SIXTH DIVISION
March 9, 2018

No. 1-17-0393
2018 IL App (1st) 170393-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KEDMONT WATERPROOFING CO., INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
CITY OF CHICAGO, a Municipal Corporation, DEPARTMENT OF PROCUREMENT SERVICES, and JAMIE L. RHEE, in her official capacity as Chief Procurement Officer for the City of Chicago,	)	No. 15 CH 9234
	)	
Defendants-Appellees.	)	Honorable Sanjay Tailor,
	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Differences between preliminary determination and final decision on Kedmont's general contractor application were not grounds for reversal; Department of Procurement Services properly applied NAICS Code definitions for general contractors; final decision on general contractor application was not untimely; affirmed.

¶ 2 As part of the City of Chicago's minority- and women-owned business enterprise procurement program, plaintiff, Kedmont Waterproofing Co., Inc. (Kedmont), was certified as a Women-Owned Business Enterprise (WBE) as a specialty trade contractor in roofing, waterproofing, and coating system installation, repair, and maintenance. In July 2012, Kedmont applied to be recertified as a WBE and expand its certification to include general contracting. The Department of Procurement Services (Department) denied Kedmont's application on both matters. Kedmont filed an amended complaint for a common law writ of *certiorari* to challenge the denials. The circuit court reversed the Department's decision not to recertify Kedmont as a WBE and affirmed the decision not to expand Kedmont's certification to include general contracting. On appeal, Kedmont contends that the denial of its general contractor application was clearly erroneous where (1) the Department's preliminary determination and final decision on Kedmont's application violated the applicable regulations; (2) the Department's application of the North American Industry Classification System (NAICS) Code definitions for general contractors was clearly erroneous; and (3) the Department's final decision on Kedmont's application was untimely. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Kedmont was first certified as a WBE in January 1995. On July 30, 2012, Kedmont applied for recertification and to expand its certification to include general contracting. The application materials included a document known as a Schedule A, "Affidavit for Minority and Women-Owned Business Enterprise (M/WBE) Certification and/or Business Enterprise owned by People with Disabilities (BEPD) Certification." On December 11, 2012, the Department requested additional information and Kedmont provided it on December 14, 2012. On September 17, 2013, the Department issued a Notice of Preliminary Determination of an Established

Business as to the recertification application, stating that there was reasonable cause to believe that Kedmont was no longer eligible to participate in the WBE program because its gross receipts exceeded the allowable standards. After Kedmont sent a written response, the Department stated that a third-party vendor had been retained to review and evaluate Kedmont's application.

¶ 5 On November 21, 2013, Kedmont sent a letter to the third-party vendor that included questions about Kedmont's general contractor application. Kedmont noted that the general contractor application appeared to have been overlooked and asked for a status update.

¶ 6 On March 3, 2014, Kedmont sent another letter to the third-party vendor that was reviewing its application. Kedmont thanked the vendor for a "very productive meeting" on February 8, 2014, and responded to a series of questions, including when Kedmont's work as a general contractor began and whether Kedmont preferred to have the recertification issue decided first or wait for the general contractor application to be resolved. Kedmont stated that its "strong preference is for a determination to be made on its WBE re-certification first *and* as expeditiously as possible." (Emphasis in original.)

¶ 7 On May 21, 2014, Kedmont sent a letter to the Department, which stated in part that the general contractor application had been pending for approximately 22 months. Kedmont stated that it supplied additional information on March 3, 2014, and had not received any additional information since then. The Department responded via email on June 19, 2014, stating that the Department would look into the status of the application.

¶ 8 In a letter dated May 6, 2015, the Department issued a Notice of Determination of an Established Business Enterprise, stating that Kedmont was no longer eligible to be a certified WBE as a roofing contractor and other finishing building contractor.

¶ 9 On June 10, 2015, Kedmont filed a complaint for administrative review and other relief. In part, Kedmont sought review of the denial of its recertification application and a writ of *mandamus* to require the Department to issue a determination on Kedmont's general contractor application.

¶ 10 On August 4, 2015, the Department informed Kedmont that it was in the process of evaluating Kedmont's pending general contractor application. The Department stated that Kedmont's supporting materials were not current and additional information was required.

¶ 11 In a letter to the Department's counsel dated August 12, 2015, Kedmont noted that the Department's counsel and Kedmont's counsel had met the previous day. Kedmont also challenged the Department's request for additional information, but agreed to produce the information without waiving or relinquishing its rights. In a letter to Kedmont dated August 14, 2015, the Department stated that Kedmont had requested the aforementioned meeting to discuss the request for additional materials and provide clarification and assistance. Kedmont delivered the additional information on August 19, 2015.

