



November 15, 2016

VIA CERTIFIED MAIL NO. 7015-3430-0001-1612-2572
RETURN RECEIPT REQUESTED

John Waddy
John W. Waddy, Jr. Law Office
111 Hamilton Avenue
Columbus, Ohio 43203

Re: MBE Certification Appeal for:
Unity Resource Solutions

Dear Mr. Waddy:

Enclosed, please find a copy of the Report and Recommendation issued by the Hearing Officer in the above-named administrative appeal.

If you choose, within 10 days of receipt of this correspondence, you may file written objections to the Report and Recommendation. Such objections shall be considered by this agency before approving, modifying or disapproving the recommendation of the Hearing Officer. Please send your objections to:

Department of Administrative Services
Office of Legal Services
30 East Broad Street, Room 4023
Columbus, Ohio 43215

The recommendation of the Hearing Officer will not be acted upon by the Department of Administrative Services until at least 10 days after you have received this correspondence. After such time, your file shall be reviewed, including the report and recommendation and any objections, and you shall receive an order approving, modifying or disapproving your appeal for certification.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sharon A. Jennings", is written over a horizontal line.

Sharon A. Jennings
Associate Legal Counsel

SAJ:sds
Enclosure

cc: Eron Colson (via Certified Mail No. 7015-3430-0001-1612-2572)
Assistant Attorney General
DAS, Equal Opportunity Division

The State of Ohio is an equal opportunity employer.

**STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES**

In the Matter of:

The Denial of the Application of **Eron Colson and Unity Resource Solutions**, for
Certification as a Minority Business Enterprise

REPORT AND RECOMMENDATION

This matter comes before the Director for the Department of Administrative Services, hereinafter DAS, upon the Appeal of Eron Colson and Unity Resource Solutions, hereinafter Unity, made pursuant to Revised Code Section 119.09, from the State Equal Opportunity Division's, hereinafter EOD, Notice of Intent to Deny Unity's Application to be certified as an Minority Business Enterprise.

On September 28, 2016, a hearing on Unity's Appeal was held before Hearing Examiner Kevin Durkin. Assistant State Attorney General Barry McKew provided legal representation to the Equal Opportunity Division of the Department of Administrative Services, hereinafter, DAS. Stacy Cornett, an Equal Opportunity Contract Officer at the Equal Opportunity Division, hereinafter EOD, of DAS, testified under oath and served as the EOD's representative at the hearing. Eron Colson was examined under oath as if on cross-examination by the State. Unity and Eron Colson were represented by Attorney John W. Waddy Jr. A motion for separation witnesses was granted. Demitra Burkhardt was identified as a witness for the Applicant, but did not testify at the hearing.

Harry Colson, Susan Dolby, Donald Stinson, Jr. and Dan Warner attended the hearing but did not testify.

State's Exhibits 1, 2, 3, 4, 4B, 4C through 14 were admitted into the record. Unity's Exhibits A & C were admitted into the record. A ruling on the admissibility of Unity's Exhibit B was reserved for the Report and Recommendation to the Director.

A copy of Unity's Exhibits were forwarded to the Hearing Examiner after the hearing, and a transcript of the proceeding was provided to the Hearing Examiner on October 19, 2016.

The Findings of Fact, Conclusions of Law and Recommendation are based upon the testimony of the witnesses as transcribed by the reporter, the Exhibits that were admitted into the record and the adverse inferences that were drawn when Eron Colson invoked her right against self-incrimination.

The Hearing Examiner recommends that the Director find the following facts, based upon a preponderance of the reliable, probative and substantial evidence in the record, for this Appeal:

1. Eron Colson asserted her Fifth Amendment right against self-incrimination in response to the question of whether Unity was established on April 9, 2014. **Transcript, at page 13.** Aside from the adverse inference drawn from this witness's invocation of her right against self-incrimination as to this question, there was additional evidence in the record that Eron Colson established Unity Resource Solutions, a sole proprietorship, on April 9, 2014. **State's Exhibit #6, at page 1.**

