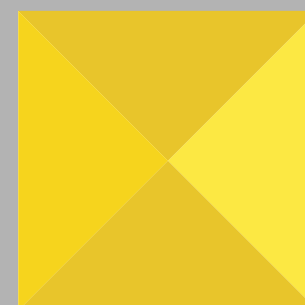
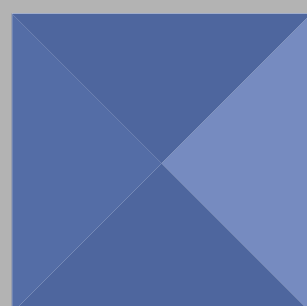
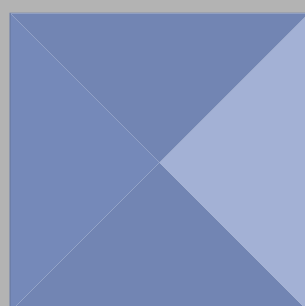
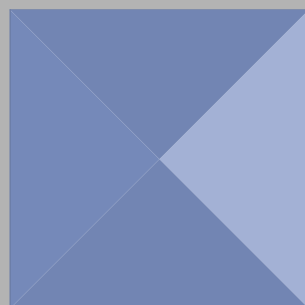
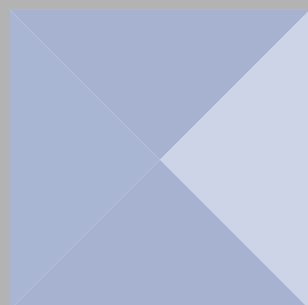
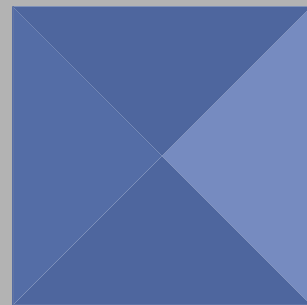
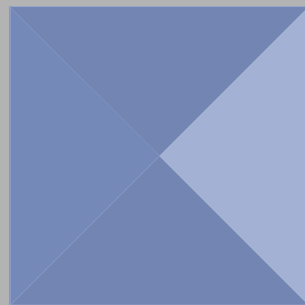
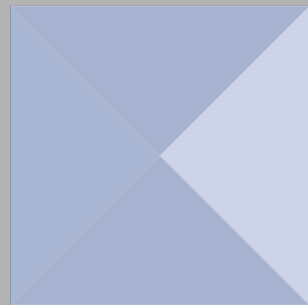
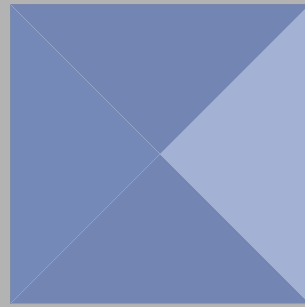


Rochester Joint Schools Construction Board

Rochester Schools Modernization Program



Phase III Strategic Plan

March 20, 2024

Volume 3: Diversity Plan

Draft

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Article I. Introduction

The Rochester Joint Schools Construction Board (“RJSCB” or “Board”) recognizes the need to take action to ensure that minority-owned, women-owned, small, and disadvantaged business enterprises along with minority and women members of the workforce are given the opportunity to participate in the performance of the contracts awarded as part of the Rochester Schools Modernization Program (“RSMP” or “Program”).

The Board recognizes that this opportunity for the participation in our free enterprise system by persons traditionally, socially, and economically disadvantaged is essential to achieving overall equality and overcoming historical disparities. Accordingly, the Board fosters and promotes the participation of such individuals and eligible business enterprises (EBEs) in all RSMP contracts as further stated herein.

The implementation of this Diversity Plan (“Plan”) will create effective processes to increase the procurement of goods and services from diverse businesses and workforce members. It will also help to stimulate better coordination of local workforce development programs to provide new job opportunities for minority and women workers that will be created as a result the RSMP.

The Board also recognizes that workforce participation by City of Rochester residents is an important factor contributing to the economic growth of the area. The Project Labor Agreement (PLA) Study is in process and if adopted through amending the Phase 1 PLA and with the assistance of the Program Manager, the Board will continue to work with the Rochester Building & Construction Trades Council to help promote and recruit apprentices from the local Rochester community.

The Design stages for the proposed six (6) RSMP Phase III Projects will begin in 2024, and the respective Construction work will start in 2025 with the overall completion of the Program in 2031.

1.01 Purpose

- (a) In accordance with Chapter 533 of the laws of New York 2014 as amended in Chapter 416 of the Laws of 2007 (the Act), the RJSCB developed this Diversity Plan with the following intentions and purpose:
 - (i) Update the diversity goals for Phase 3 of the RSMP (also called “the Program”);
 - (ii) Develop strategies that will create and coordinate efforts to ensure a more diverse workforce for RSMP projects as well as ensure the participation of minority-owned, women-owned, disadvantaged business enterprises, and small business enterprises;
 - (iii)Address accountability for attainment of the diversity goals by providing a description of the forms of monitoring that will be used, and how such information will be communicated to the public and most importantly to potential participants.

- (b) The Plan, in addition to facilitating the other goals set forth in the RSMP Strategic Plan, is designed to accomplish the following goals:
 - (i) Coordinate with ongoing programs at the Rochester City School District, City of Rochester, Monroe County, local labor organizations, and not-for-profit agencies to develop, recruit and train a new diverse workforce;
 - (ii) Promote equal and increased opportunities for under-represented business and labor segments throughout the City of Rochester to facilitate economic development and to encourage all entities associated with the Board’s procurement and contracting activities to commit to similar outreach and efforts;
 - (iii)Encourage, assist, and sustain business development of under-represented populations (including Minorities and Women) and maximize the use of City of Rochester-based labor, local professional and construction-related business enterprises.
- (c) This Plan demonstrates the Board’s commitment to diversity and complies with the Act. The Board envisions the participation goals increasing as capacity increases.
- (d) This Plan acknowledges the guidance provided by New York State Article 15A and the regulations applicable thereto, including without limitation, Parts 142 and 143 of Chapter XIV of Title 5 of the New York State Codes, Rules and Regulations (“NYCRR”).

1.02 Applicability and Scope Categories
The Board may procure the following categories of services and goods:

- (a) **Category A - Construction:** Includes all contracting relating to buildings, facilities and other erected structures on school projects in the Program.
- (b) **Category B - Services (general):** Includes advertising, printing, non-construction repairs, janitorial services, training seminars and workshops, computer and information systems, security, shipping and mailing, microfiche and microfilm, courier, storage, travel, and consulting.
- (c) **Category C - Commodities:** Includes the purchase of all goods, equipment, office and other supplies, furniture, and other tangible items not associated with the provision of a service identified in Categories A and B.
- (d) **Category D - Employment Compliance:** Includes services associated with monitoring the implementation of this Plan to ensure that EBE and minority and female employment goals are met and maintained through the life of each project.

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(e) **Category E - Professional Services:** Includes:

- (1) professional design contracts requiring the services of licensed architects, engineers, planners and surveyors;
- (2) regulated professional contracts requiring the services of individuals and firms whose practices are regulated by the State of New York;
- (3) general consultant such as program and construction management services, affirmative action services and general business services.

(f) **Category F - Financial Services:** Includes all business opportunities associated with investment banking services, bond counsel services and bank depository relationships.

Purchasing Thresholds

The Goals set forth in this Plan shall apply to all RSMP Contracts that exceed \$25,000 with regard to contacts for goods and services in Categories B through F, and Contracts that exceed \$100,000 for goods and services in Category A.

Contractors will be required to comply with the terms and conditions of a PLA, if so enacted prior to the start of construction, including but not limited to provisions concerning workplace non-discrimination.

