



## **APPENDIX C**

### **NYS MWBE REPORTING REQUIREMENTS**

#### **MWBE/SDVOB PARTICIPATION GOALS AND REPORTING**

**This Contract Goal: MBE: 10%      WBE: 15%      SDVOB: 6%**

Pursuant to **New York State Executive Law Article 15-A**, the APDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women owned businesses (MWBEs) in the performance of APDC contracts. The APDC advises all potential service providers that disadvantaged, minority and women-owned business enterprises will be afforded full opportunity to submit proposals in response to this notice and there will be no discrimination on the basis of race, creed, color, sex, national origin, disability or marital status in the award of the contract or any subcontract.

The APDC has established an overall combined participation goal of 30% for New York State Certified Minority Businesses Enterprises and for New York State Certified Women-owned Enterprises. Vendors with such certifications are requested to identify themselves in their submitted bid.

**Veteran's Services Law Article 3** provides for more meaningful participation in public procurement by certified Service- Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. The APDC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of APDC contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors, as proteges, or in other partnering or supporting roles. The APDC has established an overall 6% SDVOB goal.

#### **REQUIRED MWBE REPORTING FORMS:**

Proposers are encouraged to make a good faith effort in working toward the attainment of these goals. Proposers will be required to submit specific plans for the implementation of the required approach or evidence of a good faith effort in working toward the attainment of those goals.

Proposers that are NYS MWBE certified must provide a copy of their certification.

The APDC has established an overall combined participation goal of 30% for New York State Certified Minority Businesses Enterprises and for New York State Certified Women-owned Enterprises. Vendors with such certifications are requested to identify themselves in their submitted bid.

**EEO Policy Statement.** Prior to the award of a contract, vendors will be required to submit an EEO Policy Statement

**Staffing Plan of the anticipated work force to be unutilized on the contract** (project specific). Where the work force on the contract cannot be separated out from the vendor's total work force, information on the total work force must be supplied by ethnic background, gender and specified occupational categories. The APDC shall determine the time frame for the pre-award submission of the EEO Policy Statement and Staffing Plan. Additionally, after award, vendors will submit a Work Force Employment Utilization Report showing the actual staffing during the course of the project. Reports are to be filed on forms provided to the vendor, on a schedule determined by the APDC.



**Utilization Plan.** Vendors will be required to submit a utilization plan for achieving goals established for the participation of certified minority and women-owned businesses in relation to a State contract. The utilization plan shall require the following information of the vendor:

Name, address, and telephone number of the vendor; Federal identification or social security number of the vendor; and Names and federal identification numbers or social security numbers of all sub-vendors and suppliers which the vendor intends to use to perform the contract and a description of the contract scope of work which the vendor intends to structure to increase participation by certified minority and women-owned business enterprises on the State contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the vendor intends to be performed all sub vendors and suppliers

**Review of Utilization Plans.** In the case of a request for proposals or negotiated contract, the time requirements for submitting, reviewing, remedying deficiencies and waiving goals with regard to the utilization plan will vary in accordance with the proposal. In case of a bid submission, unless otherwise specified in information, instruction or requirements and any addenda provided to vendors for purposes of soliciting bids or proposals, utilization plans shall be submitted two business days after the vendor receives notice from the APDC that the vendor has submitted the low bid. The APDC will review the utilization plan submitted by the vendor and issue a written notice of acceptance or deficiency regarding the utilization plan no later than twenty calendar days after receipt of the utilization plan.

**Vendor Compliance Report.** Vendor compliance reports shall be submitted by vendors with respect to a contract for which goals have been established. Compliance reports will be filed at intervals required by information, instructions or requirements pursuant to which bids and proposals have been solicited, or the terms and conditions of a contract awarded pursuant to negotiation. A vendor compliance report shall include the following information: The name, address, and telephone number of each certified minority and women-owned business enterprise the vendor is using or intends to use to comply with the utilization plan; A brief description of the contract scope of work to be performed for the vendor by each certified minority and women-owned business enterprise and the scheduled dates for performance; A statement of whether the vendor has a written agreement with each certified minority and women-owned business enterprise, and if requested, copies of such agreements the vendor is using or intends to use; The actual total cost of the contract scope or work to be performed by each certified minority and women owned business enterprise, for the contract; The actual amounts of any payments made by the vendor to each certified minority and women-owned business enterprise as the date of the compliance report was submitted; and Employments Utilization Form.

**Request for Waivers.** The APDC shall grant a partial or total waiver of goal requirements established on a State contract only upon the submission of a waiver form, documenting good faith efforts by the vendor to meet the goal requirements of the contract. The following factors will be considered in the waiver:

The number and types of certified minority or women-owned business enterprises located in the region which the State contract is to be performed; The total dollar value of the State contract; The contract scope of work to be performed; The project size; The project term; The availability of other business enterprises located in the region qualified to do the work to be performed; and The financial ability of certified minority and women-owned business enterprises located outside the region to perform the State contract; Requests for a partial or total waiver of goal requirements on a State contract made prior to the award of the contract may be made simultaneously with the submission of the utilization plan for that State contract. Requests for a partial or total waiver subsequent to the award of a State contract may only be made prior to final payment on that contract. If the APDC grants a waiver then the APDC will submit the documentation to the Governor's Office for the MWBE waiver request concurrence.