2. Unity "*began operations*" on April 9, 2014. **State's Exhibit #6, at page 1.**

3. Eron Colson asserted her Fifth Amendment right against self-incrimination in response to the questions of whether she had one contract with Computer Aid, the date on which that contract was executed and whether she provided consultants to Computer Aid. **Transcript, at page 16.** Aside from the adverse inference drawn from this witness's invocation of her right against self-incrimination as to these questions, there was additional evidence in the record that Eron Colson, doing business as Unity Resource Solutions, signed an "*Ohio IT Staff Augmentation Subcontractor Agreement*" with Computer Aid, Inc. on April 9, 2014. **State's Exhibit 5, at page 9, Transcript, at pages 27-8, State's Exhibit 6, at page 7.** An authorized representative for Computer Aid, Inc. signed this contract on May 12, 2014." **Id.**

4. Eron Colson asserted her Fifth Amendment right against self-incrimination in response to the questions as to how she obtained a contract with Computer Aid, whether Demitra Burkhart or AIN had assisted her to obtain that contract and whether AIN was a EDGE provider to Computer Aid during the months of April and May, 2014. **Transcript, at pages 16-17.**

5. Eron Colson is the sole owner of Unity Resource Solutions, a sole proprietorship. **Transcript, at pages 12-13, State's Exhibit #6, at pages 1-2.**

6. Eron Colson registered Unity Resource Solutions with the Ohio Secretary of State as a Trade Name. **State's Exhibit #6, at page 7.**

7. On April 21, 2014, Eron Colson prepared a Unified Application to be certified as a participant in Minority Business Enterprise Program under the Company name of Unity Resource Solutions. **State's Exhibit 6, page 4.**

8. On April 23, 2014, Eron Colson submitted a Unified Application to the State of Ohio's Equal Opportunity Division of DAS to be certified as a participant in Minority Business Enterprise Program, hereinafter MBE. **Transcript, at page 13.**

9. Eron Colson asserted her Fifth Amendment right against self-incrimination in response to the question of whether Unity Resource Solutions "*provides supplemental I.T. consultants to other companies.*" **Transcript, at page 13.** Aside from the adverse inference drawn from this witness's invocation of her right against self-incrimination as to this question, in the section of the Unified Application provided to "*indicate a business type for the business,*" Ms. Colson wrote "*Computer Technology Consultants.*" **State's Exhibit 6, page 1.** In the section of the Unified Application provided to give a concise description of her business's products and services, Ms. Colson wrote, in part, that "*my company offers IT consultants.*" **Id.**

10. Eron Colson asserted her Fifth Amendment right against self-incrimination in response to the question of whether she had stated on her Unified Application that "*the only property you had for this business was a previously owned five-year old computer.*" **Transcript, at page 14.** Aside from the adverse inference drawn from this witness's invocation of her right against self-incrimination as to this question, Eron Colson wrote on the Document Checklist portion of her Application that "*I have not purchased any new equipment or vehicles to support the business since the inception of the business. I am driving my personal vehicle that is 11 years old and I am using a computer that is approximately five years old as well.*" **State's Exhibit 6, page 7.**

11. Eron Colson asserted her Fifth Amendment right against self-incrimination in response to the questions of whether she had employment with a company named AIN prior to the establishment of her company on April 9, 2014, whether that employment began in March, 2013 and whether her role with that company was as an apprentice to the owner of that company. **Transcript, at pages 14-5.** Ms. Colson also invoke her right against self-incrimination to the question of whether AIN was certified as an EDGE provider and to the question of whether AIN provides supplemental IT consultants to companies. **Transcript, at page 15.** Aside from the adverse inference drawn from this witness's invocation of her right against self-incrimination as to this question, Eron Colson wrote on the Document Checklist portion of her Application that "*[p]rior to starting my business, I have been working, in an apprenticeship position, with AIN systems, who also offer IT consulting services. AIN Systems, which is EDGE certified, is a sub-contractor for Computer Aid, Inc. (CAI), who staffs for the private and public sector. I have been working with AIN Systems since March, 2013, learning all phases of the consulting business, from recruiting to placement.*" **State's Exhibit 6, page 6.** Eron Colson stated that she had served an apprenticeship with AIN that started in March, 2013 during an interview with Stacy Cornett. **Transcript, at page 29.** Aside from the adverse inference dawn from this witness's invocation of her right against self-incrimination as to whether AIN is an EDGE provider, Stacy Cornett testified that AIN is an EDGE certified information technology services business that provides computer consultants. **Transcript, at pages 27, 30.**

