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**WEBSITE:** JORDAN.NYSENATE.GOV

**NEW YORK**  
**STATE**  
**SENATE**



**SENATOR DAPHNE JORDAN**  
43<sup>RD</sup> SENATE DISTRICT

**ALBANY OFFICE**  
LEGISLATIVE OFFICE BUILDING  
ROOM 508  
ALBANY, NY 12247  
(518) 455-2381

**DISTRICT OFFICE**  
1580 COLUMBIA TURNPIKE  
BLDG. 2, STE. 1  
CASTLETON-ON-HUDSON, NY 12033  
(518) 371-2751

**EMAIL:** JORDAN@NYSENATE.GOV

September 1, 2020

The Honorable Andrew M. Cuomo  
Governor of New York State  
State Capitol Building  
Albany, NY 12224

Mr. Eric Gertler  
President and CEO, Empire State Development  
Hedley Park Place  
433 River Street, Suite 1003  
Troy, NY 12180

Dear Governor Cuomo and Mr. Gertler:

I write advocating on behalf of Hoosick Valley Contractors, a successful, woman-owned, well-respected, multi-generational construction business with a proven, positive 20-year track record that is located in my 43<sup>rd</sup> Senate District. Despite its many successes, Hoosick Valley Contractors has seemingly been the subject of unfair, arbitrary, and discriminatory treatment from Empire State Development (ESD) which recently decertified the company's status as a Woman Business Enterprise (WBE). ESD's unjustified, indefensible, wholly arbitrary decision is hurting this successful woman-owned business, warrants immediate reexamination and must be rectified.

Founded in 1978, Hoosick Valley Contractors is led by my constituent Stefanie Wiley, who serves as President, Majority Shareholder, and Owner of this third-generation successful business. Ms. Wiley has worked in the construction business for over 20 years in various roles, always with the goal to one day become its President and Owner. She achieved that lifelong goal in 2014 after purchasing the business from her father upon his retirement, effectively becoming President, Majority Shareholder, and Owner.

Ms. Wiley applied for, and successfully obtained, New York State Certification as a WBE in 2014. At that time, the WBE certification lasted for three years and she subsequently filed for recertification in 2017.

Nothing in Hoosick Valley Contractors' operations changed from approval of its original certification. Ms. Wiley received no response from ESD on the recertification until the Spring of 2020 when ESD asked for additional documents. Ms. Wiley was understandably shocked to receive a recertification denial letter on July 29, 2020.

ESD noted the following reasons in its denial of Hoosick Valley Contractors' WBE certification. It is critically important to note that every one of the cited bases were evaluated by ESD in the 2014 certification process, and nothing in the recertification application process seeks such information or permits or directs ESD to reevaluate its prior decisions, particularly when, as here, there have been no material changes to the entity in the interim. ESD's decision to do so is, as discussed below, troubling.

**Ownership/Capital Contributions:** The checks paid toward Ms. Wiley's ownership shares were not recognized because they were paid out of a joint checking account. This is an erroneous assumption by ESD that her husband somehow "controls" the account, which is not the case and was not identified as an issue in 2014. If this issue had been raised prior to the denial, then the error of the assumption could have been directly addressed in that Ms. Wiley could have easily provided a renunciation by her husband as to any ownership interest deriving from such payments. Such a renunciation is commonly used with regard to disadvantaged business entities under federal law, as DOT will confirm.

**Operation:** ESD stated that Ms. Wiley did not demonstrate "adequate managerial experience or technical competence to operate the business enterprise." ESD's correspondence particularly noted that she has a degree in marketing, while her husband has a degree in construction management. Once again, this is an erroneous assumption by ESD that her husband must be running the business, which is assuredly not the case.

Ms. Wiley works with several family members such as her husband, sister, and cousin, but she has the ability to hire and fire all of them. Moreover, Ms. Wiley's operation of the company since her acquisition of her majority interest – now 6 years – was arbitrarily not credited by ESD. For ESD to discount and doubt Ms. Wiley's proven abilities based on the sheer fact that her husband happens to work in the business is a disturbing example of a sexist attitude.

It's important to note that Ms. Wiley's father, and grandfather, were equipment operators by trade and primarily focused their talents in the field.

The unique strengths that she brings to the company are from her business background including organizational management, finance, and building a team culture of smart, talented people who are accountable in their roles to help the company achieve successful growth while maintaining a proven reputation for quality and integrity in every project that Hoosick Valley Contractors build.

Ms. Wiley learned this business from the ground up through her immersion during her entire professional career. While following a team approach, it goes without saying that, as the President, Majority Shareholder, and Owner, Ms. Wiley retains ultimate and final authority on ALL business decisions for Hoosick Valley Contractors, including personnel, administration, hiring and firing, daily management, and long-term planning.

