

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION  
OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY-AND WOMEN-OWNED  
BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR  
MINORITY GROUP MEMBERS AND WOMEN**

Pursuant to New York State Executive Law Article 15-A, New York State Department of Agriculture and Markets recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of Department contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the Department establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the New York State Department of Agriculture and Markets hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that the Department may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

For guidance on how the Department will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and the Department may withhold payment from the Contractor as liquidated damages.

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.



By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan (Form MWBE/EEO 5) with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department.
- B. The Department will review the submitted MWBE Utilization Plan and advise the Bidder of acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the New York State Department of Agriculture and Markets, Fiscal Management, 10B Airline Drive, Albany, New York 12235, or by email to [emma.graham@agriculture.ny.gov](mailto:emma.graham@agriculture.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. (Form MWBE/EEO 6) Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. The Department may disqualify a Bidder as being non-responsive under the following circumstances:
  - a) If a Bidder fails to submit a MWBE Utilization Plan;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If the Department determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Department, but must be made no later than prior to the submission of a request for final payment on the Contract. (Form MWBE/EEO 7)

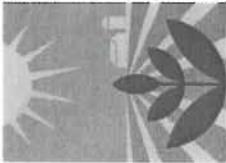
Contractors are required to submit a Contractor's Monthly MWBE Contractor Compliance & Payment Report to the New York State Department of Agriculture and Markets, Fiscal Management, 10B Airline Drive, Albany, New York 12235, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job







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**DIVISION OF FISCAL MANAGEMENT**  
 10B Airline Drive  
 Albany, New York 12235  
 (518) 457-0864

**MWBE UTILIZATION PLAN**

Solicitation: \_\_\_\_\_

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, response to request for qualifications or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (MWBE) under the contract. Attach additional sheets if necessary.

Contractor's Name, Address and Telephone No.	Contract Description Location (Region)	MWBE Goals In Contract			
		MBE _____ %	WBE _____ %		
Federal Identification No.	Federal ID. No.	NYS ESD CERTIFIED		Detailed description of Work (Attach additional sheets if necessary)	Dollar Value of Subcontracts/ supplies/ services and intended performance dates of each component of the contract
Certified MWBE Subcontractors/Suppliers Name, Address, Telephone No, E-mail Address		MBE	WBE		
		<input type="checkbox"/>	<input type="checkbox"/>		
		<input type="checkbox"/>	<input type="checkbox"/>		
		<input type="checkbox"/>	<input type="checkbox"/>		

**IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, CONTRACTOR MUST SUBMIT A REQUEST FOR WAIVER (Form MWBE 101)**

Submission of this form constitutes the contractor's acknowledgement and agreement to comply with the MWBE requirements set forth under NYS Executive Law, Article 15-A and 5 NYCRR Part 142. Failure to submit complete and accurate information may result in a finding of noncompliance or rejection of the bid/proposal and/or suspension or termination of the contract.

Prepared By (Signature)	Email Address
Name and Title of Preparer (Print or Type)	Telephone No.
	Date

**FOR A&M USE ONLY**

Reviewed By	Date
Utilization Plan Approved <input type="checkbox"/> Yes <input type="checkbox"/> No	Date
Contract No.	Project No. (If applicable)
Contract Award Date	Estimated Completion Date
Contract Amount Obligated	

Notice of Deficiency Issued <input type="checkbox"/> Yes <input type="checkbox"/> No	Date	Description of Work
Notice of Acceptance Issued <input type="checkbox"/> Yes <input type="checkbox"/> No	Date	

MWBE/EO5(3/12)



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**APPLICATION FOR WAIVER OF MWBE PARTICIPATION GOAL**

<b>Section 1: Basic Information</b>		
Contractor's Name:		Federal Identification Number:
Street Address:		E-Mail Address:
City, State, Zip Code:		Telephone: (    )    -
Contract Number:	<b>MWBE CONTRACT GOALS</b>	
	MBE %	WBE %

<b>Section 2: Type of MWBE Waiver Requested</b>			
MBE Waiver	<input type="checkbox"/> Total	<input type="checkbox"/> Partial	If partial waiver, please enter the revised MBE percentage:
WBE Waiver	<input type="checkbox"/> Total	<input type="checkbox"/> Partial	If partial waiver, please enter the revised WBE percentage:
Please explain the reason for the waiver request:			

<b>Section 3: Supporting Documentation</b>	
Provide the following documentation as evidence of your good faith efforts to meet the MWBE goals set forth in the contract and in support of your waiver application:	
<input type="checkbox"/> <b>Attachment A.</b> List of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation. <input type="checkbox"/> <b>Attachment B.</b> List of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected. <input type="checkbox"/> <b>Attachment C.</b> Descriptions of the contract documents/plans/specifications made available to certified MWBEs by the contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs. <input type="checkbox"/> <b>Attachment D.</b> Description of the negotiations between the contractor and certified MWBEs for the purposes of complying with the MWBE goals of this contract. <input type="checkbox"/> <b>Attachment E.</b> Identify dates of any pre-bid, pre-award or other meetings attended by contractor, if any, scheduled by A&M with certified MWBEs whom A&M determined were capable of fulfilling the MWBE goals set in the contract <input type="checkbox"/> <b>Attachment F.</b> Other information deemed relevant to the request.	