12. Stacy Cornett, as a EEO Contract Officer, evaluates and analyzes applicants for certification in the MBE Program. **Transcript, at page 50.** As part of her work, Ms. Cornett performs telephone and on-site interviews and verifies supporting documentation. **Transcript, at pages 50-1.** Stacy Cornett was assigned the Unity file when its application was received by the EEO. **Transcript, at page 53.** Ms. Cornett was responsible for making a recommendation to the Program Manager or Director on an application for MBE certification after she completed her analysis. **Transcript, at page 56.**

13. Harry Colson was the Interim State EEO Coordinator in May, 2014. **Transcript, at page 68, State's Exhibit 10, at page 2.** On May 8, 2014, Mr. Colson instructed Stacy Cornett to approve the MBE certification application from Eron Colson and Unity. **Transcript, at pages 69-70.** After being advised that Contract Officer Cornett did not have authority to approve MBE certification, Harry Colson directed EOD Program Manager Todd McMonigle to approve the MBE certification application from Ms. Colson and Unity. **Transcript, at pages 70-1.**

14. In a letter dated May 8, 2014, Harry Colson advised Eron Colson that:

"As you are aware, a company desiring to participate in the state of Ohio's Minority Business Enterprise program must demonstrate to this Office that the company is owned and controlled by a minority individual for at least the previous year.

After careful review of the application and supporting documentation you provided to this office, the Equal opportunity Division of the Ohio Department of Administrative Services (DAS) has determined that Unity Resource Solutions satisfactorily meets the requirement set forth in Section 123:2-15-01 of the Ohio Administrative Code as is required for participation in the program. This letter shall serve as the state's official certification to this effect."

State's Exhibit 10, at page 1

15. In a letter dated May 20, 2014, Robert Blair, Director of DAS, advised Eron Colson that:

"On May 9, 2014, the Division of Equal Opportunity issued a letter notifying you that your company, Unity Resource Solutions, had been granted certification as a Minority Business Enterprise under Section 123.151 of the Ohio Revised Code and Rule 123:2-15-01 of the Ohio Administrative Code. It has come to my attention that the May 9, 2014 letter and purported certification were issued in error.

On behalf of the Department of Administrative Services, I am hereby withdrawing the letter and rescinding the certification immediately. Please take note that your application for certification as a Minority Business Enterprise remains pending and under review by the Division of Equal opportunity. You will be notified of its approval or denial in the near future."

State's Exhibit 11

16. On September 5, 2014, another letter was present on the DAS website that was dated May 8, 2014. **Claimant's Exhibit A.** The heading above the letterhead had a date of 9/5/2014, with the caption "*MBE Certification Letter.*" **Id.** This letter was identical to State's Exhibit 10, except for the fact that this letter was signed by Director Blair instead of Harry Colson. **Id.**

17. In a letter dated November 13, 2014, Director Blair advised Eron Colson that:

"[T]he Department of Administrative Services intends to deny the certification of Unity Resource Solutions as a Minority Business Enterprise (MBE) due to the applicant's failure to meet the requirements set out in Ohio Administrative Code (OAC) 123:2-15-01 et seq.

Based upon the Unified Application for certification, support documentation submitted and pertinent review, Unity Resource Solutions is not eligible for certification into the MBE program. OAC 123:2-15-01(B)(8) states, in part: 'An Applicant must have been in business for at least one year prior to being eligible for certification.

A. This determination is based on the following: Unified Application indicates that the business began operations on 4/09/2014

B. Ohio Secretary of state Certificate indicates that the company was formed on 4/07/2014.

Therefore, due to the failure to demonstrate that it has been in business for one year prior to being eligible for certification, Unity Resource Solutions is not eligible for certification as a MBE business enterprise."

State's Exhibit 12

18. In a letter dated December 10, 2014, Eron Colson advised Todd McGonigle that Unity Resource Solutions was requesting a hearing pursuant Chapter 119 of the Revised Code to contest the November 13th Notice of Intent to Deny MBE certification. **Claimant's Exhibit C, at page 1.**

19. Ms. Colson's December 10th letter also referred to the letter signed by Director and claimed that Unity had "*moved forward with the assumption of ongoing MBE certification*" because the certification letter "*did not describe the certification as conditional in any way.*" **Claimant's Exhibit C, at page 1.** Ms. Colson also claimed that "*EOD has routinely awarded MBE certifications to businesses that have not been in business for one year.*" **Id.**

20. In a letter dated May 13, 2015, Eron Colson advised Todd McGonigle that:

"I would like to withdraw my letter for a hearing regarding the denial of my MBE certification. My certification was being denied based off my company not being in business for one year. I have not exceeded the one year business requirement and I am requesting that my previous application for certification be reconsidered and processed."

