

NEW YORK STATE  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
633 THIRD AVENUE  
NEW YORK, NY 10017

In the Matter

- of -

the Application of

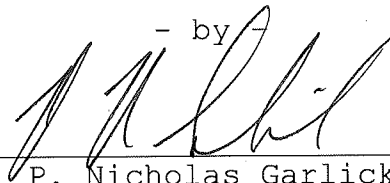
**P.W.R., LLC**

For Certification as a Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 60108

**RECOMMENDED ORDER**

- by -



\_\_\_\_\_  
P. Nicholas Garlick  
Administrative Law Judge

May 12, 2016

## **SUMMARY**

This report recommends that the determination of the Division of Minority and Women's Business Development ("Division") of the New York State Department of Economic Development to deny the application of P.W.R., LLC ("applicant") for certification as a woman-owned business enterprise ("WBE") be affirmed, for the reasons set forth below.

## **PROCEEDINGS**

This matter involves the appeal, pursuant to New York State Executive Law ("EL") Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") Parts 140-144, by P.W.R., LLC challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

P.W.R., LLC's application was submitted on September 1, 2015 (Exh. DED2).

The application was denied by letter dated December 4, 2015, from Bette Yee, Director of Certification Operations (Exh. DED1). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet three separate eligibility criteria related to Amy Roberts's ownership and operation of the applicant, as well as the independence of the applicant.

With a cover letter dated January 4, 2016, the applicant filed its written appeal and eleven exhibits (listed in the attached exhibit chart as exhibits A1-A6).

The Division submitted its response, which included a four page memorandum dated March 7, 2016. Attached to the response were eight exhibits (listed in the attached exhibit chart as exhibits DED1 - DED8). With the filing of the Division's response, the record in this matter closed.

## **ELIGIBILITY CRITERIA**

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status, regulatory criteria regarding the applicant's ownership, operation, control and independence are applied on the basis of information supplied through the application process.

The Division reviews the enterprise as it existed at the time the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and interviews that are conducted by Division analysts.

## **STANDARD OF REVIEW**

On this administrative appeal, applicant bears the burden of proving that the Division's denial of applicant's WBE certification 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 the Division's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate" (Matter of Ridge Rd. Fire Dist. v Schiano, 16 NY3d 494, 499 [2011] [internal quotation marks and citations omitted]).

## **POSITIONS OF THE PARTIES**

### Position of the Division

In its denial letter, the Division asserts that the application failed to meet three separate criteria for certification.

First, the Division found that the applicant failed to demonstrate that the woman owner's, Amy Roberts's, capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

Second, the Division found that the applicant failed to demonstrate that the woman owner, Amy Roberts, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(1)(i)&(ii).

Third, the Division found that the applicant failed to demonstrate that the applicant is an independent business enterprise, as required by 5 NYCRR 144.2(c)(2).

#### Position of the Applicant

P.W.R., LLC asserts that it meets the criteria for certification and that the Division erred in not granting it status as a woman-owned business enterprise pursuant to Executive Law Article 15-A.

#### **FINDINGS OF FACT**

1. P.W.R., LLC is a construction management consultant firm with a business address of 1 West Street, Room 365, Mineola, NY 11501 (Exh. DED2). The applicant specializes in storm damage disaster recovery consulting (Exh. DED5).

2. P.W.R., LLC was established on January 24, 2001. On March 23, 2015, Paul W. Roberts gifted his interest in P.W.R., LLC to Amy Roberts (Exh. DED3 & A6).

3. The resume of Amy Roberts states that she is the office manager of P.W.R., LLC, while her husband's resume indicates training as a damage assessor, experience in construction management services, and experience in inspecting and preparing damage estimates for over 800 home sites and 2 hospitals (Exh. DED5).

4. P.W.R., LLC has only one client, LiRo Program and Construction Management, PE P.C. (Exh. DED6). P.W.R., LLC shares office space with LiRo Program and Construction Management, PE P.C. (Exh. DED8) and pays between [REDACTED] and [REDACTED] in rent a month for a desk, computer and telephone (Exhs. DED7 & DED8).

## **DISCUSSION**

This report considers the written appeal of the applicant from the Division's determination to deny certification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The Division's denial letter set forth three bases related to Ms. Roberts's ownership and control of P.W.R., LLC and its independence. Each basis is discussed individually, below.

### **Ownership**

The first ground cited by the Division for its denial was that the applicant failed to demonstrate that the woman owner's, Amy Roberts's, capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

In the appeal, Ms. Roberts states that she is the 100% shareholder and principal owner of the applicant. Ms. Roberts also states that she has spent several years learning the business and is now fully knowledgeable in the areas of residential construction and disaster recovery and rebuilding. She attaches to her appeal copies of bank statements for July through October 2015 showing her as having authority to sign for the company (Exh. A4) and a copy of a letter from the company's CPA explaining the tax structure of the applicant (Exh. A5).

