

APPENDIX Z

**Minority and Women-Owned Business Enterprise (M/WBE) and
Equal Employment Opportunity (EEO) Participation Requirements
For All NYS Office of Temporary and Disability Assistance
Contracts and Grants**

(Authority: Article 15-A of the Executive Law, 5 NYCRR parts 140-144, Appendix A: Standard Clauses for All New York State Contracts) and requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuate the purposes of Article 15-A

I. Introduction

1. New York State Executive Law § 310–318, (Article 15-A: Participation by Minority Group Members and Women with Respect To State Contracts -- hereinafter “the Statute”), was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. The New York State Office of Temporary and Disability Assistance (OTDA) fully supports the efforts of the State of New York to promote Equal Employment Opportunity (EEO) for all persons, and to promote equality of economic opportunity for minority group members and women who own business enterprises.
2. OTDA has developed compliance requirements, forms and procedures to ensure that (i) all contractors as defined under § 310 (3) (to include those who submit bids/proposals or qualifications, or proposed contracts where a contract will be awarded pursuant to negotiation without solicitation of bids or a request for proposals, in an effort to be selected for contract award as well as those successful bidders/proposers with whom OTDA enters into State Contracts, as defined in § 310 (13) [hereinafter “Contractors”], as well as proposed or actual “Subcontractors”, as defined in § 310 (14) shall comply with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, and, (ii) there are meaningful participation opportunities for certified minority or women-owned business enterprises (M/WBEs) in the OTDA procurement process. Contractors participating in and/or selected for procurement opportunities with OTDA shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for M/WBEs, including but not limited to the Statute 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).
3. Copies of the required OTDA Forms are identified in this Appendix and available on OTDA's Internet site at <http://www.otda.ny.gov/main>. These forms are to be submitted without change to goals specified in the RFP or contract. An electronic link to the current list of certified minority- and women-owned business enterprises also is available on OTDA's Internet site.
4. Further information regarding Article 15-A of the New York State Executive Law and the New York State Minority and Women's Business Enterprise Program is available on the DMWBD Internet site at <http://www.nylovesmwbe.ny.gov>.

II. M/WBE Utilization Goal Requirements For NYS OTDA Contracts

Pursuant to Article 15-A of the New York State Executive Law and Regulations adopted pursuant thereto, NYS OTDA has established separate goals for participation of New York State certified minority and women-owned business enterprises for all State Contracts. NYS OTDA is required to implement the provisions of Article 15-A and 5 NYCRR Part 142 for all State Contracts (1) in

Revised 2/7/12

excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing; (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair of real property renovations and construction; and (3) in excess of \$100,000 whereby the owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project. To the extent that MWBE opportunities are available, goals will be included on contracts for less than \$25,000.

As a condition of the State Contract, the Contractor and NYS OTDA agree to be bound by the provisions of §316 of Article 15-A of the New York State Executive Law regarding enforcement. Successful Contractors must document "good faith efforts" toward meeting certified minority- and women- owned business enterprise utilization plans to provide meaningful participation by New York State Certified M/WBE subcontractors or suppliers in the performance of this contract. For guidance on how OTDA will determine a Contractor's "good faith effort," refer to 5 NYCRR § 142.8.

ESTABLISHED OTDA GOALS FOR CONTRACTS ARE AS FOLLOWS:

MINORITY OWNED BUSINESS PARTICIPATION	10%
WOMEN OWNED BUSINESS PARTICIPATION	10%
EQUAL EMPLOYMENT OPPORTUNITY PARTICIPATION	10 to 20%

ESTABLISHED GOALS FOR THIS PROCUREMENT/CONTRACT ARE AS FOLLOWS:

MINORITY OWNED BUSINESS PARTICIPATION	10%
WOMEN OWNED BUSINESS PARTICIPATION	10%
EQUAL EMPLOYMENT OPPORTUNITY PARTICIPATION	10 to 20%

OTDA reserves the right to establish separate and different goals on any State Contract, as identified in the specified procurement. For guidance on what factors OTDA will consider in determining what goals are appropriate in relation to a specific State Contract, refer to 5 NYCRR § 142.2(a)(1) - (6).

III. Work Force Diversity Practices, Bidding and Award Considerations

1. OTDA shall determine whether it is practical, feasible and appropriate to include in the evaluation of bids or proposals the diversity practices, as defined in 5 NYCRR § 140.1(l), of all contractors making submissions in any State Contract that is: awarded on the basis of best value; or otherwise awarded as a response to a request for a proposal and/or a request for qualifications; and anticipated to result in an award of \$250,000 or greater ; and not a contract for commodities, or otherwise based on lowest price. For guidance on how OTDA will determine whether it is practical, feasible and appropriate to assess the diversity practices of all prime contractors making such submissions, refer to 5 NYCRR §142.3(b)(1) - (4).
2. Unless otherwise specified in a particular procurement, OTDA will assess the diversity practices of all prime contractors. The assessment will be used as one of the factors in determining the award of OTDA contracts. All prime contractors shall submit diversity practice information for assessment by OTDA, which will include information required in Attachment 1 to Appendix Z and any matrix (numerical guidelines) that may be provided by the Director of DMWBD pursuant to 5 NYCRR § 142.3(10).

3. Diversity practice information submitted for assessment by all prime contractors making submissions must be fully documented and subject to audit, if required by the director of DMWBD.

IV. EEO Requirements

As to the performance of the State Contract, contractors and subcontractors 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, or termination and rates of pay or other forms of compensation.

A. Prior to the Award of a State Contract

1. In addition to the requirements stated in Appendix A, Clause 12 (Equal Employment Opportunities for Minorities and Women), as a precondition to being selected for contract award and entering into a State Contract, and except where OTDA determines that only the lowest responsible bidder(s) or finalists shall be required to submit an EEO policy statement and staffing plan or total work force data on the State Contract, the Contractor shall provide the following with its procurement submission:
 - (a) An EEO Policy Statement, as described in Appendix A, Clause 12. The OTDA EEO Policy Statement form (OTDA Form 4970) can be used to satisfy this requirement.¹
 - (b) Except for construction contracts, an EEO Staffing Plan of anticipated workforce, should document:
 - (i) The workforce proposed to be utilized on the State Contract; or
 - (ii) Where the work force to be utilized in the performance of this State Contract cannot be separated out from the Contractor's and/or proposed Subcontractor's total work force (for example, certain commodities contracts), submit in lieu of a staffing plan, the Contractor's and/or proposed Subcontractor's total workforce including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by OTDA.