State's Exhibit 13

21. In a letter dated August 28, 2015, Gregory L. Williams, Deputy Director, State EEO Coordinator, advised Eron Colson that the EOD was rescinding its November 13, 2014 Notice to Intent to Deny letter and that *"EOD will resume reviewing your company's application for certification as an MBE business enterprise."* **State's Exhibit 14.**

22. Mr. Williams' August 28th letter also noted that:

"On May 8, 2014, EOD certified your company as an MBE business. Later that same day, however, after determining that this certification was issued in error, Unity Resource Solutions' MBE certification was removed from EOD website. On May 9, 2014, at the direction of then EOD Deputy Director Harry Colson, your company's certification was re-posted to EOD's website, but was again removed that same day. On May 20, 2014, a letter from Director Robert Blair notifying Unity Resource Solutions that [its] certification was rescinded and that its application would be further considered was issued."

State's Exhibit 14

23. In a letter dated March 18, 2016, Gregory Williams advised Eron Colson that the Equal Opportunity Division of DAS intended deny her application to certify Unity as a MBE because:

"The Applicant business is not owned and controlled by a member of an economically disadvantaged group: and

The applicant business is acting as an agent or intermediary in making contracts under RC 123.151."

State's Exhibit 1

24. In his letter of March 18th, Mr. Williams also wrote that the EOD had determined that Unit Resource Solutions was not eligible for certification as an MBE based, in part, on the following:

"According to the supporting documentation and her own statements, Ms. Colson, the economically disadvantaged owner of the applicant business, does not have actual control of the day-to-day operations of the applicant business.

The applicant business works exclusively with another business, which is owned and controlled by a non-minority and is in the same or similar type of business. The applicant's business completes all the work for which it pursues certification through and in collaboration with the other non-minority business.

On information and belief, the other non-minority business has undue influence over the applicant's business by effectively exercising final, actual authority over several aspects of the day-to-day operations of the applicant's business, which directly and indirectly restrict the economic growth [of] the applicant's business.

According to the Unified Application and supporting documentation, the applicant business represents that it does not have any employees. On information and belief, however, the owner of the non-minority business has, with Ms. Colson's knowledge, held herself out as an employee of the applicant's business with apparent authority to exercise actual, ultimate control over the day-to-day operations and management decisions of the applicant business.

On information and belief, the applicant business is merely acting as an agent on behalf of the other non-minority company in attempting to secure contracts that are set aside for the MBE program.

Therefore, based upon the balance of the information in the application and supporting documentation, Unity Resource Solutions has failed to demonstrate that it is eligible for certification as an MBE business."

State's Exhibit 1, at page 2

25. On March 23, 2016, Eron Colson received a copy of the March 18, 2016 Notice of Intent to Deny MBE Certification by United states Post Office certified mail. **Exhibit 1, at page 4.**

26. In a letter dated April 17, 2016, Eron Colson gave notice that she was requesting "a hearing regarding the false determination of EOD/DAS that I am not the owner and do not have control over my business, as well as the accusations that I am acting as an agent. I am in disagreement with the decision because I have provided and can provide solid information showing that Unity Resource Solutions is owned and controlled by me, Eron Colson." **State's Exhibit 2.**

27. In a letter dated April 21, 2016, Catherine C. Perkins, Associate Counsel Catherine Perkins advised Unity and Eron Colson that a hearing on the appeal from the March 18, 2016 Notice of Intent to Deny Unity MBE Certification had been scheduled for May 2, 2016. **State's Exhibit 2, at page 1.** Ms. Perkins then noted that "upon its own motion, however, DAS has postponed the administrative hearing, but will reschedule it. Once DAS does, you will be notified of the date and time of the hearing, which will be heard by an appointed hearing officer." **Id.**

28. On April 26, 2016, Eron Colson and Unity received a copy of the April 21st letter from associate Counsel Perkins by United states Post Office certified mail. **Exhibit 3, at page 2.**

