



Policy Committee

July 14, 2020
9:00 am

Via Conference Call

1. Call Meeting to Order
2. Approval of the June 4, 2020 Policy Committee Minutes (Pages 2-4)
3. Project Matrix (Page 5)
4. WMBE discussion (Pages 6-16)
5. Adjournment – Next Meeting **August 6, 2020 at 9:00 a.m.**

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

- MEETING:** June 4, 2020, at Erie County Industrial Development Agency (the “ECIDA” or “Agency”), held the meeting via phone conference. Governor Cuomo’s Executive Order 202.1, as amended, issued in response to the Coronavirus (COVID-19) crisis, suspended Article 7 of the Public Officers Law to the extent necessary to permit any public body to take actions without permitting in public in-person access to such meetings and authorized such meetings to be held remotely by conference call or other similar service, provided the public has the ability to view or listen to such proceedings and that the meeting is recorded and transcribed.
- LIVE STREAMED:** This meeting is being live-audio streamed and made accessible on the Agency’s website at www.ecidany.com.
- PRESENT:** Denise Abbott, Hon. April Baskin, Rev. Mark E. Blue, Hon. William J. Krebs, Richard Lipsitz, Jr., Brenda McDuffie, Hon. Glenn R. Nellis, Laura Smith, David J. State, Lavon Stephens and Maria Whyte
- ABSENT:** Hon. Byron W. Brown, Hon. Johanna Coleman, Richard Cummings and Colleen DiPirro
- OTHERS PRESENT:** John Cappellino, Chief Executive Officer; Karen M. Fiala, Assistant Treasurer/Secretary; Dawn Boudreau, Compliance Officer; Grant Lesswing; Business Development Officer; Robbie McPherson, Director, Marketing & Communications; Brian Krygier, Systems Analyst; Carrie A. Hocienec, Administrative Assistant; and Robert G. Murray, General Counsel
- GUESTS:** Petro Kushnier on behalf of Kamax LLC/Raine Logistics and Alex Carducci on behalf of the City of Buffalo Office of Strategic Planning

There being a quorum present at 9:06 a.m., the Meeting of the Policy Committee was called to order by Mr. Lipsitz.

MINUTES

The minutes of the April 2, 2020 Policy Committee meeting were presented. Upon motion made by Ms. Whyte and seconded by Mr. Nellis, the aforementioned Policy Committee meeting minutes were unanimously approved.

PROJECT MATRIX

Mr. Cappellino reviewed the Agency’s Project Matrix. Mr. Lipsitz directed that the report be received and filed.

PROJECT PRESENTATIONS

Kamax, LLC/Raine Logistics, Inc., 2890 North America Drive, West Seneca, New York. Mr. Cappellino presented this proposed sales tax, mortgage recording tax exemption and real property tax abatement benefits project involving the construction of a 14,380 sq. ft. truck terminal in the Town of West Seneca. The company is currently located in the City of Buffalo in a 6,000 sq. ft. leased facility on Hamburg Street. This project involves an inter-municipal move and the Agency has implemented its Inter-Municipal Move Policy and notified both the Mayor and Supervisor of the respective municipalities.

At this point in time, Mr. Blue joined the meeting.

Mr. Kushnier spoke about the project on behalf of the company.

Ms. Baskin queried about the company’s MBE utilization plan. General discussion ensued. Ms. Baskin requested that the general contractors confirm use of MBE contractors.

Mr. Lipsitz queried about the company’s COVID-19 work plans for safety. Mr. Kushnier discussed the company’s social distancing and health and safety plans.

Mr. Cappellino stated that in exchange for providing the sales and use tax, mortgage recording tax exemption and real property tax abatement benefits, the approval of this project will be conditioned upon adherence to certain material terms and conditions with respect to the potential modification, recapture and/or termination of financial assistance as follows:

Draft Recapture Material Terms

Condition	Term	Recapture Provision
Total Investment	At project completion	Investment amount equal to or greater than 85% of project amount. Total Project Amount = \$2,214,000 85% = \$1,881,900

Employment	Coincides with 7-year PILOT	Maintain Base: 12 Create 85% of Projected Projected = 1 85% = 1 Recapture Employment = 13
Local Labor	Construction Period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with 7-year PILOT	Adherence to policy
Unpaid Tax	Coincides with 7-year PILOT	Adherence to policy
Recapture Period	Coincides with 7-year PILOT	Recapture of state and local sales tax, mortgage recording tax and real property taxes.

