

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

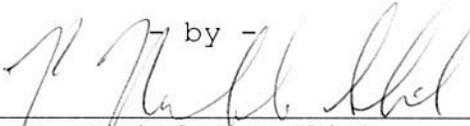
In the Matter

- of -

the Application of  
**Contractor's Layout, Inc.**  
For Certification as a Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 57813

RECOMMENDED ORDER

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

August 9, 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 Contractor's Layout, 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 Contractor's Layout, Inc. challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Contractor's Layout, Inc.'s application was received on September 10, 2013 (Exh. DED4 at 1).

The application was denied by letter dated July 23, 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 Darcy L. Quappe's ownership and operation of the applicant.

By letter dated July 29, 2015, Darcy L. Quappe, on behalf of the applicant, appealed from the Division's denial determination (Exh. A4).

By letter dated August 14, 2015, the Division notified the applicant that the applicant's written appeal should be filed on or before September 17, 2015 (Exh. A1).

By letter dated August 21, 2015, the applicant submitted its written appeal which consisted of a three page letter and four exhibits (listed in the attached exhibit chart as A1 - A4).

By letter dated October 24, 2015, the applicant submitted additional material regarding its appeal including a four page

letter and three exhibits (listed in the attached exhibit chart as A5 - A7).

In a five page memorandum dated June 7, 2016, the Division responded to the applicant's appeal. Enclosed with the response were seven exhibits, described in the attached exhibit chart as DED1-DED7).

On June 8, 2016, this matter was assigned to me.

By letter dated June 28, 2016, Mrs. Quappe submitted an unauthorized response to Division's papers

By email dated July 18, 2016, I contacted the parties and provided the Division with an opportunity to respond to Mrs. Quappe's unauthorized submission. By email the next day, the Division declined to respond and the record of 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 four separate criteria for certification.

First, the Division found that the applicant failed to demonstrate that the woman owner, Darcy L. Quappe, 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 Division found that the applicant failed to demonstrate that the woman owner Darcy L. Quappe'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).

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

### Position of the Applicant

Contractor's Layout, 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. Contractor's Layout, Inc. is in the business of providing services including: construction survey stakeout, 3-D laser scanning, and computer aided design (Exh. DED4 at 4). It has a business address of 829 Lincoln Avenue, Suite 4, Bohemia, New York (Exh. DED4 at 1).

2. Contractor's Layout, Inc. was established on April 16, 1997 (Exh. DED4 at 105). On May 8, 1997, the first shareholders meeting was held at which time Charles Redman, who owned 100% of the company, was named its president (Exh. DED4 at 101 - 117). On March 8, 1998, Paul Quappe became the owner of 50% of the stock of the firm (Exh. DED4A at 1). On September 1, 2011, Paul Quappe assumed 100% ownership of the corporation and Mr. Redman relinquished his shares of stock (Exh. DED4 at 131) pursuant to a written agreement (Exh. DED4A). This agreement included payments to Mr. Redman of over \$7,000 in cash and half of the company's total accounts receivable which at the time was in excess of [REDACTED] (Exh. DED4A at 1-2).

3. On May 1, 2012, Darcy Quappe acquired 53 shares of common stock in Contractors Layout, Inc. (Exh. DED4 at 49) for \$1,000 which took the form of a reduction of the debt the corporation owed Mr. Quappe (Exh. DED4B at 3). Mrs. Quappe did not put any money in herself (Exh. DED4 at 77). On May 1, 2012, Mrs. Quappe was also named president of the corporation (Exh. DED4B at 1).

4. Darcy Quappe had no experience or formal training in the field of surveying before she became president of Contractor's Layout, Inc. (Exh. DED4C at 2-3). Paul Quappe has been a "party chief" (team leaders working in the field), working in the surveying field since 1985, and his resume lists eight courses/trainings in the field (Exh. DED4C at 1).

5. Darcy Quappe spends most of her time in the office while her husband works primarily in the field (Exh. DED6). The Quappes share responsibility for: (1) estimating; (2) preparing bids; (3) supervising field operations; (4) purchasing equipment and supplies; and (5) negotiating contracts (Exh. DED4 at 5-6). Both are signatories on business accounts (Id. at 6). There is

also information in the record that they share responsibility for financial decisions (Exh. DED6 at 1).

## **DISCUSSION**

This report considers the 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 Mrs. Quappe's ownership and operation of Contractor's Layout, Inc. Each basis is discussed individually, below.

### **Ownership**

In its denial letter, the Division cited two grounds for denial for failure to meet ownership criteria. First, the Division determined that the applicant failed to demonstrate that the woman owner, Darcy L. Quappe, 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 response the Division withdraws this basis for denial and this ground is not considered in this recommended order.