29. In a letter dated May 12, 2016, Deputy Director Williams advised Eron Colson and Unity that a hearing on the appeal from the March 18, 2016 Notice of Intent to Deny Unity MBE certification would be held on June 22, 2016. **State's Exhibit 4, at page 1.**

30. On May 20, 2016, Eron Colson and Unity received a copy of the May 12th letter from Deputy Director Williams by United States Post Office certified mail. **Exhibit 4, at page 2.**

31. In a letter dated June 22, 2016, Deputy Director Williams advised Eron Colson and Unity that DAS acknowledged and granted her request to continue the administrative hearing on her Appeal. **State's Exhibit 4B.**

32. In a letter dated August 3, 2016, Deputy Director Williams advised Eron Colson and Unity that a hearing on the appeal from the March 18, 2016 Notice of Intent to Deny Unity MBE certification would be held on September 28, 2016. **State's Exhibit 4C, at page 1.**

33. On August 9, 2016, Eron Colson and Unity received a copy of the August 3rd letter from Deputy Director Williams by United States Post Office certified mail. **Exhibit 4C, at page 2.**

34. At the hearing, Eron Colson asserted her Fifth Amendment right against self-incrimination in response to the questions as to whether Unity had any consultants, whether Unity obtained its consultants through AIN and whether Unity had a contract with AIN to provide consultants. **Transcript, at page 17.**

35. Eron Colson asserted her Fifth Amendment right against self-incrimination in response to the question of whether Unity had been established to obtain MBE contracts and *"funnel MBE contracts through AIN."* **Transcript, at pages 17-18.** The inference drawn from Ms. Colson's silence is that her answer would be adverse to her position that Unity is entitled to MBE certification.

36. Eron Colson asserted her Fifth Amendment right against self-incrimination in response to the questions as to the business relationship between and Unity and AIN, whether Unity shared fees with AIN and questions regarding the existence or nature of contracts between Unity and AIN, and questions regarding the extent to which AIN controls the operations of Unity. **Transcript, at pages 18-23.** The inference drawn from Ms. Colson's silence is that her answer would be adverse to her position that Unity is entitled to MBE certification.

37. Unity had no employees when it submitted its Unified Application. **Transcript, at page 30, State's Exhibit 6, at page 1.**

38. The owner of AIN is not eligible for MBE certification. **Transcript, at page 31.**

39. Computer Aid obtained consultants from Unity. Unity obtained its consultants from AIN. Revenue collected by Unity from Computer Aid was to forwarded to AIN. **Transcript, at pages 33-7, State's Exhibits 7, 8 and 9.**

40. Unity acted an intermediary or agent between Computer Aid and AIN. **Transcript, at page 37, State's Exhibits 7, 8 and 9.** Based on record for this Appeal, Unity has had no other customers that it provided computer consultants to other than Computer Aid. **Transcript, at page 36.**

41. There is no information in the record for this Appeal regarding a contract, written or oral, that governs the relationship between AIN and Unity. **Transcript, at page 54.**

42. Counsel for Eron Colson and Unity offered Unity Exhibit B into evidence. Counsel for State objected to the admissibility of Exhibit B on the grounds of relevancy. A ruling on the admissibility of Exhibit B was reserved pending the preparation of the Report and Recommendation to the Director. **Transcript, at pages 63, 72.**

43. At the conclusion of the State's case, counsel for Ms. Colson and Unity moved to dismiss these proceedings as moot because Unity had been MBE certified during the period from May 8, 2014 through May 8, 2016. **Transcript, at pages 74-75.** The parties agreed that there was no request by Unity for MBE certification beyond May 8, 2016. **Transcript, at page 77.** A ruling on the motion to dismiss as moot was reserved pending the preparation of the Report and Recommendation to the Director. **Transcript, at page 78.**

44. The testimony of Stacy Cornett was credible. In order to arrive at that finding as to credibility, the Hearing Examiner considered this witness's interests in the outcome of the case; the witness's manner of testifying; the witness's opportunity to observe or acquire knowledge concerning the facts about which she testified; the witness's candor; fairness and intelligence; and the extent to which Stacy Cornett's testimony was supported or contradicted other credible evidence.

