
 NEW YORK STATE	Corrections and Community Supervision DIRECTIVE	TITLE Minority & Women-Owned Business Enterprise		NO. 2604M
				DATE 10/30/2020
SUPERSEDES DIR# 2604 Dtd. 03/22/19	DISTRIBUTION A	PAGES PAGE 1 OF 13	DATE LAST REVISED	
REFERENCES (Include but are not limited to) See Section II		APPROVING AUTHORITY 		

I. PURPOSE: This directive is applicable to all Contracting Units under the jurisdiction of the Department of Corrections and Community Supervision (DOCCS), including Central Office, Division of Correctional Industries, all facilities, and all regional/area offices. The purpose of this directive is to:

- A. Establish policy and procedures that will assist DOCCS staff in their efforts to purchase commodities and services from responsible New York State Minority and Women-Owned Business Enterprise (M/WBE) firms in compliance with applicable laws, rules, and regulations; and
- B. Provide procedures for reporting M/WBE activities.

II. REFERENCES

- Civil Practice Laws and Rules Article 78
- Executive Law Article 15-A: Section 313, Section 316
- NYS Finance Law Article XI
- State Printing and Public Documents Law
- 5 NYCRR Chapter XIV
- Directive #2914, "Contract Procurement, Monitoring, and Fiscal Responsibilities"
- Directive #2916, "Purchasing Supplies and Equipment"
- New York State (NYS) Procurement Guidelines – Maintained by the Office of General Services (OGS)

III. DEFINITIONS

- A. Minority-Owned Business Enterprise (MBE): Shall mean a business enterprise, including a sole proprietorship, partnership, or corporation that is:
 1. At least 51 percent owned by one or more minority group members;
 2. An enterprise in which such minority ownership is real, substantial, and continuing;
 3. An enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
 4. An enterprise authorized to do business in the State of New York and is independently owned and operated; and
 5. Currently MBE certified by Empire State Development.
- B. Minority Group Member: Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
 1. Black persons having origins in any of the Black African racial groups;

2. Hispanic or Latino persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
 3. Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent, or the Pacific Islands; or
 4. Native American or Alaskan native persons having origins in any of the original peoples of North America.
- C. Women-Owned Business Enterprise (WBE): Shall mean a business enterprise, including a sole proprietorship, partnership, or corporation that is:
1. At least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;
 2. An enterprise in which the ownership interest of such women is real, substantial, and continuing;
 3. An enterprise in which such women ownership has and exercises authority to control independently the day-to-day business decisions of the enterprise;
 4. An enterprise authorized to do business in the State of New York and is independently owned and operated; and
 5. Currently WBE certified by Empire State Development.
- D. Subcontract: Shall mean a contract between a Primary Contractor to an original contract and a third party; particularly, one who provides all, or a specified part, of the work, materials, or services required in the original contract.
- E. Preferred Source: Products or services provided by DOCCS' Division of Correctional Industries (Corcraft), New York State Preferred Source Program for People Who Are Blind (NYSPSP), and New York State Industries for the Disabled, Inc.
- F. Joint Venture: An association of two or more businesses which is formed to carry out a particular business activity for profit in which they may combine property, capital, efforts, skills, or knowledge. The association is limited in scope and duration; consequently, a joint venture can never be certified.
- G. Discretionary Purchase: Agency purchases of commodities or services that cannot be supplied by a preferred source or OGS Centralized Commodity Service and Technology contracts. Purchases below an established dollar level that are authorized by law to be made without a formal competitive process (see Section II.E of the NYS Procurement Guidelines).
- H. Certification Process: The State of New York has implemented a uniform, statewide Certification Program for M/WBEs under the auspices of the Empire State Development Corporation (ESD), Division of Minority and Women's Business Development (DM/WBD). Once the classifications of M/WBE firms are determined, they will be recognized by all State agencies and most authorities as bonafide M/WBEs.

M/WBEs that are interested in becoming certified should apply online at: <https://ny.newnycontracts.com/> or download the application and mail it to: Empire State Development, M/WBE, 633 Third Avenue, 33rd Floor, New York, NY 10017.

- I. M/WBE Directory: The official source directory of certified M/WBEs published by the ESD.
NOTE: Every Contracting Unit should have access to the M/WBE Directory, which is readily available online at: <https://ny.newnycontracts.com/>.
- J. Contracting Unit: Any unit with procurement responsibilities, such as the local business offices, Central Office Contract Procurement Unit (CPU), Central Office Purchasing Unit, and Correctional Industries.
- K. Contractor: Any individual, business, or other legal entity bidding on, or awarded, a contract with a State agency to furnish commodities or services for an agreed-upon price.
- L. Good Faith Efforts: The documented due-diligence and sustained efforts made with the deliberate intention to produce desired contractual obligations and/or required goals.
- M. MWBE/Service-Disabled Veteran-Owned Business (SDVOB) Team: This team coordinates/monitors the Department's M/WBE efforts.
- N. Request for Proposal (RFP): A RFP is a type of bid document which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value," as defined by State Finance Law.

IV. POLICY: It is the policy of DOCCS to actively encourage the greatest possible participation of minority and women-owned businesses in all opportunities for procurement undertaken by DOCCS and to make every effort to meet the goals established pursuant to Article 15-A of the Executive Law.

Article 15-A of the Executive Law established the DM/WBD. This legislation confirmed the commitment of the Governor to provide equal opportunity to all who seek to do business with New York State and to remedy the historical discrimination that has resulted in underutilization of enterprises owned and controlled by minorities and women. This law mandates the DM/WBD to direct and monitor New York State's activities relating to the utilization of M/WBEs on State contracts. This law also requires that operational guidelines be established to assist M/WBEs to obtain a fair share of contracts for the procurement of goods and services awarded by the State. The procurement guidelines, procedures, and goals established under Article 15-A and the NYS Procurement Guidelines remain in place.

As per the Rules and Regulations promulgated pursuant to Article 15-A, DOCCS is required to submit a quarterly M/WBE utilization report to DM/WBD. Therefore, M/WBE quarterly reporting procedures/processes by Central Office, Division of Correctional Industries, all facilities, and all regional/area offices under the jurisdiction of DOCCS must comport with Article 15-A.

Goals: In accordance with Article 15-A, it shall be the policy of DOCCS to implement an M/WBE program that has established goals. Such goals shall be a minimum of 15 percent of discretionary purchasing for minority-owned business and a minimum of 15 percent of discretionary purchasing for women-owned business, for a combined annual total of 30 percent or more of discretionary purchases going toward minority and/or women-owned businesses. These goals shall be based upon the total dollar value of consultant services contracts and procurement for goods and services awarded by the Department in accordance with State Finance Law and NYS OGS Procurement Guidelines.

V. EQUAL EMPLOYMENT OPPORTUNITIES (EEO)

- A. The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, sex, national origin, age, disability, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination.

Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rate of pay or other forms for compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

- B. At the request of the Contracting Unit, the Contractor shall request each employment agency, labor union or authorized representative, or workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of this contract, to furnish a written statement that such employment agency, labor union, or representative shall not discriminate because of race, creed, color, sex, national origin, age, disability, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics, and that such union or representative will cooperate in the implementation of the Contractor's obligation hereunder.
- C. The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor in the performance of this contract, that all qualified applicants will be afforded equal employment opportunity without discrimination based on race, creed, color, sex, national origin, age, disability, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics.
- D. The Contractor will include the above provisions of Article 15-A in every subcontract or purchase order in such a manner that such provisions will be binding upon each Subcontractor or Contractor as to its work in connection with this contract. **This is to be reflected with the inclusion of Appendix A, "STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS," to all State contracts. To obtain the current version of Appendix A, go to: <https://ogs.ny.gov/procurement/appendix>.**
- E. The provisions for these equal employment clauses shall not be applicable to Contractors or Subcontractors in the performance of work or the provision of services or other activity that is unrelated, separate, or distinct from the State contract as expressed by its terms.
- F. The requirements of these equal employment clauses shall not apply to any employment outside the State of New York or application for employment outside the State of New York or solicitations or advertisements thereof, or any existing programs of affirmative action regarding employment outside the State of New York and the effect of contract provisions required by Article 15-A.
- G. The Contracting Unit shall consider compliance by a Contractor or Subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section.

The Contracting Unit shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such law and if such duplication or conflict exists, the Contracting Unit shall waive the applicability of this section to the extent of such duplication or conflict.

- H. The Contracting Unit reserves the right to require the Contractor to submit an "EEO Staffing Plan," [EEO100](#); "M/WBE EEO Policy Statement," [EEOPS](#); and may require the Contractor or Subcontractor to submit compliance reports relating to the Contractor's or Subcontractor's operation and implementation of any EEO plan currently in effect on the date the contract is executed.

VI. STANDARD CONDITIONS FOR ALL CONSTRUCTION, CONSULTANT, SERVICE, AND PURCHASE CONTRACTS

Goals: The Contracting Unit must require the Prime Contractor to agree that they shall make "Good Faith Efforts" to subcontract a minimum of 15 percent to MBEs and a minimum of 15 percent to WBEs for a total of 30 percent of the total dollar value of the contract. The goal shall be contained in conformance with the "Contractor Requirements and Procedures for Equal Employment and Participation Opportunities for Minority Group Members and New York State Certified M/WBE," [EEOCR](#), as outlined in Article 15-A of the Executive Law. **This is to be reflected with the inclusion of EEOCR (see Section XVI for EEOCR forms) to all State contracts.**

Failure to obtain these percentages or demonstrate a "Good Faith Effort" may lead to withholding of payment(s) or contract termination.

VII. M/WBE UTILIZATION PLANS AND PROGRAM WAIVER

- A. DOCCS has established certain statewide goals which it seeks to achieve in implementing the M/WBE Program. To promote participation of M/WBEs, Contracting Units must check all available M/WBE source documents to determine if any applicable Contractors offer the commodity or service being purchased. The Contracting Unit will ensure that each individual contract shall have the State minimum goals for M/WBE participation at the time of execution.
- B. If the procurement is an RFP and will result in one or more contracts totaling \$250,000 or more, the Contracting Unit must include a provision in the RFP indicating that diversity practices will be scored. Sample provision language can be found on page 2 of the "Diversity Practices Primer," [DPP](#). Per the DP Primer, Contractors shall submit a "Diversity Practices Questionnaire," [DPQ](#), which will be scored as part of the technical proposal. Contracting Units will use the "Diversity Practices Scoring Matrix," [DPSM](#), to evaluate and score the [DPQ](#) data submitted by the Contractor. Please refer to the DP Primer for additional information as some exclusions may apply.
- C. If bids are required, the Contractor shall submit an [EEOPS](#), of their own or on a form provided by the Contracting Unit. After award of bid, but prior to issue of contract, the Contractor shall submit an "M/WBE Utilization Plan," [MWBE100](#), and an [EEO100](#).
The Contracting Unit will confirm submission of the [EEOPS](#) and review the [MWBE100](#) by using the M/WBE Directory to verify that Subcontractors reported are M/WBE certified, and that the [EEO100](#) documents the composition of the workforce to be utilized in the performance of the contract.

Although the [MWBE100](#) can be provided to DOCCS via a non-electronic method, it is preferred that the Contractor submit this form online through the New York State Contract System (NYSCS), which can be accessed at: <https://ny.newnycontracts.com>. After completion of the review, the Contracting Unit will issue a written **"Notice of Acceptance or Deficiency,"** [MWBENAD](#), to the Contractor within 20 days of receipt.

1. Notice of Acceptance: An M/WBE Notice of Acceptance will be accompanied by the following M/WBE forms to be submitted by the Contractor to the Contracting Unit on a quarterly basis upon award of the contract:
 - a. **"EEO Workforce Utilization Report,"** [EEO1](#), documents the gross wage paid to each employee working on state contracts for the work performed by such employees on the contracts broken down by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The report shall be submitted by the Contractors to the Contracting Unit on a monthly basis for construction contracts, and on a quarterly basis for commodity and services contracts.
 - b. **"M/WBE Quarterly Compliance and Subcontractor Payment Report,"** [MWBE101](#), lists all NYS Certified M/WBEs used to perform the State contract and the actual dollar amounts paid to the NYS Certified M/WBEs. The information supplied on this form must be checked for accuracy by accessing the M/WBE Directory and verifying that companies reported are certified.

NOTE: After a contract is awarded, the quarterly reports are due no later than the 5th day after the end of each quarter.

2. Notice of Deficiency shall include:
 - a. The shortfall amount and/or shortfall percentage in the MBE and WBE utilization that is contractually required;
 - b. The name of any M/WBE which is not acceptable for the purpose of complying with the goal requirements;
 - c. Elements of the contract scope of work which the Contracting Unit has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the contract by M/WBEs; and
 - d. Other information which the Contracting Unit determines to be relevant to the Utilization Plan (For example: No MBE/WBE goals; No EEO Staffing Plan or Policy Statement; etc.).
3. The Contractor shall respond to the Contracting Unit's Notice of Deficiency with a written remedy for correcting deficiencies and/or provide a "Good Faith Effort" Statement within seven business days of receipt of deficiency.
4. If the Contracting Unit determines that a Contractor has made "Good Faith Efforts" but is unable to comply with M/WBE goals because of the lack of availability of WBEs or MBEs in their respective region, the Contractor will be directed by the Contracting Unit to submit, in writing, a request for partial or total waiver of M/WBE participation goals. The "M/WBE Request for Waiver," [MWBE102](#), will be provided by the Contracting Unit.

5. The Contracting Unit will review and respond to the waiver request for approval or denial within ten business days. The Contracting Unit may deny a request for waiver.

However, if the Contracting Unit determines that the waiver request should be approved, the [MWBE102](#), along with all supporting documentation, should be forwarded to the MWBE/SDVOB Team for review and final approval. The MWBE/SDVOB Team's decision will be sent to the Contracting Unit within five business days. After receipt of the MWBE/SDVOB Team's decision, the Contracting Unit will notify the Contractor within five business days regarding the Department's decision.

6. A Contractor may submit a request for partial or total waiver of M/WBE goals at any time during their contract period, but before requesting final payment.

NOTE: Failure to submit the [MWBE101](#), and/or other reports or information as requested by DOCCS in a timely manner, may result in payments under the contract being delayed until such reports or other information have been received.

