

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) REQUIREMENTS FOR CONTRACTS

1. General Provisions

- A. The Rochester Genesee Regional Transportation Authority (“RGRTA”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (a) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing, or (b) in excess of \$100,000 for real property renovations and construction.
- B. The VENDOR to the subject contract (the “VENDOR” and the “CONTRACT,” respectively) agrees, in addition to any other nondiscrimination provision of the CONTRACT and at no additional cost to RGRTA, to fully comply and cooperate with RGRTA in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The VENDOR’s demonstration of “good-faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section 7 of this Exhibit and such other remedies are available to RGRTA pursuant to the Contract and applicable law.

2. Contract Goals

- A. Unless indicated otherwise in the Solicitation or Base Contract, RGRTA hereby establishes an overall goal of 30% for MWBE participation, based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established by RGRTA, the VENDOR should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.
Additionally, the VENDOR is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. The VENDOR understands that only sums paid to MWBEs 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.

Any portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

For Construction Contracts, the portion of a contract with an MWBE 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 supplier contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to

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represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage charged by the MWBE.

- D. The VENDOR must document “good-faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the CONTRACT. Such documentation shall include, but not necessarily be limited to:
- a. Evidence of outreach to MWBEs;
 - b. Any responses by MWBEs to the VENDORS outreach;
 - c. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 - d. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by RGRТА with MWBEs; and,
 - e. Information describing specific steps undertaken by the VENDOR to reasonably structure the CONTRACT scope of work to maximize opportunities for MWBE participation

3. Equal Employment Opportunity (“EEO”)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the CONTRACT.
- B. In performing the Contract, the VENDOR shall:
- a. Ensure that each VENDOR and subcontractor performing work on the CONTRACT shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - b. The VENDOR shall submit an EEO policy statement to RGRТА within seventy-two (72) hours after the date of the notice by RGRТА to award the CONTRACT to the VENDOR.
 - c. If the VENDOR, or any of its subcontractors, does not have an existing EEO policy statement, RGRТА may require the VENDOR or subcontractor to adopt a model statement (see Form – Equal Employment Opportunity Policy Statement).
 - d. The VENDOR’s EEO policy statement shall include the following language:
 - i. The VENDOR 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 EEO programs to ensure that minority group members and women 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.
 - ii. The VENDOR shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - iii. The VENDOR shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the VENDORS obligations herein.

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iv. The VENDOR will include the provisions of Subdivisions (i) through (iii) of this Subsection "d" and Paragraph "D" of this Section 3, which provides for relevant provisions of the Human Rights Law, 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 the CONTRACT.

C. Workforce Utilization Report

- a. The VENDOR shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by RGRTA on a quarterly basis during the term of the CONTRACT.
- b. Separate forms shall be completed by the VENDOR and any subcontractors.
- c. Pursuant to Executive Order #162, VENDORS and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

D. The VENDOR shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The VENDOR and its subcontractors 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.

4. MWBE Utilization Plan

- A. The VENDOR represents and warrants that the VENDOR has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by RGRTA, through the New York State Contract System ("NYSCS"), which can be viewed at <https://newnycontracts.com>, provided, however, that the VENDOR may arrange to provide such evidence via a non-electronic method to RGRTA, either prior to, or at the time of, the execution of the CONTRACT.
- B. The VENDOR agrees to adhere to such MWBE Utilization Plan in the performance of the CONTRACT.
- C. The VENDOR further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, RGRTA shall be entitled to any remedy provided herein, including but not limited to, a finding that the VENDOR is non-responsive.

5. Waivers

- A. If the VENDOR, after making good-faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the VENDOR may submit a request for a waiver through the NYSCS, or a non-electronic method provided by RGRTA. Such waiver request must be supported by evidence of the VENDOR's good-faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, RGRTA shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If RGRTA, upon review of the MWBE Utilization Plan, quarterly MWBE VENDOR Compliance Reports described in Section 6, or any other relevant information, determines that the VENDOR is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, RGRTA may issue a

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notice of deficiency to the VENDOR. The VENDOR must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

6. Quarterly MWBE VENDOR Compliance Report

A. The VENDOR is required to submit a quarterly MWBE VENDOR Compliance Report through the NYSCS, provided, however, that the VENDOR may arrange to provide such report via a non-electronic method to RGRTA by the 5th day following the end of each quarter during the term of the CONTRACT.

7. Liquidated Damages - MWBE Participation

A. Where RGRTA determines that the VENDOR is not in compliance with the requirements of this Exhibit and the VENDOR refuses to comply with such requirements, or if the VENDOR is found to have willfully and intentionally failed to comply with the MWBE Contract Goals, the VENDOR shall be obligated to pay to RGRTA liquidated damages.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

- a. All sums identified for payment to MWBEs had the VENDOR achieved the contractual MWBE goals; and
- b. All sums actually paid to MWBEs for work performed or materials supplied under the CONTRACT.

C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by RGRTA, the VENDOR shall pay such liquidated damages to RGRTA within sixty (60) days after they are assessed. Provided, however, that if the VENDOR has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the VENDOR following the complaint process.