

M/WBE Utilization Goal Requirements For NYSDDED Contracts

REQUIREMENTS AND PROCEDURES REGARDING BUSINESS PARTICIPATION OPPORTUNITIES FOR CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE) ON NYS DEPARTMENT OF ECONOMIC DEVELOPMENT (NYSDDED) CONTRACTS

I. General Provisions

- A. The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing and (2) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of Economic Development (the “Department”), to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Labor Law or other applicable federal, state or local laws.
- C. Failure to comply with the following requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions or enforcement proceedings as allowed by the Contract.

II. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
 - 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the Letter of Intent to award Contract.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement (see Form 100 – Minority and Women-Owned Business Enterprises 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 or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. Contractor will include the provisions of sections (a) through (c) of this subsection in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

C. Form 101 - Staffing Plan

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

D. Form 102 - Workforce Employment Utilization Report (“Workforce Report”)

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by the Contractor and any subcontractor performing work

on the Contract.

3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or sub Contractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the subject contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

III. Contract Goals

A. For purposes of this procurement, the Department hereby establishes a goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation.

- B. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the Contract Goals established in subsection “A”, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp.

- C. Pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

IV. **MWBE Utilization Plan**

A. Form 103 – MWBE Utilization Plan

1. Contractor is required to submit an MWBE Utilization Plan to the Department on “Form 103” with this bid/proposal or in the event such a plan was not submitted with a bid/proposal, prior to the execution of this Contract.
2. The Utilization Plan shall list the MWBEs Contractor intends to use to perform on the Contract and provide a description of the Contract scope of work which Contractor intends to structure to increase the participation by NYS Certified MWBEs on Contract pursuant to the prescribed Contract Goals set herein, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of the Contract which Contractor intends to be performed by NYS Certified MWBEs.
3. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and/or during the Contract term must be reported on a revised MWBE Utilization Plan and submitted to the Department for approval.

- B. The Department will review the MWBE Utilization Plan and issue to Contractor a written notice of acceptance or deficiency within twenty (20) days of its receipt. A notice of deficiency shall include (1) the name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals and the reasons why it is not acceptable; (2) elements of the Contract scope of work which the Department has determined can be reasonably structured by Contractor to increase the likelihood of participation in the Contract by NYS Certified MWBEs; and (3) other information which the Department determines to be relevant to the MWBE Utilization Plan.
- C. In the event a notice of deficiency is issued Contractor shall respond to the notice within seven (7) business days of receipt by submitting a written remedy in response to the notice of deficiency to the Department. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the Contractor and direct Contractor to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on forms provided by the Department. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. The Department may disqualify Contractor as being non-responsive under the following circumstances:
 - 1. If Contractor fails to submit a MWBE Utilization Plan;
 - 2. If Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
 - 3. If Contractor fails to submit a request for waiver in the event of a deficiency within the utilization plan; or
 - 4. If the department determines that Contractor has failed to document good faith efforts to meet the contract goals prescribed in Article III.

V. Waivers

- A. For Waiver Requests Contractor should use Form 104 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Department, upon review of the Utilization Plan and updated Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form MWBE 105) to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Administration Hearing on Disqualification

- A. If the Department disqualifies a bid based on deficiency in Contractor's utilization plan, Contractor shall be entitled to an administrative hearing, on the record, before the Department to review the determination of disqualification of the bid and determination of non-responsibility of the Contractor.
- B. Such final administrative determination shall be reviewable by a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is commenced within thirty (30) days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Executive Law Article 15-A, §313.