VIII. CONTRACTOR'S FAILURE TO COMPLY WITH TERMS OF THE AGREEMENT

- A. If the Contractor does not submit a request for waiver, or if the Contracting Unit determines that the "Good Faith Efforts" of the Contractor have been inadequate to justify the granting of the request for waiver, the Contracting Unit should notify the Contractor that proceedings on this contract will be reviewed by the MWBE/SDVOB Team, who may recommend to the Contracting Unit that it terminate the contract, or if the contract has not been executed, that the Contracting Unit withdraw from contract negotiations. The MWBE/SDVOB Team will forward a recommendation to the Contracting Unit within five business days of a Notice of Failure to Comply. The Contracting Unit will forward a Notice of Termination or Withdrawal, to the Contractor, no later than five business days after the MWBE/SDVOB Team's recommendation.
- B. Upon having given Notice of Termination or Withdrawal, the Contracting Unit may proceed with the next ranked bidder: (i) 12 days after sending a written Notice of Deficiency, and having not received a request for an administrative hearing from the Contractor; (ii) after the mailing of a Notice of Disqualification, specifying the grounds for such disqualification; or (iii) after receiving a written notification of a resolution from the Director of the Division of Support Operations, or a decision of the DM/WBD's Hearing Officer. The State agency shall serve a copy of its complaint upon the Contractor by personal service or certified mail, return receipt requested.
- C. A Contractor who has received a written Notice of Termination or Withdrawal may request an Administrative Hearing by filing a complaint, within five business days of receipt of such a notice, with the Director pursuant to Section 316 of Article 15-A of the Executive Law.

The Contractor shall serve a copy of their complaint upon the Director of the Division of Support Operations by personal service or certified mail, return receipt requested.

Mail to: Department of Corrections and Community Supervision
The Division of Support Operations / Contract Procurement Unit
The Harriman State Campus
1220 Washington Avenue
Albany, NY 12226-2050

IX. ADMINISTRATIVE HEARING ON DISQUALIFICATION

- A. If the MWBE/SDVOB Team disqualifies the bid or proposal of the contract on the grounds that the Contractor has failed to remedy the deficiencies in its [MWBE100](#), or to document "Good Faith Efforts" to remedy such deficiencies, the Contractor shall be entitled to an Administrative Hearing, on the record, before a Hearing Officer appointed by DOCCS or the State, to review the determination of disqualification of the Contractor. The Contractor shall request such hearing in writing no later than five business days after receipt of the Notice of Termination or Withdrawal. The determination of the Hearing Officer shall not interfere with the MWBE/SDVOB Team's disposition of the contract.
- B. The Hearing Officer's determination shall be a final administrative determination of DOCCS and shall be reviewable by a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is commenced within 30 days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Section 313 of the Executive Law.
- C. Such review shall be commenced in the Supreme Court Appellate Division, Third Department, and shall be preferred over all other civil causes except election causes and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the Court of Appeals of the State of New York shall be subject to the same preference.

X. CONTRACTORS AND AGENCY COMPLAINTS AND ARBITRATION

- A. If the Contractor submits a request for waiver of M/WBE goal requirements and the Contracting Unit denies the request or fails to respond in any way within ten calendar days of receipt, the Contractor may file a complaint with the ESD and the Director of the DM/WBD, according to the provisions of Section 316 of Article 15-A of the Executive Law. The complaint must be filed within ten calendar days of the Contracting Unit's receipt of the request for waiver, or within ten calendar days of a notification that the request has been denied.
- B. If the Contractor fails to respond to a Notice of Deficiency, or if DOCCS denies a request for waiver of M/WBE goal requirements, DOCCS may file a complaint with the Director of the DM/WBD pursuant to Section 316 of Article 15-A of the Executive Law.
- C. A complaint should set forth the facts and circumstances giving rise to the complaint, together with a demand for relief.
- D. The party filing a complaint, whether the Contractor or DOCCS, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.
- E. Upon receipt of a complaint, the Director of the DM/WBD shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If, within 30 days of receipt of the complaint, the Director of the DM/WBD is unable to resolve the complaint to the satisfaction of DOCCS and the Contractor, the complaint shall be referred to the American Arbitration Association for resolution pursuant to Section 316 of Article 15-A of the Executive Law.

- F. Upon conclusion of the arbitration proceedings, the Arbitrator will submit, to the Director of the DM/WBD, his or her award regarding the alleged violation of the contract or the refusal of DOCCS to grant a waiver request by the Contractor. The award of the Arbitrator, with respect to an alleged violation of the contract or the refusal of the State agency to grant a waiver, shall be final and may be vacated or modified only as provided by Article 78 of the Civil Practice Laws and Rules.
- G. Upon conclusion of the arbitration proceedings and the rendition of an award, the Arbitrator will also recommend to the Director of the DM/WBD a remedy, including, if appropriate, the impositions of sanctions, fines, or penalties, provided, however, that no fines or penalties shall be recommended with respect to the refusal of DOCCS to grant a waiver request by a Contractor.
- The Director of the DM/WBD will either: (i) adopt the recommendation of the Arbitrator; (ii) determine that no sanctions, fines, or penalties should be imposed; or (iii) modify the recommendation of the Arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction or increase the amount of any recommended fine or penalty.
- H. The Director of the DM/WBD, within 10 days of receipt of the Arbitrator's award and recommendations, will issue a determination of such matter and shall cause a copy of such determination to be served upon the parties by personal service or by certified mail, return receipt requested. The determination of the Director of the DM/WBD as to the imposition of any fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
- I. The sanctions which may be imposed by DOCCS pursuant to a determination by the Director of the DM/WBD consist of the following:
1. Reduction of the amount obligated for expenditure pursuant to the contract;
 2. Suspension or termination of the contract;
 3. Retention of payments until compliance with goal requirements is obtained, provided that DOCCS issues, within 15 days of the date of receipt of the Contractor's invoice upon which payment is being retained, a written notice of the reasons for retaining payments;
 4. Bid forfeiture; and
 5. Any other penalties of which a Contractor received notice prior to award of the contract, or which are authorized by law.
- J. The determination of DOCCS to proceed with a complaint pursuant to IX-A, above, shall not preclude DOCCS, in its discretion, from pursuing any other remedies which it may have pursuant to law and the contract.

XI. MISCELLANEOUS

- A. Goal percentages established in this contract are subject to the requirements of Article 15-A of the Executive Law and regulations adopted pursuant thereto.
- B. The parties agree as a condition of the contract to be bound by the provisions of Section 316 of Article 15-A of the Executive Law.

- C. The Contractor shall submit, and shall require Subcontractors to submit, compliance reports on forms and at intervals to be established by DOCCS. Reports not submitted at such times, as required by DOCCS, may be cause for the delay of scheduled payments to the Contractor.

XII. CONTRACT PROCUREMENT UNIT MWBE/SDVOB TEAM RESPONSIBILITIES

- A. The MWBE/SDVOB Team shall be responsible for implementing the M/WBE Program of the Department and for reviewing and reporting on the Department's activities and progress in establishing an effective M/WBE Program. The MWBE/SDVOB Team will act primarily as a compliance authority for all Contracting Unit M/WBE activities.
- B. The MWBE/SDVOB Team is available to provide technical assistance and training to Central Office, Division of Industries, facility personnel responsible for the M/WBE Program requirements, and regional/area office personnel.
- C. The MWBE/SDVOB Team shall continue its involvement in public outreach efforts to community organizations representing M/WBEs. Whenever possible, the MWBE/SDVOB Team and the facilities will arrange meetings and host M/WBE workshops/seminars for the purpose of sharing information about the Department's M/WBE Program, goals, and objectives.