**Qualification of Vendors.** The APDC may disqualify a bid or proposal of a contract as being non-responsible for failure to remedy deficiencies in the utilization plan or upon a determination that the vendor's utilization plan does not indicate that the State contract goal requirements for participation of certified minority and women owned business enterprises will be met, and the vendor has failed to document good-faith efforts. The APDC may similarly disqualify a bid or proposal for failure to meet all the EEO requirements. The vendor shall be entitled to all reviews and remedies afforded to it pursuant to Article 15-A of the NYS Executive Law.

**5 NYCRR §142.8 - Contractor's good faith efforts** (a) The contractor must document its good faith efforts toward meeting certified minority- and women-owned business enterprise utilization plans by providing, at a minimum: (1) Copies of any solicitations of certified minority- and/or women-owned business enterprises listed in the New York State Directory of certified businesses, and any responses thereto; (2) If responses to the contractor's solicitations were received, but a certified minority- or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected; (3) Copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements; (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority- and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals; (5) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority- and women



**Division of Minority  
and Women's  
Business Development**

## **Your MWBE Utilization and Reporting Responsibilities Under Article 15-A**

The New York State Contract System ("NYSCS") is your one stop tool compliance with New York State's MWBE Program. It is also the platform New York State uses to monitor state contracts and MWBE participation.


### **GETTING STARTED**

To access the system, you will need to login or create a user name and password at <https://ny.newnycontracts.com>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to your contract's project manager. For verification, in the email, include your business name and contact information.

### **VENDOR RESPONSIBILITIES**

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MWBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support»** link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on

all features of the NYSCS. You may also click on the  icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the "Knowledge Base" through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com>).

For more information, contact your project manager.

**EQUAL EMPLOYMENT OPPORTUNITY  
STAFFING PLAN**  
Submit with Bid or Proposal - Instructions on page 2

Solicitation No.:		<b>Report Includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
Offeror's Name:	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor Subcontractor's name _____	
Offeror's Address:		

Enter the total number of employees for each classification or, each of the EEO-Job Categories identified																	
EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification										Disabled		Veteran	
		Total Male	Total Female	White		Black		Hispanic		Asian		Native American					
		(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	

Totals		
PREPARED BY (Signature): _____	TELEPHONE NO.: _____ I EMAIL ADDRESS: _____	DATE: _____ I _____

NAME AND TITLE OF PREPARER (Print or Type):

Submit completed plan with bid or propoal EEO 100 (Rev 6-08)

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form for the contractor's or subcontractor's total work force.

**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 if the work force being reported is just for the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the Designated Contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the work force under the appropriate headings.
8. Enter the name, title, phone number and email 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** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through 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 an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER**





106 Smith Blvd.  
Albany, NY 12202

### CONTRACTOR'S MWBE UTILIZATION PLAN

**D** Revised Plan

Contract No.: \_\_\_\_\_

REMINDER: Utilize the New York State Contract System located at <https://ny.newnyccontracts.com/Default.asp?TN=ny&XID=8353> to report MWBE payments on a monthly basis. Making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward MWBE utilization.

Contractor's Name, Address and Federal ID No.:  Federal ID No.:	Contract Description/Location:  Work/Job Order:			Date Proposal Approved:  OGS Project Number:	Date Printed:  Work Order Value:	Bid Date:  Contract Amount:	MWBE GOALS	
							MBE%	WBE%
Certified MBE/WBE Name, Address and Phone No.  Federal ID No.:	MBE  <input type="checkbox"/>	WBE  <input type="checkbox"/>	Tiered Sub  <input type="checkbox"/>	Description of Subcontracting/Supplies	Anticipated performance/purchase date(s)	Dollar Value of Subcontract/Supplies	SEE BDC 328.1  O W J O O u.	<input type="checkbox"/>
Federal ID No.:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					<input type="checkbox"/>
Federal ID No.:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					<input type="checkbox"/>
Federal ID No.:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					<input type="checkbox"/>
Federal ID No.:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					<input type="checkbox"/>

Pursuant to Executive Law Article 15-A, my firm will engage in a good faith effort to achieve the MWBE (goals on this contract).  
Contractor's Signature: \_\_\_\_\_

Contractor's Comments:

