

TO THE MAYOR AND MEMBERS OF THE CITY COUNCIL

August 23, 2016

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SUBJECT: REVIEW OF BEST PRACTICES FOR MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION ON INCENTIVE PROGRAMS

As part of the recent changes enacted in our incentive policies regarding M/WBE commitments, staff was asked to review what other communities require and to look at best practices for M/WBE inclusion. Because there is no publication that addresses the question at hand, Economic Development staff reached out to colleagues from various communities in Texas and nationally during the period June 29, 2016 – July 28, 2016. The following chart represents a summary of the communities contacted as well as the responses:

| City | Do you tie any portion of the incentive to M/WBE participation? | Construction Commitment | % of total spend | % of abatement | S&S Commitment | % of total spend | % of abatement |
|-------------------------|---|-------------------------|------------------|----------------|----------------|------------------|----------------|
| TEXAS CITIES | | | | | | | |
| Allen | No | No | No | No | No | No | No |
| Arlington | Yes | Yes | 30% | 10% | No | No | No |
| Austin | Yes | Yes | Varies | Varies | Yes | Varies | Varies |
| Dallas | Include as a good faith effort | Good faith | 25% | Good faith | No | No | No |
| Frisco | No | No | No | No | No | No | No |
| Houston | No | No | No | No | No | No | No |
| Irving | No | No | No | No | No | No | No |
| Mansfield | No | No | No | No | No | No | No |
| Plano | No | No | No | No | No | No | No |
| San Antonio | No | No | No | No | No | No | No |
| OUTSIDE OF TEXAS | | | | | | | |
| Charlotte | No | No | No | No | No | No | No |
| Chicago | Yes | Yes | 25% | No | No | No | No |
| Kansas City | Yes | Good faith | No | No | No | No | No |
| Memphis | Yes | Good faith | 25% | No | Good faith | 25% | No |
| Nashville | Left a messages, sent various emails | TBD | TBD | TBD | TBD | TBD | TBD |
| Oklahoma City | No | No | No | No | No | No | No |
| Orlando | No | No | No | No | No | No | No |
| Phoenix | No | No | No | No | No | No | No |
| Raleigh | Include as a good faith effort | Good faith | 15% | Good faith | TBD | TBD | TBD |

Source: Personal Calls and Organization Websites. Information as of July 28, 2016.

As indicated, the majority of the communities contacted do not have a hard commitment tied to M/WBE expenditures. Of the communities that do require an M/WBE commitment, it is typically not tied to any percentage of the negotiated abatement, but is applied as a bonus that can be earned. This is consistent with the revised incentive policy that was approved for Fort Worth. For those communities that indicated they do tie a portion of their incentive(s) to M/WBE participation, we have included details and/or excerpts from their program policies on the following pages.

If you have any questions concerning this information, please contact Robert Sturns, Director of Economic Development.

David Cooke
City Manager

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In addition to the percentage of taxes eligible for abatement stated in the Tax Abatement Policy, an applicant may be eligible for a bonus percentage for the same duration as the abatement granted. In no event may the abatement (including bonuses) granted to an applicant exceed 90% unless the project fits within a Level designated by this Article as negotiable, in which case the maximum abatement may not exceed an average of 90% over the term of the abatement agreement.

Bonus Category: Arlington and/or Certified Minority/Women-Owned Contractors, Suppliers and Service Providers

Must show Arlington Contractors and/or Certified Minority/Women-Owned Contractors are utilized for a minimum of 30% of the total costs for the project's Construction, Supply and Service Expenses to receive 10% bonus abatement.

Community: Dallas, Texas**Organization: City of Dallas Economic Development Department****Program: Tax Abatement**

Tax abatement of either real estate or personal property taxes. The City of Dallas incorporates into agreements a request that the company or developer spend 25% of their construction spend with M/WBE vendors. This is a good faith request, and if the company or developer does not attain the 25%, there is no penalty.

Community: Austin, Texas**Organization: City of Austin Economic Development Department****Program: Economic Development Agreements**

The City is authorized by Chapter 380 of the Texas Local Government Code to create programs for the grant of public money to promote state and local economic development and to stimulate local business and commercial activity.

Each Economic Development Agreement is negotiated, but in general, the agreements will include language referencing M/WBE goals in construction and professional services ranging from 1.7% to 13% for construction contracts and 1.9% to 15% for professional services contracts.

