

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

In the Matter

- of -

the Application of SLG Innovation, Inc.
for Recertification as a Minority-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 63103

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
April 22, 2024

This matter considers the written appeal by SLG Innovation, Inc. (“SLG” 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 recertification as a minority-owned business enterprise (“MBE”).

PROCEDURAL HISTORY

1. On April 4, 2023, Mr. Ed Burns, as President, applied on behalf of SLG for recertification as a minority-owned business enterprise (“MBE”) (DED Exhibit 1).
2. On August 7, 2023, the Division denied the application on the following ground (DED Exhibit 2):
 - (a) The business enterprise does not actively conduct business in the State of New York, as required under 5 NYCRR § 144.2(f)(3).
3. SLG timely filed a Request to Appeal on August 22, 2023 (APP Exhibit A, DED Exhibit 8).
4. A notice to proceed via written appeal was sent to SLG on August 24, 2023 (DED Exhibit 9).
5. CCSI filed its written appeal by letter dated October 7, 2023, with attachments (APP Exhibit B).
6. The Division filed an Affidavit of Eugenio Alcantara, Certification Director, dated February 14, 2024, and a brief of JaMone Turner Esq., counsel for the Division, dated February 15, 2024.

FINDINGS OF FACT

7. SLG is an information technology services company that offers program management solutions, templates and tool sets to small and large government, healthcare, education, commercial, and utility organizations (DED Exhibit 1).
8. Mr. Ed Burns is the President and has a 51% ownership interest. Mr. Ken Cobbs has a 49% ownership interest (DED Exhibit 1).
9. Applicant provided W-2 forms for 2022 for its employees who received wages in Illinois, Louisiana, and New Jersey. No W-2 forms were provided to show wages paid in New York State (DED Exhibit 7). Applicant stated “SLG does not have any current payroll in New York State.” (DED Exhibit 1).
10. In response to the Division’s request to provide its largest signed contracts and/or agreements, applicant provided a subcontractor agreement dated January 16, 2020, between SLG and TriTech Software Systems (“TriTech Agreement”) (DED Exhibit 3). In the agreement, SLG contracted with the City of Chicago to provide information technology services.
11. Applicant also provided an agreement dated July 10, 2019, between Crossfire Consulting Group and New York State Office of General Services in which SLG was selected as a subcontractor to perform information technology services (“NYHBITS Agreement”) (DED Exhibit 4). Applicant also provided a contractor participation quote, dated July 17, 2019, in which SLG proposed to perform temporary medical staffing services for Stony Brook Medicine through prime contractor, AHS Staffing, LLC (“SBM Participation Quote”) (DED Exhibit 5). Applicant stated “On both the NY HBITS and Stony Brook Medicine contracts, SLG Innovation was selected and approved as an MBE subcontractor.

Unfortunately, we have not been successful. There are a number of other engagements we have not been successful winning the contract in NY.” (DED Exhibit 1).

12. Applicant provided a subcontractor agreement dated July 12, 2023, between Currier, McCabe and Associates, Inc. (“CMA”) and SLG (DED Exhibit 6). Applicant stated “SLG Innovation is working on a national agreement with Currier, McCabe and Associates, Inc. d/b/a CMA Consulting Services to support them in the WIC market. One of our first customers to support CMA is on their recent award to the New York Woman, Infants and Children project...” (DED Exhibit 1). Applicant stated “Unfortunately, we were awarded several MBE contracts in New York but have not received any work. We are slated to support CMA in New York on the WIC program. That will be our 1st invoices in New York.” (DED Exhibit 1).

APPLICABLE LAW

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 that has any payroll in New York State.

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 SLG for recertification as a 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

The Division acknowledges that SLG was previously certified as a minority-owned business enterprise. The Division asserts that it is not bound to recertify a MBE if its prior determinations were made in error. The Division argues that based on the application and supplemental material submitted by applicant, Division staff correctly determined that applicant was not eligible for recertification.

The Division is correct that it is not obligated to certify SLG based on its prior determinations. 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).

