

**STANDARDS FOR MEETING EMPLOYMENT GOALS FOR  
CONSTRUCTION PROJECTS RECEIVING INCENTIVES  
FROM THE NEW ORLEANS IDB**

Encouraging the use of Orleans Parish residents during the construction phase of a project, and identifying opportunities available for disadvantaged business enterprises ("DBEs"), are both essential parts of the strategy of the Industrial Development Board of the City of New Orleans, Louisiana, Inc. (the "IDB"), to strengthen the economic base of the City of New Orleans and promote economic inclusiveness in the construction of such projects.

To achieve these goals for economic inclusion city-wide, the IDB takes steps to ensure that persons and entities that receive economic development incentives through the IDB will take Commercially Reasonable & Diligent Steps (referred to herein as "CReDS") to meet Local Construction Worker ("LCW") goals and to facilitate Disadvantaged Business Enterprise ("DBE") participation during construction of any project receiving tax-exempt bonds and/or a Payment-in-Lieu-of-Tax ("PILOT") incentive from the IDB. To this end:

- All applicants requesting tax-exempt bond financing and/or any PILOT incentive are encouraged to discuss their proposal with the Mayor's Office of Economic Development, representatives of the IDB, and the IDB's special counsel prior to submitting an application, in order to gain a full understanding of the structure, costs, benefits, and general requirements for tax-exempt bonds and/or PILOT incentives (hereinafter "Incentives").
- Among other requirements, all applicants requesting Incentives from the IDB are required to take CReDS to meet both LCW goals (normally at least 40%) and to award a predetermined percent of the capital cost of the proposed project (normally at least 35%) to certified DBEs, including expenses of design, engineering, procurement, construction, and furnishing or equipping the project.
- The specific terms of any PILOT arrangement, and penalties for failing to demonstrate CReDS to comply with LCW and DBE goals will be negotiated separately for each Incentive package, based on the nature of the development; terms may include an adjustment in the standard 40% LCW goal and/or 35% DBE goal in circumstances that might warrant such adjustment.
- As part of the application and evaluation process, each applicant for Incentives shall prepare a written Employment Goals Accountability Plan (EGAP) which shall be submitted to the IDB concurrently with the Bond or PILOT Application. In the EGAP, the applicant must address its ability to comply with the LCW goal and DBE goal, and must describe the CReDS that it plans to take in order to comply with such goals. The purpose of the EGAP is threefold:
  - A. Focus the applicant's attention on how to structure their project to meet IDB's employment goals;
  - B. Afford the IDB and City an opportunity to evaluate and offer suggestions as to how such goals might be met; and

- C. Serve as a "reality check" on projects where meeting the standard 40% LCW goal and/or 35% DBE goal might be challenging, so that alternative methods to foster inclusive participation can be discussed before any bond or PILOT incentive is approved by the IDB.
- The EGAP should demonstrate that the applicant has already considered how it will be able to meet the LCW and DBE goals, and should address with specificity:
    1. The percentage of the design, engineering, procurement, construction and renovation work reasonably expected to be performed by DBE firms on the project (e.g., 35% or more);
    2. Names of DBE firms that have been identified by the applicant, on a preliminary basis, as possible participants in the design, engineering, procurement, construction and renovation of the project, including the scope of work that each such DBE firm might perform on the contract;
    3. Specific steps that the applicant proposes to take as evidence of CReDS to meet both the LCW and the DBE goals; and
    4. Any past experience that the applicant has on other public or private projects where local worker or DBE goals were imposed, and a description of the applicant's success in meeting such goals.
  - Any circumstances, or considerations arising from the nature of the project, that the applicant believes would make it unable to meet either the LCW and/or the DBE goal should be addressed in the EGAP, together with a justification of and proposal for alternative goals, and/or an offer of compensating covenants or deliverables by the applicant.
  - The EGAP and description of proposed CReDS will be reviewed by the IDB and the Mayor's Office of Economic Development as part of the application review process for the Incentives.
  - In addition to the EGAP, each applicant that actually receives a tax-exempt bond or PILOT incentive from the IDB will be subject to a quarterly reporting requirement during construction of the project, and review by the IDB, of its efforts to comply with its agreed-upon employment goals, with a final report and review upon completion of the project. If it develops during construction of the project that the applicant is falling short of, or projects that it may fail to meet, its employment goals by the time of project completion despite taking CReDS to do so, then the applicant must explain to the IDB in such quarterly reports the reasons for the shortfall and address its efforts to minimize or mitigate such shortfalls.
  - Upon completion of the project, if the agreed-upon LCW goal and/or DBE goal has not been met, then the PILOT agreement will provide a formula for the payment by the applicant of annual clawback penalty payments or increased PILOT payments during some or all of the term of the Incentives.

- Upon completion of the project, the IDB in its discretion may commission an independent audit and report of the applicant's compliance with any employment goals, including the DBE goals discussed herein, which audit and report shall be at the IDB's expense.

In measuring compliance with the LCW goals, the applicant will follow the additional documentation standards and criteria set forth in the applicable Incentives document.

In measuring compliance with the DBE goal, the applicant will also follow the additional standards and criteria set forth in the applicable Incentives document, and may only consider DBE firms from the following lists of certified firms (URLs cited below are subject to change).