If, after scoring, a Contractor is selected for award, before that award is completed (e.g., during contract negotiations), OTDA's M/WBE Program Management Unit will conduct a review of the substance of the EEO Policy Statement and EEO Staffing Plan of anticipated workforce to determine whether the Contractor appears to be in compliance with Appendix A, Clause 12 and Executive Law Article 15-A, i.e., whether such documents demonstrate that the Contractor is committed to EEO. If, upon review, OTDA comes to the conclusion that such commitment to EEO principles is lacking, OTDA shall contact the Contractor and make every effort to resolve the deficiencies identified in the policy statement and staffing plan and to bring the substance of the policy statement and staffing plan into compliance with such requirements. Failure to submit an EEO Policy Statement and EEO Staffing Plan of anticipated workforce may result in the rejection of the Contractor's procurement submission, unless the Contractor provides OTDA with a reasonable justification in writing for such failure (e.g., the failure to submit a staffing plan

¹ In the event that a State Contract is entered into on an emergency basis or where an amendment or change order has been added to a State Contract providing for a total expenditure in excess of \$ 25,000, OTDA may require the contractor to submit an EEO policy statement and to comply with the post award requirements of Part 143, Work Force Diversity Requirements and Procedures Regarding Equal Employment Opportunities for Minority Group Members and Women on State Contracts, during the life of the contract.

where a Contractor has a work force of 10 employees or less), or makes a commitment to submit an EEO Policy Statement and an EEO Staffing Plan of anticipated workforce within the time frame specified in writing by OTDA.

B. After the Award of the State Contract

1. The Contractor will designate a Minority/Women Business Enterprise Liaison/Contact person to coordinate implementation of the M/WBE-EEO program between the Contractor and the OTDA M/WBE Program Management Unit, pursuant to Article 15-A, and requirements in furtherance of the Statute that may be established by OTDA.
2. The contractor shall include the provisions of subdivision IV. A. of this section in every subcontract in such a manner that the requirements of the provisions will be binding upon each subcontractor as to work in connection with the State contract, including the requirement that subcontractors shall undertake or continue existing programs of affirmative action 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, and, when requested, provide to the contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State contract.
3. After approval of the award of a State Contract, and during the performance of the State Contract, if a contractor or subcontractor does not have an existing affirmative action program, OTDA may provide to the contractor or subcontractor a model plan of an affirmative action program.
4. After approval of the award of a State Contract, and during the performance of the State Contract, the Contractor shall periodically submit to OTDA EEO Workforce Employment Utilization/Compliance Reports (OTDA Form 4971). OTDA will provide The work force employment utilization report form to the contractor at the time of the execution of the contract. The work force utilization report shall include the following information:
 - (a) the total number of employees performing work on the State Contract;
 - (b) for commodities, services/consulting, and professional construction consultant contracts (including not-for-profit contracts within those industries), the contractor's and all subcontractor's work force on the State Contract broken down by specified ethnic background, gender, and Federal occupational categories; and
 - (c) for construction contracts, the hours a contractor's and all subcontractor's employees worked on activities related to that contract, and a breakdown of those hours by ethnic background, gender and the construction related job titles that fall within relevant Federal occupational categories.
 - (d) For construction contracts, a contractor shall submit to OTDA a work force utilization report on a monthly basis throughout the life of the contract. For all other contracts 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 contracting agency shall require a contractor to submit work force utilization reports on a quarterly basis throughout the life of the contract when the contractor's and/or subcontractor's work force on the State Contract changes.
 - (e) In the case where the Contractor's and/or subcontractor's work force does not change within the quarterly period, the Contractor shall so notify OTDA in writing.
 - (f) All forms and reports will be submitted to the OTDA program manager for this contract award and forwarded for review to.: Ms. Wilma BrownPhillips, Assistant

Commissioner, NYS OTDA, M/WBE Program Management Unit, Harlem Center,
317 Lenox Avenue, NYC, NY 10027; (212) 961-8214; mail to:
Wilma.BrownPhillips@OTDA.NY.GOV.

- (g) The EEO Workforce Employment Utilization/Compliance Reports shall be reviewed as part of OTDA's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of anticipated workforce submitted, where applicable, with procurement submission and the Contractor's EEO Workforce Employment Utilization/Compliance Reports, the Contractor/ Subcontractor may be subject to an in-depth EEO compliance review.
- (h) In addition to general compliance monitoring of State Contracts, including a contractor's compliance with the requirements of 5 NYCRR Part 143, OTDA shall conduct in-depth compliance reviews on selected State Contracts during the course of the year, in accord with 5 NYCRR § 143.3.4. If the contractor fails to provide the information requested by the State agency within 10 days of the request, such failure shall be deemed a material breach of contract and subject to an administrative hearing pursuant to 5 NYCRR § 143.6 or any other relief to which OTDA is entitled.

5. Work Force Diversity dispute resolution procedure.

- (a) If deficiencies are identified with the Contractor during OTDA's general contract compliance monitoring or during in-depth compliance reviews, the Contractor and OTDA M/WBE Program Management Unit, and other OTDA staff, as appropriate, shall make every effort to resolve the deficiencies identified to bring the Contractor/Subcontractor into compliance with such requirements.
- (b) If the Contractor and the OTDA M/WBE Program Management Unit, and other OTDA staff, as may be appropriate, are unsuccessful in their efforts, and, upon review, the OTDA Commissioner or his/her designee agrees that the Contractor/Subcontractor is non-compliant, such Commissioner or his/her designee shall submit a written complaint to the Director of DMWBD regarding the Contractor's or Subcontractor's noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Commissioner or his/her designee shall serve a copy of the complaint upon the Contractor or Subcontractor by personal service or certified mail, return receipt requested.
- (c) DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a dispute resolution memorandum indicating that the matter has been resolved and stating the terms of the resolution.
- (d) If a resolution is not possible, DMWBD shall refer the matter, within thirty calendar days of the receipt of OTDA's complaint, to the division's hearing officer for a hearing.
- (e) Upon conclusion of the administrative hearing, the hearing officer shall submit to the director of DMWBD a decision regarding the noncompliance dispute and the imposition of sanctions, fines or penalties, as provided for in the relevant sections of the contract, if appropriate, or a dismissal of OTDA's complaint, if appropriate.
- (f) The DMWBD director, within 10 business days of receipt of the decision, shall mail a determination of such matter to OTDA and shall cause a copy of such determination, along with a copy of Article 15-A of the New York Executive Law,

to be served upon the Contractor or subcontractor by personal service or by certified mail, return receipt requested.