1.03 Definitions

(a) For the purpose of this Plan, the following words, terms, phrases and abbreviations shall have the following meanings:

- (i) **"Act"** shall mean Chapter 533 of the Laws of New York 2014, amending Chapter 416 of the Laws of 2007 ("the Act"), which is the authorizing legislation for the RSMP.
- (ii) **"Bidder"** shall mean any person, partnership, corporation, joint venture, or other business entity that submits a bid to the Board for any Contract.
- (iii) **"Broker"** shall mean a person or business entity that purchases and resells goods in the ordinary course of business, but which adds no material value to the goods it offers for resale, and which does not have a warehouse or storage facility. A Broker's participation will not be counted towards any program goals.
- (iv) **"Certification"** or **"Certified"** with regard to EBE's shall mean the designation given by applicable state agencies, that a particular business is an MBE, WBE, or DBE, or alternatively, the ICO's determination that a business is an SBE as defined herein.
- (v) **"Commercially Useful Function"** shall mean the execution by an EBE that

performs the Contract, or any part of the work thereof does so by actually performing, managing, and supervising the work involved. A business enterprise that serves as a Conduit shall not be deemed to perform a Commercially Useful Function. In determining whether an EBE Contractor or subcontractor is performing a Commercially Useful Function, the Board may consider factors, including but not limited to the following:

- a. The nature and amount of work subcontracted to the EBE;
- b. Whether the EBE has the skill and expertise to perform the work;
- c. Whether the EBE actually performs, manages and supervises the work;
- d. Whether the EBE is actually serving as a Broker; and
- e. Standard industry practices relating to the use of subcontractors.

(vi) **"Compliance"** shall mean the condition existing when a Bidder or Contractor has met the requirements of the RSMP and the Plan, including attaining the Goals are using sufficient Good Faith Efforts in attempting to meet the Goals.

(vii) **"Conduit"** shall mean a person or business entity that is not a Broker, but rather, acts exclusively as a pass-through in purchasing goods or services from a vendor and reselling them to the Board or a Contractor. A Conduit's participation will not be counted towards any program goals.

(viii) **"Contract"** shall mean any binding legal obligation of the Board created to acquire some good and/or service from one or more Contractors. In this context, the terms contracting, purchasing, and procurement are synonymous and refer to the process(es) by which the Board undertakes such acquisitions.

(ix) **"Contractor"** shall mean a successful Bidder that is awarded a Contract with the Board, and where applicable, may refer to lower tier subcontractors, vendors and/or suppliers of the Contractor.

(x) **"Disadvantaged Business Enterprise"** or **"DBE"** shall mean a business enterprise where the majority ownership is by a disadvantaged individual meeting the certification requirements for a disadvantaged business enterprise pursuant to federal designation under 49 C.F.R. Part 23 and 49 C.F.R. Part 26. The NYSDOT has adopted the federal DBE program by reference (see 17 NYCRR Section 35.3).

(xi) **"Eligible Business Enterprise"** or **"EBE"** shall mean all or any of MBE, WBE, DBE or SBE, as those terms are defined herein.

(xii) **"Goal"** shall mean the aspiration levels of participation by EBE's and by Minority and Women workforce members in RSMP Contracts as designated herein and/or by Contract.

- (xiii) **"Good Faith Efforts"** shall mean those active and aggressive actions established under this Program for a Bidder and/or Contractor undertaken to meet Goals.
- (xiv) **"Joint Venture"** shall mean an association of two or more independent persons, partnerships, corporations (or any combination of them) formed, consistent with the laws of the State of New York, to perform one or more specific Contracts limited in scope and duration; and for which purpose, the entities combined their property, capital, effort, skills, knowledge and other assets.
- (xv) **"Minority"** or **"Minority Group Member"** shall be as defined in Section 15-A of the New York Executive Law, which states as follows: "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:
- a. Black persons having origins in any of the Black African racial groups;
 - b. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
 - c. Native American or Alaskan native persons having origins in any of the original peoples of North America;
 - d. Asian and Pacific Islander persons having origins in any of the Far East countries, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- (xvi) **"Minority Business Enterprise"** or **"MBE"** shall have the same meaning as "Minority-owned Business Enterprise" as defined in Section 15-A of the New York Executive Law, which states as follows: "Minority-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
- a. at least fifty-one percent owned by one or more minority group members;
 - b. an enterprise in which such minority ownership is real, substantial and continuing;
 - c. an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
 - d. an enterprise authorized to do business in this State and independently owned and operated.
- (xvii) **"Independent Compliance Officer"** or **"ICO"** shall mean the member of the Board who is selected as the responsible party for administration of this Plan and to perform all other functions designated by the Act.

- (xviii) **"Owned"** shall mean that the minority, female, or disadvantaged owner(s) possess an ownership interest of at least fifty-one percent (51%) of the business, for purposes of determining whether a business is a Minority Business Enterprise, Disadvantaged or Women Business Enterprise.
- (xix) **"Promise of Non-Discrimination"** shall mean voluntary promises made by a Bidder/Contractor relating to such party's conduct occurring prior to submission of a bid as well as after award of a Contract:
- a. to adopt the policies of the Board relating to the participation of EBE's in the procurement process;
 - b. to undertake certain affirmative Good Faith Efforts to achieve diversity Goals; and
 - c. not to otherwise engage in discriminatory conduct inconsistent with said policies and promises.
- (xx) **"Small Business Enterprise"** or **"SBE"** shall mean a locally-owned business concern which, together with its affiliates has no more than 15 employees and average annual receipts that do not exceed \$2 million. Annual receipts shall be calculated in accord with the standard established under 13 CFR 121.104. Number of employees shall be calculated in accord with the standards established under 13 CFR 121.106. Affiliates shall be determined in accord with the standards set forth under 13 CFR 121.103
- (xxi) **"Women-owned Business Enterprise"** or **"WBE"** shall be as defined in Section 15-A of the New York Executive Law, as follows: "Women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
- a. at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
 - b. an enterprise in which the ownership interest of such women is real, substantial and continuing;
 - c. an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
 - d. an enterprise authorized to do business in this State and independently owned and operated.

Article II. Principles and Objectives of the Diversity Plan

2.01 Workforce Development and Diversification Principles and Goals

(a) Workforce Development and Diversification Principles

A primary objective of this Plan is to support workforce development and diversification opportunities that the Program may create. This Plan acknowledges the diverse community of the City Rochester as reflected in its workforce labor and provides an opportunity to engage and encourage the participation of community members. This Plan also acknowledges the historical disparity experienced by Women and Minority members of the workforce in gaining access to participate in local projects. These principles are reflected in the workforce participation percentage Goals listed herein.

(b) Workforce Development and Diversification Goals

All firms or other businesses providing goods or services under a Contract meeting the dollar amount threshold set forth in this Plan shall comply with the workforce diversity Goals set forth herein.

(i) **Percentage goals:** In order to achieve the workforce diversification goals of the Program, each firm or other business providing goods or services shall use its best efforts to ensure that the workforce it engages to perform work for the Program shall demonstrate, in terms of the percentage of actual hours worked under the Contract, and/or contract as amended, participation rates as follows:

- a. **Minority Workforce:** 23% of project personnel hours including skilled trades people, trainees, journeymen, apprentices, and supervisory staff.
- b. **Female Workforce:** 7% of project personnel hours including skilled trades people, trainees, journeymen, apprentices, and supervisory staff.

Each Contractor, supplier, professional service provider, or other business providing goods and services shall strive to maximize the use of Rochester-based labor, contractors, suppliers, and service providers in performing the Contract.

2.02 Business Development and Diversification Principles and Goals

(a) Business Development and Diversification Principles

The capital investment represented by this Program creates a unique opportunity for participation of EBE's. To ensure that contracts for goods and services are placed with qualified EBE's, the Board, through its consultants, will oversee, facilitate, develop and implement the following tasks:

(i) Identify certified EBE firms available to provide goods and services to the Program

and to create a reference list for all Program participants.

- (ii) Identify firms that could/can be certified as MBE, WBE, DBE, or SBE.
- (iii) Ensure that Contractors divide the goods or services to be provided into scopes, where economically and technically feasible, to create opportunities for EBE participation.
- (iv) Coordinate activities and services with organizations such as chambers of commerce, trade groups, and community- based groups/organizations that promote MBE, WBE, DBE and SBE interests.
- (v) Create opportunities for mentoring less experienced and/or start-up MBE, WBE, DBE and SBE's.
- (vi) Encourage the formation of Joint Ventures, partnerships, or other similar arrangements where feasible.
- (vii) Create a network for referral for banking and surety credit needs and advocate for the provision of an accelerated payment system, revolving credit and needs for project bonding.
- (viii) Develop a methodology that assists any business providing goods or services to the Program to effectuate the business development and diversification Goals of the Plan. All Contracts shall include remedies and sanctions for non- compliance and identify a means by which inquiries and disputes about the project requirements may be addressed.

(b) Business Development and Diversification Goals

All Contractors or other businesses providing goods or services under a Contract meeting the dollar amount threshold set forth in this Plan shall comply with the business diversity Goals set forth herein.