With the expiration of its certification, SLG had the burden to demonstrate compliance with the eligibility criteria outlined at 5 NYCRR former §144.2 when it submitted the April 4, 2023, application and supporting materials and cannot rely on the past determinations of the Division.

II. Authorization to do business

The Division found that SLG failed to demonstrate that the business actively conducts business in the State of New York, as required under 5 NYCRR § 144.2(f)(3). The regulations define a significant business presence as “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 that has any payroll in New York State.” 5 NYCRR § 140.1(gg).

Applicant provided W-2 forms for 2022 for its employees who received wages in Illinois, Louisiana, and New Jersey. No W-2 forms were provided to show wages paid in New York State (DED Exhibit 7). Applicant stated “SLG does not have any current payroll in New York State.” (DED Exhibit 1).

In response to the Division’s request to provide its largest signed contracts and/or agreements, applicant provided a subcontractor agreement dated January 16, 2020, between SLG and TriTech Software Systems (“TriTech Agreement”) (DED Exhibit 3). In the agreement, SLG contracted with the City of Chicago to provide information technology services. This contract is

to provide services in the City of Chicago, and therefore is not conducting business in the State of New York.

Applicant also provided an agreement dated July 10, 2019, between Crossfire Consulting Group and New York State Office of General Services in which SLG was selected as a subcontractor to perform information technology services (“NYHBITS Agreement”) (DED Exhibit 4). Applicant also provided a contractor participation quote, dated July 17, 2019, in which SLG proposed to perform temporary medical staffing services for Stony Brook Medicine through prime contractor, AHS Staffing, LLC (“SBM Participation Quote”) (DED Exhibit 5). Applicant stated “On both the NY HBITS and Stony Brook Medicine contracts, SLG Innovation was selected and approved as an MBE subcontractor. Unfortunately, we have not been successful. There are a number of other engagements we have not been successful winning the contract in NY.” (DED Exhibit 1).

Applicant provided a subcontractor agreement dated July 12, 2023, between Currier, McCabe and Associates, Inc. (“CMA”) and SLG (DED Exhibit 6). Applicant stated “SLG Innovation is working on a national agreement with Currier, McCabe and Associates, Inc. d/b/a CMA Consulting Services to support them in the WIC market. One of our first customers to support CMA is on their recent award to the New York Woman, Infants and Children project...” (DED Exhibit 1). Applicant stated “Unfortunately, we were awarded several MBE contracts in New York but have not received any work. We are slated to support CMA in New York on the WIC program. That will be our 1st invoices in New York.” (DED Exhibit 1). However, “working on a national agreement” is not proof of an executed agreement for services with a resulting contribution to the State of New York.

On appeal, applicant states “SLG Innovation has actively pursued business in the State of New York. As a small minority business, the MBE certification is critical because of our recent relationship with New York based Currier, McCabe and Associates, Inc. d/b/a CMA Consulting Services... This [CMA] award will allow SLG Innovation to hire New York based resources, pay New York State taxes and open an office in the State of New York. This award is key to SLG Innovation making contributions to the New York State economy through payment of taxes, the purchase of made in New York State products or materials and by having payroll in New York State.” (APP Exhibit B). However, actively pursuing business does not meet the requirement of actively conducting business in New York, as required under 5 NYCRR § 144.2(f)(3).

The Division’s determination to deny the application on the basis that SLG failed to demonstrate that it actively conducts business in the State of New York, as required under 5 NYCRR §144.2(f)(3) is supported by substantial evidence.

CONCLUSION

SLG did not meet its burden to demonstrate that the Division’s determination to deny its application for recertification as a minority-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(f)(3) 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 SLG’s application for recertification as a minority-owned business enterprise.

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Exhibit Chart

Exhibit #	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Request to Appeal	Y	Y
APP B	Appeal Submission	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	TriTech Agreement	Y	Y
DED 4	NY HBITS Agreement	Y	Y
DED 5	Stony Brook Medicine Participation Quote	Y	Y
DED 6	CMA Agreement	Y	Y
DED 7	2022 W-2 Forms	Y	Y
DED 8	Applicant's Request to Appeal	Y	Y
DED 9	Notice to Proceed via Written Appeal	Y	Y