XIII. INSTITUTION STEWARD/CONTRACTING UNIT AND/OR EQUIVALENT RESPONSIBILITIES

- A. The Institution Steward or equivalent is charged with the task of ensuring M/WBEs are provided equal opportunity to bid on all discretionary purchases of goods and services contracts in accordance with provisions specified in Executive Law Article 15-A.
- B. The Institution Steward or equivalent shall enforce specific procedural guidelines for the purchasing agents within the Contracting Unit relative to solicitation and utilization of M/WBEs in the procurement process.
- C. They shall also monitor the efforts of their respective Contracting Units in identifying M/WBEs to be contacted as services or goods are needed.
- D. In addition, the Institution Steward or equivalent shall continue to encourage collaboration and open communication between the Contracting Unit's purchasing staff and M/WBE representatives to obtain catalogues, price lists, and additional descriptive materials so as to enhance opportunities to utilize goods and services offered by these firms.
- E. Annual M/WBE-SDVOB Training: On an annual basis and upon being hired, all business office staff are required to review the M/WBE-SDVOB training that is available on the DOCCS Training site at: Business Office Procedures and Information>MWBE>Training and Resources>MWBE SDVOB Training for Stewards. One hour of training credit is allowed for completing this training.

XIV. PROCUREMENT GUIDELINES AND PROCEDURES

- A. General: It is the responsibility of all Department employees who have purchasing responsibilities or purchasing authority to solicit M/WBEs for all DOCCSs contracts to assist such businesses to increase their involvement with the State of New York.
These same employees will supply all requested information, assistance, and reports in matters concerning the Department budget, expenditures, plans, forms, and programs concerning M/WBE development to the MWBE/SDVOB Team.

The said employees shall convey opportunities to MBE/WBE firms in full support of the Department's policy and the NYS Procurement Guidelines. These guidelines specify that a single quotation from a responsible Contractor of items not available from a preferred source, or on centralized contract, in amounts of up to \$500,000 for purchases made under State Finance Law, may be utilized to expand MBE/WBE opportunities.

All Contracting Units must maintain Contractor files for specialized items unique to the Department and maintain a current file of active M/WBEs.

All Contracting Units must compile information and prepare periodic reports as required by control agencies, administrative staff, the Budget Unit, and the MWBE/SDVOB Team.

- B. Sources: The following procedures are based on the NYS Procurement Guidelines pursuant to Article XI of the State Finance Law and Section 1-9 of the State Printing and Public Documents Law.
- C. Purchases of \$0 to \$14,999
 - 1. Check all available small business and M/WBE source documents to determine if any applicable Contractors offer the commodity or service being purchased.
 - 2. Purchase directly from an M/WBE Contractor if the Contractor meets the following criteria:
 - a. Provides a quality product or service;
 - b. Offers the product or service at a reasonable price (see Section XIV-G); and
 - c. Has reasonable delivery terms.
- D. Open Market Purchases of \$15,000 and Over: Purchases of commodities or services of more than \$15,000 can be purchased using either of the following methods:
 - 1. Formal competitive bidding for purchases of \$50,000 and over: This method does not provide an opportunity to select an M/WBE Contractor which is not the lowest responsible bidder. However, agencies should utilize the M/WBE Directory to expand bid opportunities to minority and women-owned businesses.
 - 2. Discretionary purchasing between \$15,000 and \$500,000 allows agencies to promote the participation of M/WBEs. This method may not require competitive bidding. To use this method, you must:
 - a. Identify a responsible (certified) M/WBE;
 - b. Request the selected M/WBE to offer a price for supplying this requirement; and
 - c. Determine that the price offered is reasonable and prepare a statement indicating the basis for this determination (see Section XIV-G).

All purchases of \$50,000 and over must be advertised in the Contract Reporter. Although not required, advertising purchases between \$15,000 and \$49,999 is recommended as best practice to ensure competitive pricing. Additionally, any purchase over \$50,000 must have the Office of the State Comptroller's (OSC) approval.

- E. Contracts over \$25,000: Pursuant to the M/WBE policy of the Department, goals have been established to ensure Contractors exercise "Good Faith Efforts" to utilize M/WBEs on all their purchases/contracts.

Every service, construction, consultant, or purchase contract involving a Department expenditure of \$25,000 or more shall include the "Contractor Requirements for EEO and M/WBE," [EEOCRS](#), and shall set forth the requirements of each Contractor to submit an [MWBE100](#) and outline efforts made to obtain Departmental goals.

Furthermore, the above-noted [EEOCRS](#) requires the Contractor to supply information on Subcontractors and submit certain other compliance reports required by the Department of Economic Development and the DM/WBD.

- F. Change Orders and Amendments: Whenever a change order or contract amendment will increase the value of a service contract which was previously under \$100,000 to \$100,000 or more, or any service which was previously under \$25,000 to \$25,000 or more, the provisions of Article 15-A of the Executive Law will apply, and the appropriate paragraphs and contract provisions will be included in the change order or amendment.
- G. Reasonable Pricing: "OGS, with the concurrence of OSC, has issued the following guidelines for determining reasonableness of price. These guidelines are also used as a basis for the verification and approval process."

"In general, the reasonableness of price may be determined by using one or more of the following actions: Comparing the price offered against product catalogs, published price lists, and retail market surveys; consulting historical records of previous purchases for the same or similar items; consulting with other public and/or private purchasing officials; using professional experience and judgement, etc."

Some examples of appropriate statements in determining reasonable pricing are:

1. "Comparison with the latest price catalog(s) shows this pricing to be lower than the manufacturer's suggested selling price";
 2. "A survey of the local retail market indicates this pricing is within the same price range";
 3. "Review of previous purchases made on similar items shows this pricing to be at the same discount level";
 4. "A telephone inquiry to a local government agency indicated it is paying a similar price for the same product"; and
 5. "Based on years of purchasing experience, the price offered by this M/WBE Contractor is judged to be reasonable and acceptable."
- H. Miscellaneous
1. Any firm that claims to be an MBE/WBE but is not included in the ESD M/WBE Directory should be encouraged to contact ESD to obtain the appropriate certification.
 2. An M/WBE firm that does not respond to a bid/quotation request should continue to be included on the Contracting Unit's list of prospective Contractors until no response is received on three separate and consecutive occasions. At such time, that Contractor should be contacted in writing by the Contracting Unit to verify their withdrawal from active participation.
 3. Appropriate documentation should be maintained to be used to compile quarterly activity reports, as well as to substantiate the Contracting Unit's efforts to achieve established participation goals.

4. DOCCS is committed to an aggressive M/WBE Procurement Program pursuant to the requirements of Executive Law Article 15-A. Increased utilization of discretionary thresholds is one of the many methods available to help accomplish the objectives of this program. In order to achieve increased participation of the numerous M/WBEs located in New York State, maximum utilization of these thresholds must be made by all purchasing staff.

XV. REPORTING PROCEDURES

1. Pursuant to 5 NYCRR Chapter XIV, State and contracting agencies shall submit a quarterly compliance report in a format and manner provided by the DM/WBD, including information regarding all Contracting Units' MBE/WBE activities.
2. To enable the Department to meet the reporting requirements of the State's MBE/WBE Program and to analyze and strengthen our own program, each facility must submit reports of its MBE/WBE activity.

The Institutional Steward (or the functional equivalent) in each Contracting Unit is responsible for the timely and accurate submission of all appropriate reports and forms to the MWBE/SDVOB Team.

3. MWBE/SDVOB Team participation in this program and completion of the quarterly report is not optional. Facility administrators must take immediate steps to ensure that their Contracting Unit is in compliance.
4. Instructions for completing facility utilization forms are included with each form.

