

COUNTY OF ERIE**LOCAL LAW NO. 2-1-2021****LOCAL LAW INTRO. _____-2021****THE ERIE COUNTY MINORITY AND WOMEN BUSINESS ENTERPRISE
EQUALITY AND MODERNIZATION ACT OF 2021**

A Local Law modifying, amending and superseding, to the extent applicable, Local Law Number 12-1978, Local Law Number 1-1983, Local Law Number 6-1987, Local Law Number 5-1994, and Local Law Number 9-2005 which local laws collectively established the requirement for Minority-Owned Business Utilization and a 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:**SECTION 1. LEGISLATIVE INTENT**

- A. Erie County, through its legislative enactments referenced above, has embraced the important concept of providing "economic opportunity" on an equal basis to those traditionally underserved communities often recognized as minority group members and women.
- B. Since 1978, the County has passed a series of local laws to advance the utilization of minority group members and women on construction contracts, supplies and materials, as well as in non-construction professional, consultant and technical services. These local laws were passed in 1978, 1983, 1987, and 1994 and most recently in 2005, respectively. Importantly and of note, these five previously adopted local laws were passed and implemented without any substantive or material legal challenges.
- C. Understanding this legislative history is crucial, since these efforts have significantly enhanced the opportunities and employment for minority group members and women in Erie County that in turn, has had a substantial positive impact on the economic and developmental health of the community. Presently, Local Law No. 9-2005 requires that the County maintain a goal of awarding 15% of the total cost of contracts for professional, technical or other consultant services to minority business enterprises and 5% goal for women business enterprises.
- D. Since the Spring of 2020, our nation has been confronted with an economic and health crisis caused by a once in a generation pandemic and an historic movement seeking justice related to the exposure of the societal costs of systemic racism. While much progress has been made, recent events result in the County's urgent need to promote and modernize progress in including minority and women business

enterprises in County contracting and also seeks to achieve greater employment opportunities for minorities and women in the County workforce through efforts to encourage hiring by firms awarded County contracts. This Local Law furthers the County's legislative intent to encourage and continue the County's historical legislative enactments to support our community's citizens to improve their lives economically.

SECTION 2. LEGISLATIVE FINDINGS

The Erie County Legislature, in connection with its efforts to modernize and update County policy in this important area of developing equal economic opportunities, makes the following findings and determinations:

- A. The County Legislature body hereby acknowledges and finds that Article 15-A of the New York Executive Law ("Article 15-A") enacted in July 1988 and the regulations promulgated thereunder advance an important policy to eliminate barriers for participation of minority and women-owned businesses in government contract opportunities.
- B. The County Legislature hereby finds that Article 15-A has been adopted and amended in accordance with applicable law and that the State has conducted disparity studies to support its policies in this area.
- C. The County Legislature hereby finds and determines that the two most recently completed disparity studies commissioned by the New York Department of Economic Development in 2010 and the most recent 2016 disparity study published June 30, 2017 ("2016 Disparity Study"), respectively, provide sufficient evidentiary support that significant statistical disparities exist with respect to awarding prime contracts and subcontracts to Minority and Women Owned firms statewide. [A copy of the 2016 Disparity Study has been filed with the Legislative Clerk's office.]
- D. The County Legislature hereby adopts and accepts the findings of disparities contained in the 2016 Disparity Study including the relevant data set forth in the Appendices annexed thereto in Volume 1, p. 302, Table A. 37, A. 38, A. 39 and A. 40 related to Western New York and the referenced Business Community Meetings held in Buffalo, New York in Table 9.1, p. 214. (Copies of the relevant excerpts have been filed with the Legislative's Clerk's office).
- E. The County Legislature hereby adopts, acknowledges and accepts the findings in the local wealth and income disparity study contained in the Racial Equity Dividend Report produced by the Greater Buffalo Racial Equity Roundtable issued in 2016.
- F. The County Legislature recognizes that the State goal for M/WBE is 30% for construction and commodities and services.

- G. The County Legislature hereby finds and determines that the two studies referenced above in paragraphs D and E of this Section establish that disparities exist in Erie County as to economic opportunity for minority group members and women in the award of County contracts.

In summary, both the legislative history as set forth in Section 1 of this law and the legislative findings contained in this Section 2 provide factual predicates to support the policy to serve the best interests of the citizens of Erie County.

