



CITY OF ALBANY

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Minority and Women Business Enterprise (MWBE) Program

CONTRACT MONITORING ACTIVITIES

REPORTING PERIOD: OCTOBER 2017 – MARCH 2018

City of Albany Office of Equal Employment Opportunity

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This is the bi-annual report to the Albany Common Council on the activities of the City of Albany Minority and Women's Business Participation Program, covering the period from October 2017 through March 2018.

Topics in this report include:

- 1) Introduction
- 2) Compliance Summary
- 3) Commentary
- 4) Looking Ahead

Introduction

The MWBE Officer is responsible for implementing the MWBE Program and Minority and Women Labor Utilization Plan Ordinance. [Adopted 6-18-1984; amended in its entirety 4-1-2002 by Ord. No. 13-22-02]. The intent of the Ordinance is to provide minorities and women the maximum opportunity to participate in City of Albany construction projects.

The goals for participation on these projects are:

- a minimum of 7.5% of the total dollar value of all construction projects should be awarded to City of Albany Certified Minority- or Women-owned Business Enterprises;
- a minimum of 17.8% of the total work hours on construction projects should be performed by minorities and women.

The MWBE Program and Minority and Women-owned Labor Utilization Plan Ordinance established that the Office is also responsible for implementing the City's MWBE Certification Program. The Ordinance specifies that the Office is responsible for administering the program as follows:

- Identify minority and women-owned businesses capable of engaging successfully in a competitive bid process for the procurement of construction and construction-related projects;
- Maintain a central directory of minority and women-owned firms;
- Discontinue and disqualify contractors and subcontractors when violations of policy and performance agreements occur.

Compliance Summary: October 2017 through March 2018

The MWBE Officer monitors several categories of contracts, with different compliance requirements:

1) City of Albany-funded contracts:

Require 7.5% of the total paid on the contract to be paid to certified MWBE contractors and/or subcontractors, and 17.8% of total hours worked on the contract be performed by minority or women labor. Certified MWBE subcontractors are published in the City of Albany MWBE Directory.

--this is required on construction contracts only, not services, consulting or emergency contracts

2) Department of Transportation Federally-funded contracts:

Require different levels of participation, categorized as "DBE" (Disadvantaged Business Enterprise); the contractors must be certified on the DOT list, which is based on the Empire State Development (ESD) statewide list. DOT monitors all the compliance.

--The DOT utilization goal is a percentage of the total contract cost, and ranges from less than 5% up to 30%, depending on the contract. DOT determines the goal.

3) Environmental Facilities Corporation, New York State-funded contracts:

The Environmental Facilities Corporation (EFC) is a public benefit corporation which provides low-cost financing and technical assistance to municipalities for water quality infrastructure projects. EFC sets the MWBE utilization goals for those projects. The Albany MWBE Officer compiles the utilization reports for the EFC on a quarterly basis, and is responsible for obtaining reports and supporting documents from contractors. The MWBE subcontractors must be from the certified ESD list.

--EFC utilization goals range from 20% to 30% of the contract cost, depending on the contract.

4) Department of Environmental Conservation-funded contracts:

DEC-funded projects: Construction contracts valued at \$100,000 or more and service and commodity contracts valued at \$25,000 or more must include MWBE and EEO goals. The Albany MWBE Officer aids contractors with filling out and sending in plan forms, and manages the required quarterly reports to DEC. The MWBE subcontractors must be from the certified ESD list.

--DEC utilization goals can vary according to the project; they are generally 30% MWBE subcontractor participation, and 10% each women and minority workforce participation.

5) Albany Community Development Agency (ACDA) contracts:

Mostly Federally-funded or assisted HUD, residential housing rehab contracts. Compliance requirements are the same as the City of Albany, and ACDA mostly uses Albany's MWBE list for contractors (sometimes pulling from the ESD list). This office monitors compliance.

See next page for statistics.