(i) **Percentage Goals** (applicable to the total value of the project):

In order to achieve the business development goals of the Program, each Contractor, supplier, professional service firm or other business providing goods or services shall strive to and use Good Faith Efforts to engage minority-owned, woman-owned, disadvantaged business enterprises, and small business enterprises as follows:

- a. **MBE:** 18% of each Contract or purchase order
- b. **WBE:** 12% of each Contract or purchase order
- c. **DBE:** 2% of each Contract or purchase order
- d. **SBE:** 2% of each Contract or purchase order

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(c) Good Faith Efforts

Bidders and Contractors are expected to engage in certain minimal “Good Faith Efforts” to meet and maintain the business and workforce development goals set forth in this Plan.

“Mandatory” Good Faith Efforts for Bidders on RSMP Contracts to which these Goals apply shall mean at a minimum the following in paragraph (i) through (ix). Bidders shall submit with their bids an “RSMP – Template for Documenting Good Faith Efforts” form, in the format attached hereto (or such other form as is provided for the particular bid), as proof of engaging in the following mandatory Good Faith Efforts:

(i) Delivery of written notice of the following to the ICO:

- a. all identified, available certified EBE’s (provide names, addresses, and telephone numbers of each firm);
- b. all EBE’s which requested information on the Contract;
- c. include all copies of all solicitations, correspondence, scope breakdown details, and lists of corresponding commodity codes searched;
- d. the “RSMP – Template for Documenting Good Faith Efforts” has been composed in accordance to Empire State Development’s grading and expectations.

(ii) The written notice must contain:

- a. Adequate information about the plans, specifications, and relevant terms and conditions of the Contract and about the work to be subcontracted to or the goods to be obtained from subcontractors and suppliers;
- b. A contact person knowledgeable of the project documents within the Bidder’s office to answer questions;
- c. Information as to the Bidder’s bonding requirements (if applicable, including the procedure for obtaining any needed bond, and the name and telephone number of one or more acceptable surety companies to contact);
- d. The last date and time for receipt by Bidder of EBE bids or price quotations.

(iii) Attendance at any special pre-bid meeting to inform EBE’s of subcontracting or supply opportunities.

(iv) Division of the Contract, in accordance with normal industry practice, into small, economically feasible segments that could be performed by an EBE.

(v) Providing an explanation for rejection to any EBE whose bid or price quotation is rejected, unless another EBE is accepted for the same work, as follows:

- a. Where price competitiveness is not the reason for rejection, Contractor must send the EBE a written rejection notice, including the reason for rejection.

(vi) Providing a written explanation for rejection of any EBE to the ICO, unless another EBE is accepted for the same work, including the name of the non-EBE firm proposed to be awarded the subcontract or supply agreement.

(vii) Providing to the ICO records of all EBE firms’ price quotations and the successful non-EBE firm’s price quotations, where appropriate.

- a. Where price competitiveness is not the reason for rejection, a written rejection notice including the reason for rejection will be sent to the rejected EBE.

(viii) Contractors must take appropriate steps to ensure and maintain a work environment free of harassment, intimidation, and coercion with regard to all Contract work, and shall adequately train all supervisory personnel to fulfill the Contractor’s obligation to maintain a suitable work environment.

(ix) Reporting improper conduct and all known violations of this Plan to the Board.

Additional Good Faith Efforts. In addition to, but not in lieu of, the above mandatory minimum Good Faith Efforts required under this Plan, Bidders are encouraged to engage in any or all of the following actions in paragraph (x) through (xv) to encourage and obtain the maximum practicable participation of EBE’s so as to meet (or exceed) and maintain the business development Goals of this Plan:

(x) Soliciting specific individual EBE’s whose availability to participate in a Contract can be reasonably ascertained. This measure includes:

- a. Sending of letters or making other personal contacts with specific certified EBE’s, including those with whom Bidder has contracted in the past as well as other EBE’s with whom Bidder is unfamiliar. The ICO can provide, upon request, a list of Certified EBE’s that participated in Phase 1 and/or 2 of the Program.

(xi) Sending letters or making other personal contacts with other EBE programs as well as private minority trade associations and programs that publicize contracting and procurement opportunities for the benefit of their respective participants and/or members.

- a. Such contacts are relevant to the RSMP bid under consideration and the type of EBE needed; and shall provide the same information required by a Contractor or vendor to effectuate direct contacts with EBE’s.

- (xii) Advertising in publications of general circulation in the Rochester area and trade publications that are otherwise marketed to EBE’s.
 - a. The publication or media shall be one that reasonably covers the metropolitan area.
 - b. The advertisement shall identify and describe the subcontracting or other opportunity in reasonable detail and shall state the applicable EBE Goal(s).
- (xiii) Conducting follow-up of initial solicitations of interest by contacting EBE’s to determine whether these firms are interested.
- (xiv) Providing reasonable assistance to an otherwise qualified EBE.
- (xv) Providing equal opportunity to EBE’s when replacing non-performing EBE’s.
 - a. If an EBE subcontractor or supplier fails to perform successfully, Contractor must provide other EBE’s an equal opportunity to replace the non-performing EBE subcontractor or supplier; and shall exercise the same Good Faith Efforts to secure the replacement.

To demonstrate compliance with the Good Faith Effort requirements of this Plan, Contractors shall keep detailed records of all correspondence and responses thereto, logs of all telephone calls made and received regarding the project or Contract, copies of advertisements in publications and other media, and other relevant papers as required by this program for a minimum period of three (3) years.

(d) EBE Status

- (i) To be counted toward the EBE participation Goals, an EBE must be certified at the time a contract is executed. The judgment as to whether or not an EBE has the qualifications and experience for the type of work required by the Contract rests with the Contractor.
- (ii) To be deemed an MBE, WBE, DBE or SBE, a certificate or evidence of Certification of this status must be presented to the ICO prior to Contract award. Failure to produce an authentic certificate/letter demonstrating the firm’s status as an MBE, WBE, or DBE, or failing to provide sufficient financial and other supporting information to demonstrate to the ICO that firm’s status as an SBE, will result in the firm not receiving EBE credit for the project and may jeopardize Contractor’s compliance with diversification Goals.
- (iii) MBE, WBE and DBE designations are honored only for the area/component for which the designation has been provided by an authorizing agent. The ICO will determine whether a firm qualifies as an SBE for the component of the project for which the Contractor proposes to receive credit for such firm’s participation.
- (iv) The New York State Empire State Development’s Division of Minority and Women

Business Development, The Dormitory Authority of the State of New York (DASNY), Port Authority of New York and New Jersey, and New York State Department of Transportation (NYDOT) are the authorizing agents for MBE, WBE, and DBE designations.

- (v) MBE, WBE, DBE and SBE firms must maintain their applicable certifications throughout the duration of their work on the project. The RJSCB acknowledges that due to the timing of the recertification process, there may be a technical lapse in a firm’s certification. If, upon completion of the recertification process, the certifying entity grants retroactive certification to the firm, the RJSCB will recognize the retroactive date set by the certifying entity.

(e) Counting EBE Participation

The value of the work procured from certified MBE, WBE, DBE and SBE firms to accomplish these Goals shall be determined as follows:

(i) General Standards

- a. The full dollar value of an EBE Contract or sub-contract will be counted toward the EBE participation Goals. Only EBE’s that perform a Commercially Useful Function in the work of the Contract may be counted.
- b. An EBE firm that is certified in multiple categories may participate in any such category (MBE, WBE, DBE, or SBE) to count toward the Goal for such category for a Contract, but such participation may not be counted towards the Goals in multiple categories. A single EBE’s participation in a Contract may not be divided between the MBE, WBE, DBE, and/or SBE Goals.

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(ii) Joint Ventures (JV)

JVs Between all EBE partners: With respect to a Joint Venture (JV) where all JV partners are EBE's, EBE participation will be credited for that portion of the dollar amount of the Contract performed by the EBE's.

JVs Between EBE and non-EBE partners: With respect to a Joint Venture (JV) between an EBE and a non-EBE partner, an EBE Joint Venture partner must perform a Commercially Useful Function on the Contract. The ICO shall review all contractual agreements and review other supporting documentation pertaining to the structure and management of the JV in order to verify the arrangement between the partners as follows:

- a. The initial capital investment of each JV partner;
- b. The proportional allocation of profits and losses to each JV partner;
- c. The sharing of the right to control the ownership and management of the JV;
- d. Actual participation of the JV partners in the performance of work under the project or Contract;
- e. The method of and responsibility for accounting;
- f. The method by which disputes are resolved;
- g. Other pertinent factors.