CONCLUSIONS OF LAW

45. The Fifth Amendment to the United States Constitution provides that no person shall be compelled in any criminal case to be a witness against herself.

46. The Constitutional protections afforded by the Fifth Amendment extends to witnesses in civil proceedings, including administrative hearings. Eron Colson did not waive her privilege against self-incrimination by appealing from the Notice of Intent to Deny Unity MBE certification.

47. This privilege to remain silent extends to answers which would in and of themselves support a criminal conviction as well as answers which would furnish a link in chain of evidence needed to prosecute.

48. Eron Colson properly invoked her Fifth Amendment privilege as to every question that she refused to answer during the hearing. The incriminating nature of the information sought was evident on its face. Eron Colson did not invoke the privilege as to every question and invoked her right to remain only after consultation with her attorney. No objection was made by the State's counsel that Ms. Colson was improperly invoking her right to remain silent as to any of his questions.

49. The Director can properly infer from Eron Colson's refusal to answer a question based on a claim of privilege against self-incrimination that the answer would be adverse to her and Unity. Counsel for the applicant did not request another continuance of the administrative hearing so that any other parallel proceeding could first be concluded..

50. The ultimate decision on whether Unity is not eligible for MBE certification is not based solely on Ms. Colson's silence as to particular questions that were asked at the hearing. Her silence was only one of a number of factors that were considered.

51. An adverse inference could properly be drawn even if Eron Colson was not a party to this administrative proceedings based upon the nature of the relationship between Ms. Colson and Unity and the compatibility of interests between Unity and Eron Colson

52. Unity's eligibility for certification as a MBE is governed by Revised Code Section 123.151 and Ohio Administrative Code, hereinafter OAC, Chapter 123:2-15. The EOD does not have discretion to ignore these requirements.

53. Ohio Revised Code Section 123.151(A) provides, in part that a MBE has the same meaning as in division (E)(1) of Section 122.71 of the Revised Code.

54. Ohio Revised Code Section 122.71(E)(1) defines a MBE as meaning an individual who is a member of a economically disadvantaged group, who is a United States citizen, who is a resident of Ohio and who owns and controls a business.

55. Ohio Revised Code Section 122.71(E)(2) defines the term "*owned and controlled*" as meaning that at least fifty-one per cent of the business is owned by a person who belongs to one or more of the groups set forth in division (E)(1) of this section, and that owner has control over the management and day-to-day operations of the business.

56. Ohio Revised Code Section 123.151(B)(1) provides that the Director of Administrative Services shall make rules in accordance with Chapter 119 of the Revised Code establishing procedures by which a minority business may apply to the Equal Employment Opportunity Coordinator for certification as a Minority Business Enterprise.

57. Ohio Revised Code Section 123.151(B)(2) provides, in part, that the Coordinator shall approve the application of any MBE that complies with the rules adopted under this division. Any person adversely affected by an order of the Coordinator denying certification as a MBE may appeal as provided in Chapter 119 of the Revised Code.

58. OAC rule 123:2-15-1(A)(1)(c) provides, in part, that if the Minority Business Enterprise is a sole proprietorship, one hundred per cent of the business is owned by a person who belongs to one of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule, that such owner has ultimate control over the management and day-to-day operations of the business, and that such owner has the entire interest in the capital, assets, profits and losses of the business, not including mortgages and other types of financial arrangements secured by assets or bonds secured by revenues

59. OAC rule 123:2-15-1(A)(3) provides, in part, that a person who is a member of one or more of the groups identified in paragraphs (A)(6) to (A)(9) of this rule must have actual control of the day-to-day operations of the MBE. Among the factors that shall be considered by the State Equal Employment Opportunity Coordinator in evaluating the non-minority influence are:

(a) Has the non-minority person employed the owner of the applicant concern for any period of time during the three years prior to the date of application by the applicant for minority business enterprise status.

(b) Is the non-minority person affiliated with another business in the same or similar type of business as the applicant concern.

(c) Does the non-minority person exercise final authority over any aspect of the day-to-day operations of the applicant concern; and

(d) Does the non-minority person's control over the applicant concern directly or indirectly restrict the economic growth of the company.

