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Capital Programs Manual

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Section: 4.0 GENERAL PROGRAMS REQUIREMENTS AND POLICIES
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:

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

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Section: 4.0 GENERAL PROGRAMS REQUIREMENTS AND POLICIES
Sub Section 4.02 M/WBE Requirements

The Division of Minority and Women's Business Development(M/WBD), NYS Empire State Development, has promulgated Rules and Regulations (the M/WBE Regulations - Title 9, New York Code of Rules and Regulations, Subtitle N, Parts 540-544) pursuant to Article 15-A of the State Executive Law, to ensure that certified M/WBE 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 of the Executive Law, DHCR and HTFC encourage contractors to make affirmative efforts to ensure that M/WBE have opportunities for meaningful participation on projects to be undertaken and financed with funds provided by DHCR/HTFC.

Recommended levels for M/WBE participation on State-assisted contracts have been established for contractors to use as a reference. Participation levels are based upon such considerations as, among others, 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 DHCR/HTFC projects are required to submit 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/WBE. Contractors will be notified by DHCR/HTFC of such requirements.

A break-out of M/WBE by trade services or suppliers, as well as technical assistance, may be obtained by contacting DHCR's Office of M/WBE Contract Compliance at:

New York State Division of Housing and Community Renewal
Office of Fair Housing and Equal Opportunity
38-40 State Street Albany, New York 12207
(518) 474-6157
Fax: (518) 486-3365

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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

Albany Office

New York State Empire State Development
Division of Minority and Women's Business Development
30 South Pearl Street Albany, New York 12245
(518) 292-5250
Fax: (518) 292-5803

New York City Office

New York State Empire State Development
Division of Minority and Women's Business Development
633 3rd Avenue, Suite 32 New York, New York 10017
(212) 803-2414
Fax: (212) 803-3223

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4.02.01 Utilization Plan

Applicants are required to submit a Utilization Plan for the participation of State-certified M/WBE in connection with their project. The Utilization Plan must include a list of the names and federal identification numbers or social security numbers (if known) of M/WBE 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, including such categories as the purchase of supplies, the use of temporary office services, and any other builder or vendor the applicant intends to use in connection with the project.

4.02.02 Methods for the Participation of M/WBE

The following steps are recommended for contractors to pursue participation by M/WBE 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 circulation of solicitations to minority and women contractor associations;
- (ii) request a list of M/WBE from DHCR/HTFC and solicit bids from M/WBE on such list;
- (iii) attempt to 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/WBE;
- (iv) divide, where economically and technically feasible, the work into smaller portions to enhance participation by M/WBE;
- (v) encourage, where economically and technically feasible, the formation of joint ventures, partnerships or other similar arrangements among contractors to enhance participation by M/WBE;
- (vi) consult with and use the services of governmental agencies, their consultants and contractor associations to further the participation of M/WBE;

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- (vii) make efforts to ensure that progress payments to M/WBE 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;
- (viii) place timely advertisements in appropriate minority and women-oriented trade and general circulation publications;
- (ix) make written solicitations in a timely fashion of M/WBE listed in the Minority and Women-Owned Business Directory; and
- (x) make timely responses to any advertisements and solicitations provided by M/WBE.

In compliance with the requirements of Article 15-A, applicants must provide DHCR/HTFC with assurances that they will require contractors to take specific affirmative action steps, including, but not limited to, the above-mentioned items, in a form to be prescribed by DHCR/HTFC. All contractors must submit contract reports on M/WBE Utilization Plan forms. These contract reports shall include, but are not limited to, the following:

- (i) the name, address and telephone number of each M/WBE the contractor is using or intends to use;
- (ii) a brief description of the contract scope of work to be performed for the contractor by each M/WBE and the scheduled dates for performance;
- (iii) a statement of whether the contractor has a written agreement with each M/WBE and, if requested, copies of the agreements the contractor is using or intends to use;
- (iv) the actual total cost of the contract, the work performed and the materials provided, scope of work to be performed by each M/WBE for each contract;
- (v) the actual amounts of any payments made by the contractor to each M/WBE as of the date the compliance report was submitted; and
- (vi) the percentage of total contractors, subcontractors, vendors and suppliers utilized for the project and the total contract prices for each.

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Section: 4.0 GENERAL PROGRAMS REQUIREMENTS AND POLICIES
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. In addition, Executive Order #28 prohibits discrimination on the basis of sexual orientation in the provision of any service or benefits by State agencies or departments.

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 DHCR/HTFC applicants (owners, builders and other major project participants):

- (i) a policy statement signed by the organization's president, chair or CEO stating that:
 - (a) the organization is an equal opportunity employer and does not discriminate on the basis of race, creed, color, national origin, age, sex, disability, marital status or arrest record.
 - (b) the organization will comply with all relevant Federal and State EEO and nondiscrimination laws, regulations and executive orders with respect to employment opportunities; and

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- (c) the organization will adopt and implement affirmative action policies designed to promote employment opportunities for women, minority groups, Vietnam-era veterans, and disabled persons in the work force, at all levels of employment, and that a policy-level executive of the organization will be designated to ensure that such policies are properly implemented;
- (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.

