



# Policy Committee

November 18, 2021

10:30 am

Special Working Group Meeting

MWBE Policy Discussion

Meeting Via Zoom

1. Call Meeting to Order
  2. Review and Discussion of Draft Policy Document
    - a. Construction Period
      - i. Utilization
  3. Good Faith Efforts Procedure
    1. Updates Review and Discuss
      - a. City of Buffalo Policy
    2. Contractors and Vendors Listings
    3. Local Resources & Community Partners
    - ii. Monitoring and Compliance
      1. Certified Payrolls
      2. Site Visits
      3. Cost and Staffing
  - b. Post Construction Period
    - i. Qualifying Activities Discussion
      1. Job Creation and Workforce Tract
      2. Required Number of Alternative Tracts
    - ii. Monitoring and Compliance
      1. Alternative Tract Metrics and Measurables
      2. Compliance Cost & Staffing
4. Prevailing Wage Law
  - a. MWBE & SDVOB Goals Requirement
5. Next Meeting/Adjournment

## Summary of ECIDA MWBE, Diversity and Inclusion Incentive Policy Concepts

### Construction and Post Construction Period

#### **Construction Period Outstanding Policy Issue**

- MBE/WBE % utilization goal for construction based on contract value/ NYS uses 30% total between MBE and WBE. For ECIDA professional service procurements we presently use 25% MBE, 5% WBE.

#### **Proposed Structure for a two-tiered program**

##### Construction Period

- To receive the Enhanced MWBE PILOT schedule an applicant would need to meet the utilization construction goal % as defined in the policy of 30%, 25% MBE and 5% WBE.

Once an applicant meets the goal for construction, they would then need to participate in the Post-Construction Period program to qualify for the Enhanced MWBE PILOT.

If an applicant is unable to meet the Construction Period goal but has demonstrated Good Faith efforts as defined by the ECIDA Good Faith Efforts Procedure to the satisfaction of the Agency, an applicant would be deemed to have met the Construction Period goal and would then need to participate and meet the goals of the Post-Construction Period program to qualify for the Enhanced MWBE PILOT.

##### Post Construction Period

###### **Job Creation Tract:**

- Applicants can select and comply with the job creation goal of 30% of the new jobs to be created to be women and minorities (minimum of 15% minority and at least 30% minorities or women)

If an applicant pledges and meets the job creation goal within the job creation period, typically 2 years after project completion and maintains the goal for new hires during the term of the PILOT they would be eligible for the Enhanced MWBE PILOT.

###### **Workforce Tract:**

- Applicants can select and comply with the workforce goal by demonstrating that their workforce (both retained and any new job creation) consists of a minimum of 30% women and minorities (minimum of 15% minority and at least 30% minorities or women).

If an applicant pledges and meets the workforce goal and maintains the minimum goal for their workforce during the term of the PILOT, they would be eligible for the Enhanced MWBE PILOT.

**If an applicant does not choose the job creation or workforce tract, they may qualify for the Enhanced MWBE PILOT by choosing (2) of the following tracts.**

- Procurement Tract – Applicants to set and meet procurement goals for operations including supplies, equipment and or professional services of 10% of applicant’s operational contract purchases which are within their local control for the term of the PILOT.
- Diversity & Inclusion Tract– Applicants to create a Diversity & Inclusion policy for their organization with identified goals and objective metrics and report on implementation annually for the term of the PILOT.
- Annual Training Tract – Applicants management and or key staff to participate in annual training or specified Diversity and Inclusion activities designed to advance D&I company initiatives for the term of the PILOT.
- Mentorship Tract – Applicants to develop and or participate in mentorship program(s) designed to support WMBE businesses or mentor WMBE candidates for leadership positions within their organizations or in their occupational fields for the term of the PILOT.

