

APPENDIX M

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

I. General Provisions

- A. The New York State Department of Health is required to implement the provisions of New York State Executive Law Article 15-A (Article 15-A) and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all state Contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The CONTRACTOR to this Contract agrees, in addition to any other nondiscrimination provision of this Contract and at no additional cost to the DEPARTMENT to fully comply and cooperate with the DEPARTMENT in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). CONTRACTOR’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of this Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by this Contract.

II. Contract Goals

- A. For purposes of this procurement, the DEPARTMENT hereby establishes an overall goal of__% for MWBEs participation,___% for Minority-Owned Business Enterprises (“MBE”) participation and__% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the Contract Goals established in Section II-A hereof, CONTRACTOR should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>.
- C. Additionally, CONTRACTOR is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, CONTRACTOR must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. In

accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the CONTRACTOR acknowledges that if CONTRACTOR is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in this Contract, such a finding constitutes a breach of this Contract and the CONTRACTOR shall be liable to the DEPARTMENT for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A.** CONTRACTOR agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B.** CONTRACTOR shall comply with the following provisions of Article 15-A:
1. CONTRACTOR and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The CONTRACTOR shall submit an EEO policy statement to the DEPARTMENT within seventy-two (72) hours after the date of the notice by the DEPARTMENT to award this Contract to the CONTRACTOR.
 3. If CONTRACTOR or subcontractor does not have an existing EEO policy statement, the DEPARTMENT may provide the CONTRACTOR or subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 4. The CONTRACTOR'S EEO policy statement shall include the following language:
 - a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The CONTRACTOR shall state in all solicitations or advertisements for employees that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The CONTRACTOR shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that

such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the CONTRACTOR'S obligations herein.

C. Form #4 - Staffing Plan

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

D. Workforce Utilization Report

1. The CONTRACTOR shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the DEPARTMENT on a QUARTERLY basis during the term of the Contract.
2. Separate forms shall be completed by the CONTRACTOR and any subcontractors.
3. Pursuant to Executive Order #162, CONTRACTORS and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

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

The CONTRACTOR shall include the provisions of subparagraphs (a) through (c) of paragraph 4 of subsection B and subsection D of this Section which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

IV. MWBE Utilization Plan

- A. The CONTRACTOR represents and warrants that CONTRACTOR has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of this Contract.
- B. CONTRACTOR agrees to use such MWBE Utilization Plan for the performance of MWBEs on this Contract pursuant to the prescribed MWBE goals set forth in Section II.A of this Appendix.
- C. CONTRACTOR further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of this Contract. Upon the occurrence of such a material breach, the DEPARTMENT shall be entitled to any remedy provided herein, including but not limited to, a finding of CONTRACTOR non-responsiveness.

V. Waivers

- A. For Waiver Requests CONTRACTOR should use Form #2 – Waiver Request.
- B. If the CONTRACTOR, after making good faith efforts, is unable to comply with MWBE goals, the CONTRACTOR may submit a Request for Waiver form documenting good faith efforts by the CONTRACTOR to meet such goals. If the documentation included with the waiver request is complete, the DEPARTMENT shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the DEPARTMENT, upon review of the MWBE Utilization Plan and updated Quarterly MWBE CONTRACTOR Compliance Reports determines that CONTRACTOR is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the DEPARTMENT may issue a notice of deficiency to the CONTRACTOR. The CONTRACTOR must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE CONTRACTOR Compliance Report

CONTRACTOR is required to submit a Quarterly MWBE CONTRACTOR Compliance Report to the DEPARTMENT by the 10th day following each end of quarter over the term of this Contract documenting the progress made towards achievement of the MWBE goals of this Contract. Data should be submitted via the online compliance system at <https://ny.newnyContracts.com>. Additionally, Contractor and each of its Subcontractors shall be required to submit a Workforce Utilization Report, in such format as shall be required by the DEPARTMENT on a Quarterly basis during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where the DEPARTMENT determines that CONTRACTOR is not in compliance with the requirements of this Contract and CONTRACTOR refuses to comply with such requirements, or if CONTRACTOR is found to have willfully and intentionally failed to comply with the MWBE participation goals, CONTRACTOR shall be obligated to pay to the DEPARTMENT liquidated damages.

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the CONTRACTOR achieved the Contractual MWBE goals; and

 - 2. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.

- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the DEPARTMENT, CONTRACTOR shall pay such liquidated damages to the DEPARTMENT within sixty (60) days after they are assessed by the DEPARTMENT unless prior to the expiration of such sixtieth day, the CONTRACTOR has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the DEPARTMENT.