For any year in which the Company, the architect and the general contractor fail to meet each of the goals or sub goals established by the Director, the Company, the architect and the general contractor must demonstrate good faith efforts to meet the goals as described in the City's M/WBE Program Ordinance. The Company shall submit documentation demonstrating its own and the architect's and general contractor's good faith efforts to meet the goals as is required and will be deemed in compliance if this obligation is satisfied.

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Community: Chicago, Illinois
Organization: City of Chicago Economic Development
Program: Tax Increment Financing (TIF)

Consistent with the findings which support the Minority-Owned and Women Owned Business Enterprise Procurement Program ("MBE/WBE Program"), Section 2-92-420 et seq., Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of the subsection, during the course of the Pre-Development work and the construction of its projects, the following percentages of the aggregate construction hard costs (as set forth in the Budget), but specifically excluding acquisition, relocation, and all non-construction (indirect) costs (unless part of a construction contract) and the areas of construction costs noted in the Budget as being the subject of special waiver, shall be expended for contract participation by minority-owned businesses ("MBEs") and by women owned businesses ("WBEs"):

- a. At least 25% by MBEs
- b. At least 5% by WBEs

Consistent with Section 2-92-440, Municipal Code of Chicago, each Developer's MBE/WBE commitment may be achieved in part by each Developer's status as an MBE or WBE (but only to the extent of any actual construction work performed by each Developer), or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual construction work performed by the MBE or WBE, by each Developer utilizing a MBE or a WBE as a contractor (but only to the extent of any actual construction work performed by such contractor), by subcontracting or causing a contractor to subcontract a portion of the work to one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and WBE shall not be credited more than once with regard to such Developer's MBE/WBE commitment as described in this subsection.

Community: Kansas City, Missouri
Organization: Economic Development Corporation of Kansas City (EDCKC)
Program: Planned Industrial Expansion Authority (PIEA)

All investor-owned and commercial redevelopment projects assisted by the Planned Industrial Expansion Authority (PIEA) will require that developers make "best faith" efforts to achieve participation by Minority-owned Business Enterprises and Women-owned Business Enterprises in all phases of the individual projects. This requirement includes all professional services related to your project (such as legal, surveyors, engineering, architects, and interior design), as well as the actual construction or rehabilitation work. The inability to comply with these policies and requirements could negatively impact the amount of any public assistance provided.¹

Community: Memphis, Tennessee
Organization: Economic Development Growth Engine for Memphis & Shelby County
Program: Payment in Lieu of Tax (PILOT) Program**

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Projects involving large capital investment and high levels of job creation may qualify for a property tax abatement.

The EDGE is currently authorized to grant PILOT incentives for up to fifteen years. Twenty-five percent (25%) of the County taxes and twenty percent (20%) of the City taxes may be abated.

- **Diversity Plan:** All applicants must complete a "Diversity Plan" that commits them to a best-faith effort to hire City-certified minority/women business enterprises (MWBE) and County-certified locally owned small businesses (LOSB). Applicants target 25 percent of their discretionary local spending for construction, professional and non-professional services, and goods to MWBEs/LOSBS. In addition, applicants commit to fill at least 15 percent of their new jobs using the local Workforce Investment Board or other identified local entities

*** All PILOT benefits must be approved by the board before any property for the project is leased or purchased in the county.*

Community: Raleigh, North Carolina

Organization: City of Raleigh Housing and Neighborhoods Department

Program: Economic Development Agreements

North Carolina does not have the ability to abate taxes. In addition, North Carolina is a Dillon's Rule State, meaning the cities can only implement policies that the State legislature gives the authority to provide. For example, MWBE policy in North Carolina notes that "good faith" efforts must be undertaken during the procurement process. The City of Raleigh has a goal of 15% MWBE contracting for construction projects. This policy is only a goal and North Carolina cannot mandate that a company use an MWBE; however, they can mandate they use "good faith" efforts (i.e. provide affidavits showing they tried to procure MWBE firms).

If a client were a recipient of city-owned land as part of the deal, it would be likely that they would have to abide by North Carolina's construction policy and asked to try and achieve the City's 15% goal. However, if the client was to receive something other than land as part of the deal – MWBE participation would have to be negotiated on a case by case basis.