# MWBE GOOD FAITH EFFORT COMPLIANCE PROCEDURE



## **General Definition**

Applicants for ECIDA Enhanced MWBE PILOT if unable to meet the required Construction Period utilization goal may still be eligible if they demonstrate and document best efforts made to provide meaningful participation by Certified MWBE contractors, sub-contractors, suppliers, vendors or professional service providers in the development and construction of their project.

- In order to be considered under the MWBE Good Faith Efforts Procedure an applicant must have met a minimum of 75% of the MBE/WBE goal requirement of 25% MBE and 5% WBE.  
(Value of specialty work maybe removed from calculation)

# MWBE GOOD FAITH EFFORT COMPLIANCE PROCEDURE



## Typical Good Faith Effort Provisions

Applicants to:

- Advertise opportunities to participate in the project in appropriate general circulation, trade and minority and women-oriented publications.
- Participate in any pre-bid or other meetings with MWBE firms or groups to encourage participation in the project(\*ECIDA and partners to develop a contact list of appropriate groups and or resources, including but not limited to Construction Exchange, BETC, ECC One Stops, DOL One Stop Locations, Northland Workforce Training Center).
- Provide a listing of written solicitations made to MWBE firms inviting their participation, utilizing the Erie County and City of Buffalo MBE / WBE Resource List, and/or the New York State certified list within the ECIDA Local Labor Area(Erie County, Niagara County, Chautauqua County, Cattaraugus County, Allegany County, Wyoming County, Genesee County, and Orleans County).

# MWBE GOOD FAITH EFFORT COMPLIANCE PROCEDURE

## Typical Good Faith Effort Provisions

Applicants to:

- Provide copies of any responses received from MWBE solicitations and documentation of any negotiations.
- Identify components of the project that could be contracted or sub-contracted to MWBE firms.
- Document the value of any specialty work for which there are no qualified MWBE firms in the Local Labor Area.
- Provide copies of responses received from any MWBE firms.
- Negotiate in good faith with MWBE firms submitting bids, proposals or quotations.
- Provide written statement outlining the Good Faith Efforts undertaken or any other factors relevant to documenting Good Faith Efforts for the project.
- Provide a copy of a MWBE utilization plan outlining participation of certified MWBE firms in the project.





## CITY OF BUFFALO

Mayor's Office of Contract and Compliance

WPG-1 FORM

### CHAPTER 96-13 MINORITY, FEMALE AND CITY RESIDENT WORKFORCE GOALS CITY AND STATE FUNDED CONTRACTS

All bidders must submit the following form with their bid. Failure to include this form may result in rejection

#### GOOD FAITH EFFORTS

Contractors bidding on construction work subject to the City of Buffalo's minority, female and City resident hiring goals must demonstrate good faith efforts as a condition of contract.

#### Good faith efforts include but are not limited to:

1. Documented efforts to recruit qualified minority, female, City resident and apprentice employees including:
  - a. Documented communication with unions, as applicable, requesting qualified referrals and outcome of such request.
  - b. Documented communication with the Buffalo Employment Training Center (BETC) and other community-based construction training organizations requesting qualified referrals and outcome of such request.
  - c. Other efforts to seek qualified applicants
2. Timely submission of monthly workforce utilization reports in the format requested by the City's Office of Contract Compliance;
3. Willingness to meet within a reasonable time with City Office of Contract Compliance upon request to discuss reports, goals, recruitment or any related matter.

#### CONTRACTOR ATTESTATION

I understand that this contract requires good faith efforts to meet minority, female and City Resident workforce goals as defined above. I understand that if I am awarded this contract, I am required to demonstrate good faith efforts as a condition of this contract.

ss//

\_\_\_\_\_  
Contractor Principal Signature

\_\_\_\_\_  
Date

## GOOD FAITH EFFORTS

Contractors bidding on contracts must demonstrate and document good faith efforts made to provide meaningful participation by Certified M/WBE subcontractors or suppliers/vendors in the performance of this contract.