The second ownership ground for denial was that the applicant failed to demonstrate that the woman owner Darcy L. Quappe's capital contributions were 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).

On the appeal (Exh. DED2), Mrs. Quappe states that any personal monies used to buy out the previous partner's, Mr. Redman's, interest came from the joint account of Mr. and Mrs. Quappe. She also states that her required investment was minimized by the cash flow from the business. Finally, she argues that she contributed nearly 30 years of business management experience, as evidenced by her resume (Exh. A3).

In the supplement to the appeal (Exh. DED3), Mrs. Quappe states that she was unaware of the definition of "capital contribution" as that term is used in the regulations relevant to this appeal until she was recently advised. She states that she made a capital contribution of \$ [REDACTED] to the firm in the form of income she was due to receive, but instead elected to have paid to the firm. As proof of this arrangement, attached to this supplement are two exhibits: an email in which Mrs. Quappe purports to show this arrangement (Exh. A6); and an invoice showing payments in the total of \$ [REDACTED] (Exh. A7).

In its response the Division argues that information submitted with the application shows that Mrs. Quappe received a 51% ownership interest for \$1,000 by an agreement dated May 1, 2012. The form of this \$1,000 contribution was a reduction of corporate debt owed by her husband (Exh. DED4B at 3). No other documents supporting this cash contribution or the payment of the \$1,000 were provided. During the interview with Division staff analyst Cleneice Mincey, Mrs. Quappe stated that her ownership interest was essentially a gift from her husband, based on the advice of their accountant (Exh. DED7 at 15:00). The Division rejects Mrs. Quappe's claim that her capital contribution came in the form of income she diverted to the firm because this arrangement was not disclosed at the time the application was made. The Division also rejects Mrs. Quappe's claim that her contribution to the business was in the form of management expertise because the Division argues that this is a form of sweat equity and Mrs. Quappe was paid \$ [REDACTED] in 2013 (Exh. DED5 at 16).

At the time the application was being reviewed, the only claim made in the application materials was that Mrs. Quappe contributed \$1,000 for her 53 shares of stock (Exh. DED4 at 3 & 76-77). She stated twice during her interview with Division staff that this amount was essentially a gift (Exh. DED7 at 15:00). This was the only information before the Division when it made its denial determination, and therefore, the denial was based on substantial evidence. Mrs. Quappe's claim to have made capital contributions of expertise and assigned income may have merit, but because they were not before the Division at the time it made its determination, they are irrelevant. Based on the evidence in the record and the discussion above, the applicant

has failed to demonstrate that the woman owner Darcy L. Quappe'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).

### 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, Darcy L. Quappe, 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).

On the appeal (Exh. DED2), Mrs. Quappe makes six points with respect to this ground for denial: (1) during her tenure as president of the applicant she has changed the company's business model, procedures and cost structure to improve efficiency, increase growth and profits; (2) she has increased gross revenues approximately 50% to nearly [REDACTED] (3) she has modified work schedules to increase growth and profits; (4) she has focused in the profitability of the company's jobs; (5) she has implemented improved, state of the art, technology; and (6) these improvements have led to more repeat business and referrals.

In the supplement to the appeal (Exh. DED3), Mrs. Quappe states that the nature of the firm's business does not require any permits or licensing by staff who work for the company and that Fortune 500 companies appoint CEOs based primarily on their managerial skills, not technical knowledge. She concludes that she has the managerial experience necessary to run the firm. She also states that she has the ability to: (1) read and understand contract drawings; (2) estimate jobs based on these drawings; (3) negotiate contracts; (4) hire and train field staff; (4) ensure crews are provided with necessary equipment; (5) schedule and monitor field crews; and (6) interact with contractors to resolve project scope issues. There is no mention of any ability to conduct survey work in the field.

In its reply, the Division states Mrs. Quappe lacks the necessary technical training and experience to operate the core, labor-intensive, technical aspects of the business enterprise and relies on her husband's work in the field to deliver the core revenue generating services of the business. The Division continues Mrs. Quappe's business acumen and logistical experience have not provided her sufficient expertise to direct decisions related to land surveying, the core function of the applicant. As proof of this argument, the Division states that extensive land surveying experience is necessary for the applicant to complete its contracts and that it is the expertise of the "party chiefs," team leaders in the field, which forms the core product of the applicant. Pointing to the resumes of Mr. and Mrs. Quappe (Exh. DED4C), the Division argues that Mr. Quappe's formal training and extensive work experience in the field of surveying compared to no training or prior work experience in the field show that she lacks the required technical knowledge and experience.