While applicants are encouraged to give priority in hiring to residents of the project area, precautions must be taken to ensure that such priorities do not result in qualified persons being denied employment opportunities because of sexual orientation, race, creed, color, national origin, age, sex, disability, marital status or arrest record.

In addition, under Section 312 of Article 15.A of the New York State Executive Law, the Division of Minority and Women's Business Development, NYS Empire State Development has drafted regulations for the employment of minority group members and women in State and State assisted contracts. When promulgated, these regulations will apply to all State construction contracts exceeding \$100,000 and all subcontracts exceeding \$25,000.

In brief, Part 542 of the regulations may require contracting agencies to include specific nondiscrimination and equal employment opportunity language relating to minority group members and women in all covered contracts, subcontracts, and all documents soliciting bids. In addition, equal employment opportunity policy statements and periodic compliance reports may also be required.

It should be noted, however, that there are separate equal employment opportunity requirements for the construction or rehabilitation of federally-assisted projects where contracts and subcontracts exceed \$10,000. Please refer to Section 2.00 of the Capital Programs Manual for more information.

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Section: 4.0 GENERAL PROGRAMS REQUIREMENTS AND POLICIES
Sub Section 4.04 Fair Housing Requirements

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 occupants on the basis of race, color, religion, sex or national origin. It covers the activities of all segments of the real estate industry including real estate brokers, builders, apartment owners, sellers and mortgage lenders with regard to policies and procedures for advertising, loan organization and tenant selection.

In addition, the Federal Fair Housing Amendments Act of 1988 prohibits discrimination in housing on the basis of disability/handicap 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 shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Moreover, discrimination on the basis of disability or handicap 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, or the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance.

The New York State Human Rights Law makes it an unlawful practice to discriminate against any person because of his/her race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status or familial status 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.

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It is also an unlawful discriminatory practice for the owners, lessees, assignees, or managing agents of publicly-assisted housing accommodations, or other persons having the right, ownership or possession of, or the right to rent or lease such accommodations, to cause to be made any written or oral inquiry, or record concerning the race, creed, color, disability, national origin or marital status of a person seeking to rent or lease any publicly-assisted housing accommodation.

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 DHCR/HTFC assisted housing units including Low Income Housing Credit Program Projects are required to submit affirmative marketing plans before rent-up, detailing specific actions to be taken to provide information and outreach to eligible persons of all racial, ethnic, gender and disabled groups from the housing market area.

NOTE: No later than 90 days prior to engaging in marketing activities, you must register your project on the NYS Accessible Housing website. To register,

- logon to www.nysaccessiblehousing.org , (<http://www.nysaccessiblehousing.org/>)and from the site's homepage,
- click on "Managers and Landlords." Then follow the steps under "Register Your Property."

For help in registering and for information on posting vacancies once your project is rented up, contact the Center for Independence of the Disabled, New York (CIDNY), the operator of this website at access@cidny.org or (212) 674-2300 x145.

Marketing plans should include:

- (i) how information on DHCR/HTFC affirmative marketing requirements and applicable Federal and State Fair Housing and Non-Discrimination Laws will be made available to potential owners, tenants and the general public;

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- (ii) a description of steps to be taken to reach those eligible persons who would not likely apply for available housing without special outreach, including advertising in publications which are distributed in minority and isolated communities, and outreach through local community-based organizations; and
- (iii) how project applicants, sponsors and owners will maintain records documenting the outreach efforts under their affirmative marketing plans and the results of such efforts, as required.
- (iv) (for elderly projects only) a description of 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 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 may be occupied by persons 62 years of age or older, or by handicapped persons of any age.

Applicants and owners must receive from DHCR/HTFC an approved affirmative marketing plan prior to rental of any units. At the rent-up conference the applicant and/or owner should ensure that their DHCR project manager registers the project on DHCR's Affordable Housing Directory (AHD) New Affordable Housing Projects Now Accepting Rental Applications internet website.

After the rent-up period has ended and the buildings have been issued certificates of occupancy the project will be listed on the Affordable Housing Directory (AHD). The AHD is part of the DHCR Internet website that allows the general public to search for affordable housing subsidized by the DHCR/HTFC. Information on your project that will be displayed on the site includes; number of units, number of bedrooms per unit, number of handicapped accessible units, availability of an elevator, general vacancy status and property management contact information. It is expected that owners will receive inquiries from the general public, generated by the AHD, about the availability of housing at your project. DHCR requires that you anticipate these calls and ensure that they are handled courteously, accurately and promptly.

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Please note that the "Fair/Equal Housing Opportunity" and the "Accessibility" logos must be displayed on any advertisements. These logos can be found at:

<http://www.hud.gov/library/bookshelf15/hudgraphics/fheologo.cfm>

[http://www.ahfc.state.ak.us/Graphics/Communications Images/wheelchair-symbol.jpg](http://www.ahfc.state.ak.us/Graphics/Communications/Images/wheelchair-symbol.jpg)

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.