(e) The relative compensation received by the non-minority person(s) as compensation for services as a consultant, director, officer or employee rendered to the applicant concern

60. OAC rule 123:2-15-1(A)(5) provides, in part, that an applicant concern's management and daily business operations must be controlled by an owner(s) of the applicant concern who has (have) been determined to be a member of the groups listed in paragraphs (A)(6) to (A)(9) of this rule, and such owner(s) must own a greater percentage of the business entity than any other owner, or in the case of a corporation, more voting stock than any other stockholder. Individuals who are not members of a group listed in paragraphs (A)(6) to (A)(9) of this rule who are stockholders, officers, directors or employees of an applicant for admission to the program shall not exercise actual, ultimate control or have the authority to control any aspects of the day-to-day operations, finances, or the management decisions and management policies of the applicant business concern. The existence of control or the authority to exercise control shall be determined by the facts of each case.

61. OAC rule 123:2-15-1(A)(6) provides, in part, that "*Blacks*" means all persons having origins in any of the black racial groups of Africa. Eron Colson identified herself as African-American on her Unified Application. **State's Exhibit 6, at page 2.**

62. OAC rule 123:2-15-1(B)(5) provides, in part that a MBE may do business as a sole proprietorship. Ms. Colson's Unified Application identified Unity as a sole proprietorship. **State's Exhibit 6, at page 1.**

63. OAC rule 123:2-15-1(E) provides, in part, that if an application for certification as a MBE is not approved by the State Equal Employment Opportunity Coordinator, the applicant shall be notified by mail and shall have recourse to all of the available remedies contained in Chapter 119 of the Revised Code.

64. The assertion by Eron Colson that she has the ultimate control of the management and day-to-day operations of Unity would not be sufficient, by itself, to satisfy the State of Ohio's eligibility requirements for MBE certification. In case, Ms. Colson remained silent at the hearing on the issue of ultimate control.

65. The State Equal Employment Opportunity Coordinator made findings to support his conclusion that Eron Colson lacked the requisite control of the daily operations of Unity as required by state law. The reliable, probative and substantial evidence in the record for this Appeal supports his conclusions.

66. The reliable, probative and substantial evidence in the record for this Appeal establishes that Unity has failed to demonstrate that it met the State's eligibility requirements to be a certified MBE. Eron Colson did not have actual control of the management and day-to-day operations of Unity at the time her Application was submitted to the Equal Opportunity Division of DAS or at any time thereafter.

67. OAC rule 123:2-15-1(B)(8) provides, in part, that an applicant must have been in business for at least one year prior to being eligible for certification as a minority business enterprise. Unity had not in business for a year until April 9, 2015.

68. OAC rule 123:2-15-1(B)(10) provides, in part, that if a Minority Business Enterprise has been in business more than one year, but less than two years, the certification of documents required by this rule need only to be given for the time period that the business has been in operation.

69. OAC rule 123:2-15-1(B)(12) provides, in part, that no person who is acting as an agent or intermediary in making contracts under section 123.151 of the Revised Code will be certified as a Minority Business Enterprise.

70. Harry Colson lacked the authority to certify Unity as a MBE because Unity did not begin operations until April 9, 2014.

71. The Director of DAS lacked the authority to certify Unity as a MBE until Unity had been business for a year.

72. Unity would have been entitled to only a one year MBE certification after being in operation for one year if it had met the other requirements for certification.

73. The EOD and the Director had authority to rescind a MBE certification that was contrary to state law and the Ohio Administrative code.

74. The reliable, probative and substantial evidence in the record for this Appeal establishes that Unity was not certified as a MBE during the period of May 8, 2014 through May 8, 2016. Applicant's motion to dismiss this appeal as moot is without merit.

75. Exhibit B is not relevant to the issue of whether Unity met the requirements necessary to be certified as a MBE.

76. The reliable, probative and substantial evidence in the record for this Appeal establishes that Unity withdrew its Appeal from the November 13, 2014 Notice to Deny MBE Certification.

77. The reliable, probative and substantial evidence in the record for this Appeal establishes that Unity was not in business for a period of one year until April 9, 2015.

78. The reliable, probative and substantial evidence in the record for this Appeal establishes that Unity was properly denied MBE certification on November 13, 2014 because it was not in business for a period of one year until April 9, 2015.

79. The reliable, probative and substantial evidence in the record for this Appeal establishes that Unity was properly denied MBE certification because Eron Colson failed have actual control of the management and day-to-day operations of Unity at the time her Application was submitted to the Equal Opportunity Division of DAS or at any time thereafter.