The undersigned hereby acknowledges that he/she took or may need to take the following actions on behalf of the Contractor to demonstrate, and upon request by the City, to provide written verification to document the aforesaid good faith efforts:

- (a) The Contractor attended any pre-bid, pre-award, or other meetings scheduled by the City to inform certified minority or women owned business enterprises of contracting and subcontracting opportunities available on the project, for purposes of complying with contract participation goal requirements;
- (b) The Contractor identified economically feasible units of the project that could be contracted or subcontracted to certified minority and women owned business enterprises in order to increase the likelihood of participation by such enterprises on the contract;
- (c) The Contractor advertised in a timely fashion and in appropriate general circulation, trade and minority and women oriented publications concerning the contracting or subcontracting opportunity;
- (d) The Contractor made written solicitations in a timely fashion to a reasonable number of certified minority and women owned business enterprises notifying them of the potential subcontracting opportunity. The directories of certified businesses can be viewed below, and options should be exhausted in the following order:
  1. Find a subcontractor or supplier that is jointly certified with the City & Erie County: <http://www.erie.gov/eo>
  2. If there is no subcontractor or supplier available from the directory above, find a subcontractor or supplier that is certified with the State **AND** is located within the 8 counties of Western New York: <https://esd.ny.gov/>
  3. If there is no subcontractor or supplier available from the directory above, find a subcontractor or supplier that is certified with NY & NJ Minority Supplier Development Council **AND** is located within the 8 counties of Western New York: (I think a membership is required to have access to their database)
- (e) The Contractor can document if any timely responses to any such advertisements and solicitations were provided by certified minority and women owned business enterprises. Documentation includes, but is not limited to, emails, letters, call logs, text threads and attendance logs;
- (f) The Contractor followed-up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity;
- (g) The Contractor provided interested certified minority and women owned business enterprises in a timely fashion with adequate information about the plans, specifications or terms and conditions of the City contract and requirements for the contracting or subcontracting opportunity so as to prepare an informed response to a contractor solicitation;
- (h) The Contractor submitted a completed, acceptable utilization plan in accordance with applicable requirements to meet goals for participation of certified minority and women owned business enterprises established in the City contract;



- (i) The Contractor negotiated in good faith with certified minority and women owned business enterprises submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals or quotations prepared by any certified minority or women owned business enterprise. "Good faith" negotiating means engaging in good faith discussions with certified minority or women owned business enterprises about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidder and various subcontractors and the bids of the minority or women businesses, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available; and,
- (j) The Contractor undertook efforts to make payments for any work performed by certified minority- and women-owned business enterprises in a timely fashion so as to facilitate continued performance by certified minority- and women-owned business enterprises.

## **CONSTRUCTION PERIOD: MWBE MONITORING & COMPLIANCE PROCEDURES**



Prior to commencing constructions projects seeking the Enhanced MWBE PILOT, would be required to submit to the ECIDA a MWBE Utilization Plan. The plan would list the Contractor or Subcontractor's name and address, confirm MBE/WBE status, provide dollar value of proposed contract and a brief description of the work being provided.

Upon commencement of construction a quarterly MWBE Utilization Report would be filed with the ECIDA. The report would show expenses incurred or paid to contractors or subcontractors listed in the utilization plan towards achieving the overall participation goals of the project.

ECIDA staff resources would be used to collect and review the utilization plan, quarterly reporting and monitor progress towards achieving MWBE utilization goals. Outside Consultants do provide field

Inspections service costs vary (\$1,000 to \$2,000 per visit)

## **POST CONSTRUCTION PERIOD: COMPLIANCE PROCEDURES JOB CREATION**



### **Job Creation Tract:**

Post construction and for the term of the Incentive Period applicants would provide an annual report to the ECIDA which would be certified by a company representative identifying the number of women or minority new hires and the % of each category as a % of the total number of new hires.

ECIDA staff would create an annual reporting form and monitor annual reports for compliance with the job creation goals for the project as set forth in the policy.