VIII. Complaints

- A. If the Department determines that the Contractor is not in compliance with the requirements found in Part 142 of the MWBE Regulations and the Department is unsuccessful in its efforts to resolve the matter and bring the Contractor into compliance with the requirements, the Department may file a complaint with the Director according to the provisions of Executive Law Article 15-A, §§ 313 & 316 or may assess liquidated damages pursuant to § 316-a.
- B. Subsequent to the award of this Contract, if Contractor submits a Request for Waiver of MWBE participation goals and the Department denies the request or fails to respond within twenty (20) days of receiving it, or if Contractor has received a written determination from the Department that Contractor has failed or refused to comply with the provisions of this Contract, Contractor may file a complaint with the Director in accordance with the provisions of Executive Law Article 15-A, §§ 313 & 316.
- C. The complaint must be filed within twenty (20) days of the Department's receipt of the Request for Waiver. If the Department fails to respond in that time, or within twenty (20) days of a notification that the request has been denied by the Department or within twenty (20) days of receipt of notification from the Department that the Contractor has failed or refused to comply with the goals:
 - 1. A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
 - 2. The party filing a complaint, whether the Contractor or the Department, 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.
 - 3. Upon receipt of a complaint, the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty (30) days of receipt of the complaint the Director is unable to resolve the complaint to the satisfaction of

the Department and the Contractor, the complaint shall be referred to the Division's designated hearing officer. Upon conclusion of the administrative proceeding, the hearing officer will submit to the Director his or her final determination regarding the alleged violation of the Contract or refusal of the Department to grant a waiver request by the Contractor and his or her recommendations regarding the imposition of fines, sanctions or penalties.

4. The Director, within ten (10) days of receipt of the hearing officer's decision, will issue a final determination with regard to fines, sanctions or penalties and shall cause a copy of such determination to be served upon the contractor by personal service or by certified mail, return receipt requested.
5. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by Contractor or Contractor's representative or the Contractor's willful and intentional disregard of the MWBE participation requirement included in this Contract may include a determination that Contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such Contract for up to one year following the final determination.
6. If a Contractor has previously been debarred, the penalties imposed for any subsequent violations, if such violation occurs within five years of the first violation, may result in debarment for up to five (5) years after the final determination. Such information shall be posted on the Division's web site.
7. The determination of the Department or the Contractor to proceed with a complaint shall not preclude the Department, in its discretion, from pursuing any other remedies which it may have pursuant to law and Contract, including withholding from payments to the Contractor the estimated amount of the fines and penalties which may be imposed pursuant to this subsection.

IX. Liquidated Damages - MWBE Participation

- A. In lieu of the complaint procedures set forth in Article VIII of this Appendix, if the Department determines that Contractor is not in compliance with the requirements of this subsection and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director pursuant to subdivision 8 of section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

**MINORITY AND 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 _____

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from NYSDED 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 enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

(e) This organization will include the provisions of sections (a) through (d) 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 _____, 2_____

By _____

Print: _____ Title: _____

_____ is designated as the Minority 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

_____ 20% Minority and Women’s Business Enterprise Participation

_____ % Minority Business Enterprise Participation

_____ % Women’s Business Enterprise Participation

EEO Contract Goals

_____ % Minority Labor Force Participation

_____ % Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

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

Enter the total number of employees for each classification in 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 (M)	Total Female (F)	White (M)	(F)	Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (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.: EMAIL ADDRESS:	DATE:
NAME AND TITLE OF PREPARER (Print or Type):		Submit completed with bid or proposal M/WBE 101 (Rev 11/08)

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (M/WBE 101) 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 and/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 and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/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 work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OM/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated 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 form, 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** Male or Female

WORK FORCE EMPLOYMENT UTILIZATION

Contract No.:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Reporting Period: <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
Contractor's Name:		Report includes: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
Contractor's Address:		

Enter the total number of employees in each classification in 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		
		Male (M)	Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (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.:	DATE:
NAME AND TITLE OF PREPARER (Print or Type):	EMAIL ADDRESS:	
Submit completed form to: NYS (add Agency name)		
M/WBE 102 (Revised 11/08)		

General Instructions: The work force utilization (M/WBE 102) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the M/WBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

Instructions for completing:

9. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
10. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
11. Check off the box that corresponds to the reporting period for this report.
12. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
13. Enter the total work force by EEO job category.
14. Break down the total work force by gender and enter under the heading 'Work force by Gender'
15. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Program Management Unit at (518) 474-5513 if you have any questions.
16. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
17. 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** **Male or Female**

M/WBE UTILIZATION PLAN

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

Offeror's Name: Address: City, State, Zip Code: Telephone No.: Region/Location of Work:	Federal Identification No.: Solicitation No.: Project No.: M/WBE Goals in the Contract: MBE % WBE %
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1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract.
A.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (M/WBE 104).

