

**NEW YORK STATE FINANCE AGENCY, STATE OF NEW YORK MORTGAGE AGENCY
NEW YORK STATE AFFORDABLE HOUSING CORPORATION,
STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY, AND
TOBACCO SETTLEMENT FINANCING CORPORATION
641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022, (212) 688-4000**

**HOUSING TRUST FUND CORPORATION
DIVISION OF HOUSING AND COMMUNITY RENEWAL
38-40 STATE STREET, ALBANY, NEW YORK 12207**

November, 2017

APPENDIX II

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN
REQUIREMENTS AND PROCEDURES
FOR CONTRACTS WITH**

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NYS DIVISION OF HOUSING AND COMMUNITY RENEWAL**

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I. General Provisions

- A. The New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency, Tobacco Settlement Financing Corporation, Housing Trust Fund Corporation and NYS Division of Housing and Community Renewal (individually, “Agency” and collectively, “Agency(ies)” or “Agencies”) are required to implement the provisions of New York State (“State”) Executive Law Article 15-A and 5 NYCRR Parts 142-144 (collectively the “MWBE Regulations”) for all State contracts as defined therein, with a value (i) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing, or (ii) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Agency(ies), to fully comply and cooperate with the Agency(ies) in the implementation of New York State Executive Law Article 15-A (“Article 15-A”). These requirements include equal employment opportunities (“EEO”) for minority group members and women and contracting opportunities for State 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 the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of Contract, leading to the withholding of funds, liquidated damages (as set-forth in Section VI of this Appendix II) or such other action or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this Contract, the overall MWBE participation goal for the Agency(ies) is indicated in the solicitation document and the Contract.
- B. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the Contract Goals established in Section II.A of this Appendix II, Contractor

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should reference the directory of State certified MBWEs found at the following internet address:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.

Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must demonstrate its “good faith efforts” to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com/frontend/diversityusers.asp>, provided, however, that a Contractor may arrange to provide such evidence via a non-electronic method by contacting Ms. Wanda Graham at 641 Lexington Avenue, 4th Floor, New York, New York 10022 or by sending an email to Econ.Opportunity@nyshcr.org. Please note that the NYSCS is a one stop solution for all of the Contractor’s MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Contractor’s MWBE requirements, please click on the following hyperlinked MWBE guidance, “[Your MWBE Utilization and Reporting Responsibilities Under Article 15-A](#).”

III. MWBE Utilization Plan, PROC 2 form

- A. The Contractor represents and warrants that Contractor has submitted a MWBE [Utilization Plan](#) either prior to, or at the time of, the execution of this Contract.
- B. Contractor agrees to use such [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 II.

Contractor further agrees that a failure to submit and/or use such [Utilization Plan](#) shall constitute a material breach of the terms of this Contract. Upon the occurrence of such a material breach, the Agency(ies) shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

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IV. [Request for Waiver, PROC-3 form.](#)

- A. If the Contractor, after making good faith efforts, is unable to comply with the MWBE goals, the Contractor may submit a [Request for Waiver, PROC-3 form](#), documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Agency(ies) shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- B. If the Agency(ies), upon review of the [Utilization Plan](#) and [Cumulative Payment Statement](#) 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 Agency(ies) 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.

V. [Cumulative Payment Statement, PROC-6 form](#)

Contractor is required to submit a quarterly [Cumulative Payment Statement](#) to the Agency(ies) by the 10th day following each end of quarter (i.e., March 31st, June 30th, September 30th and December 31st) over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VI. Liquidated Damages

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 the Contract, that such a finding constitutes a breach of Contract and the Agency(ies) may withhold payment from the Contractor. Such liquidated damages shall be calculated as an amount equaling the difference between (a) 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.

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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 Agency(ies), Contractor shall pay such liquidated damages to the Agency(ies) within sixty (60) days after Contractor is assessed by the Agency(ies), unless prior to the expiration of such sixtieth (60th) day the Contractor has filed a complaint with the Director of the Division of Minority and Women 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 Agency(ies).

VII. Contractor's Requirements for Equal Employment Opportunity for Minority Group Members and Women

- A. Contractor agrees to be bound by the provisions of the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the provisions of Article 15-A indicated below as "B" and "C".
- B. 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 (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. 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.
- C. The Contractor shall submit an EEO policy statement to the Agency(ies) within seventy-two (72) hours after the date of the notice by the Agency(ies) of award of this Contract to Contractor. If Contractor or Subcontractor does not have an existing EEO policy statement, the Agency(ies) may provide the Contractor or Subcontractor a model statement (see [MWBE & EEO Policy Statement \(Model\), PROC-4 form](#), hyperlinked herein). The Contractor's EEO policy statement shall include the following language:

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- (i) Pursuant to the Human Rights Law and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor (1) 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, (2) will follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest, (3) will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and (4) will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination 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 the Contractor will also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (iii) 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 (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, that they will follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

The Contractor will include the provisions of subdivisions (i) through (iii), subsection and paragraph “D” of this Section VII this Appendix II, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the

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requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

D. [EEO Staffing Plan, PROC-1 form](#)

To ensure compliance with this section, the Contractor shall submit a staffing plan identifying the work force to be utilized on the Contract. The Contractor shall submit the Staffing Plan as part of their bid or proposal or within a reasonable time, but no later than the time of award of the Contract.

E. [EEO Workforce Utilization Report, PROC-5 form](#)

- (i) After the Contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Agency(ies) of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The EEO Workforce Utilization Report must be submitted to report this information.
- (ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
- (iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided related to the actual workforce utilized on the subject Contract. When the workforce to be utilized on the Contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

ALL FORMS ARE HYPERLINKED