<b>Section 4: Signature and Contact Information</b>	
By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote MWBE participation pursuant to the MWBE requirements set forth under the contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.	
Prepared By: (Signature)	Date:
Name and Title of Preparer (Print or Type)	

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Reviewed By:

Date:

Decision:

- Full MBE waiver granted
- Partial MBE waiver granted; revised MBE goal: \_\_\_\_\_ %
- MBE waiver denied
- Full WBE waiver granted
- Partial WBE waiver granted; revised WBE goal: \_\_\_\_\_ %
- WBE waiver denied

Approved By:

Date:

Date Notice of Determination Sent:

Comments





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**COMMODITY & SERVICE CONTRACTS - CONTRACTOR'S MONTHLY PAYMENT REPORT**

(DUE ON THE 10<sup>TH</sup> DAY OF EACH MONTH FOR THE PRECEDING MONTH'S ACTIVITY AS EVIDENCE TOWARDS ACHIEVEMENT OF THE MWBE GOALS ON THE CONTRACT)

Contractor/Vendor Name, Address and Phone No.:		Contractor/Vendor Federal ID No.:		Contract No.:	
Description of Project:		MWBE Goals		Reporting Period	
		MBE%	WBE%	Month	Year
Firm Name, Address and Phone Number (List All Firms)	Description of Work or Supplies Provided	Designation		Payment This Month	Contract Amount
Federal ID No.:		<input type="checkbox"/> MBE <input type="checkbox"/> Sub <input type="checkbox"/> Broker <input type="checkbox"/> Joint Venture <input type="checkbox"/> Written Contract <input type="checkbox"/> No Written Contract	<input type="checkbox"/> WBE <input type="checkbox"/> Supplier <input type="checkbox"/> Team <input type="checkbox"/> Other <input type="checkbox"/> No Written Contract	<input type="checkbox"/> No Payment This Month	
Federal ID No.:		<input type="checkbox"/> MBE <input type="checkbox"/> Sub <input type="checkbox"/> Broker <input type="checkbox"/> Joint Venture <input type="checkbox"/> Written Contract <input type="checkbox"/> No Written Contract	<input type="checkbox"/> WBE <input type="checkbox"/> Supplier <input type="checkbox"/> Team <input type="checkbox"/> Other <input type="checkbox"/> No Written Contract	<input type="checkbox"/> No Payment This Month	
Federal ID No.:		<input type="checkbox"/> MBE <input type="checkbox"/> Sub <input type="checkbox"/> Broker <input type="checkbox"/> Joint Venture <input type="checkbox"/> Written Contract <input type="checkbox"/> No Written Contract	<input type="checkbox"/> WBE <input type="checkbox"/> Supplier <input type="checkbox"/> Team <input type="checkbox"/> Other <input type="checkbox"/> No Written Contract	<input type="checkbox"/> No Payment This Month	
Federal ID No.:		<input type="checkbox"/> MBE <input type="checkbox"/> Sub <input type="checkbox"/> Broker <input type="checkbox"/> Joint Venture <input type="checkbox"/> Written Contract <input type="checkbox"/> No Written Contract	<input type="checkbox"/> WBE <input type="checkbox"/> Supplier <input type="checkbox"/> Team <input type="checkbox"/> Other <input type="checkbox"/> No Written Contract	<input type="checkbox"/> No Payment This Month	

Signature of Firm's Affirmative Action Officer \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

For A&M Use Only  
 Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

Submission of this form constitutes the contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the contract.



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INSTRUCTIONS FOR COMPLETING THE  
COMMODITY and SERVICE CONTRACTS MONTHLY PAYMENT REPORT (Form MWBE/EEO7)

The Contractor's Monthly Payment Report (Form MWBE 102) is to be completed by the Contractor/Vendor, and submitted by the 10<sup>th</sup> of each month for the duration of the contract. This form should include all (e.g. MBE, WBE and non M/WBE) Subcontractors and/or Suppliers assigned by the Contractor/Vendor to perform work during the contract. This reporting should also include payments made by your Subcontractors and/or Suppliers to M/WBE firms.

Complete the form as specified below.

Contract No.	Indicate the Contract No.
Contractor/Vendor Name and Address	Provide your firm's name and address.
Federal ID No.	Enter your firm's Federal ID No.
Goals	Indicate MBE and WBE participation goals.
Reporting Period	Fill in the month and year of reporting period. One copy must be submitted with final payment application.
Description of Project	Briefly describe the work you are providing under the terms of this contract.
Firm Name and Address	Provide the name, address and phone number of all Subcontractors/Suppliers assigned by the Contractor/Vendor on this contract or purchase agreement(s).
Federal ID No.	Enter the Subcontractor's/Supplier's Federal ID No. If no Federal ID No. has been assigned, provide only the owner's last four (4) digits of his or her Social Security No.
Payment This Month	Indicate the amount paid <i>this month</i> to each Subcontractor/Supplier. If there was no income activity for a Subcontractor/Supplier, please check the box indicating "No Payment This Month."
Contract Amount	Enter the total contract amount or purchase agreement(s) for each Subcontractor/Supplier.
Description of Work/Supplies	Briefly describe the work performed or supplies provided by each Subcontractor/Supplier.

Submit to:

NYS Department of Agriculture & Markets  
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