



**Division of Minority  
and Women's  
Business Development**

# **NYS MWBE Program Goal Setting Basics May 4, 2022**

**A Division of Empire State Development**

# 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.



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# 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 [MWBE.Waivers@ny.gov](mailto:MWBE.Waivers@ny.gov) 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%	
<b>Total</b>	<b>100%</b>	

# 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
<b>Total</b>	<b>100%</b>	

# 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
<b>Total</b>	<b>100%</b>	<b>30%</b>

# 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.



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# 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
> <a href="#">Map This Address</a>	4th FL, Suite P
	Brooklyn, NY 11215
Phone	917-200-0245
Fax	800-605-7620
Email	<a href="mailto:info@diazelectricny.com">info@diazelectricny.com</a>
Website	<a href="http://www.diazelectricny.com">http://www.diazelectricny.com</a>

## 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

NAICS: North American Industry Classification System ☐

[Top](#) > **42** (click a higher level code to return to that level)

Actions		Code Type	Code	Code Description
<a href="#">Drill Down</a>	<a href="#">Add</a>	NAICS	<a href="#">423</a>	Merchant Wholesalers, Durable Goods
<a href="#">Drill Down</a>	<a href="#">Add</a>	NAICS	<a href="#">424</a>	Merchant Wholesalers, Nondurable Goods
<a href="#">Drill Down</a>	<a href="#">Add</a>	NAICS	<a href="#">425</a>	Wholesale Electronic Markets and Agents and Brokers

# 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 <input type="checkbox"/> No <input type="checkbox"/>
Project Title:	Contract Funding Type (check one): State <input type="checkbox"/> Blended (Federal & State) <input type="checkbox"/> Contract Value Total: State funding amount: Federal funding amount (if applicable):
Contract Value:	Contract Term:
Agency contact information: Name: Email: Phone number:	

Project Description:
Reason for Request (Lack of subcontracting, lack of MWBE availability, etc.):
Recommended Goal: MBE ____% WBE ____%

1. 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.
2. 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)**

<b>Section 1: Basic Information</b>						
Name and Title of Preparer:		Telephone:		E-Mail Address:		
Contractor's Name:			Federal Identification Number:			
Street Address:			E-Mail Address:			
City, State, Zip Code:			Telephone: (     )     -			
Contract Number:		MWBE GOALS ASSIGNED TO THE CONTRACT				
		MBE %	MBE \$	WBE %	WBE \$	
Contract Value:		Contract Term:				
ESD Region: Choose ESD Region						
Not for Profit Rule: No <input type="checkbox"/> Yes <input type="checkbox"/>		If yes, what is the value for goal assessment after Not for Profit exclusions:				
<b>Section 2: Type of MWBE Waiver Requested</b>						
MBE Waiver	<input type="checkbox"/>	Total	<input type="checkbox"/>	Partial	If partial waiver, please enter the revised MBE percentage:	
WBE Waiver	<input type="checkbox"/>	Total	<input type="checkbox"/>	Partial	If partial waiver, please enter the revised WBE percentage:	
Please explain the reason for the waiver request, is it due to a lack of subcontracting opportunities and/or MWBE availability.						
Lack of subcontracting opportunities: No <input type="checkbox"/> Yes <input type="checkbox"/>						
Please explain the lack of subcontracting opportunities in the scope of work:						
Lack of MWBE availability: No <input type="checkbox"/> Yes <input type="checkbox"/>						
If yes, supporting search and GFE documentation must 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 identified 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:			
E-Mail:			
Balance Represents the remaining project value to be performed by either the Prime, Sub-Contractor or Material Contractor		Total Project Estimate:	\$0
		Estimated Prime to Perform	\$0
		Estimated Subcontracting	\$0
		Estimated Materials	\$0
		<b>Balance</b>	\$0

Recommended Goals for Project	
MBE:	0%
WBE:	0%

Comments/Notes
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Prime to Perform			
	Description of Work	Estimated Value	% of Project Estimate
1			
2			
3			
4			
5			
<b>Total</b>		\$0	0%
<b>Overhead &amp; Profit</b>			0%
<b>Total Prime to Perform</b>		\$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											
<b>Total</b>		\$0	0%	\$0	-	0%		<b>Total</b>	-	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					0%								
8					0%								
<b>Total</b>		\$0		\$0	0%	\$0	-	0%		<b>Total</b>	-	0%	

\* Discounts are as follows:

Non Construction; Supplier 100%, Broker 25%

Construction; Supplier 60%, Broker receives commission %

Attach All MWBE Search Results to this Checklist

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

Region:		Contract Number:	
Project Title:			
Prepared By:		Total Project Estimate:	\$1,000
E-Mail:		Estimated Prime to Perform	\$0
Balance Represents the remaining project value to be performed by either the Prime, Sub-Contractor or Material Contractor		Estimated Subcontracting	\$0
		Estimated Materials	\$0
		<b>Balance</b>	<b>\$1,000</b>
<b>Prime to Perform</b>			

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

Project Title:			
Prepared By:		Total Project Estimate:	\$1,000
E-Mail:		Estimated Prime to Perform	\$500
Balance Represents the remaining project value to be performed by either the Prime, Sub-Contractor or Material Contractor		Estimated Subcontracting	\$0
		Estimated Materials	\$0
		Balance	\$500
<b>Prime to Perform</b>			
	Description of Work	Estimated Value	% of Project Estimate
1	Framing	\$500	50%
2			
3			
4			
5			
Total		\$500	50%
Overhead & Profit			0%
Total Prime to Perform		\$500	50%



### 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			
	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	plumbing	\$200	20%	y	4	100.00	10%	1	1.00	100.00	10%
2	electrical	\$13	1%	y	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.**

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

Recommended Goals for Project	
MBE:	10%
WBE:	10%
Comments/Notes	

- 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 Availability					
	Description	Estimated Value	% Discount based on Supplier/Broker Credit*	Discounted Value	% of Project 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%
	<b>Total</b>	<b>\$287</b>		<b>\$117</b>	<b>0%</b>

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

MWBE Search Performed (Y/N)	MBE Participation			WBE Participation			
	No. MBE's Identified	Estimated Value	Percent	No. WBE's Identified	Calculated Field	Estimated Value	Percent
y	3	52.20	5%	0	-	-	
y	0	-		6	1.00	0.05	0%
y	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%

Comments/Notes

# 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.



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# 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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# Q & A

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