## **POST CONSTRUCTION PERIOD: COMPLIANCE PROCEDURES WORKFORCE**



### **Workforce Tract:**

Post construction and for the term of the Incentive Period applicants would provide an annual report to the ECIDA which would be certified by a company representative identifying the total number of women or minority employees in the workforce and the % of each category as a % of the total workforce.

ECIDA staff would create an annual reporting form and monitor annual reports for compliance with the workforce goals for the project as set forth in the policy.

## **POST CONSTRUCTION PERIOD: COMPLIANCE PROCEDURES PROCUREMENT**



### **Procurement Tract:**

Post Construction applicants would provide to the ECIDA a MWBE procurement plan which would identify MWBE procurement opportunities for supplies, equipment and or professional services with the goal of achieving 10% of their annual purchases (which are subject to their control).

For the term of the Incentive Period applicants would provide an annual report to the ECIDA which would be certified by a company representative identifying the total amount of MWBE procurements as a % of annual operating expenditures.

ECIDA staff would create an annual reporting form and monitor annual reports for compliance with the procurement goals for the project as set forth in the policy.

## **POST CONSTRUCTION PERIOD: COMPLIANCE PROCEDURES DIVERSITY & INCLUSION**



### **Diversity and Inclusion Tract:**

Post construction applicants would provide to the ECIDA a copy of an organizational Diversity and Inclusion plan with identified goals and objective metrics. Plan should include at a minimum (list from BNP resource?).

For the term of the Incentive Period applicants would provide an annual report to the ECIDA which would be certified by a company representative identifying progress in meeting or completing tasks and metrics identified in their Diversity and Inclusion Plan.

Need to identify a resource that would review D&I plans for acceptability and to monitor annual reports and activities for compliance D&I plans and make recommendation to ECIDA that applicant has met obligations under the policy.

## **POST CONSTRUCTION PERIOD: COMPLIANCE PROCEDURES TRAINING**



### **Training Tract:**

Post Construction and for the term of the Incentive Period applicants would provide an annual report to the ECIDA which would be certified by a company representative identifying the annual training activities of management, key staff and or workforce and or specific activities designed to advance Diversity and Inclusion goals of the company.

Need to identify a resource that would review training and D&I activities for acceptability, to monitor annual reports and make recommendation to ECIDA that applicant has met obligations under the policy.

Question, do we develop specific list of training activities, workshops or activities that would meet the criteria of the policy. If so, who would develop resource.

## **POST CONSTRUCTION PERIOD: COMPLIANCE PROCEDURES MENTORSHIP**



### **Mentorship Tract:**

Post construction applicants would provide to the ECIDA a copy of a Mentorship plan with identified goals and objective metrics.

Post Construction and for the term of the Incentive Period applicants would provide an annual report to the ECIDA which would be certified by a company representative identifying the identifying progress in meeting or completing tasks and metrics identified in their Mentorship plan.

Need to identify a resource that would review mentorship plan for acceptability, to monitor annual reports and make recommendation to ECIDA that applicant has met its obligations under the policy.



## **PREVAILING WAGE LAW: MWBE AND SDVOB GOALS**



Effective January 1, 2022, certain projects receiving financial assistance from a public entity, including IDA's and LDC's will be subject to new prevailing wage and MWBE & SDVOB goals.

Covered Projects in general include construction projects whose total costs exceed \$5 million and for which at least 30% of these costs are met through the use of public subsidies.

There is a list of exempt projects and public subsidy exemptions.

Sets participation goals at:

|  |     |
|--|-----|
| Minority and Women-owned Business Enterprises (MWBE) | 30% |
| Service-disabled Veteran-owned Businesses            | 6%  |

## **PREVAILING WAGE LAW: MWBE AND SDVOB GOALS**



Provides for a Good Faith Efforts process

Contractor to provide evidence of Good Faith Efforts  
Requirements are similar to other state Agency rules

Process allows for varying levels of participation with documentation  
of Good Faith Efforts  
Contractors can apply for waiver

Empire State Development would be implementing the MWBE and SDVOB goal process  
including the review and granting of waivers.