Ms. McDuffie moved and Ms. Abbott seconded to recommend the project as proposed be forwarded to the members of the ECIDA for approval. Mr. Lipsitz called for the vote and the project was approved by a vote of 10 in favor, and 1 against, with Ms. Baskin voting in the negative.

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 9:47 a.m.

Dated: June 4, 2020

Karen M. Fiala, Secretary

Project Matrix/Material Factors/Clawbacks

Count	Project Name	Approval Date	Project Amount	Investment	Jobs Retained	Factors		Clawback	Local Labor	Length of Term	Additional Findings	*Incentive Amount	Adaptive Reuse	Pay Equity
						Job Creation	Jobs Created							
1	Barcalo Living & Commerce	Feb-20	\$34,727,449	85% threshold \$29,518,331	9	85%-New 25 Jobs	30	Mortgage Sales Tax	Yes	2 Years after Project Completion		\$1,003,750	Adaptive Reuse	YES
1	3310 Benzling Road, LLC/Marathon Drains	Mar-20	\$725,000	85% threshold \$616,250	15	85%-New 2 Jobs	2	PILOT Sales Tax	Yes	Period of PILOT 7 Years		\$92,000		YES
1	637 Linwood, LLC/1275 Delaware, LLC	Mar-20	\$12,460,993	85% threshold \$10,591,844	0	85%-New 8 Jobs	10	Mortgage Sales Tax	Yes	2 Years after Project Completion		\$380,911	Adaptive Reuse	YES
1	Jermal's Seneca, LLC	Mar-20	\$45,000,000	85% threshold \$38,250,000	0	85%-New 4.5 Jobs	5	Mortgage	Yes	2 Years after Project Completion		\$337,500		YES
1	Steuben Foods Incorporated	Mar-20	\$25,621,494	85% threshold 21,778,269	604	85%-New 17 Jobs	20	PILOT Sales Tax	Yes	Period of PILOT 10 Years		\$967,505		YES
1	6700 Transit Road, LLC/Big Ditch	May-20	\$32,300,055	85% threshold \$27,455,046	0	85%-New 142 FTE Jobs	168	PILOT Sales Tax Mortgage	Yes	Period of PILOT 10 Years		\$1,883,581		Yes
1	Kamax, LLC/Reine Logistics, LLC	Jun-20	\$2,214,000	85% threshold \$1,881,900	12	85%-New 1 Job	1	PILOT Sales Tax Mortgage	Yes	Period of PILOT 7 Years		\$424,250		Yes
Count			Project Amount	Investment	Jobs Retained	Job Creation	Jobs Created					Incentive Amount		
2			\$47,188,442		9		40					\$1,384,661		
7			\$153,048,991		640		236					\$4,665,247		

Adaptive Reuse														
2020 Sub Total														

Adaptive Reuse														
2020 Sub Total														

POLICY COMMITTEE

MBE/WBE goals

July 14, 2020



WHAT IS A DISPARITY STUDY?

A Disparity Study (“Study”) is an evaluation of the participation by **Minority and Women owned Business Enterprises (MWBEs)** and other disadvantaged groups in government contracting, **compared to the availability of MWBEs in the marketplace.**

US Supreme Court 1989 decision provides guidance for disparity studies:

- City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) and its progeny

NYS most recent disparity study conducted in 2016

- Study findings included **disparity between contracting by MWBE enterprises and availability**
- Link to presentation on findings <https://esd.ny.gov/sites/default/files/MWBE-DisparityStudyPresentation.pdf>



DEFINITIONS

Minority-Owned Business Enterprise (MBE)

An MBE is a business enterprise in which at least fifty-one percent (51%) is owned, operated and controlled by citizens or permanent resident aliens who are meeting the ethnic definitions listed below:

- **Black:** Persons having origins from any of the Black African racial groups.
- **Hispanic:** Persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Native American or Latin American origin, regardless of race.
- **Asian-Pacific:** Persons having origins from the Far East, Southeast Asia or the Pacific Islands.
- **Asian-Indian Subcontinent:** Persons having origins from the Indian subcontinent.
- **Native American or Alaskan Native:** Persons having origins in any of the original peoples of North America

Woman-Owned Business Enterprise (WBE)

- A WBE is a business enterprise in which at least fifty-one percent (51%) is owned, operated and controlled by citizens or permanent resident aliens who are women.