¶ 12 On August 27, 2015, the Department again requested additional information, which Kedmont provided on September 11, 2015. On September 24, 2015, the Department informed Kedmont that it had received the documents and information needed to review the general contractor application and would inform Kedmont of its decision within 30 days.

¶ 13 On October 22, 2015, the Department issued a preliminary determination that it could not approve Kedmont's general contractor application. Citing the applicable NAICS Code, the Department found that Kedmont did not provide enough evidence that it was primarily responsible for the construction and/or related activity of commercial and institutional buildings and related structures as a general contractor.

¶ 14 The Department continued that Kedmont had submitted, among other items, information about recent construction projects in which Kedmont claimed it performed as a general contractor and information about Kedmont's organizational structure and personnel. The Department also stated that notes to annual financial statements prepared by Kedmont's accountant identified Kedmont's business activity as Thermal and Moisture Protection Services. The Department noted that Kedmont was licensed as a roofing contractor by the Illinois Department of Financial and Professional Regulation, which required Kedmont to successfully complete an exam. The Department asserted that the accountant's description of Kedmont's business activity and the state roofing contractor certification affirmed the classification of Kedmont's primary activity as a specialty contractor and not a general contractor.

¶ 15 The Department also discussed Kedmont's recent construction projects. According to the Department, the projects for which Kedmont indicated that it served as a general contractor involved work in the areas of waterproofing and/or roofing, which were Kedmont's traditional specialty areas. Further, Kedmont's activity as a general contractor appeared "to involve the use of certain contracting firms performing work related to, and/or associated with their traditional services of waterproofing a building or structure, such as concrete repairs." The Department also found that eight out of nine submitted projects involved waterproofing services. One project proposal involved roof replacement and a subcontractor who specialized in leasing equipment. The Department found that six projects involved the services of a contractor that specialized in concrete services, and in four of those projects, that contractor's percentage of the project value was over 50 percent. The Department stated that Kedmont submitted evidence of its administrative role in facilitating project progress payouts, but did not present further evidence of

its role in the "coordination and/or supervision of project activity other than the firm's involvement as a waterproofing and roofing contractor."

¶ 16 Pursuant to extensions granted by the Department, Kedmont appealed the preliminary determination on December 23, 2015. According to Kedmont, the Department incorrectly suggested that a specialty contractor could never be considered a general contractor unless the general contracting services were wholly unrelated to the firm's area of specialty. Kedmont stated that the NAICS Code definitions require that a firm be either "primarily responsible" or "primarily engaged" in certain construction activities, but the definitions do not require that a firm's activities be distinct, different, or exclusive of its activities in another NAICS Code. Kedmont asserted that an applicant could be certified in more than one area of expertise, as long as the eligibility criteria were met. To that end, Kedmont provided a list of firms that were certified as both general contractors and specialty contractors. Kedmont also pointed to one particular firm that was authorized as a specialty contractor and a general contractor in its area of specialty, which was the same basis on which Kedmont sought to be certified as a general contractor.

¶ 17 Kedmont further maintained that the Department ignored a wealth of evidence that Kedmont primarily provided general contractor services. Kedmont commented on the evidence it had submitted, stating that it had performed as a construction manager, general contractor, and/or prime contractor on numerous projects that involved new work, additions, alterations, maintenance, and repairs to commercial, industrial, and institutional buildings. Additionally, Kedmont stated that it had provided clients with a single point of contact and coordinated projects that involved multiple trades and vendors, from pre-construction to the close-out

process. Kedmont included a summary of its role, responsibilities, functions, and scope of work as a general contractor on several projects.

¶ 18 Kedmont further asserted that the Department did not make a decision within the required 90-day time period. Kedmont maintained that the 90-day time period began on December 14, 2012, when Kedmont provided additional documents and information that had been requested, but the Department did not issue a decision for over three years.

¶ 19 On February 16, 2016, Kedmont submitted additional materials in support of its appeal. In an accompanying letter, Kedmont referenced a meeting where the parties discussed the appeal. The record contains two additional letters about Kedmont's appeal. In a letter dated February 19, 2016, the Department requested until March 31, 2016, to respond to Kedmont's appeal. In a letter dated March 31, 2016, Kedmont agreed to a final extension until May 2, 2016.

