

ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION RFP PROVISIONS

It is the policy of the State of New York, and the ESDC, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with Contracting Parties to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ESDC's participation in projects or initiatives, and/or the use of ESDC funds.

Each proposing respondent must represent and warrant that, if successful in obtaining a Contract, it shall (i) comply with the provisions of this section relating to Non-Discrimination and Affirmative Action and (ii) require its Contracting Parties and/or employees to comply with any and all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination in employment or hiring because of the race, creed, color, national origin, sex, sexual orientation, age, disability or marital status of any individual.

A copy of the respondent's Equal Employment Opportunity ("EEO") policy statement shall be included as part of the response to any RFP. The respondent's EEO policy statement shall contain, but not necessarily be limited to, and the respondent, **as a precondition to entering into a valid and binding Contract**, shall, during the performance of said Contract, agree to the following:

- (i) The Contracting Party will (a) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce relative to contracts executed by ESDC or to projects or initiatives utilizing ESDC funds. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (ii) At the request of ESDC, the Contracting Party shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contracting Party's obligations herein.

Any respondent submitting a proposal shall include a Staffing Plan (Schedule A-1) of the anticipated workforce to be utilized on said Contract or, where the anticipated workforce cannot be identified, information on the respondent's total workforce, including apprentices, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by ESDC.

The selected Developer shall, to the extent permitted by law, agree to undertake a program of affirmative action as directed by and substantially in accordance with the affirmative action program of ESDC. ESDC requests that respondents agree to use their best efforts to provide for the meaningful participation of M/WBEs, Minority Group Members and women; and implement the following affirmative action program for the development work (the "work") as set forth in the RFP.

- The utilization of M/WBE firms equal to 20% of the total value of the work. The respondents are encouraged to utilize M/WBEs for any product/materials or services necessary for the completion of the work.

The selected Developer is required to use its best efforts to consider forming joint ventures, associations, partnerships, or other similar entities with M/WBE firms, where appropriate or feasible, to assist in meeting this affirmative action program.

Respondents are requested to complete Schedule A-2 to denote the subconsultants that the respondents propose to use in achieving M/WBE participation. Schedule A-4 is a partial listing of New York State Certified M/WBE firms that could provide services in completion of the work.

Upon commencement of the project and quarterly thereafter during the term of the project, the Contracting Party shall submit to the AAO a Workforce Employment Utilization Report (Schedule A-3) of the workforce actually utilized on the project, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO. In the case where the Contracting Party's and/or subcontractor's workforce does not change within the quarterly period, the Contracting Party shall so notify the AAO in writing. Accuracy of the information contained in the reporting documentation (Schedules A-1 through A-3) shall be certified to by an owner or officer of the Contracting Party.

The Contracting Party shall also include with the first Workforce Employment Utilization Report and as part of the documentation required for final payment, such data describing: a) the total number of company employees at commencement of the project, b) the total number of company employees at the completion of the project and c) any net increases in the number of employees in the company. Net increases in employment shall be further classified by ethnicity, gender and occupation code.

ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth herein, and as developed by Empire State Development Corporation (“ESDC”).

Affirmative Action Officer (“AAO”)

Shall mean ESDC’s Affirmative Action Officer or his/her designee, managing the affirmative action program for ESDC.

Contract

Shall mean (i) a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a **Contracting Party**, providing for a total expenditure in excess of \$5,000 for labor, services, supplies, equipment, materials or any combination of the foregoing funded in whole or in part with ESDC funds and (ii) any loan or grant agreement funded in whole or in part with ESDC funds.

Contracting Party

Shall mean (i) any contractor, subcontractor, Developer, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in connection with any projects or initiatives funded in whole or in part by ESDC and (ii) **any borrower or grantee** receiving funds from ESDC pursuant to a loan or grant document.

Subcontract

Shall mean an agreement providing for a total expenditure in excess of \$1,500 between a **Contracting Party** and any individual or business enterprise, for goods or services rendered in connection with any project or initiative funded in whole or in part with ESDC funds.

Minority Business Enterprise (“MBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Women-owned Business Enterprise (“WBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v)

an enterprise certified by New York State as woman-owned.

ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Best Efforts - Minority and Women-owned Business Enterprise Participation

Best efforts are not limited to the efforts specified herein, and (ii) the role of M/WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women's trade associations. Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work, including the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential M/WBE participation on the Contract;
- (e) Utilizing the resources of the ESDC Affirmative Action Unit to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts;
- (f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities, where appropriate, to ensure that the Contracting Party will meet its obligations herein; and
- (g) Remitting payment in a timely fashion.
- (h) A Contracting Party's best efforts will be assessed by examining the total dollar value of the work performed by M/WBEs. The total dollar value of the work performed by M/WBEs will be determined as: (i) the dollar value of the work subcontracted to M/WBEs; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more M/WBEs -- the contract price multiplied by the percentage of the entity's profits/losses which are to accrue to M/WBE(s) under the Contracting Party's agreement; or (iii) where the M/WBE is the Contracting Party -- the contract price.

