

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**GSG Specialty Contractors LLC,**

Docket No.: MS-25-0511

Petitioner,

v.

**Supplier Diversity Office,**

Respondent.

**Appearances:**

For Petitioner: Ms. Melissa Gaughran, Mr. Edward Gaughran

For Respondent: Elizabeth Kozee, Esq., Julia O’Leary, Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF RECOMMENDED DECISION**

To be entitled to certification as a Women Business Enterprise under 425 C.M.R. § 2.02, a business must show that it is “ongoing,” “independent,” and controlled by one or more women. The petitioner company does not satisfy these requirements.

**RECOMMENDED DECISION**

Petitioner GSG Specialty Contractors LLC (GSG) applied for certification as a Women Business Enterprise under G.L. c. 7, § 61, and 425 C.M.R. § 2.02. Respondent the Supplier Diversity Office (SDO) denied the application, and GSG took this appeal.

On appeal, GSG was represented by its two corporate officers, Melissa Gaughran (Melissa) and Edward Gaughran (Edward). I held a hearing on December 5, 2025, at which Melissa testified. I admitted into evidence the Gaughrans’ exhibits marked 1-4, an affidavit executed by both Gaughrans, and the SDO’s exhibits marked A-I.<sup>1</sup>

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<sup>1</sup> I exclude the exhibits proposed along with GSG’s post-hearing brief, because GSG offered no good cause for its failure to produce and file those records before or at the hearing.

### Findings of Fact

I find the following facts.

1. The Gaughrans have worked in the construction industry for many years. Edward is a licensed construction supervisor. Melissa holds two or more certificates relating to construction safety. The Gaughrans live together but are divorced. (Exhibits A, B, 3, 4; Gaughran aff.; testimony.)

2. The Gaughrans formed GSG as a limited liability company in September 2024.<sup>2</sup> Their plan was for the company to operate as a restoration, waterproofing, and concrete-repair business. (Testimony.)

3. In early January 2025, the Gaughrans signed an operating agreement. The agreement gave 51% of the new business to Melissa and the remaining 49% to Edward. The agreement can only be dissolved or amended with the consent of both Gaughrans. Other than that, the agreement does not assign any specific prerogatives or duties either to Melissa or to Edward. (Exhibit E; testimony.)

4. Later in January 2025, Edward became a manager of another new company, Schnell Contracting Limited NE, LLC (Schnell). Schnell's corporate papers call it a "full-service restoration contractor specializing in repair and remediation services for commercial structures . . . and commercial concrete waterproofing services." (Exhibit G.)

5. Sometime thereafter, still in early 2025, Melissa became a Schnell employee. Her title is "safety officer." Edward is her supervisor. (Exhibit 3; testimony.)

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<sup>2</sup> The company was originally named DHC II Services, LLC. It acquired its current name during May 2025. (Exhibit D.)

6. In April 2025, Melissa filed an application for GSG to be certified as a Women Business Enterprise (WBE). She prepared the application from a Schnell-owned office, using a Schnell-owned computer. Among the documents enclosed with the application was an agreement between GSG and a construction-related union, which Edward had signed on GSG's behalf. (Exhibits F, 2.)<sup>3</sup>

7. GSG has not performed any construction work. It has not submitted any bids. It does not have an active bank account in its name. The company has not issued invoices, paid salaries, or hired employees. No one performs work on its behalf on a regular basis. All in all, GSG "is not currently running." (Testimony.)

8. To date, GSG's principal project has been to "seek SDO certification." Melissa has also spoken to potential counterparties about projects in which GSG might be able to become involved if and when it secures WBE certification. The Gaughrans believe that "everything [is] riding on [the] certificate"; without it, GSG is not able to operate in Massachusetts, and it is "not actually off the ground." (Testimony.)

9. In August 2025, the SDO denied GSG's application, relying in part on issues discussed below. GSG timely appealed. (Administrative record.)

### **Analysis**

"It is the policy of the commonwealth . . . to foster an inclusive marketplace that offers competitive opportunity for businesses as diverse as the people of the commonwealth."

G.L. c. 7, § 57. To that end, the SDO is responsible for certifying businesses owned by women,

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<sup>3</sup> Reacting to questions raised by SDO personnel, the Gaughrans later prepared a new version of the agreement, this time using Melissa's signature. (Exhibit 1; testimony.)

minorities, veterans, and other groups. *Id.* § 61. The SDO's certificates are intended to improve the access of certified businesses to public tenders and other resources. *Id.*

Regulations published by the SDO prescribe the conditions for certification in various categories. 425 C.M.R. § 2.02. Each category is defined by reference to an "eligible principal": that is, the controlling owner of the corporation is required to be a woman, a minority, a veteran, or a member of another qualifying group. *Id.* § 2.02(1).