(iii) The degree to which any Goals have been attained by JVs between EBE and non-EBE firms, shall be calculated as follows:

- a. A JV consisting of an EBE and non-EBE firm functioning as a Contractor will be credited with EBE participation on the basis of the percentage of the dollar amount of the work to be performed by the EBE(s) certified in the category for the applicable Goal (MBE, WBE, DBE or SBE).

(iv) Suppliers

Where a non-EBE Contractor utilizes EBE suppliers to satisfy the Goal(s) in whole or in part, all such EBE suppliers must perform a Commercially Useful Function. Participation of EBE's for purposes of achieving Goals may be approved upon the ICO's review.

- a. Upon approval by the ICO, sixty percent (60%) of the Contract amount for EBE suppliers and vendors shall count towards the Goal on construction Contracts ("Category A")

- b. Neither Conduit nor Broker participation will be counted on this project and will not be counted toward the Contractor's diversity Goals

Article III. Program Management and Independent Compliance Officer (ICO)

3.01 Program Manager

The Board has retained an independent Program Manager (“PM”) pursuant to a competitive process to carry out all duties required of this position by the Act:

- (a) **Qualifications:** The Program Manager (“PM”) shall have experience in planning, designing, and constructing new and/or reconstructing existing buildings, public facilities, commercial facilities, and infrastructure facilities, and in the negotiation and management of labor contracts and agreements, training programs, educational programs, and physical technological requirements for educational programs. All Contracts entered into by the Board for RSMP projects shall be managed by the Program Manager.

3.02 Independent Compliance Officer (ICO)

The Board will retain an Independent Compliance Officer (ICO) for Phase 3 to administer and enforce the Phase 3 Program Diversity Plan.

The ICO will verify that business diversity goals and minority and female employment goals are met and maintained through the life of each project.

(a) General Duties of the ICO

The ICO will have the following duties and obligations for purposes of implementing and achieving the policies and objectives of the Program:

- (i) Administer and enforce RJSCB policies related to the Diversity Plan;
- (ii) Promulgate rules, regulations and procedures consistent with the Diversity Plan;
- (iii) Evaluate RSMP projects and, where this Plan would otherwise require the inclusion of the Goals set forth herein in the Contract, recommend to the Board whether and to what extent the Goals should apply to any given project;
- (iv) Verify EBE’s are appropriately certified in accordance with the provisions set forth by recognized certification agencies. ICO shall determine whether a firm qualifies as an SBE upon review of pertinent financial and other supporting records;
- (v) Develop, maintain and make available a database of certified EBE’s;
- (vi) Attend pre-bid, pre-award, post-bid and bid-award meetings;
- (vii) Conduct a pre-job meeting with all Contractors and subcontractors describing the administrative process of the project and the Goals;
- (viii) Receive and investigate written complaints from Bidders and Contractors;

- (ix) Notify all parties of the right to review any decision of the ICO;

- (x) Provide recommendations to the Board, Program Manager and other pertinent personnel to effectuate the policies and objectives of this Diversity Plan;

- (xi) Prepare and submit monthly and closeout final reports to the Board; and

- (xii) Perform other tasks necessary to fulfill the above duties and to carry out the intent of the RSMP.

(b) Workforce and Business Development (EBE Participation) Duties

In order to achieve the development of a diverse workforce and EBE participation for the Program, the ICO shall do the following:

- (i) Develop a methodology that assists contractors, suppliers, professional service firms, or any other businesses providing goods and services to the Program to meet the workforce diversity Goals of the Program and the minimum standards to be attained when providing such goods and services to the Program.
 - a. An independent compliance program that monitors performance of contractors, suppliers, and professional service firms.
 - b. Regular monthly reporting process to the Board setting forth the results of all employment and compliance activity and dispute resolution activities.
- (ii) Monitor the participation of EBE’s in RSMP Contracts. Such monitoring shall include, but is not limited to, a statistical analysis of each commodity, construction trade and professional services, financial services, employment compliance monitoring at issue and a determination as to whether in any such classification there is utilization of minorities and women in a manner that is proportioned to their availability range. While this monitoring function may be performed on an ongoing, as-needed basis after the completion of construction, the ICO will provide monthly, quarterly and annual written reports to the Board during preconstruction and construction phase and post-construction phase.
- (iii) The ICO will gather statistical data and report to the Board a summary of the purchases and contracts placed with EBE’s for the period and the relative percentage to the total of purchases and contracts for that period. All reports submitted shall specify the percentage of EBE’s that are MBE, WBE, DBE and/or SBE as defined herein, with each category reported separately. Payments made to non-certified firms shall be included as a separate set of figures for purposes of tabulating the total contract dollars paid to EBE’s.

PHASE III STRATEGIC PLAN -

- a. The reports will emphasize quantity and quality of EBE involvement by dollar volume. Reporting will serve the dual purpose of giving credit where due and highlighting areas needing additional effort. Monthly expenditure reports to the Board shall include information relevant to purchasing efforts based on ethnicity and gender.
- (iv) As an aide to Bidders, the Board or ICO may refer Bidders to various websites, EBE certifying entities and/or listings identifying certified EBE firms working in relevant business categories. For any EBE firm proposed by the Bidder, whether or not such firm is included in any courtesy information provided by the ICO, the Bidder must submit acceptable proof of the certification of each EBE firm for the ICO's review. An EBE's inclusion on any list provided by the ICO or any other source is not a representation that the EBE is qualified to do the work, which is solely in the determination of the Bidder/Contractor.
- a. For example, New York State-certified contractor information may be found on the below websites:
 - i. www.ny.newnycontracts.com - NYS ESD M/WBE Directory
 - ii. www.nysucp.net - NYS BizNet DBE Directory
 - iii. www.esd.ny.gov/mwbe.html - NYS Empire State Development (MBE and WBE certification)
 - iv. www.dot.ny.gov/main/business-center/civil-rights/general-info/dbe-certification - NYS DOT (DBE certification)

Article IV. Compliance with Diversity Plan Goals

4.01 Requirements for Bidders and/or Contractors

- (a) Bidders on all RSMP Contracts exceeding the monetary thresholds to which the Goals herein apply must submit such Compliance monitoring forms (the “OCSD Forms”) as are specified herein and included in Section 2 of this document, or as further required by the Contract and/or by the ICO.
- (b) Failure to complete the OCSD Forms or adequately demonstrate compliance with Plan Goals or Good Faith Efforts may be grounds for the Board upon recommendation of the ICO to reject a bid or disqualify a Bidder.
- (c) The Board reserves the right to modify the OCSD Forms from time to time during Phase 3 based on its experiences during the Program and on the advice of the Independent Compliance Officer (“ICO”).
- (d) Any agreement between a Bidder/Contractor and an EBE in which the EBE promises not to provide subcontracting quotations to another Bidder/Contractor is prohibited. Violation of this prohibition may be grounds to reject a bid, or exercise remedial actions permitted by the Contract or by this Plan.
- (e) The ICO may request that the Bidder or Contractor supply additional information within a reasonable timeframe to perform a review and assess whether goals have been adequately stated, and/or maintained throughout Contract performance.

4.02 Consideration of Bids

- (a) All Bidders shall use Good Faith Efforts to achieve business development goals through second tier participation (subcontractor work).
- (b) The ICO will determine the acceptability and sufficiency of all OCSD Forms and other information required to be submitted by Bidders.
- (i) Any deficiency in a Bidder’s OCSD Forms will be noted by the ICO and must be cured (if permitted by the Board’s bidding policy and applicable law), or the bid may be rejected.
- (c) Proposed EBE utilization shall become an additional factor considered in the evaluation of bids, in addition to, but not limited to all other generally accepted considerations.
- (d) The ICO shall evaluate the apparent low Bidder's Good Faith Efforts for Compliance with Goals. Upon a determination of Compliance, the ICO shall forward a recommendation to the Board for Contract award.

