

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

In the Matter

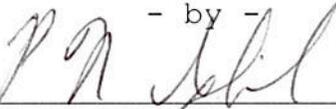
- of -

the Application of  
**Jaclyn Building Services, Inc.**  
For Certification as a Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 55822

RECOMMENDED ORDER

- by -



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P. Nicholas Garlick  
Administrative Law Judge

May 23, 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 Jaclyn Building Services, Inc. ("applicant") for certification as a woman-owned business enterprise ("WBE") be modified and, as so modified, 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 Jaclyn Building Services, Inc. challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Jaclyn Building Services, Inc.'s application was submitted on February 22, 2014 (Exh. DED2).

The application was denied by letter dated September 17, 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 four separate eligibility criteria related to Jacqueline Padula's ownership, control, and operation of the applicant.

By letter received on November 2, 2015, Ms. Padula filed a notice of appeal from the denial.

With a cover letter dated February 29, 2016, the applicant submitted thirteen exhibits as part of the appeal (listed in the attached exhibit chart as Exh. A1-A13).

In a four page memo dated May 4, 2016, the Division responded. Attached to the response were nine exhibits (listed in the attached exhibit chart as DED1-DED9).

On May 9, 2016, I was assigned to this matter.

Also on May 9, 2016, Ms. Padula sent an email notifying Division staff that she was now the sole member of the board of

directors of the applicant. Division staff counsel replied that he had no objection to submission of documents regarding this fact. Ms. Padula then sent another email stating her concerns about the length of time it had taken to process the application; that she had been very nervous during the phone interview with Division staff; and that she did not feel that she was supported in the process by State employees.

#### **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 four separate criteria for certification.

First, the Division found that the applicant failed to demonstrate that the woman owner, Jacqueline Padula, enjoys the customary incidents of ownership and shares in the risks and profits in proportion with her ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2).

Second, the Divisions found that the applicant failed to demonstrate that the woman owner, Jacqueline Padula, has control of negotiations, signature authority for payroll, leases, letters of credits, insurance bonds, banking services and contracts and other business transactions, as required by 5 NYCRR 144.2(b)(3).

Third, the Division found that the applicant failed to demonstrate that the woman owner, Jacqueline Padula, 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).

Fourth, the Division found that the applicant failed to demonstrate that the woman owner, Jacqueline Padula, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

### Position of the Applicant

Jaclyn Building Services, Inc. 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. Jaclyn Building Services, Inc. is in the business of providing plumbing and electrical contracting services for new construction, maintenance, and repairs (Exh. DED2 at 3). The

corporation has a business address of 4914 West Ridge Road, Spencerport, New York, 14559.

2. Jaclyn Building Services, Inc. was established on June 16, 2011 (Exh. A1 at 2). Jacqueline Padula owns 100% of the stock of the corporation and serves as its president (Exh. DED2 at 2).

3. No evidence was presented with the application that Ms. Padula signs contracts on behalf of the business (e.g. Exh. DED8). The application states that Mr. Nicola Calabrese and Mr. Amedeo Battisti control negotiating contracts (Exh. DED2 at 4). Ms. Padula confirmed that she relies on these men in negotiations during the phone interview with Division staff (Exh. 9 at 20:00).

4. The corporation has two permanent full-time employees (Exh. DED2 at 2). Mr. Amadeo Battisti is a licensed master electrician (Exh. DED3) with over thirty years of experience in the electrical industry (Exh. DED4). Mr. Nicola Calabrese has over thirty years of experience in the plumbing industry (Exh. DED6). Ms. Padula has 33 years of experience in the health insurance industry and prior to starting Jaclyn Building Services, Inc. had no experience or training in the construction industry (Exh. DED9 at 15:00).

5. The application states that Ms. Padula has managerial responsibility for: financial decisions, negotiating bonding, negotiating insurance, marketing and sales, hiring and firing, managing and signing payroll, and signing for business accounts. It also states that Mr. Battisti and Mr. Calabrese are jointly responsible for: estimating, preparing bids, supervising field operations, purchasing equipment/sales, and negotiating contracts (Exh. DED2 at 3-4).

#### **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 four bases related to Ms. Padula's ownership, operation and control of

Jaclyn Building Services, Inc. Each basis is discussed individually, below.

### **Ownership**

In its denial letter, the Division cited one ground for denial based on the applicant's failure to meet ownership criteria set forth in the applicable regulations. Specifically, that the applicant failed to demonstrate that the woman owner, Jacqueline Padula, enjoys the customary incidents of ownership and shares in the risks and profits in proportion with her ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2).

In its papers, Division counsel states that the Division does not defend the denial on this ground. Therefore, this ground for denial is deemed withdrawn.

### **Control**

In its denial letter, the Division asserted one ground for denial based on the applicant's failure to meet control criteria set forth in the applicable regulations. Specifically, that the applicant failed to demonstrate that the woman owner, Jacqueline Padula has control of negotiations, signature authority for payroll, leases, letters of credits, insurance bonds, banking services and contracts and other business transactions, as required by 5 NYCRR 144.2(b)(3).

In its appeal, the applicant does not address the issue of her control over the firm. She states that she formed the firm because she wanted to do something totally different after spending 33 years in the health insurance field. She also claims to be in charge of day to day operations of the firm, and lists her responsibilities, including: paying all bills; initiating payroll; leasing the business address; paying workers compensation, disability, unemployment, liability, and medical insurances; invoice billing for work done; and other business transactions.

