

Office of Finance and Development

Capital Programs Manual

Section: 4.00 FAIR HOUSING AND EQUAL OPPORTUNITY REQUIREMENTS

Sub Section: 4.01 Introduction

This Section describes the general program requirements and policies concerning Minority/Women-Owned Business Enterprises (M/WBE), Equal Opportunity, and Fair Housing.

It is organized under the following headings:

- 4.02 M/WBE Requirements
- 4.03 Equal Opportunity Requirements
- 4.04 Fair Housing Requirements

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Sub Section: 4.02 M/WBE Requirements

Article 15-A of the State Executive Law was promulgated to ensure that certified M/WBEs shall be given the opportunity for meaningful participation in the performance of State-assisted contracts, and to facilitate the award of a fair share of State-assisted contracts and subcontracts to such enterprises. In accordance with Article 15-A, HCR requires contractors to make good faith efforts to ensure that M/WBEs have opportunities for meaningful participation on projects to be undertaken and financed with funds provided by HCR.

Goals for M/WBE participation are assessed and imposed on each State-assisted contract. Participation levels are based upon the availability of certified M/WBE to perform the work in the region in which the contract is to be performed and the total dollar value of the work to be performed in relation to the dollar value of the components of the contract scope. Contractors on HCR projects are required to submit quarterly reports detailing the utilization of M/WBE in performing the contract.

Article 15-A of the Executive Law and the M/WBE Regulations requires contractors to take affirmative steps to encourage the utilization of M/WBEs. Contractors are notified by HCR of such requirements. A copy of the Directory of Certified Minority and Women Owned Businesses can be downloaded from the NYS Empire State Development web site at: www.empire.state.ny.us. Technical assistance is offered by HCR's Office of Fair Housing and Equal Opportunity which may be reached via email at OFHEO@nyshcr.org or telephone at (518) 474-6157.

4.02.01 Utilization Plan

Applicants are required to submit a Utilization Plan for the participation of State-certified M/WBEs in connection with their project. The Utilization Plan must include a list of the names and federal identification numbers of M/WBEs which the applicant intends to use in connection with the project, the dollar amount and the scope of work to be performed, the date when such work will commence, and the estimated completion date for each contract.

4.02.02 Methods for the Participation of M/WBEs

The following steps are recommended for contractors to pursue participation by M/WBEs on State-assisted contracts. Contractors are encouraged to use these steps in drafting any policy statements which will guide their efforts in meeting the applicable M/WBE goals.

- (i) actively and affirmatively solicit bids for contracts and subcontracts from certified M/WBE, including the marketing efforts to minority and women contractor associations;
- (ii) identify NYS Certified MWBEs by using ESD's online MWBE directory <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>;
- (iii) ensure that plans, specifications, requests for proposals and other documents used to secure proposals for the performance of work or supply of materials will be made available in sufficient time for review by prospective M/WBEs;
- (iv) encourage, where economically and technically feasible, the formation of joint ventures, partnerships or other similar arrangements among contractors to enhance participation by M/WBE;
- (v) partner with other governmental agencies to further outreach to M/WBE firms; and,
- (vi) ensure that payments to M/WBE firms are made on a timely basis and with such frequency that undue financial hardship is avoided and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

In compliance with the requirements of Article 15-A, applicants must provide HCR with assurances that they will require contractors to take specific affirmative action steps, including, but not limited to, the above-mentioned items, in the form of the Agency's M/WBE Utilization Plan and Utilization Agreement which may be found at www.nyshcr.org/Forms/FairHousing/ under the "M/WBE & EEO" and "M/WBE Contract Documents" sections.

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Sub Section: 4.03 Equal Employment Opportunity

Equal employment opportunity (EEO) is guaranteed by Title VII of the Federal Civil Rights Act of 1964, as amended, and the New York State Human Rights Law which prohibits discrimination in employment on the basis of race, creed, color, disability, national origin, age, sex, marital status, or arrest record. Affirmative action is generally defined as any positive action that is intended to:

- (i) correct the effects of past discrimination (whether such actions were intentional or unintentional);
- (ii) identify and seek to eliminate current discriminatory practices; and,
- (iii) seek to prevent discrimination by actively initiating and implementing policies and procedures designed to promote greater employment opportunities for protected class individuals in the work force.