- (e) If there is an issue of non-Compliance, the ICO shall notify the affected party in writing (hereinafter "Notice of Non-Compliance Review") setting forth with particularity the reasons for the finding.
- (f) Any Bidder or prospective EBE subcontractor allegedly aggrieved by a finding of non-Compliance or by other provisions of this Program may make a written complaint to the ICO to request a review of such findings.
- (i) If promptly requested in writing, a post-bid review conference shall be held with the ICO, the apparent low Bidder or other complainant, and if applicable, the Project Manager.
- (ii) The ICO may thereafter determine whether to uphold or modify the prior finding, and make an appropriate recommendation to the Board.

Article V. Implementation of Goals on RSMP Contracts

5.01 Duties of the Contractor

(a) Workforce Diversity Goals

- (i) All Contractors or other firms or persons providing goods or services to the Board that are required to meet the workforce development and diversity Goals set forth herein shall do the following:
 - a. Provide the ICO with a monthly workforce census and other employment and certified payroll records necessary to verify achievement of the workforce diversity goals and demonstrate compliance with the minimum standards. Employee zip code information must be listed on monthly EEO report.
 - b. Provide on-demand access and cooperation to the ICO to review records on- site and/or at work-site premises to validate workforce participation. This may include unannounced visits and on-the-spot interviews that the ICO and its inspectors may hold with workers at the job site or at off-site work premises to verify their work status and claimed job classifications.

(b) Business Development and Diversity Goals

- (i) Contractors shall exercise Good Faith Efforts to assist EBE firms to secure work on the Contract.
- (ii) If requested by the Board or ICO, the Contractor must submit a copy of its subcontract or agreement with the EBE firm with attached construction schedule describing the anticipated time periods that the EBE subcontractor will be utilized on the Project.
- (iii) During the term of the Contract, the Contractor shall submit monthly reports to the ICO demonstrating the continued participation and final percentage participation of the certified EBE firm(s). This verification should include monthly payment records, any change orders with the certified EBE and any other supporting data required by the ICO.
- (iv) Attainment of the Goals will be based on actual payment records and not solely on the stated EBE subcontract amount. Amounts claimed to be attributable to EBE's, but that are not substantiated by actual payment records, will not be counted toward the final Goal.
- (v) Contractors shall timely perform all other requirements of their Contract(s).

5.02 General Duties of Contractor

- (a) Contractor must submit records of payment (e.g., copies of checks) for EBE subcontract work, as well as certified payrolls and other documents required by any other terms of its Contract, to the ICO on a monthly basis to enable the Board and ICO to verify that EBE and workforce diversity percentage Goals were ultimately met.
- (b) The Contractor must keep records to substantiate compliance with the EBE and workforce diversity Goals and requirements for three (3) years following completion of its Contract, to be made available to the ICO and Board upon request.
- (c) Violations of this Diversity Plan shall constitute a material breach of Contract, and the measures defined in this Plan or by Contract may be taken against Contractors not in Compliance.
- (d) This Plan is intended only to provide guidance as to the general submission and evaluation processes. Bidders and Contractors should refer to the individual project specifications and Contract for detailed requirements. All Contracts shall include remedies and sanctions for noncompliance and identify a means by which inquiries and disputes about the Program requirement may be addressed.

Article VI. Compliance Review and Procedures for RSMP Contracts

The Board, through the ICO, shall have the authority and power to enforce the provisions of this Diversity Plan. The ICO shall monitor Contractor’s employment of the EBE firms and evaluate workforce participation. The Board reserves the right to revise the Program Goals during Phase 2 for new contracts, upon recommendation of the ICO.

6.01 ICO Oversight and Investigations

- (a) The ICO shall be authorized to determine the Contractors’ compliance with Goals. Such a determination may be based on whether the Contractor is complying with the ICO-approved EBE utilization plan (DP-1); or other information made available to the Board through monitoring, onsite inspections, progress meeting, review of payrolls or other evidence.
- (b) Where Compliance with Workforce Diversity and/or Business Development Goals cannot be achieved through no fault and/or by act of omission of the Contractor, the Contractor shall present a plan to meet these Goals in an alternative manner acceptable to the ICO. In such case, the alternative plan shall be reviewed by the ICO for approval or rejection. The ICO will determine whether the alternative plan meets the intent and Goals and will notify the Contractor of the findings. The ICO shall notify the Board of any approved changes to the Contractor’s plan.
- (c) The ICO may, upon review of documentation and other investigation, determine that the Contractor has failed to meet an obligation of the Plan and is therefore in violation of the Contract. Such determination may be based upon the Contractor’s failure to achieve the Goals (or to undertake reasonable Good Faith Efforts to achieve the Goals), failure to provide sufficient documentation of Compliance, or otherwise failure to carry out the requirements of this Plan in the ICO’s discretion.
- (d) A determination of the ICO acting on behalf of the Board is final, subject to the following appeal process. Any appeals therefrom must be formally submitted in writing to the Board within 5 days of the Contractor being notified of the ICO’s determination. In the event of an appeal, the Contractor will have an opportunity to be heard at a meeting with members of the Board and the ICO.
- (e) After such a meeting takes place, the ICO may recommend and/or the Board may otherwise approve any of the sanctions for non-compliance set forth in Section 6.02(c).

6.02 Sanctions for Non-Compliance

- (a) The Board, through the action of the ICO, shall have the authority and power to enforce the provisions of this Plan. Failure to comply with the requirements may subject the non-complying party to administrative sanctions.
- (b) A violation of this Plan by a Contractor shall constitute a material breach of Contract and shall be enforceable as such by the Board as permitted by the terms of the Contract, in addition to or in conjunction with imposition of administrative sanctions set forth in this Plan.
- (c) The following sanctions and penalties are established for the enforcement of this Plan:
 - (i) Declaration of Non-Responsiveness: In addition to standard factors in bid evaluation, the Board may declare a bid non-responsive where it is determined that a Bidder has not filed some or all of the required OCSD forms or has failed to implement Good Faith Efforts.
 - (ii) Cancellation of Contract: The Board may declare a Contract null and void where, after such Contract has been awarded, an investigation by the ICO and Board determines that the Bidder’s documents submitted to the Board contain false, fictitious, or fraudulent information.
 - (iii) Rejection of Future Bids: The Board may reject any or all future bids of a Bidder or Contractor until such time as such party shall have demonstrated that it is or shall come into Compliance with this Plan and the Contract.
 - (iv) Withholding Payment, Limited Suspension and Debarment: For falsifications, misrepresentations, or engaging in subterfuge to obtain a Contract, the Board may remove a Bidder or Contractor from its list of eligible firms entitled to do business with the Board for a period to be determined and/or withhold payment, upon reasonable notice and opportunity for due process hearing.
 - (v) Permanent Debarment: For repeated and/or egregious violations, the Board may determine that a Bidder or Contractor is no longer eligible firms to do business with the Board.

PHASE III STRATEGIC PLAN -

6.03 Guidelines for Imposition of Sanctions

- (a) General: No suspension shall be imposed by the Board except upon evidence of specific conduct on the part of an EBE participant (or proposed participant), Bidder or Contractor on an RSMP Contract that is inconsistent with or in direct contravention of the applicable provisions of this Plan and Program. Furthermore, the imposition and enforcement of sanctions shall be consistent with applicable State and Federal law.
- (b) Severity of Sanctions: In determining the length of any suspension, the Board shall consider the following factors:
- (i) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may have resulted from a misunderstanding on the part of the Contractor or EBE participant of the duties imposed on them by this Program or the Contract;
 - (ii) The number of specific incidences of failure by the Bidder or Contractor or EBE participant to achieve and maintain Compliance;
 - (iii) Whether the Bidder or Contractor or EBE participant has been previously subjected to sanctions;
 - (iv) Whether and to what extent the Bidder or Contractor or EBE participant has willfully failed or refused to provide the Board or the ICO with any information required by this Program, Contract, or applicable law;
 - (v) Whether the Bidder or Contractor or EBE participant has materially misrepresented any material facts in any filing or communication to the Board or the ICO or other agencies having legal authority over the parties; and
 - (vi) Whether any subsequent restructuring of the Bidder, Contractor or EBE participant's business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.
- (c) Length of Suspension: Suspensions may be for any length of time as determined by the Board. Suspensions in excess of one year shall be reserved for cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in contravention of applicable requirements, cases where the Bidder/Contractor or EBE participant has been previously suspended, or other similarly egregious conduct.

Article II. Severability

If any of the provisions in this Plan or any section, clause, or other part thereof shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this Program shall not be affected by such invalidity. In the event of any conflict between this Plan and a Contract, the terms of the Contract shall prevail.



OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

OCSD-1 M/WBE, SBE AND DBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

I, _____ (CONTRACTOR OR GRANT REPRESENTATIVE),

the _____ (GRANTEE/COMPANY NAME)

agree to adopt the following policies with respect to the project being developed or services rendered at

NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

- (a) This organization 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 programs of affirmative action to ensure that minority group members 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 on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State 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 and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (c) At the request of the ESD, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.
- (d) Organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors 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.
- (e) The organization will include the provisions of sections (a) through (d) of this agreement 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.

MWBE PARTICIPATION (MWBE)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.



OCSD-1 M/WBE, SBE AND DBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

- (2) Request a list of State-certified M/WBEs from ESD’s Office of Contractor and Supplier Diversity (“OCSD”) and solicit bids from the listed vendors directly. OCSD may be reached via email at OCSD@ESD.NY.GOV.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

SBE AND DBE PARTICIPATION (EBE)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the SBE/DBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified DBEs and self-certified SBEs including solicitations to contractor associations.
- (2) Request a list of State-certified DBEs from ESD’s Office of Contractor and Supplier Diversity (“OCSD”) and solicit bids from the listed vendors directly. OCSD may be reached via email at OCSD@ESD.NY.GOV.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective EBEs .
- (4) Where feasible, divide the work into smaller portions to enhance participation by SBEs and DBEs and encourage the formation of joint venture and other partnerships among EBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to SBEs and DBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting the EBE contract participation goals.
- (6) Ensure that progress payments to are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage DBE and SBE participation.

Agreed on this _____ day of _____ 20_____.

By: _____
(SIGNATURE)

Print Name: _____
Title:



OCSD-1 M/WBE, SBE AND DBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

Minority & Women-owned Business Enterprise-Equal Employment Opportunity Liaison

_____ (name of designated contractor/grantee liaison) is designated as the Minority and Women-owned Business Enterprise Liaison responsible for administering the Minority and Women-owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____% Minority Business Enterprise Participation
_____% Women’s Business Enterprise Participation
_____% **TOTAL/OVERALL M/WBE Participation Goal**

EEO Contract Goals

NOT APPLICABLE % Minority Labor Force Participation
NOT APPLICABLE % Female Labor Force Participation

S/DBE Contract Goals

_____% Small Business Enterprise Participation % Disadvantaged Business Enterprise Participation

(Signature of Contractor’s Authorized Representative)

*Name: _____
*Company: _____
*Title: _____
*Phone: _____
*Fax: _____
*Address: _____



OCSD-2 - STAFFING PLAN

(REQUIRED ONLY OF PROFFESIONAL SERVICE CONTRACTS VALUED AT \$25,000 OR MORE AND CONSTRUCTION CONTRACTS VALUED AT \$100,000 OR MORE)

OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

Submit with Bid or Proposal – Instructions on page 2

Contract/Project No.:	Contract/Project Title:	Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor Subcontractor's name _____
Contractor/Grantee Name:		
Contractor/Grantee Address:		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Total Work force	Work force by Gender			Work force by Race/Ethnic Identification																				
		Total Male (M)	Total Female (F)	Total X (X)	White			Black			Hispanic			Asian			Native American			Disabled			Veteran		
					(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)
Officials/Administrators																									
Professionals																									
Technicians																									
Sales Workers																									
Office/Clerical																									
Craft Workers																									
Laborers																									
Service Workers																									
Temporary /Apprentices																									
Totals																									

PREPARED BY (Signature):	TELEPHONE NO.:	EMAIL ADDRESS:	DATE:
NAME AND TITLE OF PREPARER (Print or Type):			



OCSD-2 - STAFFING PLAN

((REQUIRED ONLY OF PROFFESIONAL SERVICE CONTRACTS VALUED AT \$25,000 OR MORE AND CONSTRUCTION CONTRACTS VALUED AT \$100,000 OR MORE))

OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

General Instructions: All Contractors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (Form OCSD-2) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor’s and/or Subcontractor’s total work force, the Contractor shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor’s and/or Subcontractor’s total work force, the Contractor shall complete this form for the contractor’s and/or Subcontractor’s total work force.

Instructions:

- 1. Enter the Contract or Solicitation number that this report applies to along with the name and address of your company or organization.
- 2. Check off the appropriate box to indicate if the Contractor completing the report is the contractor or a subcontractor.
- 3. Check off the appropriate box to indicate work force to be utilized on the contract or the Contractor’s total work force.
- 4. Enter the total work force by EEO job category.
- 5. Break down the anticipated total work force by gender and enter under the heading ‘Work force by Gender’
- 6. Break down the anticipated total work force by race/ethnic identification and enter under the heading ‘Work force by Race/Ethnic Identification’. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
- 7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
- 8. Enter the name and contact details of the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION:

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- o **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- o **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- o **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- o **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- o **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.


OTHER CATEGORIES:

- o **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- o **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- o **GENDER** Male, Female, or “X”


PHASE III STRATEGIC PLAN -



MONTHLY EMPLOYMENT UTILIZATION REPORT - DP-3/RSMP														ROCHESTER SCHOOLS MODERNIZATION PROGRAM PHASE III									
1. Project :														2. Reporting Period: ____/____/____ - ____/____/____									
3. Reporting Contractor Name / Address / Phone No. / Fax No. No Work Performed ()														4a. Reporting Contractor is a () 1st Tier - or - () Lower Tier Contractor 4b. Only if a lower tier contractor, indicate to whom you are a subcontractor:									
Project Goals : Minority - 23% Women - 7%																							
5. POSITION	6 EMPLOYEE NAME	7 City of Rochester Resident (Y/N)	8a. Total All Hours by Service		8b. Caucasian (Hours)		8c. Black of not Hispanic Origin (Hours)		8d. Hispanic (Hours)		8e. Asian or Pacific Islander (Hours)		8f. American Indian or Alaskan Native (Hours)		9. Minority (Male & Female) % of Total Hours	10. Female (Caucasian Only) % of Total Hours	11. Total Number of Employees		12. Total Number of Caucasian Employees		13. Total Number of Minority Employees		
			M	F	M	F	M	F	M	F	M	F	M	F			M	F	M	F	M	F	M
Grand Total			0	0	0	0	0	0	0	0	0	0	0	0			0	0	0	0	0	0	0
Certification Statement - the below signed, being an authorized representative of the reporting company, hereby certifies that the above information all the hours worked by the reporting company's employees on the above noted project site during the above noted month. represents																							
14. Reporting Company Official's Printed Name and Title														15. Reporting Company Official's Signature				16. Date Signed				17. Page	
																						__1__ of __1__	




Empire State
Development



Anchin

ACCOUNTANTS & ADVISORS



INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE, SBE and DBE Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) and/or Small Business Enterprise (SBE) Disadvantaged Business Enterprise (DBE) under the contract. Attach additional sheets if necessary.

*** indicates mandatory fields**

*Contractor Name: _____

*Representative Name: _____

*Phone: _____

*Fax: _____

*Email: _____

*Total Dollar Value of Contract/Grant: \$ _____

Address: _____

Town, State & Zip: _____

*ESD Contract/Project Number: _____

RFP/RFQ/Solicitation Number: _____

*MWBE Goal: MBE _____% + WBE _____% = MWBE GOAL _____%

*SBE Goal: _____% *DBE Goal: _____%

1. * Certified MWBE, SBE or DBE Firm Name, Contact Person's Name, Address, Phone and Email.	2. * Check All That Apply	3. * Federal ID No.	4. *Detailed Description of Work (Attach additional sheets, if necessary, Attach Contract if available)	5. *Check Firm Type That Applies for Work Completed on this Project	6. *Dollar Value of Contract (if unavailable or yet undetermined, indicate \$1)
A.	<div>NYS CERTIFIED</div> <div><div><input type="checkbox"/> MBE</div><div><input type="checkbox"/> WBE</div><div><input type="checkbox"/> SBE (Self-Certified)</div><div><input type="checkbox"/> DBE</div></div>			<div><input type="checkbox"/> Subcontractor</div> <div><input type="checkbox"/> Subconsultant</div> <div><input type="checkbox"/> Materials Supplier</div> <div><input type="checkbox"/> Trade Agents/Brokers</div>	
B.	<div>NYS CERTIFIED</div> <div><div><input type="checkbox"/> MBE</div><div><input type="checkbox"/> WBE</div><div><input type="checkbox"/> SBE (Self-Certified)</div><div><input type="checkbox"/> DBE</div></div>			<div><input type="checkbox"/> Subcontractor</div> <div><input type="checkbox"/> Subconsultant</div> <div><input type="checkbox"/> Materials Supplier</div> <div><input type="checkbox"/> Trade Agents/Brokers</div>	

7. If unable to fully meet the MWBE, SBE or DBE goals set forth in the contract, the Contractor must submit a Waiver Request form, which may be obtained from the Independent Compliance Officer, Anchin.