SECTION 3. DEFINITIONS

- A. As used in this section of the law, the *Minority Business Enterprise* ("MBE") shall mean a for-profit business, which performs a commercially useful function, which is at least fifty one percent (51%), owned by a minority group member, or in the case of a publicly owned business, at least 51% of all stock is owned by minority group members. For the purposes of this provision, a minority group member is a person who is a citizen or permanent resident alien of the United States who is African-American, Hispanic, Latino, Asian-American, or Native American.
- B. *Women Business Enterprise* ("WBE") shall mean a for-profit business, which performs a commercially useful function, which is at least fifty one percent (51%), owned by a woman or women, or in the case of a publicly owned business, at least a woman or women own 51% of all stock of the entity.
- C. *Minority or Women Business Enterprise* ("MWBE") shall mean a for-profit business which performs a commercially-useful function, which is at least fifty one percent (51%) owned by a minority group member or members, woman or women, or in the case of a publicly-owned business, at least 51% of all stock of the entity is owned by a minority group member or members, a woman or women. Such ownership shall be certified by either the New York State Department of Economic Development, M/WBE Division or the Erie County Division of Equal Employment Opportunity after review of appropriate documents and investigation.
- D. *Subcontract* shall mean those contracts tiered under a prime-contract for County contracts awarded for construction, modification, supplies and material, professional, technical and service work contracted by the contractor in the execution of the work for the County.
- E. *Certified Business* shall mean a business verified as an MBE or WBE pursuant to Erie County local certification or under the provisions of Article 15-A of N.Y. Executive Law.
- F. *Contractor* shall mean an individual, a business enterprise including a sole proprietorship, a corporation, partnership or a limited liability company or any party with an award of a County contract or State contract.

- G. *Department* shall mean an office, department or division of Erie County government.
- H. *Large County* shall mean Erie County or a county having a population in excess of 285,000 according to the most recent federal census.
- I. *Utilization Plan* shall mean a plan in a prescribed schedule format prepared by a Contractor and submitted in connection with a County procurement. The Utilization plan shall identify those MBE and WBE firms committed to perform work.
- J. *Diversity Practices* shall mean the Contractor practices, actions and policies related to the following:
 - (1) Compliance with the MBE and WBE goals;
 - (2) Efforts at employment of minority and women members in the community;
 - (3) Mentoring of MBE and WBE firms with a goal of developing such firms to become prime contractors;
 - (4) Entering into partnerships, joint ventures or other similar arrangements with certified minority and women-owned businesses;
 - (5) Participation in an apprenticeship program, if applicable; and
 - (6) Compliance with The Erie County Workforce Development and Diversification New York State Certified Worker Training Program, also known as the "Apprenticeship Bill of 2018" [referencing (Local Law No. 3-2018)], if applicable.

SECTION 4. MINORITY AND WOMEN BUSINESS ENTERPRISE UTILIZATION COMMITMENT FOR CONSTRUCTION CONTRACTS BY THE DEPARTMENTS OF PUBLIC WORKS, PARKS, RECREATION AND FORESTRY, AND ENVIRONMENT AND PLANNING

The following provisions shall be inserted in, and made a condition of all bid specifications or requests for proposals prepared or administered by the Erie County Department of Public Works, Erie County Department of Parks, Recreation and Forestry, and/or the Erie County Department of Environment and Planning (including its Division of Sewage Management) and advertised after the effective date of this local law for any contract estimated by the County to exceed \$100,000 in cost (the "Construction Provision").

- A. Minority and Women Business Enterprise Utilization Commitment:

Contractors awarded a contract by the County in a value of \$100,000 or greater shall take action to create equal economic opportunity by utilizing bona fide MBEs and/or WBEs for subcontracting on County projects.

Such equal economic opportunity action shall include, but not be limited to:

- (1) Utilizing a source list of MBEs and WBEs compiled by the County or the State of New York;
- (2) Solicitation of bids from MBEs and WBEs, particularly those located in Erie, Niagara, Cattaraugus and Chautauqua Counties;
- (3) Giving MBEs and WBEs sufficient time to submit proposals in response to County solicitations;
- (4) Maintaining records showing MBEs and WBEs and specific efforts to identify and award contracts to these entities; and
- (5) A goal of awarding at least thirty percent (30%) of the total dollar value of the contract to MWBEs, or, for those contracts governed by federal or state regulations with respect to minority and/or women business hiring, the prevailing percentage set forth therein, whichever is higher.
 - (a) The collective goal of 30% for MWBE contracts shall consist of the following: 20% for MBE firms and 10% for WBE firms.