¶ 20 On May 2, 2016, the Department issued its final decision, which denied Kedmont's appeal. The Department noted that certification is limited to areas that are most reflective of an applicant's demonstrated specialty or expertise. There was no policy or position that a specialty contractor would never be considered a general contractor under the NAICS Code definition unless the general contracting services were wholly unrelated to the specialty area. Rather, Kedmont misunderstood the Department's assessment of its work as a general contractor. The Department recalled that Kedmont submitted documents relating to nine projects on which Kedmont allegedly performed as a general contractor. The Department stated that "[a]s a preliminary matter," four of the projects appeared to involve work on residential buildings and so would not reflect the necessary expertise in commercial and institutional building construction. The Department also stated that for two projects, Kedmont did not submit evidence that Kedmont had subcontracted with others to perform construction work.

¶ 21 The Department continued that "[n]onetheless, the [Department] has devoted substantial time to re-examining Kedmont's documents regarding the nature of the work that it performed on the foregoing projects ***." The Department found that its review supported the earlier finding that "Kedmont's projects involved work by Kedmont in its specialty areas of waterproofing, building coatings, and roofing, and that its general contractor activities generally involved little more than contracting for services or equipment related to that specialty work." On some projects, Kedmont hired subcontractors to perform concrete repair and surface preparation in advance of Kedmont's roofing or waterproofing work. Further, "in all but a few cases," Kedmont engaged only trades and vendors that routinely provide services for, or perform work in conjunction with, roofing and waterproofing, such as debris removal, concrete repairs, and other surface preparation. According to the Department, "[o]nly a few projects required Kedmont to co-ordinate, oversee[,] and manage *substantial* construction work unrelated to waterproofing or roofing work" performed by Kedmont or its affiliate. (Emphasis in original.) The Department also stated that as noted previously, work on residential buildings could not support certification as a general contractor under the applicable NAICS Code definition. The Department found no reason to modify the preliminary finding that "substantially all of Kedmont's general contracting activities were related to work that was incidental" to completing a roofing or waterproofing project.

¶ 22 Additionally, the Department noted that the total value of the nine contracts that Kedmont submitted as evidence of its work as a general contractor between 2010 and 2015 was approximately $984,000, and was $316,000 when only commercial or institutional projects were considered. Meanwhile, Kedmont's gross receipts from 2010 to 2014 totaled $106,443,935. Thus, the contracts did not indicate that work as a general contractor on commercial and

institutional building construction was most reflective of Kedmont's demonstrated specialty or expertise.

¶ 23 The Department further contended that the preliminary denial was not untimely. The Department stated that Kedmont had expressed a preference for the Department to act on the recertification issue first. The Department also maintained that the 90-day review period began to run when the Department acknowledged receipt of the necessary information to make a decision. Additionally, the Department asserted that the language of the applicable rules states that a decision is to be issued "not less than 90 days" after receipt of a complete Schedule A or No Change Affidavit.

¶ 24 On July 6, 2016, Kedmont filed an amended complaint for a common law writ of *certiorari*, which sought review of the denial of its application for recertification and general contractor application. As to the general contractor application, Kedmont asserted in part that the decision was untimely, the preliminary determination failed to provide the factual basis, analysis, or conclusions on which the denial was based, and the Department failed to uniformly apply the NAICS Code descriptions to Kedmont's application.

¶ 25 On January 13, 2017, after a hearing, the circuit court reversed the Department's decision as to Kedmont's recertification and affirmed the denial of the general contractor application.

¶ 26 Kedmont subsequently appealed the part of the court's order that pertained to its general contractor application.

¶ 27 II. ANALYSIS

¶ 28 On appeal, Kedmont first contends that the Department's preliminary determination and final decision on the general contractor application violated the applicable regulations by containing completely different reasons for the denial. Kedmont asserts that the preliminary

determination failed to inform Kedmont of all material facts and conclusions on which the denial was based, which deprived Kedmont of the opportunity to address them on appeal. Kedmont argues that it was only informed of the material facts and conclusions in the final decision, after which Kedmont had no opportunity to provide additional documents or information.