80. The reliable, probative and substantial evidence in the record for this Appeal establishes that Unity works exclusively with AIN, which is owned and controlled by a non-minority and is in the same or similar type of business. Unity completes all the work for which it pursues certification through and in collaboration with AIN.

81. The reliable, probative and substantial evidence in the record for this Appeal establishes that AIN has undue influence over the applicant's business by effectively exercising final, actual authority over several aspects of the day-to-day operations of the applicant's business, which directly and indirectly restrict the economic growth of Unity's business.

82. The reliable, probative and substantial evidence in the record for this Appeal establishes that Unity is acting as an agent or intermediary on behalf of AIN in attempting to secure contracts that are set aside for the MBE program.

RECOMMENDATION

It is respectfully recommended that the **Director** affirm the decision of the State Equal Opportunity Division to deny the Eron Colson's request that Unity Resource Solutions to be certified as a Minority Business Enterprise.



Kevin Durkin
Hearing Examiner

UNITY

UNITY RESOURCE SOLUTIONS

September 14, 2015

Mr. Curtis Brooks
Department of Administrative Services
Office of Information Technology
Enterprise Information Technology Contracting
30 East Broad Street, 39th Floor
Columbus, OH 43215

Subject: Distributor Acceptance

Dear Mr. Brooks:

Unity Resource Solutions offers to do business with the State of Ohio (the "State") under the terms and conditions of State Term Schedule Contract Number 533076-1-1 in accordance with the authorization letter from Harris, Mackessy & Brennan, Inc. to the State, dated September 15, 2015, a copy of which is attached to this letter. Demitra Burkhart will be Unity Resource Solutions contact. Her office address is [REDACTED] her telephone number is [REDACTED] and e-mail address is [REDACTED]. Purchase orders to Unity Resource Solutions should be sent to the following address:

Unity Resource Solutions
P.O. Box 30648
Columbus, Ohio 43230
unityresourcesolutions@gmail.com

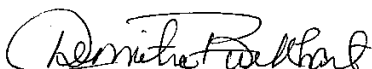
Invoices from Unity Resource Solutions will be sent to the State from the following address:

Unity Resource Solutions
P.O. Box 30648
Columbus, Ohio 43230

Unity Resource Solutions Tax Identification Number is [REDACTED]
Unity Resource Solutions DUNS Number is [REDACTED]

Unity Resource Solutions agrees to be bound by all terms, conditions, and pricing set in Harris, Mackessy & Brennan, Inc. STS contract. Unity Resource Solutions also agrees not to offer products or services to the State under that STS contract that are not authorized by Harris, Mackessy & Brennan, Inc. in the attached authorization letter. If Harris, Mackessy & Brennan, Inc. subsequently withdraws its authorization to Unity Resource Solutions to offer products or services under its STS contract, Unity Resource Solutions may no longer accept orders under that STS contract and agrees that the State may terminate the STS contract as to Unity Resource Solutions. If Unity Resource Solutions fails to comply with this paragraph, Unity Resource Solutions agrees that the State will be entitled to pursue any legal or equitable remedies available to it.

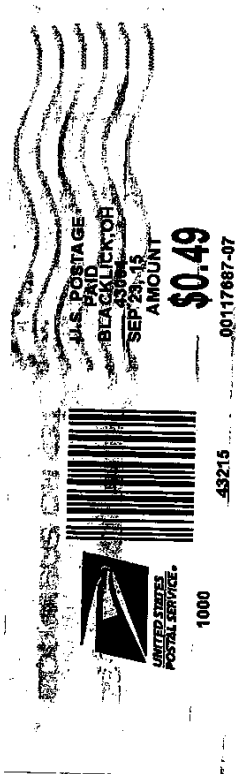
Sincerely,



Demitra A. Burkhart
Resource Manager

cc: Harris, Mackessy & Brennan, Inc.

DEMETRIA BURKHART
RESOURCE MANAGER
UNITY RESOURCE SOLUTIONS



MR. CURTIS BROOKS
DEPT OF ADMINISTRATIVE SERVICES
OFFICE OF INFORMATION TECHNOLOGY
ENTERPRISE INFORMATION TECHNOLOGY CONTRACTING
30 E. BROAD STREET, 39TH FLOOR
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