B. Where the MBE or WBE is a supplier, a credit of sixty percent (60%) of the dollar value of the subcontract between the MBE or WBE and the contractor shall be awarded towards the fulfillment of the appropriate goal as set forth above, unless the supply budget for the overall project accounts for seventy-five percent (75%) or more of the total project budget, and in that instance 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 towards the fulfillment of the appropriate goal. For the purposes of this provision, an MBE or WBE shall be considered a 'supplier' when it assumes actual and contractual responsibility to furnish supplies or materials and is the manufacturer of those supplies or materials; or is recognized by the manufacturer involved as a distributor of its supplies or materials; and owns or leases a facility which is necessary and customary to carry out the purported function of the business; and distributes, delivers and services the supplies or materials with its own employees.

C. Where the MBE or WBE performs a sales function, which is customarily performed as a distinct and necessary part of the supply process, the credit shall be the exact dollar value of the broker fees or the exact percentage of the markup on the product on a subcontract between the MBE or WBE and the contractor. The sales credit will be awarded toward the fulfillment of the appropriate goal. 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 supply chain from manufacturer to purchaser, no credit will be granted toward the appropriate goal.

- D. Each Contractor bidding on a County contract shall submit to the County, with the bid, a list of all MBEs and/or WBEs with whom the Contractor has signed a binding contractual agreement, or is presently negotiating an agreement, for the purposes of meeting the minority and women business enterprise utilization goal provided for in section A(5) of this law. Such a list must be signed by the MBEs and/or WBEs with whom the Contractor is seeking to utilize. A Contractor's bid shall not be considered where the contractor fails to submit such a signed list of MBEs and/or WBEs as provided herein. A Contractor's bid shall not be considered where examination of said list of MBEs or WBEs evidences failure by the contractor to comply with the equal economic opportunity 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 when the availability of MBEs or WBEs in the market area of the project is less than the goals above. Upon written request by the Contractor, the County, through its Erie County Division of Equal Employment Opportunity, may grant a complete or partial waiver of the requirement for subcontracting with an MBE or WBE when an MBE or WBE for the project is not available.
- E. As evidence of compliance with the goals set forth in this law, within 15 business days of the bid opening, the contractor shall submit to the County a schedule for MBE or WBE participation, including the name(s) of the MBEs and/or WBEs with whom the contractor intends to subcontract, specifying the agreed-upon price to be paid for such work, and identifying in detail the Contractor item(s) or parts to be performed by each MBE or WBE. A letter of intent to enter into a subcontract or purchase agreement, contingent upon contract award by the County, and indicating the agreed-upon price and scope of work shall be provided, signed by both the contractor and the MBE or WBE.
- F. As evidence of compliance with the goals set forth in this law, the Contractor shall provide to the County copies of all subcontracts and/or purchase agreements with MBEs or WBEs for the contract within 15 business days of the contract award. A notice to proceed with construction shall not be issued until the County receives such documentation.
- G. As evidence of compliance with the goal set forth in this law, when the project is thirty percent (30%) complete, the Contractor shall submit a list of the MBEs or WBEs with whom the contractor has entered into a binding agreement for subcontracting under this contract to the County. The same information is required when the project is at seventy five percent (75%) completion and a final accounting must accompany the final payment request to the County.

- H. Failure to comply in good faith with the provisions set forth herein shall constitute a breach of the contract, subject to all remedies available to the County, including but not limited to the assessment of liquidated damages or other contractual penalties, as reasonable and appropriate.
- I. In the event of non-compliance with subparagraphs E and F provisions by a successful low bidder Contractor, the County has the discretion to proceed with negotiations with the next two lowest or qualified bidders.
- J. All appropriate goals, ownership status, and compliance with the provisions of this law shall be certified by the Erie County Division of Equal Employment Opportunity after review of appropriate documents and investigation.

SECTION 5. MINORITY AND WOMEN BUSINESS ENTERPRISE UTILIZATION COMMITMENT FOR SUPPLIES, MATERIALS AND EQUIPMENT, ACQUIRED VIA THE DIVISION OF PURCHASE

The following provisions shall be made a condition of all bid specifications or requests for proposals prepared or administered by Erie County for supplies, materials and/or equipment purchased by Erie County involving an expenditure of more than \$20,000 (the "Supplier Provision").