¶ 29 We first summarize a few principles related to the common law writ of *certiorari*, which was developed "as a means of review of actions taken by a court or other tribunal exercising quasi-judicial functions, where no other means was available." *Portman v. Department of Human Services*, 393 Ill. App. 3d 1084, 1087 (2009). The purpose of the writ is to have the entire record of the inferior tribunal brought before the court to determine, from the record alone, if the tribunal followed the applicable law. *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 427 (1990). The standards of review are essentially the same as those under the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2014)). *Crittenden v. Cook County Comm'n on Human Rights*, 2012 IL App (1st) 112437, ¶ 40. In an administrative review action, we review the findings of the administrative agency and not the decision of the circuit court. *Id*.

¶ 30 Returning to Kedmont's claim, Kedmont asserts that the Department's final decision on the general contractor application identified four new material facts: (1) four projects appeared to have involved work on residential buildings and Kedmont did not produce actual evidence that the work could be considered commercial or institutional building construction under the applicable NAICS Code; (2) for two projects, Kedmont failed to produce subcontracts or other documents showing that it subcontracted with others to perform construction work; (3) only a few of the projects submitted required Kedmont to coordinate, oversee, and manage substantial work unrelated to waterproofing or roofing; and (4) the total value of the submitted projects was small compared to Kedmont's gross receipts.

¶ 31 The record contains the City of Chicago's Regulations Governing Certification of Minority and Women-Owned Businesses for Construction Contracts. Section III of the regulations, titled "Policy," states that it is the City's policy that minority- and women-owned business "are provided a level playing field and equal access to all contractors and subcontractors to participate in contracting opportunities financed in whole or in part with City funds, or funds over which the City has control." Section X of the regulations, titled "Application for Certification," states that certification as a minority- or women-owned business enterprise (MBE/WBE) is "limited to the area(s) of specialty or expertise determined by the Chief Procurement Officer to be most reflective of the Applicant's demonstrated specialty or expertise." The City uses the NAICS Code definitions to determine areas of specialty.

¶ 32 Section XI of the regulations, titled "Certification and Recertification Procedures," further states that:

> "In the event an application is denied, the Chief Procurement Officer shall inform the Applicant of all material facts and conclusions upon which the denial was based. The Applicant shall have 15 calendar days from the date of the determination to appeal the denial in writing. The appeal shall present sufficient facts and documentation to establish eligibility."

¶ 33 An agency must follow its own rules. *Morsovillo v. Civil Service Comm'n of Blue Island*, 101 Ill. App. 3d 406, 408 (1981). Here, although the Department's final decision contained new reasons for denying Kedmont's application, those new reasons were not central to the denial and so were not "material." See Merriam Webster's Online Dictionary, https://www.merriam-webster.com/dictionary ("material" is defined as "having real importance or great

consequences"). Thus, the Department did not violate its own rule. We briefly review the preliminary determination, which was issued on October 22, 2015. There, the Department found that Kedmont did not provide sufficient evidence that it was primarily responsible for the construction and/or related activity of commercial and institutional buildings and related structures as a general contractor. The Department stated that notes to annual financial statements prepared by Kedmont's accountant identified Kedmont's business activity as Thermal and Moisture Protection Services and Kedmont had a state certification as a roofing contractor. The Department further stated that Kedmont's recent projects involved Kedmont's traditional specialty areas of waterproofing and roofing. Also, Kedmont's work as a general contractor used firms to perform work that was "related to, and/or associated with their traditional services of waterproofing a building or structure." Further, there was no evidence of Kedmont's role in the "coordination and/or supervision of project activity other than the firm's involvement as a waterproofing and roofing contractor." In the preliminary determination, Kedmont's application was denied because the evidence indicated that Kedmont worked primarily as a specialty contractor in the areas of waterproofing and roofing.

¶ 34 In its final decision, which was issued on May 2, 2016, the Department noted "[a]s a preliminary matter" that four of the submitted projects involved work on residential buildings. The Department also stated that for two projects, Kedmont did not submit documents that showed that Kedmont subcontracted with others. While these circumstances were not raised in the preliminary determination, the Department stated that "[n]onetheless, the [Department] has devoted substantial time to re-examining Kedmont's documents regarding the nature of the work that it performed on the foregoing projects ***." The Department's language indicates that it was putting aside the residential and subcontracting issues to evaluate the substance of Kedmont's

work. Based on the Department's review, Kedmont's work involved roofing, waterproofing, and building coatings, and its general contractor activities were related to its specialty work. Ultimately, the Department found "no reason to modify the *** preliminary finding that substantially all of Kedmont's general contracting activities were related to work that was incidental to completion of a roofing or waterproofing project ***." While the Department then commented on the value of the contracts that Kedmont submitted, this detail was included as additional support for its conclusion, rather than a primary reason why Kedmont's application was denied.