Enter Name: \_\_\_\_\_

Title: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Date: \_\_\_\_\_

#### FOR OGS USE ONLY

☐ Accepted

MBE %

MBE \$

☐ Accepted as Noted

WBE %

☐ Notice of Deficiency Issued

WBE \$ \_\_\_\_\_

OGS Authorized Signature: \_\_\_\_\_

Enter Name: \_\_\_\_\_

Date: \_\_\_\_\_

-11-  
**PORT OF ALBANY**

106 Smith Blvd.  
518-463-8763

**CONTRACTOR'S MONTHLY PAYMENT REPORT** (DUE ON THE 10<sup>TH</sup> DAY OF EACH MONTH FOR THE

Contract No.: \_\_\_\_\_

PRECEDING MONTH'S ACTIVITY AS EVIDENCE TOWARDS ACHIEVEMENT OF THE MWBE GOALS ON THE CONTRACT)		<b>MWBE Goals</b>		<b>Reporting Period</b>	
Contractor/Nendor Name, Address and Phone No.:	Contractor/Nendor Federal ID No.:	MBE%	WBE%	Month	Year
Description of Project:					
Firm Name, Address and Phone Number (List All Firms)	Description of Work or Supplies Provided	<input type="radio"/> MBE <input type="radio"/> Sub <input type="radio"/> Broker <input type="radio"/> Joint Venture	<input type="radio"/> WBE <input type="radio"/> Supplier <input type="radio"/> Tiered Sub <input type="radio"/> Reseller	Payment This Month	Contract Amount
Federal ID No.:		<input type="radio"/> Written Contract	<input type="radio"/> No Written Contract	<input checked="" type="radio"/> No Payment This Month	
		<input type="radio"/> MBE <input type="radio"/> Sub <input type="radio"/> Broker <input type="radio"/> Joint Venture	<input type="radio"/> WBE <input type="radio"/> Supplier <input type="radio"/> Tiered Sub <input type="radio"/> Reseller		
Federal ID No.:		<input type="radio"/> Written Contract	<input type="radio"/> No Written Contract	<input checked="" type="radio"/> No Payment This Month	
		<input type="radio"/> MBE <input type="radio"/> Sub <input type="radio"/> Broker <input type="radio"/> Joint Venture	<input type="radio"/> WBE <input type="radio"/> Supplier <input type="radio"/> Tiered Sub <input type="radio"/> Reseller		
Federal ID No.:		<input type="radio"/> Written Contract	<input type="radio"/> No Written Contract	<input checked="" type="radio"/> No Payment This Month	
		<input type="radio"/> MBE <input type="radio"/> Sub <input type="radio"/> Broker <input type="radio"/> Joint Venture	<input type="radio"/> WBE <input type="radio"/> Supplier <input type="radio"/> Tiered Sub <input type="radio"/> Reseller		
Federal ID No.:		<input type="radio"/> Written Contract	<input type="radio"/> No Written Contract	<input checked="" type="radio"/> No Payment This Month	

Signature of Firm's Compliance Officer _____	Print Name _____	Date _____	For APDC Use Only
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**Submission of this form constitutes the contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the contract.**

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_





**OFFICE OF MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM OPERATIONS**

**REQUEST FOR WAIVER FORM**

<b>INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.</b>	
<b>Offeror/Contractor Name:</b>	<b>Federal Identification No.:</b>
<b>Address:</b>	<b>Solicitation/Contract No.:</b>
<b>City, State, Zip Code:</b>	<b>M/WBE Goals: MBE      %      WBE      %</b>
<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> <p>Contractor is requesting a:</p> <p>1. <input type="radio"/> MBE Waiver - A waiver of the MBE Goal for this procurement is requested. <input type="radio"/> Total <input type="radio"/> Partial</p> <p>2. <input type="radio"/> WBE Waiver - A waiver of the WBE Goal for this procurement is requested. <input type="radio"/> Total <input type="radio"/> Partial</p> <p>3. <input type="radio"/> 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:</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>PREPARED BY (Signature):</p> </div> <div style="width: 45%;"> <p>Date:</p> </div> </div>	
<p><del>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MIWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 6 NYCRR PART 143, FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</del></p>	
<p><b>Name and Title of Preparer (Printed or Typed):</b></p>  <p><b>Submit with the bid or proposal or If submitting after award, for an OGS contract, submit to:</b></p> <p><b>Albany Port District Commission</b>  <b>106 Smith Boulevard</b>  <b>Albany, New York 12202</b></p>	<p><b>Telephone Number:</b>      <b>Email Address:</b></p> <p align="center">..... FOR OGS USE ONLY .....</p> <p><b>REVIEWED BY:</b>      <b>DATE:</b></p> <p>Waiver Granted: <input type="radio"/> YES      <b>MBE: <u>  J  </u></b>      <b>WBE: <u>  U  </u></b></p> <p><input type="radio"/> Total Waiver      <input type="radio"/> Partial Waiver</p> <p><input type="radio"/> ESD Certification Waiver      <input type="radio"/> conditional</p> <p><input type="radio"/> Notice of Deficiency Issued</p> <p>•comments:</p>

## 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 OGS, to determine M/WBE compliance.**