

**MINUTES OF A SPECIAL MEETING OF THE
POLICY COMMITTEE OF THE
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

- MEETING:** September 23, 2021, at Erie County Industrial Development Agency (the “ECIDA” or “Agency”), 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203
- LIVE STREAMED:** This meeting is being live-audio streamed and made accessible on the Agency’s website at www.ecidany.com.
- PRESENT:** Denise Abbott; Rev. Mark Blue; Johanna Coleman; Richard Lipsitz; Brenda W. McDuffie; Glenn R. Nellis; David State; Lavon Stephens and Maria Whyte
- EXCUSED:** Hon. April Baskin; Bryon W. Brown; Colleen DiPirro; Hon. William Krebs; Laura Smit and Paul Vukelic
- OTHERS PRESENT:** John Cappellino, President & CEO; Mollie Profic, Chief Financial Officer; Karen M. Fiala, Vice President/Secretary; Beth O’Keefe, Vice President, Atiqah Abidi, Assistant Treasurer; Brian Krygier, Systems Analyst; Carrie Hocienec, Operations Assistant; Robbie Ann McPherson, Director of Marketing and Communications; and Pietra Zaffram General Counsel/Harris Beach PLLC
- GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist; Alex Carducci on behalf of the City of Buffalo; Lisa Hicks on behalf of the City of Buffalo; Seth Piccirillo on behalf of the Partnership; Shatorah Donovan on behalf of the City of Buffalo

There being a quorum present at 2:03 p.m., the special meeting of the Policy Committee was called to order by Mr. Lipsitz.

REVIEW AND DISCUSSION OF DRAFT POLICY DOCUMENTS

Mr. Cappellino reviewed the draft MWBE Policy and recapped discussion to date, noting that over the course of the Committee’s discussions, a framework has evolved for a proposed structure for a two-tiered program. Additional enhancements are available to project applicants via an enhanced PILOT schedule, including an extra year of tax abatement for projects with a construction component. Mr. Cappellino noted there were two items up for discussion for the meeting: 1) how to structure the policy during a project’s construction period, and 2) how a company would meet the goals set forth in the policy so developed.

Mr. Cappellino noted the Committee has looked at what other agencies and municipalities such as NFTA and the City of Buffalo are doing for their “best efforts” evaluation criteria to determine compliance with MWBE goals and policies. General discussion ensued regarding how to set up a successful program while encouraging participation.

Mr. Lipsitz next lead the Committee in a discussion to complete the Construction Period and Post-Construction policy concepts set forth in the the draft policy. Mr. Cappellino noted, with regard to the proposed Construction Period structure, one major issue remaining on the table is how to address an applicant who does not meet the required Construction Period utilization goals, and whether they may still be eligible if they demonstrate and document “best efforts” made to provide meaningful participation by certified MWBE contractors, subs, suppliers, vendors or professional service providers.. Right now, to be considered under the MWBE Best Efforts Procedure, an applicant must meet a minimum of 50% of the stated MWBE goals of 25% MBE participation and 5% WBE participation.

General discussion ensued regarding whether the Best Efforts construction period criteria should be changed from 50% to a 75% threshold of stated MWBE goals. Mr. Cappellino offered an amendment to the MWBE Best Efforts Procedure to state that in order to be considered under the Best Efforts Procedure, an applicant must have met a minimum of 75% of the of the stated MBE/WBE goals requirements, with a carve-out for any construction project requiring specialty services. Ms. Whyte supported the proposed.

Ms. Donovan was next invited to discuss her thoughts on what types of good faith efforts should be considered in the Best Efforts Procedures, based on her experiences with the City of Buffalo. She noted the Committee should consider who they are trying to benefit, and suggested the policy be simplified. She also suggesting referring to the policy as a pilot program, allowing any changes to be made nimbly. Ms. Donovan also suggested the Committee select more compliant developers to pilot the program and implement it at the outset. Rev. Blue noted the draft policy is not yet finished, and suggested Ms. Donovan’s suggestions be taken under consideration. General discussion ensued regarding implementing Ms. Donovan’s comments into the drafting process.

Ms. Whyte next summarized the adjustments to be made to the Construction Period structure as follows:

1. Change the Best Efforts Procedure for the Construction Period portion of the policy to reflect a goal of 75% of stated MWBE goals;
2. Withdraw specialty work from the total so as not to consider it in the Best Efforts equation;
3. Add a statement at the end of the policy that it the policy is being rolled out during a demonstration period and it is intended to be reviewed in one year, recognizing New York state may require revisions after the period within which the polity is tested; and
4. Invite Ms. Donovan to share with the Committee the “best efforts” criteria utilized by the City of Buffalo.

Mr. Cappellino next reviewed the Post-Construction portion of the draft policy. Ms. Whyte stated she likes the idea of the Job Retention Tract. She noted, however, that in instances where

an applicant is planning to retain jobs, requiring the applicant to choose 4 tracts may be too onerous and perhaps 2 tracts would be a better option. Mr. Lipsitz stated he preferred 3 out of 5 of the tracts be considered, requesting that the Committee keep the Community Organization Tract. Ms. Whyte noted the Committee members will work with Mr. Cappellino regarding incorporating job retention criteria and will come to the next meeting with a proposal of what would need to be presented to satisfy the selected Post-Construction Period Tracts. The framework will be presented at the next meeting for further discussion.

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 3:25p.m.

Dated: September 23, 2021



Karen M. Fiala, Secretary