

COUNTY OF ERIE
LOCAL LAW NO. ___ 2016
LOCAL LAW INTRO NO. 10-1 2016

A LOCAL LAW TO AMEND LOCAL LAW 6-1987: REQUIRING A MINORITY BUSINESS UTILIZATION AND WOMEN-OWNED BUSINESS UTILIZATION COMMITMENT BY PERSONS OR FIRMS CONTRACTING WITH THE COUNTY OF ERIE:

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:

LEGISLATIVE INTENT:

The Purpose of this Local Law is to amend Local Law No. 6-1987 known as the **"REQUIRING A MINORITY BUSINESS UTILIZATION AND WOMEN-OWNED BUSINESS UTILIZATION COMMITMENT BY PERSONS OR FIRMS CONTRACTING WITH THE COUNTY OF ERIE LAW"**

SECTION 1: The following provisions shall be inserted in and made a condition of all bid specifications prepared by the Erie County Department of Planning and Environment and/or the Erie County Department of Public Works and advertised after the effective date of the local law which was estimated by County to result in a contract exceeding \$100,000.00.

Minority Business Utilization commitment

(A) The Contractor shall take affirmative action to utilize bona fide minority business enterprises/women business enterprises for subcontracts on this project. Affirmative action shall include, but not be limited to: (1) Utilizing a source list of minority business enterprises (MBE) and women-owned business enterprises (WBE), (2) Solicitation of bids from MBE's and WBE's, particularly those located in Erie, Niagara, Cattaraugus and Chautauqua Counties, (3) Giving MBE's and WBE's sufficient time to submit proposals in response to solicitations, (4) maintaining records showing MBE's and WBE's and specific efforts to identify and award contracts to these companies, and (5) a goal of awarding at least ten percent (10%) of the total dollar value of the contract to MBE's and at least two percent (2%) of the total dollar value of the contract to WBE's or, for those contracts governed by federal or state regulations with respect to MBE and/or WBE hiring, the prevailing percentage set forth therein, whichever is higher, subject to waiver as provided for below.

(B) [The three (3) lowest bidders] All bidders on each contract subject to this law shall submit to the County MBE/WBE office, with the bid (or within [3 business days] 24 hours of the bid opening), a list of all MBE's and WBE's from whom the Contractor has solicited bids or with whom the Contractor has signed a binding contractual agreement of with whom the Contractor is presently negotiating an agreement, for the purposes of meeting the MBE and WBE utilization goals provided for in subdivision (A)(5) above. A contractor's bid shall not be considered where the contractor fails to submit such a list as provided for herein. A contractor's bid shall not be considered where examination of said list of MBE's and WBE's evidences failure by the Contractor to comply with the affirmative action requirements provided for herein, except that the County may, upon written request by the contractor, grant a complete or partial waiver of the provisions of subdivision (A) (5), where the availability of MBE's

and/or WBE's in the market area of the project is less than the ten percent (10%) and two percent (2%) goals above.

(C) As evidence of compliance with the goals set forth in subdivision (A) (5) above, the contractor shall submit to the county MBE/WBE office, within fifteen (15) business days of the bid opening, a schedule for MBE and WBE participation, listing the MBE's and WBE's with whom the contractor intends to subcontract, specifying the agreed price to be paid for such work, and identifying in detail the contract item(s) or parts to be performed by each MBE and each WBE. A letter of intent to enter into a subcontract or purchase agreement, contingent upon contract award, indicating the agreed upon price and scope of work, shall be provided, signed by both the contractor and the MBE or WBE. The prime Contractor shall not substitute or delete the listed MBE's or WBE's without the written consent of Erie County.

(D) As evidence of compliance with the goals set forth in Subdivision (A) (5) above, the contractor shall provide to Erie County MBE/WBE office, copies of all subcontracts and/or purchase agreements with MBE's and WBE's within fifteen (15) days of contract award. A motion to proceed with construction shall not be issued until such documentation is received.

