

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

In the Matter

- of -

the Application of Vantage Energy Consulting LLC
for Recertification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 63341

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
March 27, 2025

This matter considers the written appeal by Vantage Energy Consulting LLC (“Vantage” 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 woman-owned business enterprise (“WBE”).

PROCEDURAL HISTORY

1. On July 31, 2024, Ms. Jean Gormley, as President, applied on behalf of Vantage for recertification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1)
2. On October 21, 2024, the Division denied the application on the following ground (DED Exhibit 2):
 - (a) The business enterprise does not contribute to the New York State economy through payment of taxes, or the purchase of made in New York State products or materials, or by having any payroll in New York State, as required under 5 NYCRR §§144.2(f)(2), 140.1(gg), and 140.1(hh).
3. Vantage filed a Request to Appeal on November 19, 2024. (DED Exhibit 3)
4. A notice to proceed via written appeal was sent to Vantage on November 20, 2024. (DED Exhibit 4)
5. Vantage filed its written appeal by undated letter. (APP Exhibit A)

6. The Division filed an Affidavit of Abdul Bah, Associate Certification Director, dated March 12, 2025, and a brief of Candace Williamson, Esq., counsel for the Division, dated March 12, 2025.

FINDINGS OF FACT

7. Vantage provides a broad range of consulting services that address the utility industry and is located in Lady Lake, Florida. (DED Exhibit 1)
8. Jean Gormley is the CEO and has a 99% ownership interest. Walter Drabinski, Ms. Gormely's husband is the President and has a 1% ownership interest. (DED Exhibit 1)
9. Business tax records filed in the State of Florida were submitted. (DED Exhibit 5)
10. W-2 and W-3 statements show income paid to Ms. Gormley in the state of Florida. (DED Exhibit 6)
11. Applicant's three largest accounts for which the business provided services are in Kentucky and Florida. (DED Exhibit 1)
12. Applicant served as a subcontractor in 2022 for TRC Engineers, Inc., a Connecticut based business, performing services for the New York Power Authority. (DED Exhibit 1)
13. Applicant provided an email for a subscription to the Wall Street Journal, an invoice for the purchase of Murray's Cheese, and documentation from an Amazon.com order for Weber's Brand mustard for items purchased that were produced in New York. (DED Exhibits 1, 9, 10 and 11)
14. A document of "Purchase of NYS Services" included the following (DED Exhibit 12):
 - (a) Paychex, Inc., a payroll services company based in Rochester, New York;
 - (b) AMTRUST Workman's Compensation Insurance, a New York based company;
 - (c) Subscription to The Wall Street Journal, a New York based newspaper; and

(d) Subscription to Sirius XM, a radio service headquartered in New York.

APPLICABLE LAW

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

Small business requirement. Applications to certify business enterprises as minority and women-owned business enterprises must satisfy the small business requirement. Any business enterprise for which certification as a minority or woman-owned business enterprise is sought must be a small business, as that term is defined in Part 140.

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.

5 NYCRR §140.1(hh) states in relevant part as follows:

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

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by Vantage for recertification as a WBE 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 Vantage was previously certified as a woman-owned business enterprise. The Division asserts that it is not bound to recertify a WBE 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 Vantage 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, Vantage had the burden to demonstrate compliance with the eligibility criteria outlined at 5 NYCRR former §144.2 when it submitted the July 31, 2024 application and supporting materials and cannot rely on the past determinations of the Division.

II. Small Business

The Division denied Vantage's application on the basis that Vantage failed to demonstrate that the business made a contribution to the New York State economy through payment of taxes, or the purchase of made in New York State products or materials, or by having any payroll in New York State. The Division cited 5 NYCRR §144.2(f)(2), which states "Small business requirement. Applications to certify business enterprises as minority and women-owned business enterprises must satisfy the small business requirement. Any business enterprise for which certification as a minority or woman-owned business enterprise is sought must be a small business, as that term is defined in Part 140 of this Title." The Division further cited 5 NYCRR §§140.1(gg) and 140.1(hh), which define "Significant business presence", and "Small business", respectively. (DED Exhibit 2).