The appeal documents do not specifically address Mrs. Quappe's lack of formal training or prior surveying experience. Mrs. Quappe did state during the phone interview that when it is needed, she works in the field as a party chief or instrument man or whatever is needed (Exh. DED7 at 34:15). However, Mrs. Quappe's role in field work is not discussed in the application (Exh. DED4), her resume (Exh. DED4C at 2-3), nor in the narratives of duties (Exh. DED6). From this brief mention in the phone interview, it not possible to conclude that Mrs. Quappe possesses the experience or technical competence, working knowledge or ability needed to operate the enterprise. Therefore, the applicant has failed to demonstrate that the woman owner, Darcy L. Quappe, 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, Darcy L. Quappe, makes decisions pertaining to the operations of the enterprise or devotes time on an ongoing basis to the daily operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

On the appeal (Exh. DED2), Mrs. Quappe states that she is the ultimate decision maker for the company and has final say over: (1) employer and union matters; (2) financial matters; (3) negotiations with customers; and (4) leases. In addition she states that she is personally named on all the firm's financial commitments.

In the supplement to the appeal (Exh. DED3), Mrs. Quappe states that her duties include: accounting, payroll, collections, taxes, cost estimates, equipment purchases and financing, compliance with applicable rules, marketing, sales, customer service, and insurance. She does not list any decisions she makes in the field.

In its reply, the Division points to evidence in the record that decision making is shared between Mrs. and Mr. Quappe, and that her reliance on her husband's expertise and management of core business decisions justifies the Division's determination to deny the application. The evidence cited by the Division includes information in the application (Exh. DED4), the resumes of the Quappes (Exh. DED4C), the narratives of job duties (Exh. DED6), and the phone interview (Exh. DED7). The information in these exhibits, is reflected in the applicant's appeal documents (Exhs. DED2 & DED3). Taken together these sources describe Mrs. Quappe's responsibilities as primarily occurring within the office. The application states that she is solely responsible for: (1) financial decisions (Exh. DED4 at 4), although this claim is contradicted by Mr. Quappe's statement that he assists in this function (Exh. DED6 at 1); (2) negotiating bonding; (3) negotiating insurance; (4) marketing and sales; (5) hiring and firing; and (6) managing and signing payroll (Exh. DED4 at 5-6). The Quappes share responsibility for: (1) estimating; (2) preparing bids; (3) supervising field operations; (4) purchasing equipment and supplies; and (5) negotiating contracts (Exh. DED4 at 5-6). Both are signatories on business accounts (Exh. DED4 at 6). The division of labor between the Quappes shows that Mr. Quappe spends most of his time in the field overseeing operations (the remainder of his time is spent on the computer reviewing plans [Exh. DED6 at 1]), while his wife's oversight is limited to phone calls in the morning and evenings (Exh. DED7 at 16:30 & 37:30). The Division concludes that this information demonstrates that her duties are limited to the financial well

being of the enterprise, while her husband makes technical and operational decisions in the field and in the office pertaining to surveying projects.

Based on the evidence in the record and the discussion above, the application materials show that decisions regarding the operations of the core, revenue producing functions of the applicant are either performed by Mr. Quappe or by both Mr. and Mrs. Quappe together. Because of this, the applicant failed to demonstrate that the woman owner, Darcy L. Quappe, 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 Darcy L. Quappe'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 woman owner, Darcy L. Quappe, 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, Darcy L. Quappe, 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 Contractor's Layout, 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  
Contractor's Layout, Inc.**

**DED File ID No. 57813  
Exhibit List**

Exh. #	Description	# of pages
DED1	Denial letter	3
DED2	Applicant's appeal with 4 exhibits attached (listed below as A1-A4)	12
DED3	Applicant's supplement to its appeal with 3 exhibits attached (listed as A5-A7)	13
DED4	Application with supporting documents	152 <sup>1</sup>
DED4A	Settlement buy out agreement and stock certificates	10
DED4B	Certificate of directors' action and loan agreement	3
DED4C	Resumes of Paul and Darcy Quappe	3
DED5	2013 federal tax returns	48
DED6	Narratives of duties	3
DED7	Audio recording of interview	On disc
A1	Denial letter (missing page 3) (same as DED1, above)	2
A2	10/30/14 letter from NYSDOT granting certification as a Disadvantaged Business Enterprise	2
A3	Resume of Darcy L. Quappe	3

---

<sup>1</sup> This total includes numerous blank pages.

A4	Applicant's letter requesting appeal	2
A5	Financial information	9
A6	Email dated 2/7/14	1
A7	Schedule of payments	1