

NYS MWBE Program Goal Setting Basics May 4, 2022

Presenters

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Agenda

- 1. Introduction
- 2. Goal Setting
- 3. Exemptions and Exclusions
- 4. Q & A



Friendly Reminder

Please note that this presentation is meant as a general overview of the MWBE compliance obligations for Agencies and Authorities. This presentation neither mitigates nor eliminates the obligation to follow Article 15-A,its associated regulations or the MWBE Division's directives regarding the elements of your MWBE program. Further, it does not eliminate the requirement to address the specifics of each compliance, contract and reporting issue on a case-by-case basis under applicable laws, rules and directives.



Friendly Reminder

In all instances:

- Follow your applicable procurement laws/rules, and
- Consult with your agency/authority legal and procurement offices for guidance on such laws and procurement rules.





Goal Setting

What is Goal Setting?

Contract goal setting is the process of determining the percentage and dollar value of MWBE participation that may be placed on qualified procurements.

All procurements above the Article 15-A threshold for state contracts, unless exempted or excluded, must be assessed for MWBE goals (NYS Executive Law § 315).



Goal Setting

All State procurements and RFPs with MWBE goals of <30% but > 0, **must** be forwarded to the Executive Chamber at <u>MWBE.Waivers@ny.gov</u> for review prior to being released (via pre-RFP Waiver Request form).

Include documentation of MWBE availability to justify the proposed goal:

- Work with program and procurement staff to break out the scopes of services and relative dollar amounts of each potential subcontracting opportunity and
- Assess the availability of MWBEs who can provide the specified scopes of services.



Contract Categorization & Goal Setting

Contract Goal Setting (§142) is the process of determining the percentage and dollar value of MWBE participation that may be placed on qualified procurements, unless exempted or excluded.

Consideration for proper MWBE goal assessment includes, but is not limited to, the following:

- Contract & Scope of Work
- Potential Subcontracting Availability
- Disparity Study Data
- Geographic Location
- Total Contract Value
- The availability of certified MWBEs within the scope of work of the procurement



Goal Setting Basics

1. Determine the scopes of work involved in the procurement. What is the value of the subcontracting opportunities compared to the total amount?

Scope of work	% of project value	MWBE Availability
Site work	10%	
Foundation	10%	
Framing/Building	50%	No - Prime self-perform
Plumbing	10%	
Electrical	10%	
HVAC	10%	
Total	100%	



Goal Setting Basics

2. Of the scopes of work identified in step 1, what is the availability of MWBE vendors in the NYS Contracting System directory?

Scope of work	% of project value	MWBE Availability
Site work	10%	Yes
Foundation	10%	No
Framing/Building	50%	No - Prime self-perform
Plumbing	10%	Yes
Electrical	10%	Yes
HVAC	10%	Yes
Total	100%	



Goal Setting Basics

3. You now have identified the scopes of work and level of MWBE vendor viability. Is the procurement geographically dependent? If so, adjust your vendor results by work location.

Scope of work	% of project value	MWBE Availability
Site work	10%	No – Does not work in region
Foundation	10%	No
Framing/Building	50%	No - Prime self-perform
Plumbing	10%	Yes
Electrical	10%	Yes
HVAC	10%	Yes
Total	100%	30%



Goal Setting Documentation

It is extremely important to include all your calculations in your submission.

"SHOW YOUR WORK"

Including, but not limited to:

- Detailed data sources,
- Assumptions made, and
- Calculations for each step of the process.

Make sure that your goal submission contains a clear description of your public participation process, a good summary of the comments received during that process and a summary of any changes made based on those comments.





