

## APPENDIX A-2

### EXHIBIT 1

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

## NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A, 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.

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 establishes 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.

### Business Participation Opportunities for MWBEs

For purposes of this solicitation, OMH hereby establishes an overall goal **of 20% for MWBE participation, 12% for Minority-Owned Business Enterprises ("MBE") participation and 8% for Women-Owned Business Enterprises ("WBE") participation** (based on the current availability of qualified MBEs and WBEs). A 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](#)<sup>2</sup>. For guidance on how OMH will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

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.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A.** Bidders are required to submit a MWBE Utilization Plan on Attachment L with their bid or proposal. 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.
- B.** OMH will review the submitted MWBE Utilization Plan and advise the Bidder of OMH acceptance or issue a notice of deficiency within 20 days of receipt.

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C. If a notice of deficiency is issued, Bidder 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 remedy that is submitted is not timely or is found by OMH to be inadequate, OMH shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Attachment M, if not previously submitted with its Bid Proposal. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

D. OMH may disqualify a Bidder as being non-responsive under the following circumstances:

1. If a Bidder fails to submit a MWBE Utilization Plan;
2. If a Bidder fails to submit a written remedy to a notice of deficiency;
3. If a Bidder fails to submit a request for waiver in the event that MWBE participation goals set forth in this contract are not met; or
4. If OMH determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to OMH, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Quarterly MWBE Contractor's Compliance Report set forth in Contract Appendix A-2, Exhibit 3, to the OMH, 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. The schedule for submitting the Compliance Report is detailed in Appendix C: Payment and Reporting Schedule.

### Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan set forth in Attachment K-1 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the OMH, a workforce utilization report set forth in Appendix A-2, Exhibit 4, identifying the workforce actually utilized on the Contract if known.

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-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

**APPENDIX A-2  
EXHIBIT 1**

**Attach Final MWBE Utilization Plan (if applicable)**

**APPENDIX A-2  
EXHIBIT 2**

**Attach Request for Waiver (if applicable)**

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EXHIBIT 3**

**Insert MWBE Certification of Good Faith Efforts (if applicable)**

**APPENDIX A-2  
EXHIBIT 4  
CONTRACTOR QUARTERLY COMPLIANCE REPORT**

**Beginning FIVE (5) DAYS following the end of the first calendar quarter after a contract is awarded; quarterly compliance reports will be due for the preceding quarter's activity.**

**Instructions:** List all M/WBEs used during the quarter, providing all requested information in appropriate columns. In the event that an M/WBE is used more than one time during the quarter, list the M/WBE only once for each expenditure category. Use the Expenditure Code below to indicate the category of expenditures for which the M/WBE was used.

<b>Expenditure Code:</b>		<b>C – Commodities</b>	<b>SC – Services</b>	<b>CC – Construction Consultants</b>	<b>CN – Construction</b>	
<b>Grants Expenditure Code:</b>		<b>GM – Materials/Equipment</b>		<b>GC – Construction</b>	<b>GS – Services/Consultants</b>	
<b>Contract Number:</b>			<b>Reporting Period:</b>		<b>M/WBE Goal:</b>	
<b>Contractor:</b>			<input type="checkbox"/> Q1: April 1 – June 30 <input type="checkbox"/> Q3: Oct. 1 – Dec. 31		% MBE      % WBE	
			<input type="checkbox"/> Q2: July 1 – Sept. 30 <input type="checkbox"/> Q4: Jan. 1 – March 30			
<b>A</b>		<b>B</b>			<b>C</b>	
Amount of Actual Expenditures in Reporting Period		MBE Subcontracting Expenditures in Reporting Period			WBE Subcontracting Expenditures in Reporting Period	
\$ (if none enter 0)		\$ (if none enter 0)			\$ (if none enter 0)	
<b>M/WBE FEIN/SFS VENDOR ID</b>	<b>M/WBE Vendor Name</b>	<b>Certification</b>	<b>Work Status This Report</b>	<b>Expenditure Code</b>	<b>Product Code</b>	<b>Amount</b>
FEIN: SFS ID:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Dual	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete			\$
FEIN: SFS ID:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Dual	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete			\$
FEIN: SFS ID:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Dual	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete			\$
FEIN: SFS ID:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Dual	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete			\$
<b>Total:</b>						\$
<b>Name and Title of Preparer (Print or Type):</b>			<b>Telephone No:</b>	<b>E-mail Address:</b>		
<b>Signature:</b>			<b>Date:</b>	<b>FOR AGENCY USE ONLY</b>		
Quarterly Reports should be submitted to: <a href="mailto:mwbe@omh.ny.gov">mwbe@omh.ny.gov</a>					<b>Reviewed By:</b>	<b>Date:</b>
<b>Column A:</b>	<b>Total Amount of Actual Expenditures in Report Period:</b> Enter the amount (\$) expended in total for the Reporting Period.					
<b>Column B:</b>	<b>MBE Subcontracting Expenditures:</b> Enter the total amount (\$) of expenditures with certified Minority owned businesses made during the report period under the contract.					
<b>Column C:</b>	<b>WBE Subcontracting Expenditures:</b> Enter the total amount (\$) of expenditures with certified Women owned businesses made during the report period under the contract.					

**Expenditure:** An actual payment which is made by an agency, either through the Office of the State Comptroller or by the agency's finance office directly, including subcontractor/supplier payments made by a prime contractor and verified by the agency.

**Grants:** For the purposes of this report, grants are monies dispensed by a contracting governmental agency to a person or institution to accomplish a public purpose authorized by law. According to Article 15-A, grants are considered State contracts. For the purpose of compliance reporting, the recipient of the grant is considered to be the "contractor". These contracts are subject to M/WBE goals and reported in the same fashion as any other contractor.

**Not-for-Profit:** According to Article 15-A, Not-for-Profits entities are considered to be "contractors". These contracts are subject to M/WBE goals and reported in the same fashion as any other contractor.

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EXHIBIT 4  
CONTRACTOR QUARTERLY COMPLIANCE REPORT**

Use the following codes in the Product Code column to indicate the category of work for which the M/WBE was utilized

**PRODUCT CODE KEY:**

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 (plumbing, heating, electrical, carpentry)
D	Manufacturing (production of goods)
E	Transportation, Communication, Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
F/G	Wholesale/Retail Goods (e.g. gravel, hospital supplies, food stores, computer stores, office supplies)
G52	Construction Materials (e.g., lumber, paint, lawn supplies)
H	Financial, Insurance and Real Estate Services
I	Services
I73	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services or equipment, computer programming, security services)
I80	Health Services
I81	Legal Services
I82	Educational Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
I83	Social Services (e.g., counselors, vocational training, child care)
I87	Engineering, architectural, accounting, research, management and related services

**APPENDIX A-2  
EXHIBIT 5  
EQUAL EMPLOYMENT OPPORTUNITY  
WORK FORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT**

<b>Contract No.:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period:</b> <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__
<b>Offerer's Name:</b>		<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Offerer's Address:</b>		

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														
		Male (M)	Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)		
Officials/Administrators																		
Professionals																		
Technicians																		
Service Maintenance Workers																		
Office/Clerical																		
Skilled Craft Workers																		
Paraprofessionals																		
Protective Service Workers																		
Totals																		

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b>	<b>DATE:</b>
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