Affirmative action plans are written documents outlining the specific steps to be taken by an employer to accomplish the aforementioned objectives; though they may vary in content and design, they must be consistent with Federal and State EEO laws. The following will be required of all HCR applicants (owners, builders and other major project participants):

- (i) EEO and MWBE Policy Statements
(www.nyshcr.org/Forms/FairHousing/EEO_MWBE_PolicyStatements.pdf) signed by the organization's president, chair or CEO;
- (ii) a description of the organization's personnel policies and practices for recruitment, hiring, promotion, separations, training and grievance procedures with assurances that such are consistent with applicable laws and affirmative action policies; and,
- (iii) a description of how the organization will communicate its affirmative action and non-discriminatory policy to contractors, subcontractors, vendors and suppliers.

Under Section 312 of Article 15-A of the New York State Executive Law, contractors under State contract must state in all solicitations or advertisements for employees that equal employment opportunity will be afforded to all qualified applicants. In addition, contractors

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must include in every subcontract the provisions of Article 15-A § 312.1 except as relates to employment outside of New York State.

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Sub Section: 4.04 Fair Housing Requirements

Funded applicants are required to comply with Title VIII of the Federal Civil Rights Act of 1968, also referred to as the "Fair Housing Act," which prohibits discrimination against applicants for and occupants of housing on the basis of race, color, religion, sex, or national origin. In addition, the Federal Fair Housing Amendments Act of 1988 prohibits discrimination in housing on the basis of disability or familial status. "Familial Status" refers to one or more individuals who have not attained the age of 18 years and are domiciled with (a) a parent or another person having legal custody of such individual(s); or (b) the designee of such parent or other person having such custody with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of anyone under the age of 18 years.

Discrimination on the basis of disability (or handicap as referred to in Federal Regulations) is also prohibited under the provisions of Section 504 of the Federal Rehabilitation Act of 1973 which provides that no individual with a disability shall be excluded from participation in, the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. In addition to the federal protected classes, the New York State Human Rights Law also makes it an unlawful practice to discriminate against any person because of sexual orientation, military status, age, marital status, or source of income in the terms, conditions or privileges of sale, rental, or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith.

Discrimination in housing is also prohibited under Section 602 of the New York State Private Housing Finance Law. Applicants and owners must incorporate the provisions of these laws into the development of marketing plans, tenant selection plans, admission standards and policies, and waiting lists for housing units to be constructed or rehabilitated with State funds. Applicants and owners of projects involving the construction or rehabilitation of four or more HCR assisted housing units including Low Income Housing Credit Program Projects are required to submit affirmative marketing plans which must be approved by HCR prior to construction

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finance closing. Affirmative Marketing Plan Guidelines may be found at www.nyshcr.org/Forms/FairHousing/ under the “Affirmative Marketing” header. NOTE: No later than 90 days prior to engaging in marketing activities, you must register your project at www.nyhousingsearch.gov.

Marketing plans for elderly projects should also indicate how elderly projects will be structured, either as a “55 or over” project, where at least 80% of occupied units are occupied by at least one person who is 55 years of age or older; OR as a “62 or older” project, where all occupants of the project are persons 62 years of age or older. (See Section 5.14 for further details). In HTFC projects which are jointly financed with the US Department of Agriculture Rural Housing Services, an elderly project is required to be occupied by persons 62 years of age or older, or by handicapped persons of any age.

Please note that the "Fair/Equal Housing Opportunity" and the "Accessibility" logos must be displayed on all affordable housing advertisements. These logos can be found at: www.nyshcr.org/Forms/FairHousing/ under the section titled “Logos”.

Affirmative marketing requirements do not apply to certain types of activities administered under the federal HOME Program. *Please refer to Section 2.00 of the Capital Programs Manual for more information and if necessary discuss with your HCR Project Manager.*