- A. Contractors awarded purchase contracts by the County involving an expenditure of more than \$20,000 for supplies, materials and equipment purchases fitting within this section shall take action to create economic opportunity by utilizing MBEs and WBEs on all contracts with the County. Consistent with Section 3, MBE and WBE firms are business entities operated for-profit.

Such equal economic opportunity action shall include, but not be limited to:

- (1) Utilizing a source list of MBEs and WBEs compiled by the County or the State of New York;
- (2) Solicitation of bids from MBEs and WBEs, particularly those located in Erie, Niagara, Cattaraugus and Chautauqua Counties;
- (3) Giving MBEs and WBEs sufficient time to submit proposals in response to County solicitations;
- (4) Maintaining records showing MBEs and WBEs and specific efforts to identify and award contracts to these entities; and
- (5) A goal of awarding at least thirty percent (30%) of the total dollar value of the contract to MWBEs, or, for those contracts governed by federal or state

regulations with respect to minority and/or women business hiring, the prevailing percentage set forth therein, whichever is higher.

- (a) The collective goal of 30% for MWBE contracts shall consist of the following: 20% for MBE firms and 10% for WBE firms.

- B. All bidders on each contract subject to this supplier provision shall submit to the Erie County Division of Equal Employment Opportunity, with the bid, a list of all MBEs and WBEs in the form of a Utilization Plan with whom the supplier has solicited bids or with whom the supplier has signed a binding contractual agreement, or with whom the supplier is presently negotiating an agreement, for the purposes of meeting the MBE and/or WBE utilization goals of this section. Such a list must be signed by the MBEs and/or WBEs with whom the supplier is seeking to utilize. A supplier's bid shall not be considered where the supplier fails to submit such a signed list of MBEs and/or WBEs as provided herein. A supplier's bid shall not be considered where examination of said list of MBEs or WBEs evidences failure by the supplier to comply with the equal economic opportunity action requirements provided for herein, except that the County may, upon written request by the supplier, grant a complete or partial waiver of the provisions when the availability of MBEs or WBEs in the market area of the project is less than the specified MBE and WBE goals in this section.

- C. As evidence of compliance with the goals set forth in this law, within 15 business days of the bid opening, the supplier shall submit to the County's Division of Purchase and Division of Equal Employment Opportunity a Utilization Plan for MBE or WBE participation, including the name(s) of the MBEs and/or WBEs with whom the supplier intends to utilize, specifying the agreed-upon price to be paid for such goods and services, and identifying in detail the contract item(s) or items to be supplied by each MBE or WBE. A letter of intent to enter into a purchase agreement, contingent upon contract award by the County, and indicating the agreed-upon price and scope of work shall be provided, signed by both the supplier and the MBE or WBE. As evidence of compliance with the goals set forth in this law, the supplier shall provide to the County copies of all purchase agreements with MBEs or WBEs for the contract within 15 business days of the contract award.

- D. Failure to comply in good faith with the provisions set forth herein shall constitute a breach of the contract, subject to all remedies available to the County, including but not limited to the assessment of liquidated damages, or other contractual penalties as reasonable and appropriate.

- E. All appropriate goals, ownership status, and compliance with the provisions of this law shall be certified by the Erie County Division of Equal Employment Opportunity after review of appropriate documents and investigation.

- F. If the expenditure is less than \$20,000, the County must follow the policies and procedures as adopted in accordance with Gen. Municipal Law §104-B.

SECTION 6. MINORITY AND WOMEN BUSINESS ENTERPRISE UTILIZATION COMMITMENT FOR PROFESSIONAL SERVICES, TECHNICAL SERVICES, CONSULTANT SERVICES, AND INSURANCE PROCURED BY COUNTY DEPARTMENTS

The following provisions shall be made a condition of all bid specifications or requests for proposals prepared or administered by Erie County for professional services, technical services, consultant services, and/or insurance procured by Erie County involving an expenditure of more than \$100,000 (the "Service Provider Provision").

- A. Contractors awarded contracts by the County involving an expenditure of more than \$100,000 for services fitting within this section shall take action to create economic opportunity by utilizing MBEs and WBEs on all contracts with the County. Consistent with Section 3, MBE and WBE firms are business entities operated for-profit.

