

STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY
CLERK’S OFFICE

BUFFALO, N.Y., July 20, 2023

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY, that at the *15th* Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the *20th* day of *July*, 2023 A.D., a Resolution was adopted, of which the following is a true copy:

A RESOLUTION TO BE SUBMITTED BY
LEGISLATOR BASKIN

RE: New Buffalo Bills Stadium Project MWBE Local Outreach & Recruitment Analysis

WHEREAS, New York State Executive Law, Article 15-A §§ 310-317 (“Article 15-A”) governs the requirements for the participation of Minority and Women Enterprises (MWBEs) in New York State subcontracting on state funded public works projects; and

WHEREAS, the utilization goal of MWBEs is 30% of state funded public works projects; and

WHEREAS, on May 4, 2023, this honorable body passed the New Stadium Master Lease Agreement “New Stadium Project”, a \$1.5 billion-dollar construction project, which invested \$250 million from Erie County and \$600 Million from New York State dollar for a total of \$850 million in public funds; and

WHEREAS, the New Stadium Master Lease Agreement is a legally binding agreement between Erie County and the State of New York with Bills Stadium and Events Company, LLC; and

WHEREAS, the legally binding New Master Lease Agreement’s Construction Coordinating Agreement (CCA) Affirmative Action Plan states:

“D. The Contractor must document ‘good faith efforts,’ pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Funded Contracts. Such documentation shall include, but not necessarily be limited to:

- 1. Evidence of outreach to MWBEs
- 2. Any responses by MWBEs to the Contractor’s outreach;
- 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
- 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by ESD with MWBEs; and,
- 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation”; and

WHEREAS, the legally binding Master Lease Agreement’s Construction Coordinating Agreement (CCA) Affirmative Action Plan states:

”IV. MWBE UTILIZATION PLAN (A.) The Contractor will submit an MWBE Utilization Plan, for any Funded Contract by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method (Form OCSD-4) to ESD, either prior to, or at the time of, the execution of the contract.

B. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Funded Contract(s).

ATTEST



ROBERT M. GRABER
Clerk of the Legislature of Erie County

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C. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor non-responsiveness; and

WHEREAS, the legally binding Community Benefits Agreement (CBA) states:

“(d) MWBE and DBE Participation. Construction Manager and the Architect, to implement initiatives for maximizing participation in the design and construction of the Project, including:

- (i) Developing and maintaining an easily accessible Project website where contractors and vendors can access all Project documents and sign up to receive notifications;
- (ii) Collaborating with local small, women, and minority business organizations to identify firms that may be interested in participating in the Project, for example: Latin Chamber of Commerce, National Association of Minority Contractors, Women Business Enterprise Council, New York Contractor’s Association, Buffalo Urban League, Independent Contractors Guild of WNY, Buffalo Employment Training Center (BETC), Center for Employment Opportunities (CEO) Buffalo and the Northland Workforce Training Center (collectively, the “Local Chambers”) to ensure bid packages and other stadium-related contracting information are readily available to the Local Chambers, so they may circulate the same to their respective members;
- (iii) Engaging and providing opportunities to MWBE firms consistent with the availability of MWBE firms in the marketplace;
- (iv) The Construction Manager hosting pre-job conferences for contractors, suppliers, and subcontractors at every tier performing work on the Project, which shall address items such as manpower, key employees work dates, work hours, Project rules, employee transportation to and from the Project site, safety, employee absenteeism, and other relevant information.
- (v) Encouraging partnerships between MWBE firms and other vendors, including encouraging vendors to partner with MWBE firms, encouraging larger vendors to subcontract work to MWBE firms, and encouraging business mentorship programs that might provide professional development opportunities for MWBE firms.
- (vi) Encouraging the Construction Manager for the Project to develop a program that encourages long-term relationships with MWBE firms; that provides meaningful feedback to contractors, subcontractors and vendors relative to performance-related issues and encourages continued development of skills and abilities; that puts systems into place to ensure larger contractors and vendors are aware of MWBE firms that have successfully undertaken stadium related work.”; and

WHEREAS, whereas failure to comply with the MWBE inclusionary requirements outlined in New Lease Agreement’s Affirmative Action Plan, CCA and CBA could result in hundreds of millions of dollars in liquidated damages; and

ATTEST



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I HEREBY CERTIFY, that at the *15th* Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the *20th* day of **July, 2023 A.D.**, a Resolution was adopted, of which the following is a true copy:

WHEREAS, a transparent action plan of local MWBE engagement and recruitment should be prioritized by the Managing Contractor, Gilbane|Turner, has a history of total reliability on prime contractors to meet MWBE utilization goals has resulted in loopholes that further exclude and prohibit inclusion practices such as “pass through” or “staged entities” that give a false perception of the prime contractor truly partnering with a certified MWBE; and

WHEREAS, to date more than \$400 Million in construction bid packages have been awarded on the New Buffalo Bills Stadium Project; and

WHEREAS, on last month, Empire State Development issued a letter to the Buffalo Bills noting that the project is “well below their expected performance” in meeting their 30% MWBE Utilization Goals; and

WHEREAS, this Honorable Body has intentions to review all “good faith efforts” to achieve the 30% MWBE Utilization Goals for the purposes of ensuring fair, effective, accessible, and equitable outreach to local MWBE subcontractors.

NOW, THEREFORE, BE IT

RESOLVED, the Erie County Legislature directs the Erie County Office of Equal Employment Opportunity to issue a survey to Erie County MWBE construction-related contractors, suppliers and vendors, as well as New York State MWBEs construction-related contractors, suppliers and vendors who operate in the Western New York region, including contractors with pending or denied MWBE applications over the last 3 years; and be it further

RESOLVED, the survey shall seek to assess local certified MWBEs knowledge and understanding of bidding package opportunities published by the New Stadium Project’s Managing Contractors, and be it further; and be it further

RESOLVED, that the survey list questions that identify local MWBE’s comfort level with navigating the New Stadium Project’s bid package announcement website and their awareness and accessibility to bid package outreach events; and be it further

RESOLVED, the results of the survey be submitted to the Erie County Legislature within 30 days of the passage of this resolution; and be it further

RESOLVED, copies of this resolution be sent to The Buffalo Bills Chief Operating Officer, Gilbane Construction Chief Executive Officer, Turner Construction Chief Executive Officer, New York State Governor, Empire State Development President, Empire State Development’s Division of Minority and Women’s Business Development Executive Vice President, Erie County Stadium Corporation Board of Directors, Erie County Stadium Corporation President, Erie County Executive, and Erie County Division of Equal Employment, Opportunity, and Inclusion Director; and be it further

ATTEST



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RESOLVED, the survey requirements mentioned in the above resolves shall be waive if, within three weeks of this resolution being approved, the Buffalo Bills and their general contractor, Gilbane|Turner, publicly notice and hold MWBE procurement opportunity outreach sessions. The sessions must specifically discuss bid packages on the New Stadium Project that will be within the capacity of smaller MWBEs, so that the project scopes of bid packages are “right-sized” to meet the capacity of our local, small MWBEs in Western New York. MWBE procurement opportunity outreach sessions shall be held in the late afternoon or evenings to accommodate contractors who primarily work during daytime hours. There shall be a minimum of 3 outreach sessions, with one session each held in the City of Buffalo, the City of Tonawanda, and the City of Lackawanna.

REFERENCE: **INTRO. 15-1 (2023) AS AMENDED**

ATTEST



ROBERT M. GRABER
Clerk of the Legislature of Erie County