¶ 35 We acknowledge that the Department used the word "substantial" in the final decision to describe the shortcomings of Kedmont's evidence, stating that only a few projects required Kedmont to "co-ordinate, oversee[,] and manage *substantial* construction work unrelated to waterproofing or roofing work" performed by Kedmont or its affiliate. (Emphasis in original.) Though the word "substantial" was new, the thrust of the final decision was that Kedmont's work was primarily in the areas of waterproofing and roofing. Further, even if the word "substantial" should not have been used, a violation of an agency's rules is a reversible error only if the negatively affected party shows that it was prejudiced. *Schinkel v. Board of Fire & Police Comm'n of Algonquin*, 262 Ill. App. 3d 310, 319 (1994). Here, the preliminary determination and final decision hinged on the same finding—almost all of Kedmont's work was related to its specialty areas of waterproofing and roofing. Kedmont had the opportunity to address this issue on appeal and so was not prejudiced. Overall, the Department's inclusion of new, supplementary reasons in the final decision is not a ground for reversal.

¶ 36 Next, Kedmont contends that the Department's application of the NAICS Code definitions for general contractors was clearly erroneous. Kedmont argues that the NAICS Code

does not require Kedmont to be involved in the oversight and management of substantial construction work unrelated to its area of specialty or that Kedmont engage subcontractors who do not routinely provide services along with its area of specialty. Kedmont further asserts that a number of firms are certified as both general contractors and specialty contractors. Kedmont points to one firm in particular that the Department authorized as a specialty contractor and a general contractor in its area of specialty, and contends that Kedmont applied to be certified as a general contractor on the same basis.

¶ 37 The threshold question is how the NAICS Code defines a general contractor—a source of disagreement between the parties. Whereas Kedmont maintains that it can be a general contractor in its areas of specialty, the Department asserts that Kedmont had to show that it performed substantial work outside its specialty areas.

¶ 38 "The interpretation of an administrative regulation is reviewed *de novo*." *Portman*, 393 Ill. App. 3d at 1088. The same rules used to interpret statutes apply when we construe an agency's regulations. *LaBelle v. State Employees Retirement System*, 265 Ill. App. 3d 733, 736 (1994). We first consider the language of the regulation, and if it is clear, we do not look to other aids for construction. *Weyland v. Manning*, 309 Ill. App. 3d 542, 547 (2000). " 'In determining the plain meaning, we consider the regulation in its entirety, keeping in mind the subject it addresses and the apparent intent of the agency in enacting it.' " *Portman*, 393 Ill. App. 3d at 1089. Further, undefined terms are given their ordinary meanings. *Id.*

¶ 39 Section X of the City's regulations, titled "Application for Certification," states that certification as a MBE/WBE is "limited to the area(s) of specialty or expertise determined by the Chief Procurement Officer to be most reflective of the Applicant's demonstrated specialty or expertise." An applicant may be certified in more than one area of expertise, as long as the

eligibility criteria are met. Areas of specialty or expertise are determined using NAICS Code definitions.

¶ 40 The introduction to the "Sector 23 – Construction" part of the NAICS Code definitions states in part:

> "Establishments primarily engaged in contracts that include responsibility for all aspects of individual construction projects are commonly known as general contractors, but also may be known as design-builders, construction managers, turnkey contractors, or *** joint-venture contractors. Construction managers that provide oversight and scheduling only (*i.e.*, agency) as well as construction managers that are responsible for the entire project (*i.e.*, at risk) are included as general contractor type establishments. ***
>
> Establishments primarily engaged in activities to produce a specific component (*e.g.*, masonry, painting, and electrical work) of a construction project are commonly known as specialty trade contractors. Activities of specialty trade contractors are usually subcontracted from other construction establishments, but especially in remodeling and repair construction, the work may be done directly for the owner of the property." United States Census Bureau, 2012 NAICS Definition, Sector 23—Construction, http://www.census.gov/eos/www/naics.

The NAICS Code definition for Commercial and Institutional Building Construction states in part:

> "This industry comprises establishments primarily responsible for the construction (including new work, additions, alterations, maintenance, and repairs) of commercial and institutional buildings and related structures ***. Included in this industry are commercial and institutional building general contractors, commercial and institutional building for-sale builders, commercial and institutional building design-build firms, and commercial and institutional building project construction management firms." United States Census Bureau, 2012 NAICS Definition, 236220 Commercial and Institutional Building Construction, http://www.census.gov/eos/www/naics.