Compliance Summary: October 2017 through March 2018

Project	Contractor	Total Spent	MWBE Spent	MWBE %	Total Hrs		M/W Labor%	Notes
					Labor	Hrs M/W Labor		
#8776 Washington, Western Traffic Improvements	Stilsing Electric	\$24,935.00	\$24,935.00	100.00%	106	15	14.15%	WBE contractor
#8836 Corning Riverfront Transportation Improve	Kubricky Construction	\$802,887.00	\$428,622.00	53.39%	769	42	5.46%	full year total, DOT funded
#8872 Roadway Striping 2016 Contract #2	Straight Line Indust.	\$193,193.00	\$193,193.00	100.00%	552	47	8.51%	WBE contractor, partially delinquent
#8890 Whitehall, Ten Broeck, Cardinal Rehab	Luizzi Bros.	\$794,242.00	\$445,957.00	56.15%	5,919	1,283	21.68%	full year total, DOT funded
#8900 Feura Bush Filtration Plant	Ganem Contracting	\$133,950.00	\$1,426.50	1.06%	2,737	523	19.11%	full year total, waiver granted, EFC
#8901 Street Resurfacing/Sidewalk Recon #1	New Castle Paving	\$1,896,552.00	\$497,527.00	26.23%	6,185	442	7.15%	full year total, partially delinquent
#8904 Elberon Pl. CSO Abatement/Flood Mitigation	Rifenburg	\$737,022.00	\$31,324.00	4.25%	7,304	1,263	17.29%	full year, partial delinquent, DEC, EFC
#8908 Street Resurfacing/Sidewalk Recon #2	New Castle Paving	\$1,535,871.00	\$652,087.00	42.46%	6,062	460	7.59%	full year total, partially delinquent
#8911 Restoration & Improvements, Various Bldgs.	VMJR Companies	\$224,261.00	\$0.00	0.00%	1,240	47	3.79%	full year total, delinquent
#8918 Masonry Restoration, Various City Buildings	Lupini Construction	\$156,334.00	\$156,334.00	100.00%	1,386	46	3.32%	waiver approved, full year total, WBE
#8920 Madison Ave. Streets #2	Callanan	\$1,252,796.00	\$41,517.00	3.31%	8,797	2,310	26.25%	full year total, partially delinquent, DOT
#8922 Fire Suppression System/Fuel Island	B-Lann Equipment	\$37,027.00	\$0.00	0.00%	232	63	27.23%	waiver requested, specialty project
#8923 Loudonville Reservoir	James H. Maloy	\$74,100.00	\$0.00	0.00%	341	88	25.66%	full year total, job not completed yet
#8925 Capital Hills Fuel Canopy	Luizzi Bros.	\$116,137.00	\$4,433.00	3.82%	571	84	14.71%	waiver granted
#8929 Hackett Blvd. Water Main	Luizzi Bros.	\$134,256.00	\$31,590.00	23.53%	969	201	20.74%	
ACDA: 118 Edgecomb St.	Z. Ipek & Sons	\$7,650.00	\$800.00	10.46%	60	20	33.33%	
ACDA: 1200 Broadway	All Mighty GC	\$11,475.00	\$3,000.00	26.14%	46	24	52.17%	
ACDA: 152 Second Ave.	All Mighty GC	\$18,836.00	\$1,507.00	8.00%	234	78	33.33%	
ACDA: 17 W. Van Vechten St.	Z. Ipek & Sons	\$13,000.00	\$1,050.00	8.08%	100	40	40.00%	
ACDA: 19 Slingerlands St.	R&D Contracting	\$9,906.00	\$793.00	8.01%	100	20	20.00%	
ACDA: 20 Lawn Ave.	All Mighty GC	\$13,325.00	\$1,066.00	8.00%	152	56	36.84%	
ACDA: 20 Southern Blvd.	Baker Contracting	\$25,275.00	\$7,650.00	30.27%	270	80	29.63%	
ACDA: 226 Morris St.	Z. Ipek & Sons	\$15,100.00	\$1,500.00	9.93%	140	50	35.71%	
ACDA: 259 Mt. Hope Drive	Carl Trichilio Constr.	\$29,700.00	\$16,500.00	55.56%	80	80	100.00%	
ACDA: 298 Mereline Ave.	All Mighty GC	\$13,575.00	\$1,086.00	8.00%	48	16	33.33%	
ACDA: 311-315 Clinton Ave.	Baker Contracting	\$364,399.00	\$60,688.00	16.65%	3,323	829	24.95%	full year total
ACDA: 340 Orange St.	Baker Contracting	\$24,500.00	\$1,960.00	8.00%	118	42	35.59%	
ACDA: 342 Manning Blvd.	Baker Contracting	\$20,500.00	\$2,500.00	12.20%	174	38	21.84%	
ACDA: 38 Fullerton St.	WolfCreek	\$16,975.00	\$1,358.00	8.00%	56	16	28.57%	
ACDA: 41 Grandview Terrace	WolfCreek	\$10,275.00	\$800.00	7.79%	56	25	44.64%	
ACDA: 41 Hampton St.	Z. Ipek & Sons	\$11,575.00	\$2,100.00	18.14%	145	55	37.93%	
ACDA: 58 Kent St.	Sherwin PM	\$12,400.00	\$3,000.00	24.19%	174	56	32.18%	
ACDA: 592 Central Ave.	All Mighty GC	\$29,150.00	\$2,400.00	8.23%	298	90	30.20%	
ACDA: 674 Myrtle Ave.	Z. Ipek & Sons	\$13,000.00	\$1,050.00	8.08%	100	40	40.00%	
ACDA: 984 Western Ave.	All Mighty GC	\$10,250.00	\$820.00	8.00%	144	40	27.78%	
TOTALS:		\$8,784,429.00	\$2,620,573.50	29.83%	48,988	8,608	17.57%	