- (g) The decision of the hearing officer shall be final and may only be vacated or modified as provided in Article 78 of the New York Civil Practice Law and Rules.

V. M/WBE Requirements

The Contractor acknowledges that it is the policy of the State of New York and of OTDA that M/WBEs shall be given the opportunity for meaningful participation in the performance of State Contracts. Therefore, Contractors agree to make good faith efforts to solicit active participation to meet established goals under this procurement by M/WBEs identified in the ("ESD") directory of certified businesses², which can be viewed at:

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

1. For the purposes of this Appendix Z, the question of whether a Contractor has engaged in and documented "Good Faith Efforts" to solicit active participation to meet established goals under this procurement by M/WBEs in the performance of State Contracts shall be determined by the OTDA Commissioner or his/her designee, after a thorough consideration of the factors listed in 5 NYCRR § 142.8.
2. The separate MBE and WBE participation goals established by OTDA for this procurement are based on the overall availability of M/WBEs that have been certified to perform the specific scope of work identified under this procurement. For compliance purposes, these goals should not be construed as rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority- and Women-owned Business Program work.

A. Prior to the Award of a State Contract

1. Contractors shall document and/or demonstrate in their procurement submissions every good faith effort to solicit active M/WBE participation, at least equal to the goals established by OTDA. The M/WBE utilization should be measured by comparing (in detail) the dollar value of the component services/deliverables/materials provided/supplied by M/WBEs to the total dollar value of the services/deliverables/materials available under the State Contract.
2. The Contractor shall provide with its procurement submission:
 - (a) A signed Certification of Good Faith Efforts (OTDA-4976) form, to achieve the overall prescribed M/WBE participation percentage (%) goals set forth in the procurement.
 - (b) A M/WBE Subcontractor Utilization Plan (OTDA-4937) form, which should document actions taken and/or to be taken to meet established goals and the time frames needed to achieve results which could reasonably be expected by putting

² All M/WBE firms are required to be certified by Empire State Development (ESD) or must be in the process of obtaining certification from ESD. Should the Contractor identify a minority-owned or woman-owned firm that is not currently certified as an M/WBE, the Contractor should request that the firm submit a certification application to ESD for an eligibility determination, with a copy to the OTDA M/WBE Program Management Unit. OTDA's M/WBE Program Management Unit will work with ESD to expedite the application; however, it is the responsibility of the Contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement, in order to facilitate full M/WBE participation.

forth every good faith effort to achieve the overall prescribed M/WBE participation percentage (%) goals set forth in the procurement.

- (i) In the case of a request for proposals, request for qualifications, or negotiated State Contract, OTDA may waive or modify this requirement by sending a written notice to the Director of DMWBD, with an explanation ten (10) days before solicitations are issued.
 - (ii) In the case of any bid submission, utilization plans shall be submitted after the opening of bids, but in any case no more than ten business days after the contractor receives notice from OTDA that the contractor has submitted a low bid, provided OTDA may adopt a longer time period for submission of utilization plans as to all or particular categories of its contracts upon filing of such period and any supporting justification with the Director of DMWBD/ESD, and subject to rejection or modification by the Director. Any such modification or rejection shall apply to contract solicitations on or after the date of the rejection or modification.
 - (c) A M/WBE Subcontractor's and/or Suppliers' Letter of Intent to Participate (OTDA-4938) form, which should document the names and signatures of certified MBEs and/or WBEs which have agreed to participate as subcontractors if the Contractor is awarded the State Contract.
3. When M/WBE goals higher than 0% (zero percent) are included in OTDA's procurement document, a Contractor's failure to submit a Certification of Good Faith Efforts, M/WBE Subcontractor Utilization Plan, and a M/WBE Subcontractor's and/or Suppliers' Letter of Intent to Participate, where applicable, may result in noncompliance with submission requirements, unless the Contractor provides OTDA with a completed M/WBE Subcontractor Request for Waiver (OTDA-4969) form, within the timeframe specified in writing by OTDA.
 4. If, after scoring, a Contractor is selected for award, before that award is completed (e.g., during contract negotiations), OTDA's M/WBE Program Management Unit will review the substance of the Subcontractor Utilization Plan submitted by the Contractor and within twenty (20) days from the receipt thereof by the OTDA MWBE Program Management Unit, and prior to the execution of the contract resulting from said procurement, issue a written notice of acceptance or deficiency. OTDA may accept a utilization plan if it complies with the requirements of 5 NYCRR § 142.6(c) and Attachment 2.
 5. If a notice of deficiency is warranted, the notice shall include the information identified in 5 NYCRR § 142.6(d).
 6. Unless otherwise specified in the information, instructions or requirements and any addenda provided to contractors for purposes of soliciting bids or proposals, a Contractor must provide OTDA with a written remedy in response to a written notice of deficiency within seven (7) business days of receipt or within a time frame as specified by OTDA to correct the specific deficiency. If the Contractor's remedy to a notice of deficiency is not timely provided or if it is found by OTDA to be inadequate, OTDA shall so notify the Contractor and request the Contractor to submit a waiver form within five business days. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid for non-responsiveness. Failure to comply with the requirement to provide a written remedy in response to a notice of deficiency may result in the disqualification of the Contractor, after the Contractor has been given notice and opportunity to be heard in accordance with 5 NYCRR § 142.9. The time requirement of this paragraph shall apply unless otherwise agreed to in writing by OTDA and the Contractor. If the Contractor changes its utilization plan after submission, it shall be required to notify OTDA in writing of such change and obtain approval from OTDA in

accordance with this paragraph and 5 NYCRR §142.8 and the Contractor's documented good faith efforts.

