



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 is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") 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. Contractor agrees, in addition to any other non-discrimination provision of the Contract and at no additional cost to the New York State Department of Labor ("NYS 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. These requirements include equal employment opportunities for minority group members and women ("EEO"), and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). 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 non-discrimination 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 withholding of funds or such other actions, liquidated damages pursuant to section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, the NYS Department of Labor hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation.
- B. For purposes of providing meaningful participation by MWBEs on this Contract, and achieving the Contract Goals established in section III-A (above), Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/MWBE.html>. Additionally, Contractor is encouraged to contact the Division of Minority and Women Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the NYS Department of Labor for liquidated or other appropriate damages, as set forth herein. A copy of the applicable regulations, 5 NYCRR Parts 140 through 145, is available at the following website: <http://www.esd.ny.gov/MWBE.html>.

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Attachment MWBE/EEO (01/15)

III. Form MWBE 100 - MWBE Utilization Plan

- A. Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of this Contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on this Contract pursuant to the prescribed MWBE goals set forth in section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of this Contract. Upon the occurrence of such a material breach, NYS Department of Labor shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

IV. Waivers

- A. For Waiver Requests, Contractor should use Form MWBE 101 – Waiver Request.
- B. If Contractor, after making good faith efforts, is unable to comply with MWBE goals, Contractor may submit a Request for Waiver documenting the good faith efforts of the Contractor to meet such goals. If the documentation included with the waiver request is complete, the NYS Department of Labor shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Department, upon review of the Utilization Plan and updated Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals, and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to Contractor. 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. Quarterly MWBE Contractor Compliance Report

- A. Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form EEO 105) to the Department by the 10th day following the end of each quarter during the term of the Contract, documenting the progress made towards achievement of the MWBE goals of the Contract.
- B. All reports must be submitted to the following address by the quarterly due dates outlined in the “M/WBE and Work Force Utilization Reporting Schedule” provided to the Contractor by the Department.

New York State Department of Labor
Purchase and Contracts, MWBE Administrator
W. Averell Harriman State Office Campus – Bldg 12, Room 454
Albany, New York 12240
Email: Labor.sm.MWBEAdmin@labor.ny.gov
(518) 474-2678 (phone) (518) 457-0620 (fax)

VI. Liquidated Damages - MWBE Participation

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

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- 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, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director pursuant to subdivision 8 of section 313 of the Executive Law, in which event the liquidated damages shall only be payable if Director renders a decision in favor of the Department.

VII. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

- B. Contractor shall comply with the following provisions of Article 15-A:
 - 1. Contractor and Subcontractors 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. Contractor shall submit an EEO policy statement to the NYS Department of Labor within seventy two (72) hours after the date of the notice by NYS Department of Labor to award the Contract to the Contractor.
 - 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the NYS Department of Labor may provide the Contractor or Subcontractor with 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. Contractor shall 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. 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. 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. Contractor shall include the provisions of sections (a) through (c) of this subsection and paragraph "E" of this section, which provides for 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 this Contract.

C. Form EEO 100 - Staffing Plan

To ensure compliance with this section, Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form, and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the NYS Department of Labor of any changes to the previously submitted Staffing Plan. This information is to be submitted quarterly during the term of the contract in the Workforce Report. The Report shall detail the actual workforce utilized in the performance of the contract under the specified categories listed, including: ethnic background, gender, and Federal occupational categories.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the subject contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions, and applicable case law. Contractor and subcontractors will 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.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE)
EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT**

By signing and submitting this Policy Statement, the below noted awardee/contractor/organization (authorized representative) agrees to adopt the following policies with respect to the project/program/product being developed or services rendered at the New York State Department of Labor.

M/WBE This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhance participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

M/WBE Contract Goals

- ___ 30% Minority and Women's Business Enterprise
- ___ 15% Minority Business Enterprise Participation
- ___ 15% Women's Business Enterprise Participation

EEO a) This organization 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 programs of affirmative action to ensure that minority group members 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 on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) This organization will include the provisions of sections (a) through (c) of this agreement 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 State contract.

EEO Contract Goals

- ___ % Minority Labor Force Participation
- ___ % Female Labor Force Participation

Agreed to this ___ day of _____, 201__

Name of Awardee/Contractor/Organization: _____

Authorized Representative's Signature: _____

Print Name: _____ Title: _____