

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

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Contractor Requirements and Procedures for Participation by New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

## **1.1. New York State Law**

- A. Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations, the RGRTA is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of RGRTA contracts.

## **1.2. Business Participation Opportunities for MWBEs**

- A. Unless indicated otherwise on the Cover Page of the Solicitation, RGRTA hereby establishes an overall goal of 30% for MWBE participation for New York State-certified Minority-owned Business Enterprise (“MBE”) and New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this Solicitation (“Contract”) must document its good-faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this Solicitation, the respondent agrees that RGRTA may withhold payment pursuant to any Contract awarded as a result of this Solicitation pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how RGRTA will evaluate a Contractor’s “good-faith efforts,” refer to 5 NYCRR § 142.8.
- B. The respondent 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.
- C. The 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
- D. In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this Solicitation, such finding constitutes a breach of contract and RGRTA may withhold payment as liquidated damages.
- E. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- F. By submitting a bid or proposal, a respondent agrees to demonstrate its good-faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, or utilizing the forms included with this solicitation.
- G. Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

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

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- a. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to RGRTA for review and approval. RGRTA will review the submitted MWBE Utilization Plan and advise the respondent of RGRTA's acceptance or issue a notice of deficiency prior to contract award.
  - b. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within five (5) business days of receipt, or other timeline as required by RGRTA, by submitting to the Procurement Officer identified in this Solicitation, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by RGRTA to be inadequate, the Procurement Officer shall notify the respondent and direct the respondent to submit, within five (5) business days, or other timeline as required by RGRTA, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- H. RGRTA may disqualify a respondent as being non-responsive under the following circumstances:
- a. If a respondent fails to submit an MWBE Utilization Plan;
  - b. If a respondent fails to submit a written remedy to a notice of deficiency;
  - c. If a respondent fails to submit a request for waiver; or
  - d. If RGRTA determines that the respondent has failed to document good-faith efforts.
- I. The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made to RGRTA at any time during the term of the Contract, but must be made no later than when Contractor identifies that they will be unable to meet the accepted MWBE goal.
- J. The successful respondent will be required to submit reports on a quarterly basis to RGRTA, by the 5th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### ***1.3. Equal Employment Opportunity Requirements***

- A. By submission of a bid or proposal in response to this Solicitation, the respondent agrees with all of the terms and conditions of the Exhibit entitled "Sample Contract" section entitled "Standard Clauses for All New York State Contracts" including Clause 12 entitled "Equal Employment Opportunities for Minorities and Women". The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Deliverables"), except where the Deliverables are for the beneficial use of the respondent, undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.
- B. The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement to RGRTA with its bid or proposal.

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

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- C. If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, as required by New York State on a quarterly basis during the term of the Contract. The format of such report may be modified from time to time.
  - a. Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.
  - b. Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will 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.
  - c. Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.