7. Disqualification of a Contractor based on a deficient utilization plan or failure to provide a utilization plan.
 - (a) Where OTDA determines, after having given notice of deficiency pursuant to paragraph five and 5 NYCRR § 142.6(c), that a Contractor has failed to submit an acceptable utilization plan or satisfactorily document its good faith efforts, OTDA may proceed with the next ranked bidder: (i) 12 days after sending a written notice of deficiency, as specified in paragraph 5 and 5 NYCRR § 142.6 to the Contractor, and OTDA has not received a request for an administrative hearing from the Contractor; (ii) after the mailing of a notice of disqualification, specifying the grounds for such disqualification, based on OTDA's record of an administrative hearing; or (iii) after receiving a written notification of a resolution from the director, or a decision of DMWBD's hearing officer. OTDA shall serve a copy of its complaint upon the Contractor by personal service or certified mail, return receipt requested.
 - (b) A contractor who has received a written notice of disqualification may, within 5 days of receipt of such a notice, file a complaint with the director of DMWBD pursuant to Section 316 of the Executive Law. The contractor shall serve a copy of its complaint upon the director and OTDA by personal service or certified mail, return receipt requested.

Pursuant to Chapter 429 of the Laws of 2009, which amends § 313 of the Statute, and 5 NYCRR Part 142.5, OTDA is required to post information concerning contractor utilization plans, and any applicable waivers on the agency website.

B. After the Award of the State Contract

1. In accordance with regulations under 5 NYCRR Part 142, after the awarding of the Contract, and during the performance of the State Contract, except where OTDA has granted the Contractor a total waiver³, the Contractor shall, as required by OTDA, periodically submit to OTDA: M/WBE Subcontractor Quarterly Compliance Reports.
2. Failure to timely submit a Contractor's M/WBE Subcontractor Quarterly Compliance Report and/or other reports or information as requested by OTDA may result in payments under the contract being delayed until such reports or other information have been received by OTDA.⁴ OTDA may also deem other noncompliance with requirements under the Statute as a breach of contract and commence any other means of enforcement permitted under the contract and/or by law.
3. OTDA shall review the substance of the Contractor's M/WBE Subcontractor Quarterly Compliance Report and shall be responsible for evaluating and determining whether the Contractor has demonstrated compliance with its previously approved Contractor's M/WBE Subcontractor Utilization Plan. In making such determination, OTDA may review and investigate whether the goals are being achieved with certified minority- and women-owned business enterprises and whether information made available to OTDA through monitoring, on-site inspections, progress meetings regarding work required by the State Contract, review of payrolls or other OTDA action provides acceptable evidence of compliance.

³ If OTDA has granted a partial waiver to the Successful Contractor, prior to award OTDA must have approved a Contractor's M/WBE Utilization Plan and a completed Contractor's M/WBE Subcontractor's Notice of Intent to Participate. Please note that after award the Contractor must still submit Contractor's M/WBE Compliance Reports.

⁴ Contractors may be requested to provide additional Compliance Reports and information (i) to verify payments made to M/WBEs, (ii) to verify M/WBE utilization and/or, (iii) as needed to evaluate any other aspect of Contractor compliance with the requirements set forth herein.

4. Where it appears that a Contractor cannot, after a good faith effort, comply with the goals established in the contract, such Contractor may submit a completed M/WBE Subcontractor Request for Waiver, setting forth the reasons for such Contractor's inability to meet any or all of the participation goal requirements, together with an explanation and supporting documentation demonstrating the good faith efforts undertaken by such Contractor to obtain the required M/WBE subcontractor participation goal requirements. OTDA will not grant any automatic waivers of goal requirements on a State contract, but may grant a partial or total waiver of goal requirements established on a State Contract, only if the Contractor provides appropriate written justification, after execution and before the final payment. For guidance on what additional factors OTDA will consider in determining whether to grant a partial or total waiver, refer to 5 NYCRR §142.7(a)(1) - (7).⁵
5. If a Contractor seeks modification to its previously approved M/WBE Subcontractor Utilization Plan, the Contractor shall first notify OTDA in writing of such change and obtain approval from OTDA.
6. If OTDA determines that the Contractor has not demonstrated compliance with the goals established in the contract and has made no good faith effort to do so, OTDA and the Contractor shall make every effort to resolve the deficiencies identified and to bring the Contractor into compliance with such requirements.
7. OTDA will determine whether the Contractor is in non-compliance. The Contractor will be found to be not in compliance when it is non-responsive, in whole or in part, to the EEO and/or M/WBE program requirements or requests.
8. OTDA reserves the right to impose sanctions following a determination of non-compliance by a Contractor. Sanctions may be imposed upon the Contractor whenever EEO and/or M/WBE program requirements have not been met in a timely and effective manner. Any/all of the following sanctions may be imposed:
 - Disallowance of costs associated with such non-compliance;
 - Initiation of procedures to suspend or terminate the grant or contract;
 - Withholding of progress payments until such time as corrective actions have been undertaken by the Contractor to the satisfaction of OTDA;
 - Deleting Contractor's name from bid lists for a specified period of time to be determined in the sole discretion of OTDA;
 - Report Contractor as non-responsible to NYS OSC Vendor Responsibility System; and
 - Other sanctions of which a Contractor has notice in writing prior to or during the performance of a contract.
9. If OTDA is unsuccessful in its efforts, and, upon review, the OTDA Commissioner or his/her designee agrees that the Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals for participation by certified minority- and/or women-owned business enterprises established in the State Contract, the Commissioner or his/her designee shall submit a written complaint within 20 days of OTDA's determination to the Director of DMWBD), pursuant to Executive Law, section 316, by personal service or certified mail, return receipt requested, accompanied by the reasons for OTDA's determination for which the complaint is filed, together with a demand for relief, such as disbarment, damages or fines pursuant to the terms.