SCHEDULE A-1

STAFFING PLAN

Project/RFP Title _____ Location of Contract _____ County _____ Zip _____
 Contractor/Firm Name _____ Address _____ City _____ State _____ Zip _____

Check applicable categories: (1) Staff Estimates include: () Contract/Project Staff () Total Workforce() Subcontractors
 (2) Type of Contract: () Construction Consultants () Commodities () Services/Consultants

TOTAL ANTICIPATED WORK FORCE											Total Percent Minority Employees	Total Percent Female Employees	
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American Alaskan Native				
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female			
Officials/Admin.													
Professionals													
Technicians													
Sales Workers													
Office & Clerical													
Craft Workers													
Operatives													
Laborers													
Service Workers													
TOTALS													

CERTIFICATION:
 I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Staffing Plan and (ii) to the best of my knowledge, information and belief the information herein is complete and accurate.
 Signature _____ Date _____ Telephone Number _____

Forward to:
Include this form with RFP proposal
 Do not send to ESDC

CONTRACTORS STAFFING PLAN
Instructions for Completion

PURPOSE:

The Contractors Staffing Plan is prepared by all contractors providing good, products and merchandise, or services (skilled and non-skilled) or professional consulting services (inclusive of professional construction consultant services) to a state agency. The plan is required prior to the award of a contract and contains the anticipated staff assignments during the contract. **In instances where that cannot be identified, the contractor may identify the total work force of the company.** The form will be reviewed by state agencies for the purposes of equal employment opportunity requirements.

GENERAL INFORMATION:

1. **Project/RFP Title:** describe the project for which you are competing as indicated on the RFP/RFB document.
2. **Location of Contract:** the company's location and postal zip code.
3. **Contractor/Firm Name:** the company that will be providing the workforce. Include *address* with city name, state and zip code.
4. **Check applicable categories:**
(1) *Staff Estimated include:* **Contract/Project Staff** (check in cases where the workers to be assigned can be determined, **Total Work Force** (check in the event the contract work force cannot yet be determined, **Subcontractors** (check if the work force for the project is that of a subcontractor).
(2) *Type of Contract:* **Construction Consultants, Commodities, Services/Consultants** (check appropriate box).

TOTAL ANTICIPATED WORK FORCE:

1. **Federal Occupational Category:** The contractor's work force is broken down and reported by the nine Federal Occupational Categories (FOC's) consistent with the Federal government's EEO-1 categories for the private sector labor force. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.
2. **Total Number of Employees:** Record the total number of all persons employed in each FOC regardless of ethnicity (either to be assigned to the contract/project staff OR in the company's total work force, as indicated by the categories selected in number 4 (1) Staff Estimated, of the General Information. Report the number of male employees in column (1), and the total number of female employees in column (2) for each FOC. In columns (3) through (10), report the number of male and female *minority* group member, based on the following defined groups:

Black (not of Hispanic origin): all persons having origins in any of the Black African racial groups.

Hispanic: all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race.

Asian or Pacific Islander: all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

Native American or Alaskan Native: all persons having origins in any of the original peoples of North America.

TOTAL PERCENT MINORITY:

Add all minority group members (male and female) columns (3) through (10), divide by the total numbers of all employees in that FOC (columns 1 + 2). Post the percentage result for that FOC. [Total number of minority employees (columns 3 through 10) / Total number of employees (columns 1 and 2)].

TOTAL PERCENT FEMALE:

Divide the number of female employees (column 2) in the FOC, by the total number of both Male and Female (column 1 + 2). Post the percentage result for that FOC. [Total female employees (column 2) / total number of employees (columns 1 and 2)].

TOTALS:

To compute the column totals, add vertically. *Total Percent Minority Employees and Total Percent Female Employees* should be calculated as shown above, using the summed column totals.

The Contractors Staffing Plan is to be completed by the prime contractor and signed and dated by an authorized representative before submission. The *Company Official's Name, Title, Telephone Number, Signature and Date* signed should be provided where indicated on the form.

SCHEDULE A-2

SCHEDULE OF MINORITY/WOMEN OWNED BUSINESS PARTICIPATION

(No substitutions may be made on this submission except by prior written approval from Empire State Development)

Name of Respondent

Project/RFP Title:

Address

Respondent's Contract Amount:

Telephone Number: (____) _____

Name/Address/Phone No. of Minority/Women-owned Business	MBE or WBE	Joint Venture, Subconsultant, or Supplier	Scope of Work to be Performed	Proposed Contract Price or Purchase Amount & Percentage

CERTIFICATION:

I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Schedule of Minority/Women Owned Business Participation and (ii) to the best of my knowledge, information and belief the information herein is complete and accurate.

Signature _____ Date _____

Forward to:
Include this form with RFP proposal. Do not send to ESDC.

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