(E) As evidence of compliance with the goal set forth in Subdivision (A) (5) above, the contractor shall submit to the county MBE/WBE office, when the project is thirty percent (30%) complete, a list of MBE's and WBE's on the project, the dollar amounts paid to that date and the estimate amount remaining to be spent. This same information is required at seventy five percent (75%) completion and a final accounting must accompany the final payment request.

(F) Failure to comply with the provisions set forth herein shall constitute a breach of this contract subject to all remedies available to the County.

(G) For the purposes of this section, the term "minority business enterprise (MBE)" shall mean a business which performs a commercially useful function, at least fifty-one percent (51%) of which is owned by minority group members or, in the case of a publicly owned business, at least fifty-one percent (51%) of all stock is owned by minority group members. Such ownership shall be certified by the Erie County Equal Employment Opportunity Office. For the purposes of this paragraph, "minority group members" are citizens of the United States who are Black, Hispanic, Asian-American, American Indian, Eskimo or Aluet. For purposes of this section, the term "subcontract" includes all construction, modification, supplies and material, and service work contracted for by the Contractor in the prosecution of this work.

(H) For the purposes of this Section, the term "women-owned business enterprise (WBE)" shall mean a business which performs a commercially useful function, at least fifty-one (51%) of which is owned by a woman or women or, in the case of a publicly owned business, at least fifty-one (51%) of all stock is owned by a woman or women. Such ownership shall be certified by the Erie County equal Employment Opportunity Office.

(I) Where the MBE or WBE is a supplier, a credit of one hundred percent (100%) of the dollar value of the subcontract between the MBE or WBE and the contractor shall be awarded toward the fulfillment of the appropriate goal, as set forth in Section 1 (A) (5) above.

1) For purposes of this section, an MBE or a WBE will be considered a supplier when it:

a. assumes actual and contractual responsibility to furnish supplies and/or materials and is the manufacturer of those supplies and/or materials; or

b. is recognized by the manufacturer involved as a distributor of its supplies and/or materials; and

c. owns or leases a warehouse, yard, building or other facility which is necessary and customary to carry out the purported function of the business; and

d. distributes, delivers and services the supplies and/or materials with its own staff.

(J) Where an MBE or WBE performs a sales function, which is customarily performed as a distinct and necessary part of the supply process, a credit of twenty-five percent (25%) of the dollar value of the subcontract between the MBE or WBE the Contractor will be awarded toward the fulfillment of the appropriate goal, as set forth in Section 1 (A) (5) above.

(K) Where the MBE or WBE performs a function or service which is commercially unnecessary, such as acting as a passive conduit in the supply process or duplicating a service provided by others in the same chain of supply from manufacturer to purchaser, no credit will be granted toward the appropriate goal, as set forth in Section 1 (A) (5) above.

(L) The qualifications set forth in subsections (I), (J) and (K), above, of this Action shall be certified by the Equal Employment Opportunity Office.

(M) For purposes of this Section, the term "subcontractor " includes all construction, modification, service work, supplies and material contracted for by the contractor in the prosecution of this work.

SECTION 2. The county Executive shall appoint a minority business enterprise and women-owned business enterprise utilization advisory board of nine (9) members consisting of county personnel, legislators, minority contractors, female contractors and community and business representatives, which shall review program administration and implementation on a regular basis and shall submit an annual report to the county Executive and the County Legislature. This committee shall be empowered to promulgate regulations to provide for the administration of this local law.

SECTION 3. The legislature shall conduct hearings annually to assess the impact of the local law.

SECTION 4. This local law shall take effect immediately.

SPONSOR: LEGISLATOR THOMAS A. LOUGHRAN

CO-SPONSOR: LEGISLATOR KEVIN R. HARDWICK

NOTE: ADDITIONS IN TEXT ARE INDICATED BY UNDERLINE; DELETIONS BY [BRACKETS]