In its response, the Division states that the applicant has failed to submit any proof that Ms. Roberts made a capital contribution to the firm. The application does not indicate that she made any contribution (Exh. DED2 at 2). The applicant did submit a document entitled "Donation Inter Vivos" which shows that on March 23, 2015, Paul W. Roberts gifted his interest in the firm to Amy F. Roberts in consideration of the love and affection he had for her (Exh. DED3 & A6). The applicant also submitted with the application bank statements for July 2015, August 2015, and September 2015 which show the funds owned by the company, but not the source of these funds (Exh. DED4). The Division concludes Ms. Roberts has failed to

meet this certification criteria and that the transfer of ownership was done for the purposes of securing WBE certification.

Based on the evidence in the record and the discussion above, the applicant has failed to demonstrate that the woman owner, Amy Roberts's, capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). The record lacks any evidence that any capital contribution of money was made to the company and contains no assertion that Ms. Roberts's contribution was in the form of expertise.

### Operation

The Division found that the applicant failed to demonstrate that the woman owner, Amy Roberts, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(1)(i)&(ii).

In the appeal, Ms. Roberts states she has over twenty years of experience and expertise in construction, real estate, and mortgage lending. She attaches to her appeal a copy of letter from her New York State client which states that her experience in residential construction has enabled her company to provide valuable assistance (Exh. A1). She also states that she has the knowledge and expertise to execute contracts as the owner of the company and has performed the work successfully. She attaches a second letter from a client in Louisiana which states that her experience with residential construction allowed the project to move forward efficiently, on schedule and within budget (Exh. A2).

In its response, the Division states that it determined that Ms. Roberts lacks the requisite managerial experience or technical competence to provide consulting services related to construction management. The Division notes that Ms. Roberts lacks any formal training or prior work experience in construction management. The Division points to Ms. Roberts's resume which indicates her prior work experience was as an office manager for the applicant and as a real estate agent

(Exh. DED5 at 1). The applicant's husband, Paul W. Roberts, has provided construction management services for fifteen years (Exh. DED5 at 2). The letter provided by the applicant from the company's CPA also states that both Mr. and Ms. Roberts work for the company (Exh. A4). Based on this evidence, the Division concludes that Ms. Roberts relies on her husband's substantial industry experience to provide consulting services to clients.

Based on the evidence in the record and the discussion above, the applicant failed to demonstrate that the woman owner, Amy Roberts, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(1)(i)&(ii). Nothing in the record indicates that Ms. Roberts has either the training or experience to provide construction management services without the help of her husband.

### **Independence**

The Division found that the applicant failed to demonstrate that the applicant is an independent business enterprise, as required by 5 NYCRR 144.2(c)(2).

In her appeal, Ms. Roberts states that the applicant is not connected to any other business entity and that Paul Roberts no longer has an ownership interest in the company (Exh. A5). She also includes an updated copy of a page from the company's website (Exh. A6).

In its response the Division states that that the applicant failed to demonstrate that the woman is an independent business enterprise. The applicant has only one client, LiRo Program and Construction Management, PE P.C. (Exh. DED6). The applicant rents office space from LiRo Program and Construction Management, PE P.C. (Exh. DED7). The applicant also receives office supplies from and has access to the proprietary database of LiRo Program and Construction Management, PE P.C. (Exh. DED8). These facts, the Division argues, demonstrate that the applicant is not an independent business enterprise because it is dependent upon another business for its business existence.

Based on the evidence in the record and the discussion above, the applicant failed to demonstrate that the woman

applicant is an independent business enterprise, as required by 5 NYCRR 144.2(c)(2). The applicant, as a sub-consultant to LiRo Program and Construction Management, PE P.C. has not shown that it is an independent business.

### **CONCLUSIONS**

1. The applicant failed to demonstrate that the woman owner's, Amy Roberts's, capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

2. The applicant failed to demonstrate that the applicant failed to demonstrate that the woman owner, Amy Roberts, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(1)(i)&(ii).

3. The applicant failed to demonstrate that the applicant is an independent business enterprise, as required by 5 NYCRR 144.2(c)(2).

### **RECOMMENDATION**

The Division's determination to deny P.W.R., LLC's application for certification as a woman-owned business enterprise should be affirmed, for the reasons stated in this recommended order.



**Matter of  
P.W.R., LLC**

**DED File ID No. 60108  
Exhibit List**

<b>Exh. #</b>	<b>Description</b>	<b># of pages</b>
A1	Letter from Joseph Massa	1
A2	Letter from Mark A. Howard	1
A3	Bank documents	14
A4	Letter from Frances W. Nettles, CPA	1
A5	Website information	1
A6	Letter for change in ownership	1
DED1	Denial letter dated December 4, 2015	3
DED2	Application	9
DED3	Gift document	1
DED4	Sources of Capitalization	4
DED5	Resumes	2
DED6	Executed contracts	13
DED7	Rent documents	8
DED8	Shared items with the LiRo Group	1