Such equal economic opportunity action shall include, but not be limited to:

- (1) Utilizing a source list of MBEs and WBEs compiled by the County or the State of New York;
- (2) Solicitation of bids from MBEs and WBEs, particularly those located in Erie, Niagara, Cattaraugus and Chautauqua Counties;
- (3) Giving MBEs and WBEs sufficient time to submit proposals in response to County solicitations;
- (4) Maintaining records showing MBEs and WBEs and specific efforts to identify and award contracts to these entities; and
- (5) A goal of awarding at least thirty percent (30%) of the total dollar value of the contract to MWBEs, or, for those contracts governed by federal or state regulations with respect to minority and/or women business hiring, the prevailing percentage set forth therein, whichever is higher.
 - (a) The collective goal of 30% for MWBE contracts shall consist of the following: 20% for MBE firms and 10% for WBE firms.

- B. All professional, technical, or consultant providers subject to this provision shall submit to the Erie County Division of Equal Employment Opportunity, with the proposal, a list of all MBEs and WBEs in the form of a Utilization Plan with whom

the provider has solicited bids or with whom the provider has signed a binding contractual agreement, or with whom the provider is presently negotiating an agreement, for the purposes of meeting the MBE and/or WBE utilization goals of this section. Such a list must be signed by the MBEs and/or WBEs with whom the provider is seeking to utilize. A proposal shall not be considered where it fails to include such a signed list of MBEs and/or WBEs as provided herein. A proposal shall not be considered where examination of said list of MBEs or WBEs evidences failure to comply with the equal economic opportunity action requirements provided for herein, except that the County may, upon written request by the provider, grant a complete or partial waiver of the provisions when the availability of MBEs or WBEs in the market area of the project is less than the specified MBE and WBE goals in this section.

- C. As evidence of compliance with the goals set forth in this law, within 15 business days of the notice of award, the provider shall submit to the applicable County Department and Division of Equal Employment Opportunity a Utilization Plan for MBE or WBE participation, including the name(s) of the MBEs and/or WBEs with whom the provider intends to utilize, specifying the agreed-upon price to be paid for such goods and services, and identifying in detail the contract item(s) or items to be supplied by each MBE or WBE. A letter of intent to enter into an agreement, contingent upon contract award by the County, and indicating the agreed-upon price and scope of work shall be provided, signed by both the provider and the MBE or WBE. As evidence of compliance with the goals set forth in this law, the provider shall provide to the County copies of all agreements with MBEs or WBEs for the contract within 15 business days of the contract award.
- D. Failure to comply in good faith with the provisions set forth herein shall constitute a breach of the contract, subject to all remedies available to the County, including but not limited to the assessment of liquidated damages, or other contractual penalties as reasonable and appropriate.
- E. All appropriate goals, ownership status, and compliance with the provisions of this law shall be certified by the Erie County Division of Equal Employment Opportunity after review of appropriate documents and investigation.

SECTION 7. REPORTING REQUIREMENTS FOR COUNTY DEPARTMENTS

In furtherance of Local Law Number 9-2005, the following provisions shall update, modify and amend such Local Law as set forth herein.

- A. Every County Department shall annually prepare and implement a written MWBE Utilization Plan for the utilization goals for minority and women owned business

participation on County contracts, excluding any not-for-profit contracting procurements, let by or on behalf of such Department. The Plan shall be submitted to the Erie County Division of Equal Employment Opportunity for review and approval by September 15 annually.

- B. The County Division of Equal Employment Opportunity shall submit a summary of each Department's annual written plan to the Legislature simultaneously with the annual proposed Budget. The plans are not to be considered as a part of the proposed annual budget process.
- C. The Erie County Legislature shall hold an annual hearing in its Minority and Women Business Enterprise Committee concerning the annual written plans submitted by Departments.
- D. The Division of Equal Employment Opportunity shall also prepare a bi-annual report on each Department's goal achievement, including each Department's good faith efforts to reach those goals. The bi-annual report shall be submitted to the County Executive and the Legislature.
- E. Each Department shall make good faith efforts to achieve the goal of 30% utilization of M/WBEs.
- F. Failure by any Department to submit any reports required by this Local Law shall be grounds for discipline by the County Executive, except for those Departments whose heads are elected, and in that instance, the County Legislature shall determine the appropriate remedy for non-compliance with the provisions of this Law.
- G. The County Legislature and County Executive shall mutually determine the necessary funding to accomplish the purposes of this Local Law during the annual budget process, including but not limited to the costs of any Disparity Study within the next five (5) years.