⁵ Requests for a partial or total waiver made subsequent to award of a State Contract may be made at any time during the term of the State Contract but prior to the submission of a request for final payment on that State Contract.

10. Subsequent to the award of a State Contract to a Contractor who becomes deficient with regard to its utilization plan, the Contractor may file a complaint with the director pursuant to Executive Law, section 316, by personal service or certified mail, return receipt requested, provided that the complaint is filed within 20 days following (i) the Contractor's receipt of a written determination by OTDA that the Contractor is not entitled to a partial or full waiver of the goals established in the State Contract for participation by certified minority- and women-owned business enterprises; or (ii) the Contractor's receipt of a written determination by OTDA that the Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals; or (iii) 20 days have passed from the date of OTDA's receiving a written request from the Contractor, sent by certified mail, return receipt requested, for a partial or total waiver of goal requirements for participation by certified minority- and women-owned business enterprises, and no written determination has been issued by OTDA. The complaint should state the reasons for the complaint, together with a demand for relief.

A copy of any complaints filed with the director by the Contractor or OTDA shall either be personally served or mailed certified mail, return receipt requested, by the party making the complaint to the party against whom the complaint is being filed.

11. Upon receipt by the DMWBD director of a complaint, the party against whom the complaint has been filed shall be provided with an opportunity to respond to the complaint. If within 30 days of receipt of the complaint, the director is unable to resolve the complaint to the satisfaction of OTDA and the Contractor, the complaint shall be referred to the DMWBD's hearing officer for a hearing. The hearing shall be held in accordance with the procedures outlined in section 145.1 of DMWBD's regulations.
12. Upon conclusion of the administrative hearing, the hearing officer shall submit to the director his or her decision regarding the alleged violation of the contract or the refusal of OTDA to grant a waiver request by the Contractor. The decision of the hearing officer with respect to an alleged violation of the State Contract or the refusal of OTDA to grant a waiver shall be final.
13. Upon conclusion of the administrative hearing and the rendering of a decision, the hearing officer shall also recommend to the director a remedy, including, if appropriate, the imposition of sanctions, fines or penalties.
14. The director, within 10 days of receipt of the decision, shall file a determination of such matter and shall cause a copy of such determination to be served upon the Contractor by personal service or by certified mail, return receipt requested. The decision of the director shall be final and may only be vacated or modified as provided in article seventy eight of the civil practice law and rules upon an application made within the time provided by such article. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by the contractor or the contractor's willful and intentional disregard of the minority and women-owned participation requirement included in the contract may include a determination that the Contractor shall be ineligible to submit a bid to any contracting State agency or be awarded any State contract for a period not to exceed one year following the final determination; provided however, if a Contractor has previously been determined to be ineligible to submit a bid pursuant to this section, the penalties imposed for any subsequent violation, if such violation occurs within five years of the first violation, may include a determination that the contractor shall be ineligible to submit a bid to any contracting State agency or be awarded any State contract for a period not to exceed five years following the final determination. DMWBD shall maintain a website listing all contractors that have been deemed ineligible to submit a bid pursuant to this section and the date after which each contractor shall once again become eligible to submit bids.
15. Nothing herein shall diminish or supersede OTDA's authority and responsibility to enforce the requirements of its contracts.

16. The Contractor agrees (i) to provide OTDA access to all documentation, records, reports, facilities, etc, which OTDA may deem necessary to determine Contractor compliance, and (ii) to be bound by the provisions of the Statute (§ 316) regarding possible fines, sanctions and penalties for violations of the Statute.
17. M/WBE Performance Standards - Violations
 - (a) The parties herein agree that, any failure by the Contractor to comply with the established M/WBE goals of the Agreement may constitute a material breach of the Agreement. Without prejudicing any of its other rights or remedies for such breach under the terms of the Agreement, if it is determined by the OTDA that the Contractor has willfully and intentionally failed to comply with the M/WBE participation requirements set forth in the Agreement, and in Appendix A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS, then the Contractor shall be liable for liquidated damages, as specified herein, for each finding of such willful and intentional failure.
 - (b) The parties herein agree that, inasmuch as the damages caused by any material breach of the Agreement for the willful and intentional failure to comply with the M/WBE participation requirements set forth in the Agreement will be difficult to precisely calculate, that instead liquidated damages will be imposed in an amount equaling the difference between (1) the dollar value of the component services/deliverables/materials to be provided/supplied by M/WBEs set forth in the approved M/WBE Subcontractor Utilization Plan had the Contractor achieved the goal for M/WBE participation set forth in this Agreement, and (2) such sums actually paid to M/WBEs under this Agreement.
 - (c) Determinations of compliance or non-compliance with the Agreement's M/WBE participation requirements shall be based upon the Contractor's approved Utilization Plan, M/WBE Sub-Contractor Quarterly Compliance Report, and any relevant documentation related thereto. The determination of what constitutes the willful and intentional failure to comply with the M/WBE participation requirements will be based upon the evaluation of the same criteria considered in evaluating an M/WBE subcontractor waiver request.
 - (d) Upon a determination that a willful and intentional failure to comply with the M/WBE participation requirements has occurred, the OTDA shall withhold the amount established in subparagraph (b) from any future payments otherwise required by this Agreement. All funds being withheld pursuant to this provision shall be offset as liquidated damages upon the expiration or termination of the contract, unless the Contractor comes into compliance with the M/WBE requirements at any time during the term of the State contract but prior to the submission of a request for final payment on the contract. All payments withheld pursuant to this provision shall be released upon OTDA's determination that the Contractor has come into compliance.

Attachment 1 to Appendix Z

Contractor Diversity Practice Information and Matrix

Pursuant to Section 142.3(c), Diversity practice information submitted for assessment by all prime contractors making submissions shall include the following:

(1) The percentage of such prime contractor's gross revenues involving the use of minority- and/or women-owned business enterprise subcontractors for servicing clients and/or manufacturing products and/or performing on contracts in the contractor's prior year of business activity.

(2) The percentage of such contractor's gross revenues involving the use of joint ventures, partnerships, or other similar arrangements with certified minority and/or women-owned business enterprises in the contractor's prior year of business activity.

(3) The percentage of such contractor's gross revenues involving the use of government or private sector contracts that had certified minority- and/or women-owned business enterprise utilization requirements.