The regulations assign separate eligibility requirements to businesses and to nonprofit organizations. In the case of a business, three pertinent requirements are that the applicant must be "owned and controlled by eligible principal(s)," must be "independent," and must be "ongoing." 425 C.M.R. § 2.02(3)(a), (c), (d). As to each requirement, "[t]he burden of proof shall be on the applicant." *Id.* § 2.02(2)(a).

#### *I. Ongoing*

The requirement that an applicant entity must be "ongoing," 425 C.M.R. § 2.02(3)(d), is defined in detail. In pertinent part, to be "ongoing," a company must be "actively in business . . . and regularly and actively seeking contracts, orders, or sales of the applicant's products or services." 425 C.M.R. § 2.02(1).

GSG does not satisfy this requirement. The company cannot be viewed as "actively in business" when it has not performed any work, has no money coming into or going out of it, has focused so far on preparing its SDO application, and needed to rely on Schnell's offices and computer even to prepare that application. It is fatal to GSG's case that the business "is not actually off the ground" (as Melissa testified).

The Gaughrans theorize in essence that the “ongoing” requirement is unreasonable: in their view, the only feasible strategy for a company like GSG is *first* to obtain SDO certification and *then* to perform work and generate income. But this tribunal is not a proper forum for that claim. Policy-based arguments against elements of 425 C.M.R. § 2.02 may be made to the Legislature or to the SDO itself; challenges to the legality of the regulation may be brought in the Superior Court. But in administrative tribunals, on-the-books regulations are treated as valid and enforceable. See *Pepin v. Division of Fisheries & Wildlife*, 467 Mass. 210, 214 (2014); *Doe v. Sex Offender Registry Bd.*, 459 Mass. 603, 629 (2011).<sup>4</sup>

## *II. Control*

Approximately twenty paragraphs of the regulations define the circumstances in which a company is “controlled” by an eligible principal. Only the crux of the definition needs to be considered here. The eligible principal must “have the legal authority to make[,] and in fact make, all major decisions of the applicant.” 425 C.M.R. § 2.02(1). She must have “dominant control in the conducting of all major aspects of the business.” *Id.* The pertinent major aspects include the business’s daily operations, financial accounts, personnel decisions, contract negotiations, and equipment purchases. *Id.*

The Gaughrans state in their affidavit that Melissa “maintains dominant, ultimate and final decision-making authority over all aspects of the business,” including its projects,

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<sup>4</sup> Under the regulations, a company cannot satisfy the requirement of being “ongoing” if it was “formed . . . solely for the purpose of taking advantage of a special program developed to assist [certified] businesses.” 425 C.M.R. § 2.02(1). It is not necessary to decide the implications of this provision for GSG’s circumstances.

personnel, and estimates. The hearing testimony revealed this pronouncement to be hypothetical: GSG has had no projects, personnel, or estimates for either Melissa or anyone else to control. It is not possible to infer from the Gaughrans' skeletal operating agreement how decisions at the company would in fact be made if the company were to become operational.

It may well be the Gaughrans' intention for GSG to be primarily Melissa's project. But describing an intention is not the same as proving real-world facts. Given GSG's inchoate circumstances, a preponderance of the available evidence does not prove that Melissa exercises dominant control over the company.

### *III. Independent*

Lastly, a company seeking SDO certification must be "independent," i.e., not "dependent upon, affiliated with, or influenced by . . . any other person, business enterprise or organization in . . . key elements of its . . . affairs." 425 C.M.R. § 2.02(1). The regulations rebuttably presume non-independence when "one or more of the [applicant's] ownership or management officials is substantially the same as in a non-eligible . . . business enterprise . . . in the same or similar industry." *Id.*

Again, given GSG's inactivity, its independence or non-independence is largely hypothetical. But on balance, the evidence supports a conclusion that GSG is too heavily reliant on Schnell to qualify. Non-independence is presumed given that Edward is a part-owner of GSG and also a manager at Schnell, whose industry is at least "similar" to GSG's. And GSG was able to complete its one main achievement—the submission of an SDO application—only with the help of a Schnell office and a Schnell computer.

**Conclusion**

Binding regulations make businesses eligible for SDO certification only if, at the time of their applications, they are already ongoing businesses, controlled by eligible principals, independent of non-qualifying enterprises. On a preponderance of the evidence, GSG does not yet satisfy those requirements. Accordingly, the denial of GSG's application for WBE certification should be AFFIRMED.

Dated: January 7, 2026

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

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