SECTION 8. WORKFORCE DIVERSITY PROGRAM

- A. Definitions: As used in this law under this Section, the following terms are defined below:
 - (1) *Minority Group Member* shall mean a United States Citizen or permanent resident alien who can establish and demonstrate membership in the following group:
 - (a) Black or African-American having origins in any of the Black African racial groups;

- (b) Hispanic / Latino persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian, African or Hispanic origin;
 - (b) Native American or Alaskan native persons having origins in any of the original peoples of North America;
 - (d) Asian and Pacific Islander persons having origins in any of the Far East Countries, South-East Asia or Pacific Islands; and
 - (e) Women from all racial groups.
- (2) *Executive Order No. 18* shall mean that certain Executive Order entitled "*Erie County Construction Bid Documents shall include Local and Disadvantaged Worker Requirements*" signed by County Executive Mark C. Poloncarz on September 27, 2017.
 - (3) *Disadvantaged Groups* shall mean collectively "disadvantaged workers" as that term is defined in Executive Order No. 18 at par. 1(c), for the purposes of including such individual groups for this Section. Specifically, a disadvantaged worker is a resident who has a household income below 50% of the Area Median Income ("AMI"); or has been released from prison within the last 10 years; or participates in the Temporary Assistance for Needy Families program; or participates in the Supplemental Nutrition Assistance Program; or has been unemployed for at least 12 consecutive months. The applicable zip codes as referenced in the Executive Order No. 18 as cited above will be determined annually by Erie County Division of Equal Employment Opportunity.

B. As evidenced by the history of local laws in this subject matter area as recited previously in Section 1 hereof and the Executive Order No. 18 signed by County Executive Poloncarz for Construction, the County encourages aspirational goals for the utilization of disadvantaged groups inclusive of minority group members and women in construction, supplier industry, professional, technical and occupations. To further that policy goal and incorporate the spirit and intent of Executive Order No. 18 into this law, there shall be Workforce Participation goals in the award of County Contracts established by the County Department for contracts in excess of \$250,000 for construction and related supplies and \$100,000 for the professional, technical and occupations.

- (1) Each Department shall strive to meet aspirational goals as set forth in par. 2 below and such goals shall be set forth in its invitation for bids, request for proposals and other solicitations that will result in an award of \$250,000 for construction and \$100,000 for the provision of goods and services shall set forth the expected degree of workforce participation by minority group members, women and those individuals described in the Executive Order

No. 18 issued by County Executive Poloncarz related to construction services specifically.

- (2) Based on the Executive Order No. 18, par. 1(c), a Workforce Participation goal of 20% of total work hours performed during the contract award period for the provision of goods and services is hereby determined to be applicable to this Section. Notwithstanding this Section, Executive Order No. 18 is not repealed, amended or modified by this law.
- (3) Departments seeking to meet the aspirational workforce participation goals of 20% shall consider factors including but not limited to the following:
 - (a) the findings in the 2016 Disparity Study with specific references to the Buffalo and Western New York region and the 2016 Greater Buffalo Racial Equity Study;
 - (b) United States Census Bureau data; and
 - (c) Local unemployment and poverty level data.
- (4) Every Contractor responding to an invitation for bids, request for proposals or other solicitation resulting in a contract award from a County Department shall agree to the workforce participation goals in this Section and make good faith efforts to achieve the workforce participation goal or request a waiver from such goal.
 - (a) Contractor shall sign a certification prepared by the Erie County Division of Equal Employment Opportunity as to the good faith efforts.
 - (b) Any Contractor may submit a waiver request to this Section in writing to the Division of Equal Opportunity. Each waiver request must be supported by appropriate documentation evidencing good faith efforts as to compliance.
 - (c) In the event that a Contractor is not able to meet the M/WBE goals, the Director of Equal Employment Opportunity may permit the workforce participation efforts to be credited towards any shortfalls in meeting the M/WBE participation goals, as deemed appropriate and with documented evidence of good faith compliance. The degree to which the workforce participation efforts may be counted towards the M/WBE goals shall be promulgated by the Rules and Regulations as described in Section 11 herein.