(4) The percentage of such contractors' gross revenues that the contractor paid to certified minority- and/or women-owned business enterprise subcontractors and paid to certified minority- and/or women-owned business enterprise joint ventures, partnerships, or other similar arrangements.

(5) The percentage of such contractor's overhead expenses for the prior year of business activity that were certified minority- and/or women-owned business enterprise expenditures.

(6) Any training or mentoring programs provided for certified minority- and/or women-owned business enterprises by such contractor. Any such programs shall be described and attached as an exhibit.

(7) Any financial assistance provided to certified minority- and/or women-owned business enterprises by such contractor. Any such programs shall be described and attached as an exhibit.

(8) Any supplier and subcontractor diversity goals involved in such contractor's procurements. Contractors shall provide examples of any such goals.

(9) The established goals, if any, for certified minority- and/or women-owned business enterprise suppliers or a total purchasing budget allocated to certified minority- and/or women-owned business suppliers by such contractors. Such contractors shall provide a copy or policy or statement of any such established goals.

(10) Any other information that demonstrates such contractor's commitment to diversity practices, or information explaining why such contractor should be exempt from an assessment of diversity practices.

Attachment 2

Requirements for Acceptance of Contractor Utilization Plan

Pursuant to Section 142.6(c), OTDA may accept a contractor(s) utilization plan if: (1) the goals, as determined by the State agency in the solicitation or bid, are to be provided by one or more certified minority- and/or women-owned business enterprises;

(2) the contractor submits an alternative plan utilizing certified minority- and/or women-owned business enterprises that equal the contract goals set forth in the solicitation;

(3) the contractor submits a utilization plan which only partially satisfies the goals set forth the solicitation, but is supported by the contractor's documented good faith efforts to submit a utilization plan as requested;

(4) the contractor is a joint venture, teaming agreement, or other similar arrangement, with a certified minority- or women-owned business enterprise whose value added or participation is equal to the percentage of the goals set forth in the solicitation;

(5) the contractor submits a mentor-protege agreement acceptable to the agency, which does not meet the goals set forth in the solicitation, but reflects an investment by the mentor in the protege roughly equal to the difference between the goal set forth in the solicitation and the percentage of value added participation provided by the protege.

M/WBE SUBCONTRACTOR 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) subcontractor under the contract. Attach additional sheets if necessary.

Offeror's Name: _____

Address: _____

City, State, Zip Code: _____

Region/Location of Work: _____

Federal Identification Number: _____

Solicitation Number: _____

Telephone Number: _____

M/WBE Goals in the Contract: MBE % WBE %

<p>1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.</p>	<p>2. Classification</p> <p>NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE</p> <p>NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE</p>	<p>3. Federal ID No.</p>	<p>4. Detailed Description of Work (Attach additional sheets, if necessary)</p>	<p>5. Dollar Value of Subcontracts / Supplies/Services and intended performance dates of each component of the contract.</p>
<p>FOR AGENCY USE ONLY</p>				
<p>PREPARED and APPROVED BY: _____</p> <p>NAME AND TITLE OF PREPARER (Print or Type): _____</p>		<p>REVIEWED BY: _____ DATE: _____</p>		
<p>UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No: _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>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.</p>				

**MINORITY/WOMEN OWNED BUSINESS ENTERPRISE (M/WBE)
MWBE SUBCONTRACTORS AND /or
SUPPLIERS LETTER OF INTENT TO
PARTICIPATE**

To: _____ Federal ID Number: _____
(Name of Contractor)

Proposal / Contract number: _____

Contract Scope of Work: _____

The undersigned intends to perform services or provide material, supplies or equipment as follows:

At the following price: \$ _____

Name of MWBE: _____

Address: _____

Federal ID Number: _____

Telephone Number: _____

Designation:

- MBE - Subcontractor
- WBE - Subcontractor
- MBE - Supplier
- WBE - Supplier

Joint venture with:

Name: _____

Address _____

Fed ID Number: _____

MBE

WBE

Are you a New York State Certified M/WBE?

Yes

No

The contractor proposes, and the undersigned agrees to, the following beginning and completion dates for such work.

Date Proposal/ Contract to be started: _____

Date Proposal/ Contract to be completed: _____

Date Supplies ordered: _____

Delivery date: _____

The above work will not be further subcontracted without the express written permission of the contractor and notification of the Office. The undersigned will enter into a formal agreement for the above work with the contractor ONLY upon the Contractor's execution of a contract with the Office.

Date: _____

Signature of M/WBE Contractor: _____

Printed/Typed Name of M/WBE Contractor: _____

INSTRUCTIONS FOR M/WBE SUBCONTRACTORS AND SUPPLIERS' LETTER

This form is to be submitted with bid attached to the Subcontractor's Information Form in a sealed envelope for each certified Minority or Women-Owned Business enterprise the Bidder/Awardee/Contractor proposes to utilize as subcontractors, service providers or suppliers.

If the MBE or WBE proposed for portion of this proposal/contract is part of a joint or other temporarily-formed business entity of independent business entities, the name and address of the joint venture or temporarily- formed business should be indicated.

Contact: Wilma Brown Phillips, M/WBE Director
Wilma.BrownPhillips@otda.state.ny.us

M/WBE GOAL REQUIREMENTS CERTIFICATION OF GOOD FAITH EFFORTS

Contractors (to include those who submit bids/proposals in an effort to be selected for contract award as well as those successful bidders/proposers with whom OTDA enters into State contracts) must document "good faith efforts" to provide meaningful participation by New York State Certified M/WBE subcontractors or suppliers/vendors in the performance of this contract.

