

## **Contractor Requirements And Procedures For Business Participation Opportunities For New York State Certified Minority- And Women-Owned Business Enterprises (MWBE) And Equal Employment Opportunities For Minority Group Members And Women**

### **1. New York State Law**

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

### **2. Business Participation Opportunities for MWBEs**

- a. OMH has developed compliance requirements, forms and procedures to ensure that contractors shall comply with requirements to ensure equal employment opportunities for minority group members and women, and that there are meaningful participation opportunities for certified MWBEs in the OMH procurement process. Contractors participating in and/or selected for procurement opportunities with OMH shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity (EEO) and opportunities for MWBE, including but not limited to Article 15-A and its implementing regulations as promulgated by the Empire State Development (ESD) Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144.
- b. OMH has established an overall agency goal of 30% for MWBE participation, 16% for Minority-Owned Business Enterprises (MBE) participation and 14% for Women-Owned Business Enterprises (WBE) participation. For this contract, the goals for MWBE participation have been established as follows:

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**Total MWBE participation: \_\_\_\_\_%**

**MWBE \_\_\_\_\_% participation is comprised of:**

**MBE: \_\_\_\_\_ % and WBE: \_\_\_\_\_ %**

The contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that OMH may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: [Division of Minority & Women Business Development](#). For guidance on how OMH will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

- c. In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OMH may withhold payment from the Contractor as liquidated damages.
- d. The Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:
  - i. Contractors are required to submit a MWBE Utilization Plan on Exhibit 1 with their bid or proposal or, if not previously submitted with its bid or proposal, with the original contract documents. Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. If unable to completely meet the participation goals specified in the contract, requests for a partial or total waiver of established goal requirements may be made at any time during the term of the Contract to OMH, detailing a Good Faith Effort, but must be made no later than prior to the submission of a request for final payment on the Contract. Such requests for waiver shall be submitted using a Request for Waiver on Exhibit 2 and Certificate of Good Faith Effort (Exhibit 2-a).
  - ii. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OMH.
  - iii. OMH will review the submitted MWBE Utilization Plan and advise the Contractor of OMH acceptance or issue a notice of deficiency within 20 days of receipt.
- e. If a notice of deficiency is issued, Contractor agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OMH, a written remedy in response to the notice of deficiency. If the written

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remedy that is submitted is not timely or is found by OMH to be inadequate, OMH shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Exhibit 2.

- f. Contractors are required to submit a Quarterly MWBE Contractor's Compliance Report to the OMH on Exhibit 3, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**3. Equal Employment Opportunity Requirements**

- a. Contractor agrees with all of the terms and conditions of Appendix A Standard Terms and Conditions Section 20.
- b. Where applicable, contractor agrees, upon request, to submit to the OMH, a workforce utilization report, as set forth in Exhibit 4, identifying the workforce actually utilized on the Contract if known.
- c. 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 (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.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of 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.**