Vendor Searches

Certified Firm Identification

It is best to search the NYSCS by **NAICS Code** to identify certified MWBEs for the scope of work to be performed. The following parameters are also acceptable:

- NIGP Code
- CSI Code
- Business Description



NAICS Code

Business & Contact Information

Business Name Diaz Electric of NewYork Inc

Owner Ms. Ana Diaz

Address 247 Prospect Ave

> Map This Address 4th FL, Suite P

Brooklyn, NY 11215

Phone 917-200-0245

Fax 800-605-7620

Email <u>info@diazelectricny.com</u>

Website http://www.diazelectricny.com

Commodity Codes

Code Description

NAICS 238210 Electrical contractors

NAICS 238210 Electrical Contractors and Other Wiring Installation Contractors

NIGP 91438 Electrical



Broker Codes – NAICS 425 Supplier Codes – NAICS 423/424





Common Issues

- Misidentification of suppliers. Understand the differences between:
 - Service providers and suppliers
 - Brokers and suppliers.
- Inadequate information on the role of the MWBE.
- Always verify role of brokers.



Introducing Updated Request Forms

MWBE waiver request forms have been updated to provide Ag/Aus with clarity and to ensure requests include all necessary information.

Updated forms include:

- Pre-Bid Waiver Form
- Post-Award Waiver Form
- MWBE Goal Assessment Form

These forms, including the goal assessment form, will now be required for all waiver requests. The fillable forms will be sent out shortly.



Pre-RFP Waiver Request

Contract No / Project No.:	
ESD Region:	DBE Goals (check one): Yes No
Project Title:	Contract Funding Type (check one): State
Contract Value:	Contract Term:
Agency contact information: Name: Email: Phone number:	
Project Description:	
Reason for Request (Lack of subcontracting, lack o	f MWBE availability, etc.:
Recommended Goal: MBE% WBE _	

- When a lack of subcontracting opportunities is a reason for the waiver request please provide a breakout of any scopes of work and their know/estimated values.
- If a lack of MWBE availability is a reason for the waiver request you must provide your search parameters; industry codes, regions, keywords, etc. and your search results.



REQUEST FOR WAIVER FORM (POST AWARD)

Section 1: Basic Information		w == 10 == 1					
Name and Title of Preparer:	Telephone:	E-Mail Address:					
Contractor's Name:	b)	Federal Identification Number:					
Street Address:		E-Mail Address:					
City, State, Zip Code:		Telephone:					
Contract Number:	MWBE	GOALS ASSIGNED TO THE CON	ITRACT				
	MBE %	MBE \$ WBE %	WBE \$				
Contract Value:	Contract Term:						
ESD Region: Choose ESD Region							
Not for Profit Rule: No ☐ Yes ☐ If yes, what is the value	for goal assessment after N	ot for Profit exclusions:					
Section 2: Type of MWBE Waiver Requested							
MBE Waiver	If partial waiver, please ente	al waiver, please enter the revised MBE percentage:					
WBE Waiver	If partial waiver, please ente	al waiver, please enter the revised WBE percentage:					
Please explain the reason for the waiver request, is it due to a lack of	f subcontracting opportunitie	es and/or MWBE availability.					
Lack of subcontracting opportunities: No Yes							
Please explain the lack of subcontracting opportunities in the scope of	of work:						
Lack of MWBE availability: No □ Yes □	If yes, supporting se	earch and GFE documentation mus	st be attached				
Please provide MWBE search efforts:							



MWBE Goal Assessment Form

Instructions: This document is used to assess Minority/Women-Owned Enterprise (MWBE) project goals. Complete all yellow cells. Identify all work the Prime is to perform and the estimated value/cost of each major category. For both Sub-Contracting and Material Availability, break the project into major areas and identify tasks or items. Using the MWBE Contract Database (https://ny.newnycontracts.com/), perform the MWBE search and include the number of MBE and WBE's identifyed for each line. This document will then calculate the recommended goals for the project based on the number of each identified. Attach proof of your searches to this document.

Region:		Contract Number:		
Project Title:				
Prepared By:		Total Project Esti	mate:	\$0
E-Mail:		Estimated Prime to	Perform	\$0
		Estimated Subcont	racting	\$0
Balance Repre	esents the remaining project value to be performed by either the	Estimated Mate	rials	\$0
	Prime, Sub-Contractor or Material Contractor	Balance		\$0

Non Construction; Supplier 100%, Broker 25%

	Prime to Perform		
	Description of Work	Estimated Value	% of Project Estimate
1			
2			
3			
4			
5			
	Total	\$0	0%
	Overhead & Profit Total Prime to Perform		0%
	Total Prime to Perform	\$0	0%