DEFINITIONS: OTHER GROUPS

- **Disadvantaged Business Enterprise (DBE)**
 - Company level diversity certification. ...
 - Governed by Federal regulations,
 - Generally, company or organization must be at least 51% owned by a socially and economically disadvantaged person
- **Veteran Business Enterprise (VBE)**
 - (NYS) One or more service-disabled veterans, with a service-connected disability rating of 10% or greater, must own at least 51% of the business enterprise
- **Small Business Enterprise (SBE)**
 - Small Business Enterprise – some states set specific contracting goals for small business enterprises, typically based on business size, sales or income



CERTIFICATION



NYS Certification

- Creates a list of Certified Enterprises
- Can take several months

Ownership, Operation and Control

All firms seeking MBE, WBE or MWBE certification must be independently owned, operated and controlled by minority members and/or women. The ownership must be real, substantial and continuing, and the minority members and/or women must exercise the authority to independently control the day-to-day business decisions

Personal Net Worth Restriction

Each minority or woman owner upon whom certification is based cannot have a personal net worth exceeding \$15 Million after allowable deductions

Small Business Restriction

Firms must not employ more than 300 individuals

Independent, active and one year in business

The firm must operate independently of other firms, must demonstrate it is an active business and generally, the business must be in operation for at least one year

CERTIFICATION



Local Certification

- Creates a list of Certified Enterprises

Erie County/City of Buffalo maintain list of certified MWBEs

Goals:

- Set to overcome disparity in government purchasing/contracting
- Created by local or state action
- Goal %'s Vary by jurisdiction

- NYS 30% MWBE goal
- City of Buffalo 25% MBE 5% WBE
- Erie County 10% MBE 2% WBE
- ECIDA (contracted services) 15% MBE 5% WBE

REPORTING & MONITORING

Contract Utilization Forms

- Project or purchase contract-based
- Vendors and sub-contractors
- Waiver Process

Workforce Utilization

- Refers to EEO goals for MWBE or other groups specifically for workforce
- May be related to procurement/contracting goals



CURRENT POLICY GOALS



TAX INCENTIVE PROJECTS

- ECIDA application encourages applicants to utilize MBE/WBE contractors for their projects and asks companies to describe their MBE/WBE practices that promote MBE/WBE Hiring and utilization.
- Staff requests letter from applicant and/or contractor describing MBE/WBE efforts
- Applicants sign and certify their applications and are provided a link to MBE/WBE certified vendors list



PROCUREMENT

- ECIDA contracts for services (projects being directly undertaken by IDA)
- MBE goal 15%
- WBE goal 5%



I : Applicant Background

Part 1

Part 2

II : Project Details

Part 1

Part 2

Part 3

III : Facility Type

IV : Tenant Information

V : Environmental Questionnaire

VI : Inter-Municipal Move

VII : Adaptive Reuse

VIII : Senior Housing

IX : Retail

Attachments

Upload Files

AGREE AND SUBMIT

Complete and Submit Application

- Please check here to acknowledge that you have read and understand the ECIDA Attorneys' and ECIDA Standard Fee Schedule.
- I understand that I will not be able to make any revisions after clicking "Submit Application". In case of an omission or an error, the ECIDA may allow me to make additions or corrections in the future.
- I acknowledge that the information contained within this application is true and accurate.
- I have read and agree to the ECIDA's insurance requirements.
- I have read and agree to the ECIDA's Representations, Certifications and Indemnification document, including the requirements for the annual Employment survey and quarterly Local Labor Utilization reports.
- I have been authorized by the company receiving the potential benefits to fill out and submit this application.

Individual submitting the application

Beth OKeefe

The ECIDA supports Minority and Women-Owned Business Enterprises (MWBES) and we encourage you to utilize MWBES as part of your project. To assist you with your search for MWBE firms, here are links to enterprises certified by NY State <https://ny.newycontracts.com/> and those jointly certified by Erie County/City of Buffalo <http://www2.erie.gov/eoo/index.php?q=mbewbe-resources>.

A one time fee of \$1000 is required for submission. By clicking the submit button below you will progress through the cart to complete payment at which time your application will be submitted.

Save And Go Back

Save And Complete Later

Save And Submit

OTHER AGENCY POLICIES?

OTHER IDAS



- Surveying through NYSEDC other IDA's MBE/WBE programs

- ESD has MBE/WBE goals for projects receiving grant funds
- Generally 30% MBE/WBE goal based on the dollar amount of the grant
- ESD Tax Incentive programs do not contain MBE/WBE goals



ESD



THANK YOU