- (a) City of New Orleans State & Local Disadvantaged Business Enterprise (SLDBE) directory of certified firms at [www.nola.gov](http://www.nola.gov);
- (b) Louisiana Unified Certification Program (LA UCP) for Disadvantaged Business Enterprises certified by the Louisiana Department of Transportation & Development at [www.laucp.org](http://www.laucp.org); or
- (c) For projects involving the construction of residential rental housing, the Housing Authority of New Orleans (HANO) list of Certified DBE Contractors at [www.hano.org/VendorRegistration/List](http://www.hano.org/VendorRegistration/List).

#### **MINIMUM STANDARDS FOR COMMERCIALLY REASONABLE AND DILIGENT EFFORTS TO MEET EMPLOYMENT GOALS**

Before, during and upon completion of construction, the applicant must demonstrate its CReDs to meet the agreed-upon DBE goals by documenting compliance with the following minimum procedures, as well as any other procedures and the applicant may feel are germane to demonstrating CReDS:

A. Sufficient Work Identified for Subcontractors. Identify the efforts made to select portions of work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

B. Initial Solicitation & Notice to Subcontractors. The applicant should provide notice of its interest in receiving sub-bids on the contract to those business enterprises, including DBEs having an interest and capability in participation in the selected work items. The notice should contain:

- (i) Adequate information about plans, specifications, and relevant terms and conditions of the contract and about the work to be subcontracted or the materials to be obtained from subcontractors and suppliers;
- (ii) A contact person within the applicant's office to answer questions about the proposed work; and

- (iii) The last date for receipt by the applicant of DBE bids or price quotations from prospective DBE bidder.

C. Follow-Up On Initial Solicitation. The applicant must document its efforts to follow-up on initial solicitation of sub-bid interest by contacting the business enterprises to determine with certainty whether said enterprises were interested in performing specific portions of the project work. Applicant must follow-up with all subcontractors to whom they sent any initial correspondence.

D. Negotiations with Prospective DBEs. The applicant must negotiate, with serious intent, with interested DBEs and must not unjustifiably reject an unsatisfactory bids or proposals prepared by any enterprise.

If it develops during or upon completion of construction that DBE goals are not being met, then a detailed explanation of the reasons for not accepting DBE quotes may be required, and the applicant's efforts may be evaluated using the criteria set forth below under "Considerations when Employment Goals are not Met." In such case, the applicant should provide:

- (i) copies of all solicitations for bids or proposals and/or written notices distributed to DBEs. Each non-accepted quote should be addressed individually;
- (ii) an explanation of the efforts the bidder/respondent made to negotiate with serious intent with interested DBEs; and
- (iii) information about any cost comparisons that were considered in the decision to not accept DBE quotes. The fact that there may be some additional costs involved in selecting a DBEs is not in itself sufficient reason for a bidder/respondent's failure to meet the contract DBE goal, as long as such costs are reasonable.
- (iv) if a proposal is rejected on the grounds of being non-responsive, an explanation of the reasons for concluding that the proposal was non-responsive.

E. Community Resources/Organizations. The applicant must conduct outreach using at least two (2) community resource organizations that provide assistance in the recruitment and placement of DBEs.

### **CONSIDERATIONS WHEN EMPLOYMENT GOALS ARE NOT MET**

Upon completion of the project, if the agreed-upon LCW goal and/or DBE goal has not been met, then the PILOT Lease or other Incentives agreement will provide formulas for the calculation and payment by the applicant of annual clawback penalty payments or increased PILOT payments.

With respect to the LCW goal, any annual clawback penalty payments or increased PILOT payments will be made strictly according to the formula set out in the PILOT Lease, with no adjustment or abatement available if the LCW goal was not met.

However, with respect to the DBE goal only, such clawback or increased PILOT Payments may be abated or reduced in whole or in part if (A) applicant demonstrates the reasons that it was unable to meet the DBE goals, despite taking CReDS to do so, and (B) both the IDB and the New Orleans Office of Supplier Diversity jointly agree that (i) such justification is reasonable and (ii) the circumstances leading to the shortfall in meeting the DBE goals were unforeseen at the time of the application and submission of the EGAP.

Acceptable justifications that the IDB and Office of Supplier Diversity may consider with respect to any shortfall in meeting the DBE goal include, without limitation:

1. A DBE contractor or subcontractor fails or refuses to execute a written contract;
2. A DBE contractor or subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards, unless the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. A DBE contractor or subcontractor fails or refuses to meet reasonable, nondiscriminatory surety bond requirements.
4. A DBE contractor or subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. A DBE contractor or subcontractor is or becomes ineligible to perform because of suspension and debarment proceedings pursuant to any federal state law or regulation;
6. The applicant has determined that a DBE contractor or subcontractor is not a responsible contractor;
7. A DBE contractor or subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal; and
8. A DBE owner dies or becomes disabled with the result that A DBE contractor is unable to complete its work on the contract.

The IDB and the Office of Supplier Diversity may also factor into their final determination (but is not required to do so) any efforts by an applicant that are not directly quantifiable as a percentage of the capital cost of the project, such as participation by minority-owned lending institutions or insurance companies, and "soft spends" such as the use of DBE caterers or food trucks, uniform contractors, garbage or waste disposal contractors, etc.

It is acknowledged that any such joint determination by the IDB and the New Orleans Office of Supplier Diversity to abate or reduce the clawback or penalty payment for failing to meet agreed-upon DBE goals will be a highly subjective determination, one that results from careful consideration of all facts, circumstances and documentation submitted by the applicant in support of a request for such an abatement or reduction. The burden of proof that the failure to meet agreed-upon DBE goals is reasonable and unforeseen rests entirely upon the applicant.