Commentary

Overall, the compliance numbers are acceptable.

The **MWBE Utilization** average of 29.83% is considerably higher than the 7.5% goal, undoubtedly helped by three contracts with 100% compliance (due to the contractor being an MWBE). The most glaring delinquencies are the projects with 0% compliance:

- VMJR, #8911 (no waiver requested);
- B-Lann #8922 was a specialty Fire Suppression project that had no available MWBEs who could be subcontracted; and
- Maloy #8923, this project is less than 15% completed, and an MWBE subcontractor is scheduled for later in the project.

The overall **Labor Utilization** is 17.57%, a quarter of one percent short of the goal of 17.8%. Again, some contractors are diligent about maintaining good labor rates; others are less than compliant.

Drilling down

A snapshot of one six-month period does not always reflect the M/W utilization for the entire job. For example, an MWBE subcontractor may perform a considerable portion of the work at the start of the job, but less at the end, so the percentages taken from the last six months of the job may not reflect MWBE utilization on the entire project. Therefore, jobs lasting more than six months have a full-year snapshot shown in the chart on page 4. For longer contracts, even a full-year snapshot may not cover the entire contract.

Again, ACDA jobs have the best compliance of all the contracts shown on page 4. Those jobs are mostly rehab of smaller properties, and there are many local MWBEs that can take on jobs of that size. Many of the jobs show far greater than the required 7.5%/17.8% compliance.

DOT contracts do not require the contractor to report compliance to this office, so the numbers may be incomplete. DOT does their own monitoring, and sets the compliance goals specific to each project.

EFC contracts tend to be larger, long-term contracts (often covering several years). EFC is diligent about requiring contractors to meet the planned M/W utilization, or requiring documentation to obtain a waiver. Most jobs meet EFC's stringent requirements, or get a waiver.

Prime Contractors who are on the certified Albany MWBE list fulfill the MWBE requirement and are not required to subcontract with other MWBEs, although some do.

City of Albany-funded jobs show the least compliance.

