinations, he stressed that “the most substantial facts” are always included. (Hearing Testimony of Glenn Butler). (DED Exhibit 1; APP Exhibits I, J, K, L, and M).

However, in this case, the amended answers and supporting documents submitted to the Division by the applicant were not considered by the Division despite the Analyst informing the applicant that “We are processing the application using these documents.” (APP Exhibit M). Mr. Chadha credibly testified at the hearing that Angad did self-perform some work, corroborating the June 30 email to the Analyst, which stated in part: “We do SELF PERFORM major portion of our contracted work. Especially in CONCRETE. Please review the additional paperwork regarding some other work that was ‘SELF PERFORMED’ recently.” (APP Exhibit L; Hearing Testimony of Gurmeet Singh Chadha). In addition, Mr. Chadha credibly testified at the hearing that he did have employees. (Hearing Testimony of Gurmeet Singh Chadha).

Applicant’s counsel argued that it is common industry practice for a general contractor to subcontract work, and as the business was recognized as a general contractor by the Division, it

meets the criteria delineated in §144.2(e)(3). (See, *Feltt v. Owens*, 247 AD2d 689 (3<sup>rd</sup> Dept 1998) (holding that a general contractor is generally responsible for the coordination of work at a worksite); see also, *Utica Mutual Insurance Company v. Style Management Associates Corp.*, 125 AD3d 759 (2<sup>nd</sup> Dept. 2015) (citing the responsibilities of a general contractor to include the supervising of a project, and the hiring and paying subcontractors). In addition, the applicant has provided credible, clarifying evidence through both Mr. Chadha's testimony, and through the introduction of communications with the Division that took place at the time of the application, that the business enterprise is a general contractor that also self-performs some work. (APP Exhibits I, J, K, L, and M; Hearing Testimony of Gurmeet Singh Chadha).

Based on the foregoing, the Division's determination to deny Angad's certification on the grounds that it does not operate independently as required under 5 NYCRR § 144.2(e) was not based on substantial evidence.

### **CONCLUSION**

Applicant met its burden with respect to the eligibility criteria at 5 NYCRR § 144.2(e).

### **RECOMMENDATION**

The Division's determination to deny Angad Construction Corp.'s application for certification as a minority owned business enterprise should be reversed.

In the Matter of Angad Construction Corp.  
DED File ID No. 69974  
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Angad NYC SBS MBE Certification (6/30/2023)	Y	Y
APP B	Angad's MBE Profile in the SBS Directory	Y	N
APP C	Angad's NYC Department of Buildings ("DOB") General Contractor's License Registration No. 623026, issued on February 2, 2023 and expiring on March 6, 2026	Y	N
APP D	North American Industry Classification System ("NAIC") Code for construction "general contractor(s)" that subcontract out some of the construction work	Y	N
APP E	NAIC Codes	Y	N
APP F	Angad Invoice to Beant Blessings (10/03/2022)	Y	Y
APP G	Angad Invoice to RMK Ventures L.P. (9/10/2022)	Y	N
APP H	Angad Invoice to 15 Wilkinson for Construction (9/07/2022)	Y	N
APP I	Angad Invoice to GNK Properties (4/14/2023)	Y	Y
APP J	Angad Invoice to P&N Management LLC (5/22/2023)	Y	Y
APP K	Angad Invoice to Green Property LLC (5/08/2023)	Y	Y
APP L	Angad Email to Division Analyst (6/30/2023)	Y	Y
APP M	Division Analyst Email to Angad (7/03/2023)	Y	Y
APP N	Angad NYS-45 Quarterly Combined Withholdings, Wage Reporting, and Unemployment Insurance Return Report	N	N
APP O	Form 941 2023 Employer Quarterly (2nd) Federal Tax Return	N	N

APP P	Form 941 2023 Employer Quarterly (3rd) Federal Tax Return	N	N
APP Q	Form 941 2022 Employer Quarterly (4th) Federal Tax Return	N	N
APP R	Form 941 2023 Employer Quarterly (4th) Federal Tax Return	N	N
APP S	Interim Jan – March 2024 Earnings Record	N	N
APP T	Form 941 2023 Employer Quarterly (1st) Federal Tax Return	N	N
APP U	Affidavit of Gurmeet Singh Chadha, President, Angad Construction Corp.	Y	N
DED 1	Angad MBE Certification Application	Y	Y
DED 2	Denial Determination Letter (8/10/2023)	Y	Y
DED 3	Request to Appeal	Y	Y
DED 4	Notice of Conference and Hearing (3/18/2024)	Y	Y
DED 5	Angad JRA 108 Lincoln Rd, Check and Invoice	Y	Y
DED 6	Danny DP Corp Invoice	Y	Y
DED 7	VTECH Construction Invoice	Y	Y
DED 8	Eric Li Invoice for Services and Check	Y	Y
DED 9	Angad Gurmeet S. Chadha Resume	Y	Y
DED 10	Gurmeet S. Chadha Tax Return (2021)	Y	Y
DED 11	Gurmeet S. Chadha W2 2021	Y	Y
DED 12	Angad Constr. Fed Tax Return (2021)	Y	Y
DED 13	Angad Constr W2 W3 Letter (10/13/2022)	Y	Y
DED 14	Angad Constr Safety Registration	Y	Y

DED 15	NYC DOB (results Licensee Name) Gurmeet S. Chadha	Y	Y
DED 16	NYC DOB Details G.S. Chadha, Angad Construc Corp)	Y	Y
DED 17	NYC DOB Details G.S. Chadha, Green Realtors, LLC	Y	Y
DED 18	NYC DOB Details, G.S. Chadha, ANGAD Builders LLC	Y	Y
DED 19	Beant Blessings Invoice & Check	Y	Y
DED 20	Angad Construction Acosta Air Invoice	Y	Y