

V. Non-Compliance and Sanctions

In the event that the Developer or a Contracting Party violates any of the provisions herein, ESDC may require that the following sanctions and remedies for non-compliance be imposed:

- (a) Within twenty (20) days after the end of each calendar month, the AAO will review the Monthly Employment Utilization Report and the MBE/WBE Compliance Report filed with the AAO to assess compliance with the established program. If the Contracting Party has failed to file the required monthly reports and/or if in the reasonable judgment of the AAO, an analysis of the reports reveals apparent underutilization as a result of a failure to use best efforts, the AAO may notify the Developer and Contracting Party in writing (the "First Notice"), which notice shall describe the nature and extent of the apparent failure to use best efforts.
- (b) If the AAO's review and analysis of the Contracting Party's reports filed in the month next following the month in which the Contracting Party received the First Notice reveals that there continues to be apparent underutilization as a failure to use best efforts, then the AAO may notify the Contracting Party and Developer in writing (the "Second Notice") which notice shall describe the nature and extent of the continuing failure to use best efforts and will arrange a conference (on ten business days advance notice) which the Contracting Party and Developer must attend, at which the AAO will identify in consultation with the Developer, specific reasonable and practicable corrective measures from among those available to demonstrate best efforts which the Contracting Party will undertake.
- (c) If the AAO's review and analysis of the Contracting Party's reports filed in the month next following the month in which the Contracting Party received the Second Notice reveals continuing apparent underutilization as a result of a failure to use best efforts and if the Contracting Party has not already undertaken the specific corrective measures agreed upon to demonstrate its best efforts, the AAO may notify the Contracting Party and Developer in writing (the "Final Notice"), which notice shall describe the nature and extent of the continuing failure to use best efforts. Upon receipt of the Final Notice, the Contracting Party and Developer shall be required to comply with the following sanctions and remedies for compliance:
 - (1) The Contracting Party and Developer shall attend a hearing with the AAO.
 - (2) After any such hearing, and a determination by the AAO that the Contracting Party has failed to comply with any of these provisions (i.e. use best efforts to comply with the provisions herein), and the passage of time in which to remedy such failure has transpired, then ESDC, in its sole discretion, with notice to the Developer, may declare an Event of Default. .

ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Developer and any Contracting Party in connection with the construction of the Project to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth in Sections II and III herein, and developed by ESDC.

Affirmative Action Officer ("AAO")

Shall mean ESDC's Affirmative Action Officer or his/her designee, managing the affirmative action program for ESDC.

Contract

Shall mean a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a Contracting Party, providing for a total expenditure in excess of \$10,000 for labor, services, supplies, equipment, materials or any combination of the foregoing funded in furtherance of construction of the Project.

Contracting Party

Shall mean (i) if applicable the Developer, or (ii) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in furtherance of the construction of the Project.

Subcontract

Shall mean an agreement providing for a total expenditure in excess of \$1,500 between a Contracting Party and any individual or business enterprise, for goods or services rendered in connection with any project or initiative funded in whole or in part with ESDC funds.

Minority Business Enterprise ("MBE")

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

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: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Women-owned Business Enterprise ("WBE")

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Best Efforts - Minority and Women-owned Business Enterprise Participation

Best efforts are not limited to the efforts specified herein, and the role of M/WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to minority and women's trade associations. The Developer and each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work. Such record keeping must include the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Developer and Contracting Party in connection with potential M/WBE participation on the Contract;
- (e) Utilizing the resources of the AAO to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts; and
- (f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities, where appropriate, to ensure that the Developer will meet its obligations herein.
- (g) Requiring the Contracting Party to remit payments tot M/WBE's in a timely fashion.

Best Efforts - Minority Group Member and Female Workforce Participation

Best efforts to provide for meaningful Minority Group Member and female workforce participation shall include at least the following in connection with the work:

- (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at the premises. The Developer and Contracting Party shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain such a working environment, with specific attention to Minority Group Member or female individuals working at the premises;
- (b) State in all solicitations or advertisement for employees that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, sexual orientation, age disability or marital status;
- (c) Send to each labor union or representative of workers with which a collective bargaining agreement or understanding is in place, a notice advising the said labor union or workers representative of commitments under this Section, and post copies of the notice in conspicuous places available to employees and applicants for employment;
- (d) Establish and maintain a current list of Minority Group Member and female recruitment sources and community organizations, and provide written notification to them when employment opportunities are available. Maintain a record of the organizations' responses;

- (e) Maintain a current file of the name, address and telephone number of each Minority Group Member and female applicant and any referrals from a union, recruitment source or community organization, and of the action taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back by the union or, if referred, was not employed, this shall be documented in writing in the file with the reasons therefor; along with whatever additional actions the Contracting Party may have taken;
- (f) Disseminate the Developer's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in meeting its Equal Employment Opportunity obligations, by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, and other similar items, by specific review of the policy with all management personnel and with all Minority Group Member and female employees at least once a year, and by posting the company Equal Employment Opportunity policy on bulletin boards accessible to all employees at each location where work is performed under this Contract;
- (g) Disseminate the Developer's Equal Employment Opportunity policy externally by including it in any advertising in the news media, specifically including Minority Group Member and female news media, and providing written notification to and discussing the Equal Employment Opportunity policy with any contractor with whom the Developer does or anticipates doing business; and,
- (h) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.

MONTHLY EMPLOYMENT UTILIZATION REPORT
Instructions for Completion

The Monthly Employment Utilization Report ("MEUR") is to be completed by each subject contractor (both Prime and Sub) and signed by a responsible official of the company. The reports are to be filed by the 5th day of each month during the term of the project, and they shall include the total work-hours for each employee classification in each trade in the covered area for the monthly reporting period. The prime contractor is responsible for submitting its subcontractors report, along with its own. Additional copies of this form may be obtained from Empire State Development ("ESD").

Minority: Includes Blacks, Hispanics, Native Americans, Alaskan Natives, and Asian and Pacific Islanders, both men and women.

1. Worker Hours of Employment (a-e):
 - a) All Worker Hours: The total number of male hours, the total number of female hours, and the total of both male and female hours worked under each classification.
 - b) through e) Minority Worker Hours: The total number of male hours and the total number of female hours worked by each specified group of minority worker in each classification.

2. Number of Workers (a-b):
 - a) All Workers: Total number of males and total number of females working in each classification of each trade in the contractor's aggregate workforce during reporting period.
 - b) Minority Workers: Total number of male minorities and total number of female minorities working in each classification, in each trade in the contractor's aggregate workforce during reporting period.

3. Construction Trade: Only those construction crafts which contractor employs in the covered area.
Construction Trades include: Field Office Staff (Professionals and Office/Clerical), Laborers, Equipment Operators, Surveyors, Truck Drivers, Iron Workers, Carpenters, Cement Masons, Painters, Electricians, Plumbers and Other.

Note: ESD may demand payroll records to substantiate work hours listed on the Monthly Employment Utilization Report, if discrepancies should arise.

OCCUPATIONAL CODES

Officials/Administrators	100
Professionals	110
Technicians	120
Sales Workers	130
Office & Clerical	140
Craft Workers	150
Operatives	160
Laborers	170
Service Workers	180

FORWARD TO:

Empire State Development
Affirmative Action Unit - Laverne Poole
633 Third Avenue
New York, NY 10017 Office: (212) 803-3224 FAX: (212) 803-3223