	Sub-Contracting Availability					MBE Participation			WBE Participation			
	Description of Work	Estimated Value	% of Project Estimate	MWBE Search Performed (Y/N)	No. MBE's Identified	Estimated Value	Percent	No. WBE's Identified	Calculated Field	Estimated Value	Percent	
1												
2												
3												
4												
5												
	Total	\$0	0%	\$0			0%		Total	1) - 3	0%	

	Materials Availability					MBE Participation			WBE Participation				
	Description	Estimated Value	% Discount based on Supplier/Broker Credit*	Discounted Value	% of Project Estimate	MWBE Search Performed (Y/N)	No. MBE's Identified	Estimated Value	Percent	No. WBE's Identified	Calculated Field	Estimated Value	Percent
1					0%								
2					0%								
3					0%								
4					0%								
5					0%								
6					0%								
7			- 22		0%								
8					0%								
	Total	\$0		\$0	0%	\$0		-	0%		Total	1-1	0%

Attach All MWBE Search Results to this Checklist

Construction; Supplier 60%, Broker recieves commision %



Recommended Goals for Project

Comments/Notes

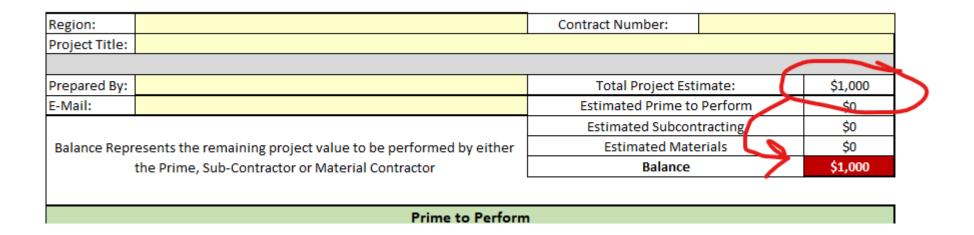
0%

MBE:

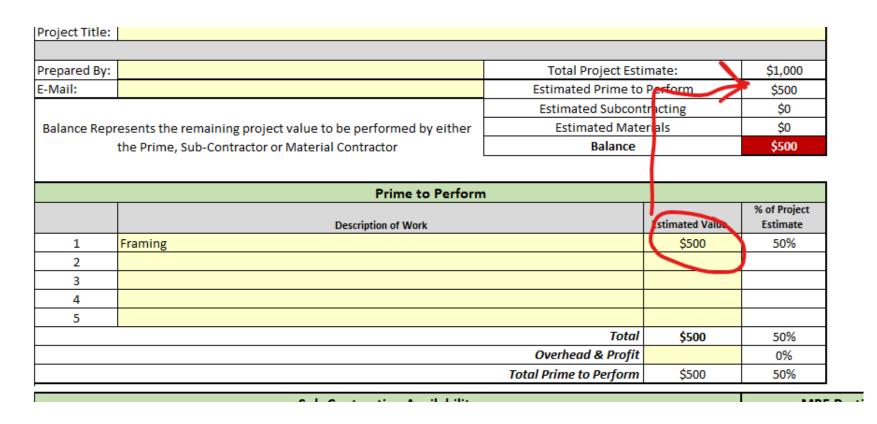
WBE:

* Discounts are as follows:

1. Enter the Total Project Estimate. This will populate the Balance field.



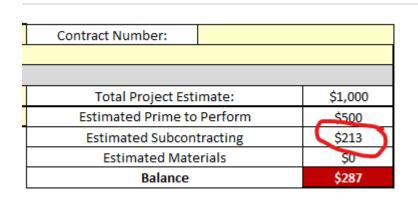
2. Enter the scopes of work that are to be self-performed by the prime contractor. This will reduce your balance amount.

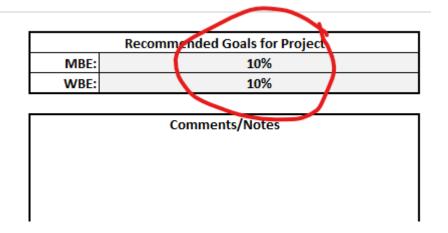


3. Enter the subcontracting availability, estimated value, whether you performed a MWBE vendor search and your MWBE vendor search results (number of MBEs & MBEs).