The undersigned hereby acknowledges that he/she took or may need to take the following actions on behalf of the Contractor to demonstrate, and upon request by OTDA, to provide written verification to document the aforesaid good faith efforts:

- (a) The Contractor attended any pre-bid, pre-award, or other meetings scheduled by the contracting agency or the NYS Department of Economic Development or its designee to inform certified minority- or women-owned business enterprises of contracting and subcontracting opportunities available on the project, for purposes of complying with contract participation goal requirements;
- (b) The Contractor identified economically feasible units of the project that could be contracted or subcontracted to certified minority- and women-owned business enterprises in order to increase the likelihood of participation by such enterprises on the contract;
- (c) The Contractor undertook efforts to reasonably structure the contract scope of work for purposes of subcontracting with certified minority- and- women-owned business enterprises;
- (d) The Contractor advertised in a timely fashion and in appropriate general circulation, trade and minority- and women-oriented publications, if any, concerning the contracting or subcontracting opportunity;
- (e) The Contractor made written solicitations in a timely fashion to a reasonable number of certified minority- and women- owned business enterprises identified from current certified lists of such business enterprises provided or maintained by the NYS Empire State Development's Division of Minority and Women Owned Business Development, or its designee, of the contracting or subcontracting opportunity. The directory of certified businesses can be viewed at: <http://esd.ny.gov/index.html>
- (f) The Contractor can document if any timely responses to any such advertisements and solicitations were provided by certified minority- and women-owned business enterprises;
- (g) The Contractor followed-up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity;
- (h) The Contractor provided interested certified minority- and women-owned business enterprises in a timely fashion with adequate information about the plans, specifications or terms and conditions of the State contract and requirements for the contracting or subcontracting opportunity so as to prepare an informed response to a contractor solicitation;
- (i) The Contractor submitted a completed, acceptable utilization plan in accordance with applicable requirements to meet goals for participation of certified minority-and women-owned business enterprises established in the State contract;
- (j) The Contractor used the services of community organizations, contractor groups, state and federal business assistance offices and other organizations identified by the NYS Department of Economic Development or

its designee that provide assistance in the recruitment and placement of minority and women business enterprises;

- (k) The Contractor negotiated in good faith with certified minority- and women-owned business enterprises submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals or quotations prepared by any certified minority- or women-owned business enterprise. "Good faith" negotiating means engaging in good faith discussions with certified minority- or women-owned business enterprises about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the bids of the minority or women businesses, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available; and,
- (l) The Contractor undertook efforts to make payments for any work performed by certified minority- and women-owned business enterprises in a timely fashion so as to facilitate continued performance by certified minority- and women-owned business enterprises.

Signature Date

Print Name

Title

Company

Contract Number

Program/Solicitation Name

MWBE SUBCONTRACTOR REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.

<p>Offeror/Contractor Name:</p> <p>Address:</p> <p>City, State, Zip Code:</p>	<p>Federal Identification No.:</p> <p>Solicitation/Contract No.:</p> <p>M/WBE Goals: MBE % WBE %</p> <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>	<p>Date:</p>
<p>PREPARED BY (Signature):</p> <p>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.</p> <p>Name and Title of Preparer (Printed or Typed):</p>	<p>Telephone Number:</p> <p>Email Address:</p>
<p>Submit with the bid or proposal or if submitting after award, submit to the MWBE Program Unit:</p> <p>NYS OTDA ATTN: Ms. Wilma BrownPhillips, MWBE Director MWBE Program Management Unit Harlem Center 317 Lenox Avenue New York, New York 10027</p> <p>Email to: <u>Wilma.BrownPhillips@OTDA.State.NY.US.</u></p>	<p>***** FOR AGENCY USE ONLY *****</p> <p>REVIEWED BY:</p> <p>DATE:</p> <p>Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> MBE <input type="checkbox"/> WBE</p> <p><input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> 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 the contracting entity, to determine M/WBE compliance.

CONTRACTOR QUARTERLY COMPLIANCE REPORT

INSTRUCTIONS: BEGINNING TEN DAYS FOLLOWING THE END OF THE FIRST CALENDAR QUARTER (March 31st, June 30th, September 30th, and December 31st) AFTER A CONTRACT IS AWARDED; QUARTERLY COMPLIANCE REPORTS WILL BE DUE FOR THE PRECEDING QUARTER'S ACTIVITY.

Expenditure Code: C -- Commodities, SC -- Services/Consultants, CC -- Construction Consultants, CN -- Construction, GM -- Grants Material/Equipment, GC -- Grants in Construction, GS -- Grants in Services/Consultants

Contract Number: C _____ Contractor: _____	REPORTING PERIOD: From: ____/____/____ To: ____/____/____	MWBE Goal MBE ____ % WBE ____ % M/WBE ____ %
---	--	--

A	B	C	D
Amount of Actual Expenditures in Reporting Period	Minority-Owned Business Enterprise (MBE) Subcontracting Expenditures in Reporting Period	Women-Owned Business Enterprise (WBE) Subcontracting Expenditures in Reporting Period	Dual Minority and Women-Owned Business Enterprise (MWBE) Subcontracting Expenditures in Reporting Period
\$ _____ <small>(If none, enter 0)</small>	\$ _____ <small>(If none, enter 0)</small>	\$ _____ <small>(If none, enter 0)</small>	\$ ____0_____ <small>(If none, enter 0)</small>

Payee ID	Payee Name, Address, City, Zip	Service Location	MBE or WBE or Dual MWBE	Expenditure Code	Product Code	Amount

CREDIT WILL NOT BE GIVEN WITHOUT COMPLETE INFORMATION

NAME AND TITLE OF PREPARER (Print or Type):	TELEPHONE NO.:	EMAIL ADDRESS:
QUARTERLY REPORTS SHOULD BE SUBMITTED TO: Please submit completed form to the Contract Manager or If you are not sure who it is, please contact the Bureau of Contract Management (BCM) at (518) 486-6352.	FOR AGENCY USE ONLY	
	REVIEWED BY:	DATE:

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 a quarter, list the M/WBE only once for each expenditure category. Use the Expenditure Code defined at the top of the form to indicate the category of expenditures for which the M/WBE was used.

TOTALS FOR REPORT PERIOD

- Column A** Total Amount of Actual Expenditures in Report Period: Enter the amount (\$) for each Expenditure Code made during report period under this contract.
- Column B** MBE Subcontracting Expenditures: Enter the amount for each Expenditure Code with registered Minority Owned Business Enterprises made during the report period under this contract.
- Column C** WBE Subcontracting Expenditures: Enter the amount of expenditures for each Expenditure Code with registered Women Owned Business Enterprises made during the report period under this contract.
- Column D** MWBE Dual Subcontracting Expenditures: Enter the amount of expenditures for each Expenditure Code with registered Minority and Women Owned Business Enterprises made during the report period under this contract.