PREPARED BY (Signature): DATE: NAME AND TITLE OF PREPARER (Print or Type): SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.	TELEPHONE NO.:	EMAIL ADDRESS:
FOR M/WBE USE ONLY		
REVIEWED BY:		DATE:
UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ Contract No.: _____ Project No. (if applicable): _____ Contract Award Date: _____ Estimated Date of Completion: _____ Amount Obligated Under the Contract: _____ Description of Work: _____ NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____		
M/WBE 103 (Revised 11/08)		

REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT 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>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="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>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</p> <p>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: _____</p>		
PREPARED BY (Signature):	Date:	
<p><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></p>		
Name and Title of Preparer (Printed or Typed):	Telephone Number:	Email Address:
Submit with the bid or proposal or if submitting after award submit to:	***** FOR M/WBE USE ONLY *****	
	REVIEWED BY:	DATE:
	<p>Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional</p> <p><input type="checkbox"/> Notice of Deficiency Issued _____</p> <p>*Comments:</p>	
<p>New York State Department of Economic Development Attn: Counsel's Office 625 Broadway, 8th floor Albany, NY 12245</p> <p>M/WBE 104</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, the Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by AGENCY, to determine M/WBE compliance.

M/WBE Quarterly Report of

Is this a final report? Check One
Yes _____ No _____

NYS AGENCY Contract No. _____ **Project No.** _____

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified M/WBE subcontractor on this project. The payments as shown made are in compliance with contract documents for the above referenced project.

Contractors Name and Address		Federal ID#	Goals/\$ Amt.		Contract Type _____						
			MBE _____%= _____	WBE _____%= _____	Paid to Contractor This Quarter _____						
M/WBE Subcontractor/Vendor		Product Code*	Work Status This Report	Total Subcontractor Contract Amount		Payments this Quarter		Previous Payments		Total Payment Made to Date	
				MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
Name: FED ID#			___ Active ___ Inactive ___ Complete								
Name: FED ID#			___ Active ___ Inactive ___ Complete								
Name: FED ID#			___ Active ___ Inactive ___ Complete								
Name: FED ID#			___ Active ___ Inactive ___ Complete								
Total											

*See Reverse Side for Product Codes

Date _____ Name _____ Title _____ Signature _____

PRODUCT KEY CODE

A	=	Agriculture/ Landscaping (e.g., all forms of landscaping services)
B	=	Mining (e.g., geological investigations)
C	=	Construction
C15	=	Building Construction – General Contractors
C16	=	Heavy Construction (e.g., highway, pipe laying)
C17	=	Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)
D	=	Manufacturing
E	=	Transportation, Communication and Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
F/G	=	Wholesale/Retail Goods (e.g. hospital supplies and equipment, food stores, computer stores, office supplies)
G52	=	Construction Materials (e.g., lumber, paint, law supplies)
H	=	Financial, Insurance and Real Estate Services
I	=	Services
I73	=	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)
I81	=	Legal Services
I82	=	Education Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
I83	=	Social Services (Counselors, vocational training, child care)
I87	=	Engineering, architectural, accounting, research, management and related services

CONTRACTOR BID SOLICITATION LETTER

MBE/WBE
 Main Street
 Anywhere, New York 00000

Re: CONTRACT # _____
 COUNTY _____
 Project Title _____

Dear MBE/WBE:

We are the low bidder on Project/Contract # _____ which involves [type of contract(s)] _____ in the _____ of New York. We are currently soliciting bid quotations or proposals from NY State certified M/WBE firms for any tasks of the work contained in this contract. The specialty items contained include the following:

ITEM(S)	DESCRIPTION	QUANTITY	PROJECTED START DATE

The Work Plan and specifications are currently available at our office for your review. If you are interested in participation on this project, please complete and submit a copy of the MBE/WBE Contractor Participation Bid/Proposal (Attachment # 7) no later than thirty (30) days from the (due date) _____.