XVI. LIST OF FORMS/DOCUMENTS REFERENCED IN THIS DIRECTIVE

Document Abbreviated Name	Document	Primary Section Referenced
DPP	Diversity Practices Primer	Section VII-B
DPQ	Diversity Practices Questionnaire	Section VII-B
DPSM	Diversity Practices Scoring Matrix	Section VII-B
EEO1	EEO Workforce Utilization Report	Section VII-C-1-a
EEO100	EEO Staffing Plan	Section V-H
EEOCRC	Contractor Requirements for Contracts	Section VI
EEOCRS	Contractor Requirements for Solicitations	Section VI
EEOPS	M/WBE EEO Policy Statement	Section V-H
MWBE100	M/WBE Utilization Plan	Section VII-C
MWBE101	M/WBE Quarterly Compliance and Subcontractor Payment Report	Section VII-C-1-b
MWBE102	M/WBE Request for Waiver	Section VII-C-2-d
MWBENAD	Notice of Acceptance or Deficiency	Section VII-C

Editable versions of the above-named forms can be obtained from the Contract Procurement Unit by email at mwbe@doccs.ny.gov or by phone at (518) 436-7886 ext.3135.

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

How to Score Diversity Practices

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs.

This guide provides instructions on how to determine whether diversity practices should be scored on your procurement, step-by-step instructions as to how to apply diversity practices, and suggestions as to how to customize diversity practices to the particular needs of your organization.

Is My Procurement Subject to Diversity Practices?

Diversity practices are intended to be applied on procurements in which procurement personnel exercise their subjective judgment in selecting one or more successful contractors on the basis of best value, NOT on procurements that are awarded based upon lowest price. The following checklist illustrates when diversity practices should be scored as part of a procurement:

- | | | |
|---|------------------------------|-----------------------------|
| 1. Is the procurement based upon best value (RFP or RFQ)? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Is the anticipated award \$250,000 or greater? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Is scoring for diversity practices practical, feasible, and appropriate? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

If the answer to all three questions is “Yes,” the procurement should be scored for diversity practices. If the answer to questions 1 or 2 is “No,” no further action is needed and the procurement should not be scored for diversity practices. If the answer to question 3 is “No,” such determination should be documented in writing and diversity practices should not be scored. For more information on when a procurement is subject to diversity practices, please see the frequently asked questions below.

Frequently Asked Questions

May I score diversity practices and award points to contractors that are MWBEs based upon their MWBE certification on the same procurement? No. Procurements may award points to contractors based upon their efforts to collaborate with and promote MWBEs (diversity practices) OR award points to contractors based upon whether they are certified as MWBEs (quantitative factor), but may not score for both. Procurements may not be scored for diversity practices when a quantitative factor is applied.

When is it NOT practical, feasible, or appropriate to score diversity practices? In circumstances where MWBE firms are not available to participate as subcontractors or suppliers in the industry that is the subject of the procurement, contractors' ability to implement diversity practices may be too minimal to score respondents to an RFP or an RFQ. However, it is important to note that diversity practices should be scored when MWBEs are available to participate as subcontractors or suppliers in the industry, even if such subcontracting or supplying opportunities do not exist on the specific project that is the subject of your procurement.

Additionally, certain methods of identifying contractors may not be conducive to scoring for diversity practices. For example, where an RFQ is to be used to identify the availability of contractors and inform the contents of a future RFP, it may be appropriate to defer scoring of diversity practices until the RFP used to select the successful contractor or contractors is ultimately released.

Should I score for diversity practices where multiple vendors will be selected via a procurement, and the award to each of them is anticipated to be less than \$250,000? Yes. Diversity practices should be scored where the aggregated spending via a procurement is expected to equal or exceed \$250,000, even if the amount allocated to each successful contractor is less than \$250,000.

Scoring for Diversity Practices

Once you determine to score diversity practices as part of a procurement, you must identify the number of points you intend to allocate to contractors' diversity practices and include appropriate language in your RFP or RFQ, score the diversity practices of contractors using the diversity practices matrix, and weight each score in accordance with the percentage of points allocated to diversity practices.

Where an organization determines to score diversity practices as part of determining best value on a procurement, the RFP or RFQ in question should include the following: (1) a provision indicating that diversity practices will be scored, (2) the maximum number of points that may be awarded based upon respondents' diversity practices, and (3) a diversity practices questionnaire that respondents may provide as part of their response to the RFP or RFQ. A sample provision indicating that diversity practices will be scored is provided below:

[Name of Agency] has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement shall be required to include as part of their response to this procurement, as described in [Section ###] herein, forms [Diversity Form Numbers].

The diversity practices questionnaire provided by the Division of Minority and Women's Business Development provides eight questions for respondents to answer. Your organization may include additional questions, as discussed in more detail on page 5. The following provides a guide to scoring responses to each of the questions.

Question 1

Question 1 solely addresses whether the respondent employs a chief diversity officer. In order to receive points for a response to question 1, a respondent should provide all of the information requested, including evidence of initiatives performed by the chief diversity officer. Merely identifying a chief diversity officer without providing the requested information should result in a score of zero.

Questions 2 and 3

These questions direct respondents to provide information on the share of expenditures that the respondents made with MWBEs. Only the prior fiscal year of a respondent should be taken into account when assigning a score to questions 2 and 3. Any additional data that respondents provide illustrating expenditures made with MWBEs in other fiscal years should be disregarded.

In addition, any data regarding expenditures made to businesses certified as MWBEs by an entity other than the State of New York should be disregarded. Expenditures made to businesses with certifications other than MWBE, such as Disadvantaged Business Enterprises and Service- Disabled Veteran-owned Business Enterprises, are not to be considered in this analysis.

Question 4

Respondents may score points in response to question 4 by identifying industry-specific technical training of MWBEs. Technical training is specific to the industry in question, and does not include generic training in skills that are transferrable across industries. Examples of trainings that do not qualify as technical training include trainings in managerial skills and leadership, effective communication, and professional development and networking. Examples of technical training topics include the use, installation, or safe handling of particular products, the use of industry-specific IT, and industry-specific sales and customer service strategies.

In assessing the robustness of a respondent's technical training, you should take into account the duration of the technical training program, the number of MWBEs served, and the total number of hours devoted to technical training of MWBEs. The characteristics of a robust technical training program will vary based upon the nature of the industry and the associated opportunities for MWBE training. However, characteristics of technical training programs fitting the "minimum" scoring criterion will typically be that the respondent has been providing technical training for one year or less, that the respondent has provided fewer than one hundred hours of technical training, or that the respondent has provided technical training to only one MWBE firm in a contracting area for which there is significant MWBE availability.

Question 5

In order for a respondent to receive points for its response to question 5, the respondent must provide documentation demonstrating its participation in a mentor-protégé program approved by a governmental entity. Such governmental entity need not necessarily be the State of New York.

Appropriate documentation of the existence of a mentor-protégé program will vary based upon the approving governmental entity. Only documents generated by a governmental entity should be accepted to demonstrate the existence of a mentor-protégé program.

A robust mentor-protégé program must include the following elements:

- The mentee must be able to meaningfully participate in the delivery of contract requirements.
- For services contracts: at least one element of the scope must be performed by the MWBE with the Prime serving as mentor. Multi-year contracts must have a plan in place to expose the MWBE to each element of the scope through the lifetime of the contract.
- Mentor and mentee must enter into an agreement, approved by a governmental entity, which outlines the expectations of each party.
- Specific metrics must be identified which will be used to measure the effectiveness and success of the Mentor/Protégé relationship.