The NAICS Code definition for specialty trade contractors states that it comprises:

> "[E]stablishments whose primary activity is performing specific activities (*e.g.*, pouring concrete, site preparation, plumbing, painting, and electrical work) involved in building construction or other activities that are similar for all types of construction, but that are not responsible for the entire project. The work performed may include new work, additions, alterations, maintenance, and repairs." United States Census Bureau, 2012 NAICS Definition, 238 Specialty Trade Contractors, http://www.census.gov/eos/www/naics.

¶ 41 Based on the language in the above definitions, Kedmont's work had to go beyond waterproofing and roofing. A key phrase in the NAICS Code definition of a general contractor is "responsibility for all aspects of individual construction projects." We examine the plain meaning of that phrase. "Responsible" is defined as "liable to be called to account as the primary

cause, motive, or agent." Merriam-Webster's Online Dictionary, http://www.merriam-webster.com/dictionary. "Aspect" is defined as "a particular status or phase in which something appears or may be regarded." *Id*. "Construction" is defined as "the process, art, or manner of constructing something," and "constructing" is defined as "to make or form by combining or arranging parts or elements: BUILD." *Id*. Based on these definitions, "responsibility for all aspects of individual construction projects" means being in charge of all phases of a building project. Thus, to be a general contractor, the applicant must show that it was responsible for putting together all of the parts of a structure, beyond working in specialty areas. It would not be enough for an applicant to be responsible for subcontractors who only work in a select specialty area. This interpretation is consistent with the contrast presented in the NAICS Code between firms primarily responsible for the construction of commercial and institutional buildings and specialty trade contractors. The former is responsible for combining the many parts that go into a construction project while the latter performs specific activities involved in building construction.

¶ 42 Our interpretation is closer to the Department's than Kedmont's. Under the NAICS Code definition, it is not possible to be a general contractor only in a specialty area, which is the basis on which Kedmont stated it sought certification. A general contractor is responsible for all phases of a building project. The Department maintains that an applicant must provide evidence that it performed "substantial work" outside of a specialty area. The Department does not explain how it arrived at the term "substantial," but the key point is that an applicant must show that its primary work involves responsibility for all parts of a project.

¶ 43 Further, the Department's decision was grounded in the correct interpretation of the NAICS Code definition for a general contractor. In the final decision, the Department stated that

Kedmont's projects involved work by Kedmont "in its specialty areas of waterproofing, building coatings, and roofing, and that its general contractor activities generally involved little more than contracting for services or equipment related to that specialty work." The Department further stated that "substantially all of Kedmont's general contracting activities were related to work that was incidental to completion of a roofing or waterproofing project." The Department found that Kedmont's work was limited to its specialty areas, and so did not meet the NAICS Code definition for a general contractor. The Department correctly applied the NAICS Code definition.

¶ 44 Further, to the extent that Kedmont claims that it provided sufficient evidence that it was responsible for all aspects of individual construction projects, beyond waterproofing and roofing, we find no basis to reverse the Department's finding to the contrary. Whether Kedmont's evidence showed that general contracting was most reflective of Kedmont's demonstrated specialty or expertise is a mixed question of law and fact, which we review under a clearly erroneous standard. See *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391, 395 (2001) (mixed question of law and fact involves an examination of the legal effect of a given set of facts). A decision is clearly erroneous where the reviewing court, on the entire record, is " 'left with the definite and firm conviction' " that a mistake was made. *Id*. at 395. The standard is largely deferential to the agency's decision. *Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 715 (2007).

¶ 45 Kedmont points to several pieces of evidence that it asserts the Department overlooked. Kedmont states that it was accountable for the entire project at a high school, which included subcontracting with three different contractors for concrete repairs, topping slab, concrete surface preparation and debris haul away, as well as assuming responsibility for monitoring the project's schedule, coordinating safety precautions, and installing waterproofing membrane and

concrete topping. Kedmont also faults the Department for relying on Kedmont's receipt of a roofing contractor license and its accountant's statement that Kedmont's business activity was Thermal and Moisture Protection Services. Kedmont further asserts that the Department improperly disregarded Kedmont's six-page summary of its role in coordinating and/or supervising project activity for general contractor projects.