In its response the Division states that its denial was based on the applicant's failure to show that Ms. Padula controls negotiations for the company. Specifically, the Division argues that no evidence was presented that Ms. Padula

signs contracts on behalf of the business (Exh. DED8), and the application states that Mr. Calabrese and Mr. Battisti control negotiating contracts (Exh. DED2 at 4). She also stated that she relies on these men in negotiations (Exh. 9 at 20:00)

Based on the evidence in the record and the discussion above, the applicant has not demonstrated that the woman owner, Jacqueline Padula has control of negotiations, as required by 5 NYCRR 144.2(b)(3). As stated in the application and by Ms. Padula during the interview, the male employees of the firm control the negotiations.

### **Operation**

In its denial letter, the Division asserted two grounds for denying the application for failure to meet certification criteria related to the operation of the applicant. First, the Division found that the applicant failed to demonstrate that the woman owner, Jacqueline Padula, 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. Padula states that she has 33 years of experience in the health insurance field and experience as a project manager. Her family also has experience in the construction business. She acknowledges that she is neither a plumber nor an electrician. She also stated during the telephone interview that she had no training in either field (Exh. DED9 at 15:00).

In its response, the Division argues that Ms. Padula does not have adequate managerial experience or technical competence to operate the applicant. Since the applicant is primarily engaged in providing plumbing and electrical services and Ms. Padula has no work experience or license either as an electrician or a plumber (Exh. DED5), the Division argues that she does not meet the criteria for certification. The Division points to the facts that one of the company's vice-presidents, Mr. Battisti, is a licensed master electrician (Exh. DED3) with over thirty years of experience in the electrical industry (Exh. DED4) and the other vice-president, Mr. Calabrese, has over thirty years of experience in the plumbing industry (Exh. DED6). Because Ms. Padula has no training or experience to allow her to

meaningfully evaluate the work of these men, the Division concludes that Ms. Padula's presence from time to time at the job sites is not material to her ability to evaluate the work done by the firm.

Based on the evidence in the record and the discussion above, Ms. Padula does not meet the criteria for certification as a WBE because nothing in the record demonstrates her knowledge and competence in either the electrical or plumbing field. Consequently, the applicant failed to demonstrate that the woman owner, Jacqueline Padula, 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).

The second ground asserted for denial on operational grounds was that the applicant failed to demonstrate that the woman owner, Jacqueline Padula, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

In the appeal, Ms. Padula states that she is in charge of the day to day operations of the firm and speaks to each employee at the beginning of each week regarding the work to be done that week. She also states that she is solely responsible for: paying all bills; initiating payroll; leasing the business address; paying workers compensation, disability, unemployment, liability, and medical insurances; invoice billing for work done; and other business transactions. During the phone interview with Division staff, she stated that she doesn't perform field work for the firm (Exh. DED9 at 12:00), relies heavily on her employees (Exh. DED9 at 16:00), doesn't do estimating for the firm or know how to do it (Exh. DED9 at 18:20), or negotiate the firms contracts (Exh. DED9 at 20:00).

In its response the Division states that it deems a woman owner to make decisions for a business enterprise when she manages its core functions. The Division argues that Ms. Padula had delegated the core functions of the applicant to Mr. Battisti and Mr. Calabrese and therefore does not operate the applicant for certification purposes. Because the revenue generating functions of estimating and supervising field operations of the business are done by men (Exh. DED2 at 3-4,

DED7), the Division concludes that the applicant did not meet certification criteria. In addition, the application states that men at the firm are solely responsible for preparing bids, purchasing equipment and sales, and negotiating contracts (Exh. DED2 at 3-4). The Division concludes that Ms. Padula's role at the firm is limited to relatively minimal financial and administrative tasks.

Based on the evidence in the record and the discussion above, the applicant failed to demonstrate that the woman owner, Jacqueline Padula, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

### **CONCLUSIONS**

1. The applicant failed to demonstrate that the woman owner, Jacqueline Padula has control of negotiations, as required by 5 NYCRR 144.2(b)(3).

2. The applicant failed to demonstrate that the woman owner, Jacqueline Padula, 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 woman owner, Jacqueline Padula, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

### **RECOMMENDATION**

The Division's determination to deny Jaclyn Building Services, Inc.'s application for certification as a woman-owned business enterprise should be modified by striking the first basis for denial. As so modified, the determination should be affirmed, for the reasons stated in this recommended order.

**Matter of  
Jaclyn Building Services, Inc.**

**DED File ID No. 55822  
Exhibit List**

<b>Exh. #</b>	<b>Description</b>	<b># of pages</b>
A1	Corporate documents	8
A2	Corporate business account information	4
A3	Personal account information	4
A4	HELOC information	
A5	Credit card information	1
A6	Proposal example	1
A7	Contract example	1
A8	Payroll information	10
A9	Health insurance information	1
A10	Billing invoice example	7
A11	Proof of purchase of vehicle	6
A12	Photos of vehicles	2
A13	Ms. Padula's resume	1
DED1	Denial letter dated September 17, 2015	3
DED2	Application	11
DED3	Amadeo Battisti Master Electrician License	1
DED4	Amadeo Battisti resume	1
DED5	Jacqueline Padula resume	3

DED6	Nicola Calabrese resume	1
DED7	JBS Narrative of duties	1
DED8	JBS Purchase Order	1
DED9	Certification interview	On disc