SECTION 9. MINORITY AND WOMEN UTILIZATION ADVISORY BOARD

Erie County Charter Section 1703 establishes the Minority and Women Utilization Advisory Board ("MWUAB"), whose mission, among other matters, is to evaluate and review the adequacy of the County's efforts on behalf of Minority and Women's Business Enterprises.

- A. To the extent necessary and applicable, Local Law Number 1-1983, Section 2, thereof, shall be modified, amended and updated as follows:
- (1) MWUAB is hereby tasked with reviewing program administration and implementation of this law including handling of any administrative appeals for non-compliance sanctions and shall submit an annual report to the Erie County Legislature.
 - (2) MWUAB shall appoint, among its members, a designated hearing committee for administrative appeals involving the subject matter of diversity compliance.
 - (3) MWUAB shall have its members appointed by the County Executive, consistent with Local Law Number 1-1983. The County Executive shall provide a copy of the appointees to the County Legislature within thirty days of appointment.
 - (4) MWUAB shall retain, after consultation with and approval by the Department of Law, outside consultants and professionals as required to accomplish its mission and shall be empowered to promulgate rules for the administration of this Section 9.

SECTION 10. SANCTIONS FOR NON-COMPLIANCE

As set forth in Section 1 of this law, the County has expressed a strong policy objective and intent to provide opportunity for meaningful participation in County contract awards. Further, as set forth in Section 2, the County has made certain legislative determinations in support of the policy directives contained herein.

- A. To accomplish that objective, each County contracting Department shall include a provision in its respective contracts that any Contractor who willfully and intentionally fails to comply with the MBE and WBE provisions of this law shall be liable to the County Department contracting entity for liquidated or other appropriate damages on account of such contractual breach. Any such assessment of liquidated damages, other appropriate contractual sanction or alternative non-monetary sanction and penalty, such as a designation as a non-responsible bidder, shall be considered as a relevant factor in future County procurement opportunities.

- B. Each Contractor shall agree and consent upon acceptance of an award of a County contract to be bound by terms of compliance with the law including any associated sanctions.
- C. Not less than five days after receipt of a written provisional determination by a County Department that the Contractor has failed to comply with this Local Law, the Contractor shall receive a notice setting forth the rationale for the provisional determination, along with the time, date and place for the Contractor to appear and be heard on the provisional determination.
- D. At the designated time and place set forth in the notice, the Contractor may challenge the reasons for the County Department's provisional determination in person, with or without counsel, by appearing before the Minority and Women Utilization Advisory Board ("MWUAB")'s designated hearing committee as described in Section 9. No member of the designated hearing committee shall be an elected legislator.
- E. The MWUAB shall render its decision and make a recommendation to the Erie County Division of Equal Employment Opportunity and the Erie County Department of Law on whether or not to issue sanctions within forty-five (45) days after the presentation by the Contractor and the Department who made the provisional determination.
- F. The County Department of Law will review the recommendation of the MWUAB in consultation with the Erie County Division of Equal Employment Opportunity and institute proper proceedings for the imposition of sanctions.
- G. If a County contractor/vendor/supplier asserts or claims a MWBE or workforce diversity status that is not accurate during its contract with the County, the County will note this factor and consider the non-compliance as a relevant factor in evaluating the vendor in future procurement opportunities. Said non-compliance may be a factor in determining that the vendor is not a responsible bidder for purposes of County contracting.
- H. The sanctions set forth in this Section are imposed if there is willful conduct and intentional conduct or a lack of evidence of good faith compliance.

SECTION 11. RULES AND REGULATIONS

As of the effective date of this Local Law, the County Law Department, in conjunction with the Division of Equal Employment Opportunity, shall promulgate Rules and Regulations related to the implementation, guidance and enforcement of this Local Law. Such promulgated rules and regulations shall be submitted to the County Legislative body for approval, by simple majority, and biennially thereafter. If after sixty days from the Director's written notice to the Legislature, the Legislature has not voted to disapprove such rules and regulations, said rules and regulations shall be deemed promulgated.

SECTION 12. SEVERABILITY

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, or business shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its specific application.

SECTION 13. EFFECTIVE DATE

This Local Law shall take effect the first day of April, 2022.

SPONSORS:

April N.M. Baskin
Howard Johnson
Jeanne Vinal
Timothy J. Meyers