



Policy Committee

August 12, 2021

2:00 pm

Special Working Group Meeting

MWBE Policy Discussion

ECIDA Offices, 95 Perry St.

5th Floor Conference Room

1. Call Meeting to Order

2. Review and Discussion of Draft Policy Document
 - a. Construction Period
 - i. Best Efforts Procedure

 - b. Post Construction Period
 - i. Review Qualifying Activities

3. 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 best efforts as defined by the ECIDA Best 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

- 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 that goal within the job creation period, typically 2 years and maintains the goal identified new hires during the period of the PILOT they would qualify for the Enhanced MWBE PILOT.

If an applicant does not choose the job creation goal tract, they may qualify for the Enhanced MWBE PILOT by choosing (2-4?) of the following tracts.

- Job Retention Tract – Applicants must demonstrate that their existing workforce consists of at least 30% women and minorities (minimum of 15% minority and at least 30% minorities or women) and must maintain above percentage for the term of the PILOT.

- **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.
- **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.
- **Community Organization Tract** – Applicants to demonstrate financial or personnel commitment to supporting Community Organizations that provide resources for WMBE business formation, business operational support or mentorship. Or organizations that provide Diversity and Inclusion activities in the community for the term of the PILOT.

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MWBE BEST EFFORTS 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 Best Efforts Procedure an applicant must have met a minimum of 50% of the MBE/WBE goal requirement of 25% MBE and 5% WBE.

MWBE BEST EFFORTS PROCEDURE



Typical Best 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 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).
- 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 BEST EFFORTS PROCEDURE



Typical Best 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 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 Best Efforts undertaken or any other factors relevant to documenting Best Efforts for the project.

Summary of ECIDA MWBE, Diversity and Inclusion Incentive Policy Concepts

Overall Goal:

Create a program that will encourage ECIDA tax incentive applicants to promote diversity and inclusion initiatives within their organizations and create MWBE utilization goals for ECIDA incentivized projects (ECIDA project).

Policy Objective:

Projects seeking ECIDA assistance would be incentivized to participate in the Agency's MWBE Diversity and Inclusion program. Applicants that participate in the program would receive extra incentives (PILOT) for meeting goals and objectives as outlined in the Policy.

The policy would have two component phases, one for the construction or project procurement period and the second for post construction operations over the term of the ECIDA incentive period.

Applicants for ECIDA incentive projects would qualify for a "MWBE Enhanced PILOT Schedule" if they achieve the MWBE goals during the construction period and meet certain post construction operational diversity and inclusion goals and activities.

Construction Period:

Companies engaging in construction activities (Includes labor and materials as well as design and engineering services) for ECIDA projects would report on MWBE goals to show that they complied with the provisions of the policy to achieve a level of MWBE utilization for the ECIDA project Construction Period. Percentage of MWBE utilization goals would be set by the ECIDA board based on the dollar value of the project construction budget. If a company is unable to meet the required Construction Period utilization goal, they 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 as outlined in the ECIDA Best Efforts Procedure.

Post Construction Operational Period:

In addition to the Construction period goals ECIDA projects would need to undertake certain post construction operational diversity and inclusion goals or activities to qualify for the Enhanced MWBE PILOT.

A list of potential goals and activities would be developed as part of the policy formation that companies could choose from to participate in, including employment utilization goals, procurement goals for operational purchases, and organizational diversity and inclusion training and programming.

The company's efforts would be monitored through ECIDA's compliance program throughout the term of the incentive period.

Approval Process:

The ECIDA Policy Committee will review the draft MWBE Diversity and Inclusion Incentive Policy and make recommendations to the full ECIDA Board for consideration and approval. If the policy is approved, changes to the Uniform Tax Exemption Policy (UTEP) will be made to include the new MWBE enhanced PILOT. Alterations to the UTEP would involve notifying the taxing jurisdictions of intent to modify the Agency's UTEP.

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MWBE ENHANCED PILOT SCHEDULES



Current 7 Year PILOT Schedule

Year	1	2	3	4	5	6	7	8
PILOT Payment %	10%	10%	20%	20%	30%	30%	30%	100%

MWBE Enhanced 8th Year PILOT Schedule

Year	1	2	3	4	5	6	7	8
PILOT Payment %	5%	5%	10%	15%	20%	25%	30%	30%

Modified Yearly % and added an Extra Year of Benefit

Resulted in 44% difference in total PILOT payments comparing Current 7 Year PILOT Schedule to proposed MWBE Enhanced Schedule of 8 years.

*UTEP Proposing Changing PILOT Schedules

MWBE ENHANCED PILOT SCHEDULES



Current 10 Year PILOT Schedule

Year	1	2	3	4	5	6	7	8	9	10	11
PILOT%	10%	10%	10%	20%	20%	20%	30%	30%	30%	30%	100%

MWBE Enhanced 11th Year PILOT Schedule

Year	1	2	3	4	5	6	7	8	9	10	11
PILOT%	5%	5%	10%	10%	15%	15%	20%	20%	30%	35%	40%

Modified Yearly % and added an Extra Year of Benefit

Resulted in 34% difference in total PILOT payments comparing Current 10 Year PILOT Schedule to proposed MWBE Enhanced Schedule of 11 years.

*UTEP Proposing Changing PILOT Schedules