Question 6

Question 6 evaluates both the existence of MWBE goals on the part of the respondent in its own contracting, and the respondent's achievement of these goals. Whether a goal is robust depends on the availability of MWBEs in the industry in question. One tool to assist you in determining the availability of MWBE firms in the industry is the New York State Contract System MWBE Directory <<https://ny.newnycontracts.com/>>. This analysis should, to the extent possible, be based upon subcontracting activities that are available in the industry in which the respondent is engaged, not solely the availability of MWBE subcontractors for the procurement being made by your organization.

Once you have evaluated the robustness of the goal, you must take into account the share of the goal that the respondent has achieved. A respondent should only receive a robust score if the respondent has achieved a significant portion of an appropriate goal; achieving a small percentage of a robust goal should not entitle a respondent to a robust score.

Question 7

Question 7 considers whether a respondent has an immersive, formal program to promote the use of MWBEs as suppliers. A formal supplier diversity program must be documented via a program policy manual or similar document describing the requirements for participation and elements of the program, as well as documentation of program activities.

Characteristics of a supplier diversity program meeting the minimum requirement for the respondent to be awarded points could include a supplier diversity program with weak verification procedures focused solely on creating a list of diverse suppliers from which the respondent may procure goods or services. A robust supplier diversity program may be characterized by rigorous verification of MWBE status, plans for outreach to MWBE suppliers, and training and education programs designed to increase the capacity of MWBE suppliers.

Question 8

The final question considers the use of MWBEs on the procurement for which diversity practices are being scored. This is the only criterion that considers the circumstances of the procurement exclusively, without regard to the respondent's other activities to promote MWBEs. The robustness of a utilization plan is to be assessed based upon the availability of MWBEs to perform as subcontractors and suppliers to the respondent on the procurement. As with question 6, you should refer to the MWBE Directory in order to determine the availability of MWBEs.

Determine the Weighted Score

Once you have added the scores for all eight questions for a respondent, multiply that score based upon the weight you have assigned to diversity practices on the procurement. For example, if diversity practices account for 8% of the available points on your RFP and a respondent achieves a total score of 50 points for diversity practices on the diversity practices matrix, that respondent's weighted score is the product of 50 points and .08, or 4 points.

Customizing Diversity Practices

The eight questions reflected on the diversity practices questionnaire constitute the minimum required to assess the diversity practices of respondents. You may add additional questions to the diversity practices questionnaire to customize it to your procurement activities. In order to determine whether additional fields may be useful, consider some of the following questions:

- Are there particular resources or skills needed to serve as a subcontractor or supplier in the industry?
- Are there technical or financial barriers to entry in the industry?
- Could respondents facilitate MWBE training and participation in the industry in ways not reflected on the questionnaire?
- Are there specific types of MWBE subcontractors or suppliers that are particularly underutilized in the industry in question?

In the case that you decide to include additional questions on the diversity practices questionnaire, you must revise the diversity practices matrix accordingly to reflect any points to be awarded to respondents for additional questions.

Diversity Practices Questionnaire

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority and women-owned business enterprises as suppliers/contractors?¹

4. Does your company provide technical training² to minority and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

¹ Do not include onsite project overhead.

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

5. Is your company participating in a government approved minority and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan.

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

STATE OF _____
COUNTY OF _____) ss:

On the _____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

Diversity Practices Scoring Matrix

Questions

Q1 - CDO or other person tasked with function					Yes	No	Total
					5 pts	0 pts	
Q2 - Percentage of prior yr. revenues that involved M/WBEs as subs or JVs/partners							
	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	20 pts	14 pts	10 pts	6 pts	2 pts	0pts	
Q3 - Percentage of overhead expenses paid to M/WBEs							
	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	16 pts	10 pts	7 pts	4 pts	1 pts	0pts	
Q4 - M/WBE Training							
			Robust	Moderate	Minimum	None	
			16 pts	8 pts	4 pts	0 pts	
Q5 - M/WBE Mentoring							
			Robust	Moderate	Minimum	None	
			12 pts	8 pts	4 pts	0 pts	
Q6 - Written M/WBE goals included in the Company's procurements							
			Robust	Moderate	Minimum	No	
			20 pts	12 pts	6 pts	0 pts	
Q7 - Formal Supplier Diversity Program							
			Robust	Moderate	Minimum	No	
			6 pts	4 pts	2 pts	0 pts	

Diversity Practices Scoring Matrix

Q8 - Utilization Plan			Robust	Moderate	Minimum	No	
			5 pts	3 pts	1 pts	0 pts	
Total Diversity Score (Max 100 pts)							
Weighted Score (Up to 10% of Technical)							

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Reporting Entity ☐ Contractor ☐ SubcontractorFEIN _____

Contractor Address	
--------------------	--

Contract Number _____

Reporting Period - Select One	
<input type="checkbox"/> January 1 - March 31	<input type="checkbox"/> April 1 - June 30
<input type="checkbox"/> July 1 - September 30	<input type="checkbox"/> October 1 - December 31

Reporting Month - Select One			
<input type="checkbox"/> January		<input type="checkbox"/> February	<input type="checkbox"/> March
<input type="checkbox"/> April		<input type="checkbox"/> May	<input type="checkbox"/> June
<input type="checkbox"/> July		<input type="checkbox"/> August	<input type="checkbox"/> September
<input type="checkbox"/> October		<input type="checkbox"/> November	<input type="checkbox"/> December

Workforce Identified in Report	
<input type="checkbox"/>	Workforce Utilized in Performance of Contract
<input type="checkbox"/>	Contractor/Subcontractor's Total Workforce

[illegible]

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

EEO STAFFING PLAN (EQUAL EMPLOYMENT OPPORTUNITY)

SUBMIT WITH BID OR PROPOSAL

Solicitation No.:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Report includes Contractor's: <input type="checkbox"/> Contractor's workforce to be utilized on this contract <input type="checkbox"/> Contractor's total workforce <input type="checkbox"/> Subcontractor's workforce to be utilized on this contract <input type="checkbox"/> Subcontractor's total workforce Submit completed form to: Department of Corrections and Community Supervision Support Operations / Contract Procurement Unit The Harriman State Campus 1220 Washington Ave Albany, NY 12226
Contractor/Subcontractor's Name:		
Contractor/Subcontractor's Address: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">FEIN:</div> <div style="width: 45%;">Telephone NO.:</div> </div>		

Enter the total number of employees for each classification.

EEO Job Category	Total Work-force	Workforce by Gender		Workforce by Race/Ethnic Identification													
		Total Male	Total Female	White (Not Hispanic/Latino)		Black (Not Hispanic/Latino)		Hispanic or Latino		Asian (Not Hispanic/Latino)		American Indian or Alaskan Native(Not Hispanic/Latino)		Disabled		Veteran	
		(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive/Senior Level Officials & Managers																	
First/Mid Level Officials & Managers																	
Professionals																	
Technicians																	
Sales Workers																	
Administrative Support Workers																	
Craft Workers																	
Operatives																	
Laborers and Helpers																	

Service Workers																	
Totals																	
PREPARED BY (Signature):								TELEPHONE NO.:						DATE:			
								E-MAIL ADDRESS:									
NAME AND TITLE OF PREPARER (Print or Type):										FOR AGENCY USE ONLY							
										REVIEWED BY:						DATE:	

General instructions: All Offerors must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package to the address provided. Where the workforce to be utilized in the performance of the State contract can be separated out from the Contractor's total workforce, the Offeror shall complete this form only for the anticipated workforce to be utilized on the State contract. Where the workforce to be utilized in the performance of the State contract cannot be separated out from the Contractor's total workforce, the Offeror shall complete this form for the Contractor's current total workforce. 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 must complete this form upon request of DOCCS.