Compliance process

The MWBE officer communicates with contractors, from the beginning stages of a project to the end:

- Discussing MWBE requirements with the department which manages the project;
- Attending pre-bid conferences to present contract MWBE requirements and answer questions from potential contractors;
- Reviewing the bids;

- Communicating with bidders whose MWBE or Labor Utilization plans are inadequate, advising them of the goals and options, and not approving the contract until the plans are acceptable;
- Monitoring the progress of compliance as the payment vouchers are submitted and informing contractors they must improve when deficiencies are found;
- Conducting a waiver process when special aspects of a project make it necessary;
- Recommending against re-hiring a delinquent contractor.

A question of clout

The MWBE office maintains a list of delinquent contractors, to advise project managers to avoid signing on with those contractors for future projects. However, other than delaying payment approvals for delinquent contractors (which is problematical and a short-term annoyance, not a solution), the Albany MWBE Program does not have the authority (at the time of this report) to penalize contractors who do not meet the stated goals.

What New York State does: New York State funders (such as EFC and DOT) will penalize municipalities using non-compliant contractors (who have not submitted acceptable waiver requests) by not disbursing the full funding. The municipalities then must find solutions to compensate for the decreased funding.

What can Albany do? These approaches may require legislative action to penalize for non-compliance:

- Fine contractors for not meeting the required MWBE goals (e.g. if the goals are 2% short of requirements, the contractor would be fined 2% of the total contract amount; this is the approach used by NYS agencies).
 - Consider: how would a fine be handled when there is 0% compliance?
- Prohibit (rather than just recommend) delinquent contractors from obtaining future contracts with the City.

Other Activities

Certifications: The MWBE Officer also certifies MWBEs to be added to the City’s Directory of Certified MWBEs. The list is kept current and is available on the City website. Go to www.albanyny.gov; about halfway down the home page, in the “Find” column, click on “MWBE” to access the MWBE webpage with all the information, forms and the certified list.

Expanding: Twelve new MWBEs have been added to the list since October 2017, now totaling 98 MWBEs on the list. The office does outreach to other business groups (notably the Hispanic Chamber of Commerce and the Capital District Black Chamber of Commerce) in an effort to expand the list to include not only construction contractors, but all MWBEs in the community. The long-term goal is for the list to be a resource for the entire community instead of only for construction contractors.

Denials: The office is working on a procedure and policy for denying certification, based on Empire State Development’s procedures and legal decisions. Of particular concern are businesses where (usually) a woman is given nominal ownership of a business in order for the business to qualify for MWBE status advantages, but a man (often a husband) is the one who actually manages the business.

Communications: A weekly email is sent to Albany MWBEs with information on upcoming bids, RFPs, job opportunities, apprenticeships, events, etc. This communication is popular with the businesses on the MWBE list. After discussing how MWBEs could participate in the non-bid purchasing process with the Purchasing Department, this information was communicated to Albany MWBEs.

Looking Ahead

Compliance: The Office is working on identifying tools for dealing with non-compliant contractors.

Documenting for the future: The office is preparing a training document for future MWBE Coordinators, which describes the many functions of the office. This will allow subsequent Coordinators to easily access the details of handling forms, approving plans, monitoring contracts, record-keeping and maintaining the certified list.

M/W Labor: One of the ongoing challenges to meeting MWBE goals is the availability of minority and women laborers on the City's construction projects. Some prime contractors frequently say their problem with meeting M/W labor requirements is that they don't have access to M/W labor, especially those who get laborers from union halls. The office is investigating ways to improve the accessibility of contracting jobs to minority and women laborers.

Advisory Council: Suggested by an MWBE late last year, the office will be instituting an advisory group of MWBEs to discuss and advise the office on how to best utilize MWBE resources.

Conclusion

Overall, the functions of the MWBE Program are in good shape. Communications with the other Albany departments involved with outside contractors are good. Most contractors are in compliance with the MWBE requirements. The MWBE list is current and up-to-date. The office looks forward to more improvements in the coming months.

Respectfully submitted,

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June 4, 2018