



New York State
Department of Economic Development
Division of Minority and Women's
Business Development

In the matter of the appeal of

**SHUTE'S TJS EXCAVATION, INC. DBA
SHUTE'S RENT ME DUMPSTERS**

FINAL ORDER 25-08

From a denial of certification as a Woman-owned Business Enterprise pursuant to Executive Law Article 15-A.

The attached Recommended Order is incorporated with modification, as set forth below.

This order arises from an administrative appeal brought on behalf of Shute's TJS Excavation, Inc. DbA Shute's Rent Me Dumpsters ("Shute's Excavation" or "Appellant") pursuant to parts 140-147 of title 5 of the New York Codes, Rules and Regulations. Appellant seeks reversal of the determination of the Division of Minority and Women's Business Development (the "Division"), dated November 20, 2024, to deny Shute's Excavation certification as a Woman-owned Business Enterprise ("WBE").

The Division received the Administrative Law Judge's Recommended Order, dated July 8, 2025, which recommended the Director modify the Division's determination to deny Shute's Excavation application for WBE certification, and as modified, affirm the denial determination. Specifically, the Administrative Law Judge found that Shute's Excavation had met its burden to demonstrate that the Division's determination to deny its application for WBE certification with respect to the eligibility criteria at 5 NYCRR §144.2(c)(1) was not based on substantial evidence. However, the Administrative Law Judge found that Shute's Excavation had not met its burden to demonstrate that the Division's determination to deny its application for certification as a woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(b)(2), and 144.2(c)(2), was not based on substantial evidence.

After considering the appeal record, I respectfully decline to accept the findings as they pertain to 5 NYCRR §144.2(c)(1) set forth in the July 8, 2025, Recommended Order. Based on the Division's interpretation of the regulations, Appellant failed to demonstrate that Joelle Shute, the woman owner relied upon for certification, possessed adequate industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR

§144.2(c)(1). That said, I accept the findings as they pertain to 5 NYCRR §§144.2(b)(2), and 144.2(c)(2), as set forth in the July 8, 2025, Recommended Order.

Under 5 NYCRR §144.2(c)(1), the Division considers the following factors when evaluating competence in the industry: (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. Shute's Excavation is a "full service site work company providing excavation services, roll off dumpster rental, waste removal services, demolition, debris removal and scrap hauling." Ms. Shute has not obtained the relevant licenses and/or certifications commonly required to provide such services, nor does her educational background reflect the academic credentials typically held by persons employed in the industry. Lastly, the record does not show that Ms. Shute has obtained industry-specific expertise through direct work experience. Ms. Shute's previous work experience is not related to the industry at hand. Ms. Shute has been at the applicant business since 2015 and claims to have been around the industry for many years, but at no point does she elaborate on the industry-specific expertise she has obtained from this experience. The responsibilities for which Ms. Shute is solely responsible at Shute's Excavation, while valuable to business operations, do not inherently demonstrate industry-specific competency. Ms. Shute also shares several responsibilities with a non-qualifying owner, which include but are not limited to estimating and preparing bids. The same non-qualifying owner is solely responsible for supervising field operations and, per Ms. Shute's own admission, performs the technical work provided by Shute's Excavation. Ms. Shute did not present any evidence demonstrating that she has ever performed or supervised, nor is able to perform or supervise, the services Shute's Excavation provides. Thus, it cannot be determined that Ms. Shute has obtained industry-specific expertise via direct work experience, nor, accordingly, that she possesses adequate industry-specific competence to make critical business decisions without relying upon other persons.

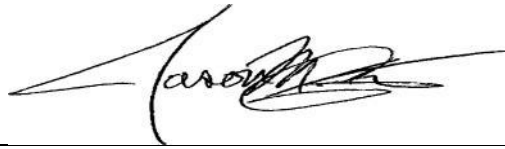
ORDERED: The recommendation to modify the Division's denial determination, based on the findings pertaining to 5 NYCRR §144.2(c)(1), as set forth in the attached Recommended Order, is hereby rejected. The recommendation to affirm the Division's denial determination, based on the findings pertaining to 5 NYCRR §§144.2(b)(2), and 144.2(c)(2), as set forth in the attached Recommended Order, is hereby accepted.

ORDERED: The Division's determination to deny the certification of Shute's Excavation based on the eligibility criteria at 5 NYCRR §§144.2(b)(2), 144.2(c)(1), and 144.2(c)(2), is hereby affirmed.

ORDERED: The Division's Directory for Minority and Women-owned Business Enterprises will reflect the determination herein; Shute's Excavation will not be listed.

This decision is Ordered by Jason M. Clark, the Executive Vice President and Executive Director of the Division of Minority and Women's Business Development.

August 4, 2025

A handwritten signature in black ink, appearing to read "Jason M. Clark", written over a horizontal line.

Jason M. Clark
Executive Vice President and Executive Director
Division of Minority and Women's Business Development