Use the following codes in the Product Code column to indicate the category of work for which the MWBE was utilized:

PRODUCT CODE KEY:

A	Agriculture/Landscaping (e.g., all forms of landscaping services)
B	Mining (e.g., Geological Investigation)
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 (production of goods)
E	Transportation, Communication and Sanitary Services (e.g., Delivery services, warehousing, broadcasting and cable systems)
F/G	Wholesale/Retail Goods (e.g., gravel, hospital supplies and equipment, 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 of 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

Expenditure: An expenditure is an actual payment which has been 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 to be State contracts. For the purpose of compliance reporting, the recipient of the grant is considered to be the "contractor". These contracts are subject to MWBE goals and reported in the same fashion as any other contract. Grant dollars expended should be reported on the form most appropriate for the majority of the grant (e.g. if the grant dollars are generally spent for construction, the monies should be reported on the construction form; if for training, the monies should be reported on the services/consultant form).

Not-for-Profit: An entity organized as a not-for-profit corporation pursuant to State Law. According to Article 15-A, not-for-profit entities are considered to be "contractors". These contractors are subject to MWBE goals and should be treated and reported in the same fashion as any other contractor. The expenditure of dollars by a not-for-profit entity should be reported on the form most appropriate to the majority of the funding (e.g. if the dollars are generally spent to provide training and/or rehabilitation services, then the monies should be reported on the services/consultant form; if the expenditures are made on a contract for low-income housing, the dollars should be reported on the construction form).

Subcontract: a) For construction, a subcontract is any portion of the contract or any service performed or supplies provided relative to that contract by any party other than the prime contractor;

b) For commodities and consultant/services, a subcontract is that portion of the total value of a contract portioned out to another consultant/individual or vendor. This is also known as second tier spending;

c) For grants/not-for-profits contracts, a subcontract is that portion of funding expended for supplies, equipment, printing, consultants, trainers, services, etc.

d). It is important to provide all information as requested or credit may not be allowed.

e). It is critical that you provide the detailed information requested on the CONTRACTOR QUARTERLY COMPLIANCE REPORT. List each MWBE firm you have included in the MBE and WBE totals (for prime and subcontract expenditures) in each expenditure category. Missing information may result in the firm/dollars not counting toward agency MWBE participation goals.

MINORITY/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 _____

This organization will require its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participation goals and provide Equal Employment Opportunities set by NYS OTDA for the State-funded project by taking the following steps:

M/WBE

- (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 NYS-OTDA 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 increase participation by M/WBEs and encourage the formation of joint ventures and other partnerships among M/WBE contractors to encourage their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain, or, where appropriate, require its subcontractors to maintain and submit, as required by OTDA, records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that project payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and/or other credit requirements may, in the sole discretion of OTDA, be waived and/or appropriate alternatives are developed to encourage M/WBE participation.
- (7) This organization will include the provisions of sections (1) through (6) 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.

EEO

- (a) This organization will not discriminate against any employee or applicant for employment because of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, predisposing genetic characteristics, victim of domestic violence status, 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, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, predisposing genetic characteristics, victim of domestic violence status or marital status,
- (c) At the request of the contracting agency, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, predisposing genetic characteristics, victim of domestic violence status or marital status, and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) This organization will include the provisions of sections (a) through (c) 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: _____

Minority/ Women Business Enterprise Liaison

_____ is designated as the Minority/Women Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment Opportunity (MWBE-EEO) program.

(Authorized Representative)

Title: _____

Date: _____

Contact:

NYS OTDA
ATTN: Ms. Wilma BrownPhillips, MWBE Director
MWBE Program Management Unit
Harlem Center
317 Lenox Avenue
New York, NY 10027
Wilma.BrownPhillips@otda.state.ny.us

EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

Submit with Bid or Proposal - Instructions on page 2

Solicitation/Program Name:

Report includes:
 Work force to be utilized on this contract
 Contractor/Subcontractor's total work force

Offeror's Name:

Reporting Entity:
 Contractor
 Subcontractor

Offeror's Address: Subcontractor's name _____

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	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)	(M) (F)	(M) (F)											
	Officials/Administrators																					
Professionals																						
Technicians																						
Service Maintenance Workers																						
Office/Clerical																						
Skilled Craft Workers																						
Paraprofessionals																						
Protective Service Workers																						
Totals																						

PREPARED BY (Signature): _____ **TELEPHONE NO.:** _____ **DATE:** _____

EMAIL ADDRESS: _____

NAME AND TITLE OF PREPARER (Print or Type): **SUBMIT COMPLETED WITH BID OR PROPOSAL**

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (04-10) 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 or RFP 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**

**EQUAL EMPLOYMENT OPPORTUNITY
WORK FORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT**

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

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Work force by Gender		Work force by Race/Ethnic Identification					Disabled (M) (F)	Veteran (M) (F)	
	Total Work force	Male (M)	Female (F)	White (M) (F)	Black (M) (F)	Hispanic (M) (F)	Asian (M) (F)			Native American (M) (F)
Officials/Administrators										
Professionals										
Technicians										
Service Maintenance Workers										
Office/Clerical										
Skilled Craft Workers										
Paraprofessionals										
Protective Service Workers										
Totals										

PREPARED BY (Signature):	TELEPHONE NO.:
NAME AND TITLE OF PREPARER (Print or Type):	EMAIL ADDRESS:
Submit completed form to M/WBE Program Unit: NYS OTDA ATTN: Ms. Wilma BrownPhillips, M/WBE Director M/WBE Program Management Unit Harlem Center 317 Lenox Avenue New York, NY 10027	
DATE:	

General Instructions: The work force utilization/compliance report (EEO Workforce Utilization report 04-10) 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 or subcontractor's total work force, the contractor 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 or subcontractor's total work force, information on the contractor's total work force shall be included in the Utilization Report. Utilization reports are to be completed each quarter and submitted to OTDA 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 written statement of no change or submit a copy of the previously submitted report 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".
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

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