	Sub-Contracting Availability					MBE Participation			WBE Participation			
				MWBE Search								
			% of Project	Performed	No. MBE's			No. WBE's				
	Description of Work	Estimated Value	Estimate	(Y/N)	Identified	Estimated Value	Percent	Identified	Calculated Field	Estimated Value	Percent	
1	plumbing	\$200	20%	у	4	100.00	10%	1	1.00	100.00	10%	
2	electrical	\$13	1%	у	0	-		0	-	-		
3									-			
4									-			
5									-			
	Total	\$213	21%	\$222		100.00	10%		Total	100.00	10%	

This will also reduce your balance and populate the recommended MBE & WBE goals portion of the form.





4. Complete the Materials Availability section if applicable.

Doing so will also automatically adjust your project balance.

Don't forget to enter the appropriate discount for broker/supplier credit.

		Materials Av	vailability			
			% Discount based on Supplier/Broker		counted	% of Project
	Description	Estimated Value	Credit*	1	Value	Estimate
1	construction materials	\$87	60.00%	\$	52.20	5%
2	construction materials Broker	\$100	5.00%	\$	5.00	1%
3	drywall	\$100	60.00%	\$	60.00	6%
4						0%
5						0%
6						0%
7						0%
8						0%
	Total	\$287			\$117	0%

5. Like the subcontracting section, enter the estimated value, whether you performed a MWBE vendor search and the number of MBEs and WBEs identified.

	МВЕ	Participatio	n	WBE Participation							
MWBE Search Performed (Y/N)	No. MBE's Identified	Estimated Value	Percent	No. WBE's	Calculated Field	Estimated Value	Percent				
у	3	52.20	5%	0	-	-					
у	0	-		6	1.00	0.05	0%				
у	0	-		0	-	-					
		-			-	-					
		-			-	-					
		-			-	-					
		-			-	-					
		-			-	-					
\$0		52.20	5%		Total	0.05	0%				

This will now complete your budget calculations and MBE & WBE recommended goal percentages.

Contract Number:		
Total Project Estimate:		\$1,000
Estimated Prime to Perform		\$500
Estimated Subcontracting		\$213
Estimated Materials		\$287
Balance		\$0

Recommended Goals for Project	
MBE:	15%
WBE:	10%



Goal Setting

If the goal assessment results in a **0%** MWBE goal because no subcontracting opportunities exist or there is currently no availability of certified MWBEs to perform or provide specific goods or services, then the contract may become an **in-year exclusion**, but only if approval is received from the Executive Chamber.





Exemptions and Exclusions

EXEMPTIONS

Exemptions are procurements which are (generally) not eligible for MWBE goal setting.

- Personal services (i.e. payments to staff for labor)
- Debt service (actual debt incurred)
- Financial services and asset management are not blanket exclusions
- Travel reimbursements
- Utilities
- Centralized contracts (may be subject to MWBE goals)
- Sole source contracts (may be subject to MWBE goals)

- Postage
- Telephones
- Staff benefits
- Operating transfers
- Certain rentals and repairs
- Special departmental charges, such as unemployment insurance and tuition reimbursement
- Insurance Premiums (excluding broker fees)

Appropriate payments that fit the definition of exemptions must be identified as such in Goal Plans. Once approved, those designated amounts will be subtracted from the Projected Total Budget.



EXCLUSIONS

- No subcontracting opportunities or availability of certified MWBEs:
 - Detailed documentation required.
- Other than with RFPs, the Division will grant exclusions only if MWBEs are solicited to participate as prime contractors or no MWBEs are available to participate as primes.
- If a contract is deemed an exclusion, it should not be included in the MWBE available budget for the goal setting section of the goal plan.
- Unanticipated MWBE utilization can be reported with the quarterly MWBE submission.
 - Must be reported along with the accurate contract expenditure (denominator), and the contract must be taken out of exclusions in the goal plan.





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