Instructions for completing:

1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the Contractor or a Subcontractor.
3. Check off the appropriate box to indicate type of workforce being reported.
4. Enter the total workforce by EEO job category.
5. Break down the total workforce by gender and enter under the heading "Workforce by Gender."
6. Break down the total workforce by race/ethnic background and enter under the heading "Workforce by Race/Ethnic Identification."
7. Enter the name, title, phone number, and E-mail address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

WHITE - (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa or the Middle East.

BLACK - (Not of Hispanic origin) A person who has origins in any of the black racial groups of Africa.

HISPANIC or LATINO - All persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race

ASIAN & PACIFIC ISLANDER - All persons having origins in any of the original peoples of the Far East, Southeast Asia or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

AMERICAN INDIAN or ALASKAN NATIVE - A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community recognition.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** - Any person who:
 - Has a physical or mental impairment that substantially limits one or more major life activity (ies)
 - Has a record of such an impairment; or
 - Is regarded as having such impairment.
- **VETERAN** - An individual who served in the military during time of war.

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

APPENDIX C

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The Department of Corrections and Community Supervision (hereinafter referred to as "DOCCS") 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 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 "DOCCS, to fully comply and cooperate with DOCCS 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") and other applicable federal, state, and 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 and such other remedies are available to DOCCS pursuant to the Contract and applicable law.

II. Contract Goals

- A. For purposes of this Contract, DOCCS hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified minority-owned business enterprise ("MBE") participation and 15 percent for New York State-certified women-owned business enterprise ("WBE") participation (collectively, "MWBE Contract Goals") based 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 at the following internet address:
<https://ny.newnycontracts.com>.

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 that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

FOR CONSTRUCTION CONTRACTS: The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. 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 the monetary value for fees, or the markup percentage, charged by the MWBE.

FOR ALL OTHER CONTRACTS (non-construction): 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 percent 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 the 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 DOCCS 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, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics. 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 DOCCS within seventy-two (72) hours after the date of the notice by DOCCS to award the Contract to the Contractor.

3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, DOCCS may require the Contractor or subcontractor to adopt a model statement (see Form – Equal Employment Opportunity Policy Statement).
4. The 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, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics, 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, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics.
 - 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 this Subsection 4 and Paragraph "E" of this Section III, 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 the Contract.

C. Form EEO 100 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a 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 staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by DOCCS.

D. Form EEO-1 - Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by DOCCS on a QUARTERLY (non-construction) or MONTHLY (construction) basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.

- 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, color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, arrest or conviction record, 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

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by DOCCS, through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to DOCCS, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to 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 the Contract. Upon the occurrence of such a material breach, DOCCS shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

- A. If the 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 DOCCS. 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, DOCCS shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If DOCCS, upon review of the MWBE Utilization Plan, quarterly or monthly 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, DOCCS may issue a notice of deficiency to the 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 MWBE Contract Goals.

VI. Quarterly/Monthly MWBE Contractor Compliance Report

The Contractor is required to submit a quarterly (non-construction) or monthly (construction) MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to DOCCS by the 5th day following the end of each quarter or month as applicable during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

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

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

**MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____ (the awardee/contractor) agree to adopt the following policies with respect to the project being developed or services rendered at _____

This organization will require its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participation goals and provide Equal Employment Opportunities set by NYS DOCCS for the State-funded project by taking the following steps:

M/WBE

- (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) Utilize ESD Directory of State certified M/WBEs 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 increase participation by M/WBEs and encourage the formation of joint ventures and other partnerships among M/WBE contractors to encourage their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain, or, where appropriate, require its subcontractors to maintain and submit, as required by DOCCS, records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that project payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and/or other credit requirements may be waived and/or appropriate alternatives are developed to encourage M/WBE 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, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics, and 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, age, disability, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics.
- (c) At the request of the contracting agency, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics, 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.

Agreed to this _____ day of _____, 20____

Sign: _____

Print: _____ Title: _____

Minority/ Women Business Enterprise Liaison

_____ is designated as the Minority/Women Business Enterprise Liaison (Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____ % Minority and Women's Business Enterprise Participation

_____ % Minority Business Enterprise Participation

_____ % Women's Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____

Contact:

**Department of Corrections and Community Supervision
Support Operations / Contract Procurement Unit
The Harriman State Campus
1220 Washington Ave
Albany, NY 12226**

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

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

New York State Law: Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations DOCCS is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of DOCCS contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, DOCCS hereby establishes an overall goal of **30** percent for MWBE participation, **15** percent for New York State-certified Minority-owned Business Enterprise ("MBE") participation and **15** percent for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the bidder agrees that DOCCS may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how DOCCS will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

GENERAL INFORMATION

The bidder understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. 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 the monetary value for fees, or the markup percentage, charged by the MWBE.

FOR ALL OTHER CONTRACTS - 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 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the bidder further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this solicitation, such finding constitutes a breach of contract and DOCCS may withhold payment 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 agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a bidder may arrange to provide such evidence via a non-electronic method by contacting the designated contact(s) for this procurement. Additionally, a bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

1. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted 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 DOCCS for review and approval.

DOCCS will review the submitted MWBE Utilization Plan and advise the bidder of DOCCS acceptance or issue a notice of deficiency within 30 days of receipt.

2. If a notice of deficiency is issued, the bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to DOCCS, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DOCCS to be inadequate, DOCCS 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. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

DOCCS may disqualify a bidder as being non-responsive under the following circumstances:

- a) If a bidder fails to submit an 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 DOCCS determines that the bidder has failed to document good faith efforts.

The successful bidder will be required to 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 DOCCS, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful bidder will be required to submit a **quarterly (non-construction) or monthly (construction)** MWBE Contractor Compliance & Subcontractor Payment Report to DOCCS, by the 10th day following each end of **quarter/month** as applicable over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

GENERAL INFORMATION

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the bidder agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The bidder is required to ensure that it and any subcontractors awarded a subcontract 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 bidder, 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, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The bidder will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement to DOCCS with its bid or proposal.

If awarded a Contract, bidder shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by DOCCS on a **quarterly or monthly** basis as required during the term of the Contract.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, arrest or conviction record, 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.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

**MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____ (the awardee/contractor) agree to adopt the following policies with respect to the project being developed or services rendered at _____

This organization will require its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participation goals and provide Equal Employment Opportunities set by NYS DOCCS for the State-funded project by taking the following steps:

M/WBE

- (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) Utilize ESD Directory of State certified M/WBEs 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 increase participation by M/WBEs and encourage the formation of joint ventures and other partnerships among M/WBE contractors to encourage their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain, or, where appropriate, require its subcontractors to maintain and submit, as required by DOCCS, records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that project payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and/or other credit requirements may be waived and/or appropriate alternatives are developed to encourage M/WBE 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, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics, and 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, age, disability, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics.
- (c) At the request of the contracting agency, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics, 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.

