New York State Department of Labor
Purchase and Contracts
Minority and Women-Owned Business Enterprise and
Equal Employment Opportunity Participation

Participation by Minority Group Members and Women With Respect to State Contracts: Requirements And Procedures

I. General Provisions

A. The New York State Department of Labor ("Department of Labor") is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York State Codes, Rules and Regulations ("NYCRR") for all State contracts, as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing, or (2) in excess of $100,000 for real property renovations and construction.

B. The contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Department of Labor, to fully comply and cooperate with the Department of Labor in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO"), and contracting opportunities for New York State-certified minority and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state, or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix or such other remedies are available to the Department of Labor pursuant to the Contract and applicable law.

II. Contract Goals

A. For purposes of this procurement, the Department of Labor hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State-certified minority-owned business enterprises ("MBE") participation and 15% for New York State-certified women-owned business enterprises ("WBE") participation (collectively, "MWBE Contract Goals") bases on the current availability of MBEs and WBEs.

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs found at the following internet address: http://www.esd.ny.gov/MWBE.html.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414; to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as the term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

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 this Contract. 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 the Department of Labor 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.

III. Equal Employment Opportunity (EEO)

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.

B. In performing the Contract, the Contractor shall:

1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to the Department of Labor within seventy-two (72) hours after the date of the notice by the Department of Labor to award the Contract to the Contractor.

3. If the Contractor, or any of its subcontractor, does not have an existing EEO policy statement, the Department of Labor may require the Contractor or subcontractor to adopt a model statement (see Minority and Women-Owned Business Enterprises Equal Employment opportunity Policy Statement).

4. Contractor's EEO policy statement shall include the following language:
   a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
   b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.
   c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin,

sex age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

d. The Contractor will include the provisions of Subdivisions (a) through (c) of the Subsection 4 and Paragraph "E" of this Section III, which provides relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form EEO 100 – Equal Employment Opportunity Staffing Plan ("Staffing Plan")

To ensure compliance with this section, the Contractor shall submit an Equal Employment Opportunity Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the Equal Employment Opportunity Staffing Plan (Form EEO 100) and submit it as part of their bid or proposal or within a reasonable time, as directed by the Department of Labor.

D. Form EEO 101 – MWBE Work Force Employment Utilization/Compliance Report ("Workforce Report")

1. The Contractor shall submit a Workforce Report, and shall require each of its subcontractors to submit a Workforce Report, in such form as shall be required by the Department of Labor on a quarterly basis during the term of the Contract.

2. Separate forms shall be completed by Contractor and any subcontractor.

E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan – Form MWBE 100

A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit and MWBE utilization Plan as such time as shall be required by the Department of Labor, through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newyorkcontracts.com, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Department of Labor, either prior to, or at the time of, the execution of this Contract.

B. The Contractor agrees to adhereto such MWBE Utilization Plan in the performance of the Contract.

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

IV. Waivers – Form MWBE101

A. For Waiver Requests, Contractor should use Form MWBE 101 – Application for Waiver of MWBE Participation Goal ("Waiver Request").

B. If Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Department of Labor. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Department of Labor shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.

C. If the Department of Labor, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract goals, and no waiver has been issued in regards to such non-compliance, the Department of Labor may issue a notice of deficiency to Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the MWBE Contract Goals.

V. MWBE Quarterly Compliance Report - Form MWBE105

A. The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form MWBE105) through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to the Department of Labor by the 10th day following the end of each quarter during the term of the Contract.

VI. Liquidated Damages - MWBE Participation

A. Where the Department of Labor determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Department of Labor liquidated damages.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. In the event a determination has been made which requires the payment of liquidated damages, and such identified sums have not been withheld by the Department of Labor, the Contractor shall pay such liquidated damages to the Department of Labor within sixty (60) days after they are assessed., Provided, however, that if the Contractor has filed a complaint with the Director of Division of Minority and Women's Business Development (DMWBD) pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the compliance process.