The impressive, recognized success of Ms. Wiley's leadership of Hoosick Valley Contractors is undeniable. In fact, her company was named one of *Albany Business Review's* "Fastest Growing Businesses" for 2019, a clear recognition by a respected third party that her leadership is effective and ongoing.

To learn that ESD denied Ms. Wiley's status in the WBE program because she does not have "adequate managerial experience or technical competence to operate the business" at this point during her accomplished career after such a successful growth curve runs contrary to the aforementioned accolade. It also is a shocking, disappointing, and, frankly, egregious example of sexism on the part of ESD.

As further evidence of ESD's seemingly institutionalized bias directed at Ms. Wiley and Hoosick Valley Contractors, I commend to you the following clear and compelling evidence derived by a Freedom of Information Law response from ESD detailing five years of data concerning the State's WBE program. A rigorous, objective analysis of ESD's data (enclosed with my correspondence) from September 1, 2014, to March 11, 2020, reveals the following troubling facts:

- **WBE applications (without considering application withdrawals) were denied at a rate of 19.6%;**
- **WBE recertifications were denied at a rate of 5.9%;**
- **63% of denials are appealed, but the rate of overturn is just over 2%;**
- **For Caucasian-owned WBEs, the denial rate was 17.9%, while for Minority-owned WBEs the denial rate was 9.3%; and**
- **As to the "no race indicated" category, applicants are expected to be nonminority, as minority WBE applicants generally apply as an MBE as well. If that is the case, then the percentage of denials for Caucasian women goes to slightly over 20%.**

As demonstrated above by ESD's data, there is a clear pattern – and a troubling trend – of WBEs, particularly non-minority WBEs, some of whom have been in business for decades, having difficulty regarding their initial applications and other aspects of their subsequent WBE recertification effort. The referenced data comes directly from ESD, was compiled over nearly six years, and points to this likely being more than mere coincidence.

Instead, the disparity in WBE denials is an apparent policy of bias by ESD against certain businesses to deny them their rightful and proper WBE recertification. Such a policy is wrong, irresponsible, and needs to be corrected.

Hoosick Valley Contractors works on many state contracts and the loss of their WBE certification would constitute a significant financial impact on the company. The business currently has \$13.1 million in State construction contracts underway. Out of the \$13.1 million, \$2.6 million was awarded solely because of their WBE status (through subcontracts with other contractors). Of the remaining \$10.5 million, the business contracted directly with a State Agency as the General Contractor.

Hoosick Valley Contractor's WBE status gives them access to a public procurement process, as the program is supposed to do, and allows them to self-perform more of the work, otherwise, they would have to subcontract 15% (or \$1,575,000) to other WBE certified companies. For this company, being able to self-perform more on contracts is an advantage because it allows them more control over the project and provides work for their employees. WBE certification also effectively provides a 10 percent "bid bump" which is critically valuable in helping obtain certain government contracts. The loss of such an important provision will undoubtedly hurt this woman-owned business.

As an open shop company, Hoosick Valley Contractors works hard to provide year-round work to its tradespeople which gives them more economic stability for their families and their local communities.

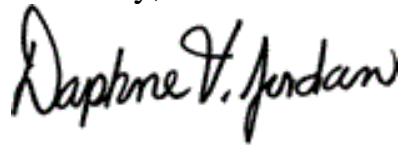
Thankfully, Hoosick Valley Contractors plans to vigorously appeal ESD's denial, even though doing so will necessitate their hiring an attorney and taking time, attention, and funding away from operating and growing their business.

I respectfully request that ESD immediately reexamine – and reverse – the unfair, improper, and patently incorrect denial of WBE recertification for Hoosick Valley Contractors based on non-recertification issues and retroactively recertify this business. I also ask that ESD employ an outside, independent audit of its WBE program and review all recertification denials over the past several years (September 1, 2014, to March 11, 2020) to ensure that its certification and recertification decisions were based on evidence, in a gender-neutral manner and are not creating disparities or erecting artificial barriers to those that the program is specifically intended to assist.

Additionally, I will be introducing comprehensive legislation to ensure that ESD takes the appropriate corrective measures concerning WBE certification and recertification criteria. I also will urge my colleagues in the State Legislature to exercise the full extent of our oversight prerogative during our budget hearings next year.

The unfair treatment of my constituent Stefanie Wiley, and her business Hoosick Valley Contractors, likely demands public exposure and a rigorous examination by the media, State Legislature, and State Comptroller as to the possible existence of systemic bias in ESD's policies regarding WBE certification and recertification.

Sincerely,

A handwritten signature in black ink that reads "Daphne V. Jordan". The signature is written in a cursive, flowing style.

Daphne Jordan  
State Senator, 43<sup>rd</sup> District

Enclosure: FOIL data highlighting pattern of possible systemic bias by ESD