PREPARED BY (Signature): _____ DATE: _____

Preparer's Name (Print or Type): _____

Preparer's Title: _____

Date: _____

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLES 15-A AND 17-B, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

The MWBE Certification status of the firms listed on this form **MUST** be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises. This directory is available at <https://ny.newnycontracts.com>.

The SBE Certification requires the completion of a self-certification form issued by the RSMP.

The DBE Certification status of the firms listed on this form **MUST** be verified using the Directory of New York State Certified Disadvantaged Business Enterprises. This directory is available at <https://nysucp.newnycontracts.com/>

TELEPHONE NO.: _____

EMAIL ADDRESS: _____

Policy Regarding Use of MWBE/SBE/DBE Suppliers and Brokers Only
sums paid to MWBE, SBE or DBE for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.
FOR CONSTRUCTION/CAPITAL PROJECTS – The portion of a contract with an MWBE, SBE or DBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. Brokers will not receive credit for this project.

**** FOR ICO USE ONLY ****

REVIEWED BY: _____

DATE: _____

UTILIZATION PLAN APPROVED?
YES PARTIAL NO Date: _____

☐ ☐ ☐

Phase III Strategic Plan

ROCHESTER JOINT SCHOOLS
CONSTRUCTION BOARD

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PHASE III STRATEGIC PLAN -



OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY



OCSD-5

WAIVER REQUEST FORM

Request for Waiver			
Grantee / Contractor Name:		Fed ID No.:	
Full Address:		Contract / Project Number:	
Project Details (Project Name, Project Location):		Have you Previously submitted a Waiver Request? (YES/NO)	
Current Contract Value:		MWBE Goal: MBE % + WBE % SBE Goal: % DBE Goal: %	
<p>By submitting this form and the required information, the Contractor certifies that every "Good Faith Effort" has been taken to promote MWBE, SBE and DBE participation pursuant to the MWBE, SBE and DBE requirements set forth under the contract. Review 5 NYCRR § 142.8 and 9 NYCRR § 252, Contractor's Good Faith Efforts, for the precise definition of "Good Faith Effort." Failure to adequately demonstrate Good Faith Efforts will result in a denial of your Waiver Request. It is the Contractor's responsibility to ensure that adequate, clear and complete information is presented to the Office of Contractor and Supplier Diversity ("OCSD").</p>			
<p>*UTILIZATION VALUE MET:</p> <p>MBE: \$_____ WBE: \$_____ SBE \$ _____ DBE: \$ _____</p> <p>*CONTRACTOR IS REQUESTING :</p> <p>1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. REQUESTED MBE GOAL: _____%</p> <p>2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. REQUESTED WBE GOAL: _____%</p> <p>3. <input type="checkbox"/> SBE Waiver – A waiver of the MWBE Goal for this procurement is requested. REQUESTED SBE GOAL: _____%</p> <p>4. <input type="checkbox"/> DBE Waiver – A waiver of DBE Participation Goal for this procurement is requested. REQUESTED DBE GOAL: _____%</p>			
PREPARED BY (Signature): _____ Date: _____			
SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT THAT IT HAS MADE GOOD FAITH EFFORTS, PURSUANT TO 5 NYCRR §142.8 AND/OR 9 NYCRR §252, TO INCLUDE THE PARTICIPATION OF NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES AND SERVICE DISABLED VETERAN OWNED BUSINESSES IN THE ABOVE PROJECT OR CONTRACT. CONTRACTOR HEREBY AGREES TO PROVIDE ANY AND ALL RELEVANT DOCUMENTATION IN SUPPORT OF THE DEMONSTRATION OF ITS GOOD FAITH EFFORTS AND ACKNOWLEDGES THAT IT HAS PROVIDED WITH THIS WAIVER REQUEST ALL AVAILABLE DOCUMENTATION SUPPORTING ITS GOOD FAITH EFFORTS.			
*Name and Title of Preparer:		*Telephone Number:	*Email:



OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY



OCSD-5

WAIVER REQUEST FORM

Contractor's Good Faith Efforts

- (a) Contractors must document their good faith efforts toward utilizing certified firms, including but not limited to, those identified within a utilization plan. Such documented efforts, shall include, at a minimum:
- (1) Copies of its solicitations of certified firms enterprises and any responses thereto;
 - (2) If responses to the contractor's solicitations were received, but a certified firm was not selected, the specific reasons that such firm was not selected;
 - (3) Copies of any advertisements for participation by certified firms timely published in appropriate general circulation, trade, MWBE and SDVOB oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
 - (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified firms enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
 - (5) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified firms.
- (b) In addition to the information provided by the contractor in subdivision (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
- (1) where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontract or supplier opportunities in the contract;
 - (2) the number of certified firms in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
 - (3) the actions taken by the contractor to contact and assess the ability of certified firms located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
 - (4) whether the contractor provided relevant plans, specifications or terms and conditions to certified firms sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
 - (5) the terms and conditions of any subcontract or provision of suppliers offered to certified firms and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;
 - (6) whether the contractor offered to make up any inability to comply with the certified firms goals in the subject State contract in other State contracts being performed or awarded to the contractor;
 - (7) the extent to which contractor's own actions, including but not limited to, any failure by contractor to discharge contractor's duties pursuant to this Part, Articles 15-A or 17-B of the Executive Law, contributed to contractor's inability to meet the maximum feasible portion of the contract goals;
 - (8) whether the contractor knowingly utilized one or more certified firms, in the performance of the subject State contract, that contractor knew or reasonably should have known could not perform a commercially useful function.



OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

MWBE, SBE AND DBE COMPLIANCE AND PAYMENT REPORT

OCSD-6

CONTRACTOR/GRANTEE: _____
ADDRESS: _____
TOWN/COUNTY/ZIP: _____
CONTACT PERSON: _____
TELEPHONE: _____
EMAIL: _____

RSMP REPRESENTATIVE: _____
CONTRACT/PROJECT NAME: _____
CONTRACT/PROJECT #: _____
PROJECT START DATE: _____
PERCENT COMPLETE: _____
ACTUAL COMPLETION DATE: _____

REPORTING PERIOD: ☐ Monthly for the Month of: (Month) (Year)

Attach MWBE, SBE and DBE executed contracts, wire transfer confirmations and cancelled checks as proof of payment to the identified EBEs.
This report should be completed and signed by an officer of the Reporting Company. Attach additional sheets if necessary.

PRIME CONTRACTOR, if different from above (Name, Address, Contact Person, Title and Phone # with area code)	PRIME CONTRACT AMOUNT	MWBE, SBE or DBE SUBCONTRACTOR (Name, Address, Contact Person, Title and Phone # with area code)	NYS CERTIFICATION (Check One)	DESCRIPTION OF SERVICES	CONTRACT AMOUNT	PAYMENTS PREVIOUSLY REPORTED	PAYMENTS ON CURRENT REPORT	TOTAL PAYMENTS TO DATE
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> DBE		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> DBE		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> DBE		\$	\$	\$	\$

CERTIFICATION: I, _____ (Print Name), the _____ (Title) of the Reporting Company above, do
certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief, the information contained herein is complete and accurate.

SIGNATURE: _____ DATE: _____
Submission of this form constitutes the Contractor’s acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate
information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.



Empire State
Development



OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY (“OCSD”)
OCSD-7: MWBE Application Expedite Request Form

INSTRUCTIONS: All information requested below is mandatory for submission. MWBE certification determinations are completed by the Division of Minority and Women’s Business Development (“DMWBD”). Due to privacy and confidentiality concerns, DMWBD is unable to provide OCSD with details of, or updates on, any certification application. A notification will be circulated if the MWBE applicant is certified as a NYS MWBE.

