

**Resolution 2016-17: 161**  
**EBE Goals Waiver for MA Ferrauilo Contract (Monroe)**

**By Board Member Brown**

WHEREAS, the Rochester School Facilities Modernization Program Act (“the Act”) established the Rochester Joint Schools Construction Board (“RJSCB” or “Board”), a seven voting member board consisting of equal representation by the City of Rochester (“City”) and the Rochester City School District (“District”), as well as a member jointly selected by the City and the District; and

WHEREAS, under the Act, the RJSCB has certain enumerated powers to act as agent for the District, the City, or both; and

WHEREAS, for the Rochester Schools Modernization Program (“RSMP”), the Board implemented a Diversity Plan to create effective processes to increase the purchase of goods and services from diverse businesses and workforce members; and

WHEREAS, in the RSMP Phase 1 Diversity Plan, the Board established participation goals for Eligible Business Enterprises (“EBEs”) as follows: MBE: 15% of each contract; WBE: 5% of each contract; DBE: 2% of each contract; and SBE: 5% of each contract; and

WHEREAS, the RJSCB approved the award of the mechanical contractor contract to Michael A. Ferrauilo Plumbing and Heating Inc. (“MA Ferrauilo”) for the Monroe project in Phase 1 of the RSMP (Resolution 2014-15: 242); and

WHEREAS, the RJSCB entered into a contract with MA Ferrauilo (Resolution 2014-15: 242) dated June 9, 2015 (the “Contract”), to perform the scope of services defined in the contract documents as the mechanical contractor’s scope of work; and

WHEREAS, the Contract requires MA Ferrauilo to comply with the requirements for EBE participation set forth in the Phase 1 Diversity Plan; and

WHEREAS, following the execution of the Contract, MA Ferrauilo, along with Campus Construction (the Construction Manager), and the Program Manager, identified changes in the scope of work, and thereafter fourteen (14) change orders were issued to MA Ferrauilo increasing the Contract Sum by \$737,843; and

WHEREAS, MA Ferrauilo has requested a waiver of the EBE participation requirements set forth under the Contract due to its stated inability to meet the EBE goals with regard to certain change order work; and

WHEREAS, pursuant to Section 004331 of the Specifications for the Monroe project, the Independent Compliance Officer (“ICO”) has the discretion to waive the requirement to meet the EBE goals; and

WHEREAS, MA Ferrauilo has certified that it has taken every good faith effort to promote EBE participation set forth under the Contract; and

WHEREAS, MA Ferrauilo has projected that at project completion it will attain the following EBE performance: MBE: 14.80%; WBE: 4.60%; SBE: 4.53%; and DBE: 1.80%; and

WHEREAS, the ICO has reviewed MA Ferrauilo’s waiver request and has determined that it has adequately demonstrated its good faith efforts to promote EBE participation and meet the EBE goals; and

WHEREAS, the ICO has exercised its discretion to waive MA Ferrauilo's requirement to meet the EBE goals; and

WHEREAS, the ICO has recommended to the MWBE and Services Procurement Committee (the "Committee") that MA Ferrauilo's request for an EBE goal waiver should be granted; and

WHEREAS, the Committee considered and discussed the Independent Compliance Officer's recommendation at its March 2, 2017 meeting and after due deliberation, it approved the request to grant the EBE goal waiver to MA Ferrauilo.

THEREFORE, BE IT RESOLVED:

1. The RJSCB hereby grants MA Ferrauilo's waiver of the EBE goal requirements established in the Contract between the RJSCB and MA Ferrauilo dated dated June 9, 2015.

**Second by Board Member Jones**

**Approved 6-0 with Member Schmidt away**