¶ 46 In advancing these points, Kedmont requests that we re-weigh the evidence that was submitted to the Department, which we will not do. See *id*. (a court of review will not reweigh the evidence or substitute its judgment for that of the agency). All of the evidence that Kedmont cites was submitted to the Department. Further, based on our review of the record, we do not "definitely and firmly [believe] that a mistake has occurred." *Id*. The record supports that Kedmont's submitted evidence revolved around waterproofing and roofing, and as explained above, that was insufficient to show expertise as a general contractor under the NAICS Code definition. The Department's decision was not clearly erroneous.

¶ 47 We will briefly comment on Kedmont's assertion that a number of firms have been certified as both general contractors and specialty contractors. Kedmont focuses on one such firm in particular, which was initially certified as an MBE as an electrical contractor and then had its certification expanded to that of a general contractor. According to Kedmont, this firm was authorized to provide services as a specialty contractor and as a general contractor in its area of specialty. Kedmont further states that the Department granted the firm's general contractor application the same day it denied Kedmont's. In addition to discussing it in its brief, Kedmont discussed the firm as part of its appeal of the preliminary determination that was issued on October 22, 2015. However, Kedmont does not indicate what evidence the firm submitted in support of its general contractor application and we do not know how the Department made a

decision in what is an unrelated matter. Thus, we cannot determine whether the decision on another firm's application should have impacted how Kedmont's application was handled.

¶ 48 Kedmont next contends that the Department's final decision on its general contractor application was untimely. Kedmont states that it submitted its application on July 30, 2012, and did not receive a final decision until almost four years later, on May 2, 2016. Kedmont maintains that the regulations impose a 90-day deadline for making a decision, which began to run after Kedmont complied with a request for additional information on December 14, 2012. Nonetheless, the Department continued to make self-serving requests for additional information. Kedmont also asserts that it never requested that the Department put its review of the general contractor application on hold.

¶ 49 Meanwhile, the Department asserts that the 90-day period in the regulations is a minimum time for the Department to reach a decision, rather than a maximum. The Department further notes that the 90-day requirement pertains to the preliminary determination, rather than the final decision that follows an appeal. The Department states in the alternative that if the 90-day period is a maximum, then the Department issued its preliminary decision within 90 days of when the application was complete, which was September 24, 2015. Also, the Department contends that Kedmont told the Department to prioritize the recertification application over the general contractor application.

¶ 50 We are again faced with an issue of regulatory interpretation: whether the 90-day period in the regulations is a maximum or minimum timeframe. Section XI, titled "Certification and Recertification Procedures," of the City's regulations states in part:

> "The receipt of any Schedule A or No Change Affidavit shall be thoroughly reviewed for material omissions or deficiencies. Forms

> containing omissions or deficiencies shall be returned to the Applicant, with notice of the nature of the omissions or deficiencies, and shall not be subject to the 90-day decision requirement until completed forms are received. ***
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> ***
>
> Any request for additional information shall be in writing and specify that the Applicant must respond within 15 calendar days. The Applicant may request additional time to respond if it consents to a corresponding extension of the 90-day decision requirement.
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> ***
>
> The Chief Procurement Officer shall grant or deny the certification or continued eligibility of the Applicant in a timely manner, but not less than 90 days following receipt of a complete Schedule A or No Change Affidavit[.] ***
>
> The Applicant shall have 15 calendar days from the date of the determination to appeal the denial in writing. ***
>
> The Chief Procurement Officer's final decision shall be communicated to the applicant in writing within 30 calendar days of receipt of the appeal. *** "

¶ 51 As noted above, courts apply the same rules in interpreting administrative regulations as in construing statutes. *Weyland*, 309 Ill. App. 3d at 547. We first consider the language of the regulation, and if it is clear, we do not use other aids for construction. *Id*. If the language of ambiguous—that is, it is capable of more than one reasonable interpretation—we look to the

purpose and necessity of the regulation, the evils sought to be remedied, and the goals to be achieved. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 231 Ill. 2d 370, 382 (2008); *Portman*, 393 Ill. App. 3d at 1089. We view all provisions of an enactment as a whole. *People ex rel. Madigan*, 231 Ill. 2d at 382. If doubt remains, we may consider extrinsic matters to determine the intent of the drafters. *Portman*, 393 Ill. App. 3d at 1089. In construing regulations, we give respectful consideration to the agency's interpretation and we will not overrule that interpretation unless it is plainly erroneous. *John Sexton Contractors Co. v. Illinois Pollution Control Board*, 201 Ill. App. 3d 415, 424 (1990).