REQUIREMENTS: For an MWBE expedite request to be accepted by DMWBD, it must:

- 1. Be for an MWBE Applicant with a pending application in the [New York State Contract System](#).
- 2. Be for a procurement and/or contract that has not yet been awarded to any vendor.
- 3. Include detailed search information of the [NYS Directory of Certified MWBEs](#) (“the Directory”), showing that no suitable MWBEs were found and/or were available to perform the work needed. This includes the search criteria and codes utilized to identify existing certified MWBEs, the results of those searches, and specific and detailed written reasons for not utilizing MWBEs resulting from those searches. **Screenshots of the MWBE Directory searches and results are required be attached with this expedite request.**

*** Failure to meet any of the above criteria, or to fully complete this form, shall mean that the expedite request will not be accepted.**

DISCLAIMER: Submission of this request does not guarantee acceptance of the expedite request. Acceptance of the expedite request does not guarantee certification of the MWBE Applicant. After submission of the Expedite Form, DMWBD can be contacted via email at: mwbecertification@esd.ny.gov. Only NYS-certified MWBEs may count towards ESD’s MWBE goals.

Submit a completed Expedite package via email to: OCSD@esd.ny.gov for processing

ESD GRANTEE/CONTRACTOR INFORMATION (“REQUESTING ORGANIZATION”, “REQUESTOR”)			
ESD CONTRACTOR/GRANTEE: _____		CONTACT PERSON EMAIL: _____	
CONTACT PERSON: _____		ESD CONTRACT/PROJECT #: _____	
TELEPHONE: _____		CONTRACT/PROJECT NAME: _____	

MWBE APPLICANT INFORMATION	
NAME OF FIRM: _____	OWNER PHONE: _____
OWNER NAME: _____	ADDRESS, CITY, STATE & ZIP: _____
OWNER EMAIL: _____	MWBE APPLICATION No.: _____

CURRENT/PAST PROCUREMENT INFORMATION			
Please provide details on procurement history with the MWBE applicant, both current and past, for classification and tracking purposes.			
Contract Date	Contract Number	Description of Goods/Services to be Provided	Contract Amount



OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY (“OCSD”)
OCSD-7: MWBE Application Expedite Request Form

MWBE DIRECTORY SEARCH
Please provide the search terms and codes (NAICS, NIGP, etc.) utilized in your MWBE Directory search. Please add a separate attachment if additional space is needed.
Copies/screenshots of the searches completed, and the associated results, are required. Commodity code searches are required.

Commodity Code Search Terms & Criteria	Search Results (Per the Directory)	If certified MWBEs resulted from you search, please provide a detailed explanation as to why these certified firms do not meet your project needs.	Name of Associated Backup/Copy of Search Screenshot Attachment
	firms		
	firms		
	firms		

SCOPE OF WORK INFORMATION

DESCRIPTION OF THE NEEDED SCOPE OF WORK	
REASON FOR INTEREST IN THE MWBE APPLICANT	
HAS THIS FIRM BEEN AWARDED THIS SCOPE OF WORK?	<input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, DATE: _____
HAS A CONTRACT BEEN EXECUTED WITH THIS FIRM?	<input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, DATE: _____

Submission of this request does not guarantee certification of the MWBE Applicant. ESD and DMWBD reserve the right to ask for additional information on the submitted request. MWBE certification is based SOLELY on the applicant meeting the MWBE criteria as required by Executive Law Article 15-A and its associated regulations.

CERTIFICATION: I, _____ (Print Name), the _____ (Title) of the Requesting Organization above, do certify that (i) I have read this MWBE Application Expedite Request Form and (ii) to the best of my knowledge, information and belief, the information contained herein is complete and accurate.

SIGNATURE¹: _____ DATE: _____
Submission of this form constitutes the Requestor’s acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the request.

¹Electronic signatures (“eSignatures”) are accepted. Typed signatures are not accepted.

Links Referenced Above

New York State Contract System:	https://ny.newnycontracts.com/
NYS Directory of Certified MWBEs:	https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp

GOOD FAITH EFFORTS CHECKLIST

The Rochester Joint Schools Board (RJSCB) welcomes your participation in the Rochester School's Modernization Program (RSMP). Pursuant to the requirements of the RSMP and in consideration of the privilege to submit bids/proposals on contracts funded, in whole or in part, by RJSCB, I/WE, _____, by Owner/Principal _____,

HEREBY attest that we have exercised the following Good Faith Efforts in addition to my /our regular and customary solicitation process:

I/We have delivered written notice to all available certified EBE's for each potential subcontracting or supply category in the Contract AND all potential subcontractors or vendors which requested information on the Contract.

I/We have provided all potential subcontractors or vendors with adequate information as to plans, specifications, relevant terms and conditions of the Contract, bonding requirements, and the last date and time for receipt of price quotations.

I/We have attended a special meeting called to inform business and individuals of subcontracting or supply opportunities.

I/We have, in accordance with normal industry practices, divided the contract into economically feasible segments that can be performed by an EBE.

I/We have provided a written explanation for rejection of any potential subcontractor or vendor to the EBE/, including the name of the firm proposed to be awarded the subcontract or supply agreement, where price competitiveness is not the reason for rejection.

I/We have actively solicited, through sending letters or initiating personal contact, EBE's in all feasible and appropriate categories providing subcontracting opportunities for the contract under consideration.

I/We have utilized the services of available community organizations and associations, contractors' groups, and trade associations known to publicize contracting and procurement opportunities, for the purpose of obtaining assistance in the contacting and recruitment of EBE's for the RJSCB's contract under consideration.

I/We have advertised in publications of general circulation in the Rochester Metropolitan Surrounding Area and other media owned by, or otherwise focused or marketed to EBE's, and the advertisement identifies and describes the specific subcontracting or other opportunity in reasonable detail. (At a minimum, utilizing NYS Contract Reporter <https://www.nyscr.ny.gov/advertise.cfm>)

I/We have conducted discussions with interested EBE's in good faith, and provided the same

willingness to assist EBE's as has been extended to any other similarly situated subcontractor.

I/We have taken steps to ensure that all labor supervisors, superintendents, and other supervisory personnel are aware of and carry out the obligation to maintain a non- discriminatory work environment, free of harassment, intimidation and coercion at all construction sites, offices and other facilities to which employees are assigned to work.

Please also provide the following:

1. Copies of ads placed for solicitation.
2. Copies of all directory searches performed including those searches that resulted in no certified firms for a specific scope or work. Please document the search terms and/or commodity codes used during your session.
3. Telephone/meeting logs with details including the date, time, firm contacted, person(s) communicated with and outcome.
4. Copies of emails and/or faxes that show the "direct" scope of what you solicited the potential subcontracting firm to perform and their responses.
5. A narrative describing the specific steps undertaken to reasonably structure the contract scope of work for purposes of subcontracting with or obtaining supplies from NYS certified MBE/WBE/SBE/DBE firms.
6. Evidence that off-site firms and services were considered for contracting opportunities (e.g., material suppliers, trucking, fabricator, manufacturer, etc.).
7. Copies of documentation showing negotiations took place between the low bidder and prospective subcontractor or other firms (supplier, manufacturer, fabricator, etc.).
8. Copies of quotes from the selected firms and quotes received when a specific scope of work was awarded to a non-certified firm versus a certified firm (when certified firm's quote was deemed unreasonable or excessive).
9. Detailed explanation for any scope of work deemed "self-performing" without intent to split the work (when there is MBE/WBE/SBE/DBE availability and the utilization goal has not been met).
10. Supporting documentation of any and all additional efforts performed prior to letting or pre-designation date.

Please note the following documentation of Good Faith Effort will be deemed inadequate:

1. "In-house" generated lists that do not include MBE/WBE/SBE/DBE targeted firms.
2. Copies of redundant emails to MBE/WBE/SBE/DBE firms containing identical language.
3. Unsubstantiated responses of non-interest from MBE/WBE/SBE/DBE firms.



Please fill out this form with as much detail as possible. Supporting documentation for Good Faith Efforts should include (at a minimum) the following:

- *Insufficient documentation of Good Faith Efforts include:
 - "In-house" generated lists that do not include MBE/WBE/SDVOB targeted firms.
 - "In-house" generated lists that do not identify firms for specific work items or description being solicited.
 - Copies of redundant emails to MBE/WBE/SDVOB firms containing identical language.
 - Unsubstantiated response of non-interest from MBE/WBE/SDVOB firms.
 - Numerous copies of the entire contract sent to each firm to attempt to provide quantity in lieu of quality

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