If you need additional information and assistance, or need to review the Work Plan and specifications, please contact (authorized representative) of our office at (telephone).

In the event that you cannot bid on this contract please complete the attached Minority/Women’s Contractor Unavailability Certification Form (See Attachment # 8).

Thank you for your interest as we look forward to a successful project.

Sincerely,

New York State Department of Economic Development

**M/WBE SUBCONTRACTORS AND SUPPLIERS
LETTER OF INTENT TO PARTICIPATE**

Recipient/Contractor: _____ Contract/Project No.: _____

Address: _____

Federal ID#: _____ Project/Contract # _____ Location of Work: _____

Dear Recipient/Contractor:

I, _____ intend to perform work for _____
(Name of Subcontractor/Vendor's Firm) (Name of Consultant/Contractor)

located at _____ in connection with the above project. My Minority/Women Business Enterprise (M/WBE) status as a MBE () and/or WBE () is certified as of _____
(Check all as applies) (cert. date)

_____ is prepared to do the following:
(Name of Subcontractor/Vendor's Firm)

(Describe work to be performed on the above project)	Unit Price	Total Amount

You have projected _____ for such work to start.
(Commencement Date)

_____ will sign a formal contract for the above work conditioned upon the
(Name of Subcontractor/Vendor's Firm)

approval of your executed contract with the recipient/contractor.

MBE: Subcontractor or Supplier (Please circle one)

WBE: Subcontractor or Supplier (Please circle one)

Company Official's Name _____ Title: _____

Company Official's Signature: _____

Address: _____

Consultant/Contractor (Please circle one)

Company Official's Name: _____ Title: _____

Company Official's Signature _____ Date: _____

Telephone Number: () _____ Fax Number: () _____

M/WBE CONTRACTOR PARTICIPATION BID/PROPOSAL

Prime Contractor _____
 Address _____

Re: CONTRACT # _____
 COUNTY _____
 Project Title _____

TO: _____
 (Name of Prime Contractor)

_____ proposes to perform the work as follows:
 (Name of M/WBE Firm)

(Specify in detail the particular work items to be performed thereof and associated dollar amounts)

TYPE OF WORK	UNIT PRICE	DOLLAR AMOUNT

 NAME OF M/WBE CONTRACTOR

 SIGNATURE OF M/WBE CONTRACTOR

 DATE

M/WBE CONTRACTOR UNAVAILABILITY CERTIFICATION

PROJECT/CONTRACT # _____

I, _____
(Principal or Prime Consultant/Contractor)

_____ of _____
(Title) (Name of Consultant's/Contractor's Firm)

(Address) (Telephone Number)

I certify that on (Date) _____ I contacted the following New York State Certified Minority/Women Business Enterprises by registered mail to obtain bids for work to be performed on the above-mentioned contract.

List of names of M/WBEs, and type of work that bids were requested

- _____
- _____
- _____

To the best of my knowledge and belief, said New York State Certified Minority/Women Business Enterprise contractor(s) was unavailable for work on this project, or unable to prepare a bid for the following reasons: Pease check appropriate reasons given by each MBE/WBE firm contacted above.

- _____ I did not have the capability to perform the work
- _____ Contract too small
- _____ Remote location
- _____ Received solicitation notices too late
- _____ Did not want to work for this contractor
- _____ Other (give reason) _____

Signature of Prime Consultant/Contractor

Title Date