¶ 52 As written, whether the 90-day time period is a minimum or maximum is ambiguous. The regulations state that the Chief Procurement Officer must make a decision "not less than 90 days" following the receipt of a complete Schedule A or No Change Affidavit. At the same time, the regulations state that an applicant can consent to an "extension of the 90-day decision requirement," which would seem to be unnecessary if the 90-day period were a minimum timeframe. The stated policy of the regulations—to provide a "level playing field"—does not help resolve this ambiguity.

¶ 53 Thus, we turn to extrinsic sources. Of note, the regulations in the record were issued in 2015. The regulations were updated in 2017 and state in part:

> "Following the receipt of a complete Application, the Chief Procurement Officer shall grant or deny the certification or continued eligibility of the Applicant in a timely manner, but not more than 90 days of receiving all required information from the Applicant." The City of Chicago, Regulations Governing Minority- and Women-Owned Business Enterprises, Veteran-Owned Business Enterprises and Business

Enterprises Owned or Operated by People with Disabilities for Construction Contracts, https://www.cityofchicago.org/content/dam/city/depts/dps/Outreach/8.14.2017.CertificationRules.Construction.pdf.

¶ 54 We may take judicial notice of the 2017 regulations, even though they are not in the record. See *People v. Henderson*, 2013 IL App (1st) 113294, ¶ 35 n.1 (stating that a court may take judicial notice of state rules and regulations that appear on a public government website); *People v. Davis*, 180 Ill. App. 3d 749, 753 (1989) (stating that a court may take judicial notice of administrative rules and regulations and noting that although a regulation was not in the record, the court located the regulation and would consider it). Further, an amendment to an ambiguous statute can be interpreted as intending to clarify that ambiguity. *Board of Regents of Regency Universities System v. Illinois Educational Labor Relations Board*, 166 Ill. App. 3d 730, 744 (1988). We deem the change in language from "not less than 90 days" to "not more than 90 days" as clarifying that the 90-day period in the regulations is a maximum time to issue a decision, rather than a minimum time.

¶ 55 Based on this clarification, the Department had 90 days "following receipt of a complete Schedule A or No Change Affidavit" to issue a decision. The parties agree that Kedmont submitted its application materials on July 30, 2012. However, under the plain language of the regulations, the 90-day deadline is triggered once the application materials are complete. And, the regulations do not provide a timetable for when an application must be deemed complete. The regulations state only that "[f]orms containing omissions or deficiencies shall be returned to the Applicant, with notice of the nature of the omissions or deficiencies, and shall not be subject to the 90-day decision requirement until completed forms are received." Applicants have 15 days

to respond to requests for additional information and may request more time to do so. On the whole, the regulations provide for some back-and-forth between the parties while an applicant assembles a complete application. Further, where the regulation does not include a deadline for the Department to deem an application complete, we cannot create one. "Courts may not, under the guise of statutory interpretation, create new rights or limitations not suggested by the language of the statute." *People v. Bowden*, 313 Ill. App. 3d 666, 671 (2000). The Department found that the application was complete on September 24, 2015, and issued a preliminary determination on October 22, 2015, which was well within the 90-day deadline. The Department's preliminary determination was not untimely.

¶ 56 We also note that the 90-day deadline applies only to the preliminary determination. The regulations include a separate timetable for the final decision: an applicant has 15 days to appeal the preliminary determination and the Department must issue a final decision within 30 days of receiving the appeal. Here, both parties requested and received extensions from each other during the appeal process. Kedmont cannot now complain that the Department took too long to issue a final decision after Kedmont appealed.

¶ 57 We recognize that over three years passed between when Kedmont submitted its application in July 2012 and when the application was deemed complete in September 2015. However, the parties communicated throughout the process, exchanging letters and emails and meeting in person several times. Notably, Kedmont stated a "strong preference" in March 2014 for the recertification issue to be decided first. Three months after the recertification matter was decided, the Department turned to the general contractor application. We acknowledge that the wait was long, but the Department responded to Kedmont's inquiries along the way and as stated

above, the regulations did not impose a deadline for when the Department had to deem Kedmont's application complete. Overall, the Department's actions were not untimely.

¶ 58 Because we are affirming the Department's denial of Kedmont's general contractor application, we will not address the parties' arguments about whether, as relief, Kedmont is entitled to an order requiring the Department to certify Kedmont as a general contractor.

¶ 59 III. CONCLUSION

¶ 60 For the foregoing reasons, we affirm the judgment of the circuit court as to Kedmont's general contractor application.

¶ 61 Affirmed.