5 NYCRR §140.1(hh) states that a small business is "a business which has a significant business presence in the State..."

5 NYCRR §140.1(gg) states that a "significant business presence" includes making "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."

Applicant submitted business tax records reflecting filing in the State of Florida, but not in New York State. (DED Exhibit 5)

Applicant submitted W-2 and W-3 statements which show that the business does not employ any New York State residents and does not have any payroll in New York State. (DED Exhibit 6)

Applicant provided details of its three largest accounts. Two were based in Kentucky and the third was performed in Florida. (DED Exhibit 1)

Applicant served as a subcontractor in 2022 for TRC Engineers, Inc., a Connecticut based business, performing services for the New York Power Authority. (DED Exhibits 1 and 8) However, the services were provided to TRC, the Connecticut business, and not directly provided to the New York Power Authority. (DED Exhibit 8)

In response to the Division's request for documentation to show the business made a contribution to the New York State economy (DED Exhibit 1), applicant provided an email regarding the subscription to the Wall Street Journal, an invoice for the purchase of Murray's Cheese, and documentation from an Amazon.com order for Weber's Brand mustard. (DED Exhibits 9, 10 and 11)

Applicant submitted a document reflecting "Purchase of NYS Services." This document included the following (DED Exhibit 12):

- (e) Paychex, Inc., a payroll services company based in Rochester, New York;
- (f) AMTRUST Workman's Compensation Insurance, a New York based company;
- (g) Subscription to The Wall Street Journal, a New York based newspaper; and
- (h) Subscription to Sirius XM, a radio service headquartered in New York.

However, these products and services are not directly related to the services that Vantage provides.

No evidence was provided to show that Vantage paid any payroll or taxes in New York State or purchased any made in New York State materials or products directly related to the services that Vantage provides. (DED Exhibits 1, 5, 6, 9, 10, 11 and 12)

On appeal, applicant states that its ability to offer consultant services was restricted due to COVID complications; and that plans to travel to New York in December 2024 (after the denial determination) were canceled due to weather conditions. Applicant also stated it was retained by

Long Island Power Authority to provided consulting services. “Unfortunately, that contract was not ratified by the state due to complications from COVID and clerical errors.” (APP Exhibit A) However, these reasons do not overcome the requirement that the company must make a contribution to the New York State economy through the payment of taxes, purchase of made in New York State products or materials, or have payroll in New York State. 5 NYCRR §140.1(gg)

Applicant further stated on appeal, “we actively bid for contracts each year in New York State. We only get the work when we win the contract.” (APP Exhibit A) However, “actively pursuing business does not meet the requirement of actively conducting business in New York.” *Matter of SLG Innovation, Inc.*, Recommended Order dated April 22, 2024, Final Order 24-06, dated October 4, 2024.

The Division’s determination to deny the application on the basis that Vantage failed to demonstrate that the business contributes to the New York State economy through payment of taxes, or the purchase of made in New York State products or materials, or by having any payroll in New York State, as required under 5 NYCRR §§144.2(f)(2), 140.1(gg), and 140.1(hh), is supported by substantial evidence.

CONCLUSION

Vantage did not meet its burden to demonstrate that the Division’s determination to deny its application for recertification as a woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(f)(2), 140.1(gg), and 140.1(hh), 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 Vantage's application for recertification as a woman-owned business enterprise.

In the Matter of Vantage Energy Consulting LLC
 DED File ID No. 63341
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Appeal Submission	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Applicant's Request to Appeal	Y	Y
DED 4	Notice to Proceed Via Written Appeal	Y	Y
DED 5	Business Tax Filing for 2022 and 2023	Y	Y
DED 6	W-2 and W-3 Statements	Y	Y
DED 7	Kentucky and Florida Agreements	Y	Y
DED 8	TRC Task Orders and Proof of Payment	Y	Y
DED 9	Newspaper Subscription	Y	Y
DED 10	Murray's Cheese Shipment	Y	Y
DED 11	Amazon Shipment Details	Y	Y
DED 12	Services Purchased in NYS	Y	Y