Agreed to this _____ day of _____, 20____

Sign: _____

Print: _____ Title: _____

Minority/ Women Business Enterprise Liaison

_____ is designated as the Minority/Women Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment
Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____ % Minority and Women's Business Enterprise Participation

_____ % Minority Business Enterprise Participation

_____ % Women's Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____

Contact:

**Department of Corrections and Community Supervision
Support Operations / Contract Procurement Unit
The Harriman State Campus
1220 Washington Ave
Albany, NY 12226**

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

M/WBE UTILIZATION PLAN

INSTRUCTIONS: This form must be submitted with any bid proposal or proposed negotiated contract. This Utilization Plan must contain a detailed description of the supplies, purchases, and/or services to be provided by each certified Minority and Women-Owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Contactor's Name: _____
 Address: _____
 City, State, Zip Code: _____

Federal Identification Number: _____
 Solicitation/Contract Number: _____
 Telephone Number: _____

Region/Location of Work: _____

M/WBE Goals in the Contract: MBE _____ % WBE _____ %

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, and Telephone No.	2. Classification	3. Detailed Description of Work/Purchase (Attach additional sheets, if necessary)	4. Dollar Value of Subcontracts/Supplies/Services and intended performance dates of each component of the contract.
A.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE Federal ID No. _____		
B.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE Federal ID No. _____		
C.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE Federal ID No. _____		

IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, CONTRACTOR MUST SUBMIT A REQUEST FOR WAIVER TO THE CONTRACTING UNIT.

Submission of this form constitutes the Contractor's acknowledgement and agreement to comply with the M/WBE 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.

NAME AND TITLE OF PREPARER (Print or Type):

SUBMIT COMPLETED FORM TO:
 Department of Corrections and Community Supervision
 Support Operations / Contract Procurement Unit
 The Harriman State Campus
 1220 Washington Ave
 Albany, NY 12226

SIGNATURE AND DATE:

FOR AGENCY USE ONLY

REVIEWED BY:

DATE:

UTILIZATION PLAN APPROVED: ☐ YES ☐ NO **Date:** _____

Contract No: _____

Contract Award Date: _____

Estimated Date of Completion: _____

Amount Obligated Under the Contract: _____

NOTICE OF DEFICIENCY ISSUED: ☐ YES ☐ NO **Date:** _____

NOTICE OF ACCEPTANCE ISSUED: ☐ YES ☐ NO **Date:** _____

Instructions:

1. Contractor Information: Enter contractor name, address, and federal employer identification number (FEIN).
2. Region/Location of Work: Enter region/location of work or facility name.
3. Project M/WBE Goals: Enter M/WBE Project Goals. These goals are to be accomplished by subcontracting with NYS certified M/WBE's.
4. Subcontractor: NYS Certified M/WBE Information: Enter name of certified M/WBE, address, telephone number, and Federal ID number. Verify in the Directory of Certified Minority and Women-Owned Businesses available at: www.esd.ny.gov/mwbe.html that they are a NYS certified minority or women-owned business.
5. Indicate certification type: MBE, WBE or both by checking the appropriate boxes, Y (Yes) or N (No).
6. Describe the type of services the M/WBE vendors will provide in relation to the contract, and estimate the amount the contractor will spend with these vendors.

Special Note: This section does not need to be completed if the contractor is a certified minority and women-owned business enterprise (dual certified) and responsible for one hundred percent of the contract performance. If this is the case, proceed to the signature section and attach a printout from the Directory of Certified Minority and Women-Owned Businesses available at: www.esd.ny.gov/mwbe.html showing the Contractor is a dual New York certified M/WBE. If the contractor is a NYS certified minority-owned business enterprise (MBE) or women-owned business enterprise (WBE), this section needs to be completed to satisfy the goal for which the Contractor is not certified. For example, if the Contractor is a NYS certified MBE, the Contractor is required to subcontract with a NYS certified WBE to achieve the WBE project goals.

7. Signature Section: Sign, print name, and date.

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

M/WBE QUARTERLY COMPLIANCE AND SUBCONTRACTOR PAYMENT REPORT

INSTRUCTIONS: After a contract is awarded, quarterly compliance reports are due no later than the 5th day after the end of each quarter.

Contractor's Name: _____
 Address: _____
 City, State, Zip Code: _____

Federal Identification No: _____
 Contract No.: _____
 Telephone No: _____

Reporting Period:
☐ Jan 1, 20__ - Mar 31, 20__
☐ Apr 1, 20__ - Jun 30, 20__
☐ Jul 1, 20__ - Sept 30, 20__
☐ Oct 1, 20__ - Dec 31, 20__

AS EVIDENCE OF THE PROGRESS MADE TOWARDS ACHIEVEMENT OF THE MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) GOAL(S), THE FOLLOWING INFORMATION INDICATES THE PAYMENTS MADE TO NYS CERTIFIED M/WBEs BY THE CONTRACTOR ON THIS PROJECT.

M/WBE Vendor/Subcontractor Name	Work Status This Report	Total Subcontractor Contract Amount		Payments This Quarter		Previous Payments		Total Payments Made to Date	
		MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
Name: FED ID#:	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: FED ID#:	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: FED ID#:	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: FED ID#:	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								

NAME AND TITLE OF PREPARER (Print or Type):

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.

TELEPHONE NO.:

E-MAIL ADDRESS:

FOR AGENCY USE ONLY

APPROVED: ☐ YES ☐ NO

Submit to:

Department of Corrections and Community Supervision
 Support Operations / Contract Procurement Unit
 The Harriman State Campus
 1220 Washington Ave
 Albany, NY 12226

REVIEWED BY:
DATE:

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

M/WBE REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE REVERSE FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.	
Offeror/Contractor Name:	Federal Identification No.:
Address:	Solicitation/Contract No.:
City, State, Zip Code:	M/WBE Goals: MBE % WBE %
<p align="center">By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.</p>	
Contractor is requesting a: 1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial 2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial 3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development:_____	
PREPARED BY (Signature): <small>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</small>	Date: Telephone Number: Email Address:
Name and Title of Preparer (Printed or Typed):	***** FOR AGENCY USE ONLY *****
Submit with the bid or proposal or if submitting after award, submit to: Department of Corrections and Community Supervision Support Operations / Contract Procurement Unit The Harriman State Campus 1220 Washington Ave Albany, NY 12226	REVIEWED BY: _____ DATE: _____ Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ *Comments:

REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

NOTE:

Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by the contracting entity, to determine M/WBE compliance.

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Sample Letter for Notice of Acceptance or Deficiency

Department Letter Head

(see Directive #0008, "Use of Department Stationery & Business Cards")

DATE

NAME

TITLE

COMPANY

STREET ADDRESS

CITY, STATE ZIP

Re: CONTRACT NUMBER
CONTRACT NAME
Amount:

Dear NAME:

I have received your Utilization plan for the above referenced project. Upon review, the M/WBE firm(s) listed on **Appendix X** are approved for utilization. Based on your submittal, your firm has a shortfall of % (\$) *MBE participation* and % (\$) *WBE participation*. The contractually required M/WBE participation for this contract is 15% MBE and 15% WBE.

According to NY State Executive Law Article 15A, all contractors are required to make a Good Faith Effort to solicit M/WBE participation on DOCCS funded contracts. It appears that **COMPANY NAME** has not met those requirements. For assistance in identifying NYS Certified M/WBE sub-contractors/suppliers, please proceed to the NYSED website: www.esd.ny.gov/MWBE.html. I am requesting that you submit a revised Utilization Plan along with any good faith efforts by close of business **DAY AND DATE**.

I have attached additional vendor information in the industry that may be of assistance to you in fulfilling the M/WBE goals of this contract.

If you have any questions, you may contact me at (xxx) xxx-xxxx ext. xxxx.

Sincerely,