

 <p>Category: Financial Legal and Compliance</p> <p>Responsible Office: System-wide Supplier Diversity Program</p>	<p>Procedure Title: Participation by Minority Group Members and Women (MWBEs) with Respect to State University of New York Contracts</p> <p>Document Number: 7557</p> <p>Effective Date: February 01, 2025</p> <p>This procedure item applies to: State-Operated Campuses</p>
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Summary

This procedure sets forth guidelines to assist state-operated campuses of the State University of New York (SUNY) in the procurement of materials, supplies, equipment, construction, construction-related services, and services from New York State certified minority- or women-owned business enterprises (MWBE). Specifically, it outlines steps that campuses must employ in the procurement process for commodities and services (Procedure Item 7553) and construction (Procedure Item 7554) and construction-related services (Procedure Item 7555) to be in compliance with NYS Executive Law Article 15-A, 5 NYCRR Part 140 and SUNY MWBE policy (Procedure Item 7556).

This procedure applies to all procurements exceeding \$25,000 for labor, services (including architectural and design services), supplies, equipment, or materials, and for procurements exceeding \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements.

Process

I. REQUIREMENTS

1. System-wide:
The SUNY System-wide Supplier Diversity Program will comply with NY Executive Law Article 15-A, 5 NYCRR Part 140, SUNY MWBE policy (Procedure Item 7556), and the SUNY Board Resolution January 2012 entitled "Minority and Women Enterprises Utilization Reports."
2. Appointment and Responsibility of Campus Coordinator:
Each campus shall appoint one (1) Campus Coordinator who shall be responsible for the

campus compliance with the SUNY Supplier Diversity Program. The Campus Coordinator is responsible for full implementation of Procedure 7557.

- a. The Campus Coordinator shall be identified by the campus President, or designee on Form 7557-122 - MWBE Program Coordinator Designation and forwarded to the System-wide Supplier Diversity Program.
- b. To ensure continuity of operation and training on Procedure 7557, the Campus Coordinator shall notify the System-wide Supplier Diversity Program prior to vacating this responsibility. The campus President or designee is responsible for notifying the System-wide Supplier Diversity Program of a replacement on Form 7557-122.

II. OBJECTIVES

1. It is SUNY policy to ensure that MWBEs, as defined in Article 15-A, have an equal opportunity to receive and participate in SUNY procurements. Through the implementation of this procedure, SUNY intends to:
 - a. permit only firms certified by Empire State Development (ESD) to participate on SUNY contracts as MWBEs;
 - b. create a level playing field on which MWBEs can compete fairly for SUNY procurements;
 - c. ensure nondiscrimination in the award and administration of contracts; and
 - d. help remove restrictive specifications and artificial barriers to the participation of MWBEs in state contracts.

III. OVERSIGHT RESPONSIBILITIES OF THE SYSTEM-WIDE SUPPLIER DIVERSITY PROGRAM

1. Submit to Empire State Development (ESD):
 - a. an annual Goal Plan; and
 - b. a quarterly compliance report.
2. Provide:
 - a. a performance evaluation for campus presidents addressing their respective campus compliance with the SUNY MWBE program;
 - b. Training for campuses' designated Campus Coordinators on MWBE requirements and SUNY procedure.
3. Review campuses' compliance with MWBE procedures.
4. MWBE waivers and utilization plans shall be posted on the System-wide Supplier Diversity Program website, pursuant to ESD procedures.

IV. GOOD FAITH EFFORTS

Campuses and the vendors and contractors with whom they do business, shall make a good faith effort to procure materials, supplies, equipment and services from NYS certified MWBEs and to meet established agency goals for MWBE participation in state contracts.

SUNY shall develop and adopt agency-specific goals in accordance with ESD procedure; these goals may be applied on applicable contracts.

V. PRE-SOLICITATION PHASE

1. Assessing for goals

1. Prior to advertising, the Campus Coordinator shall determine if:
 1. the procurement is exempt or excluded from goal requirements;
 2. the campus can utilize MWBE Discretionary Authority;
 3. there are NYS certified MWBEs, both inside and outside of the

campuses' region, which have indicated their availability in the NYS MWBE Directory of Certified Firms, or in response to a campus' inquiry.

1. If there is MWBE availability, goals shall be assigned for advertising.
2. If no MWBE availability is documented, a Campus MWBE Pre Solicitation Waiver Request (7557-114b) must be submitted to the System-wide Supplier Diversity Program to assign goals for advertising below the established agency goal threshold.
 1. A request may be made on behalf of the campus by the System-wide Supplier Diversity Program to ESD to review a partial or full pre-solicitation waiver of goals.
 2. The campus must receive a waiver approval from the System-wide Supplier Diversity Program before advertising goals below the agency goal threshold.
2. If a state contract is entered into on an emergency basis or where an amendment or change order has been added to a state contract providing for a total expenditure in excess of \$25,000, SUNY campuses may require the contractor to submit a utilization plan and to comply with other post award requirements during the life of the contract.

2. Diversity Practices

1. The campus shall determine whether it is practical, feasible and appropriate to include in the evaluation of bids or proposals the diversity practices of all contractors making submission for the award of any state contract that is:
 1. Awarded on the basis of best value, or otherwise awarded as a response to a request for a proposal and/or a request for qualification; and
 2. Anticipated to result in an award of two hundred fifty thousand dollars (\$250,000) or greater; and
 3. Not a contract based on lowest price.
 4. The Campus Coordinator will score the Diversity Practice Questionnaire, which can be found in the Request for Proposal boilerplate, using the Diversity Practices Scoring Rubric (Form 7557-125). This final score will be calculated on the NYS Diversity Practices Scoring Matrix (Form 7557-126). Diversity Practices will be a weighted score up to 10% of the technical.

3. Quantitative Factors

1. When developing a Request for Proposals (RFP) awarding a procurement contract on the basis of Best Value, State Finance Law § 163(1)(j) allows a Contracting Officer to designate up to 5% of the total technical evaluation scale to be awarded to a Proposer who meets one of the following criteria (NOTE: Although a Proposer may meet more than one of the criteria, credit is to be awarded for only one category, not multiple categories):
 1. The Proposer is a New York State Certified Minority and Women-owned Business Enterprise (MWBE) as defined in Executive Law § 310; or
 2. The Proposer is a New York State Certified Service-Disabled Veteran-Owned Business (SDVOB) as defined in Executive Law § 369(h); or
 3. The Proposer is a Small Business (SBE) as defined in Executive Law §

310(20).

2. The above-referenced 5% designation included in the RFP technical evaluation is called a "Quantitative Factor". Quantitative Factors are included when MWBEs, SDVOBS and SBEs are typically available in the particular industry to be the winning prime contractors.
3. Campuses must not evaluate both Quantitative Factors and Diversity Practices in the same procurement.

VI. SOLICITATION PHASE

1. The campus will incorporate the contract goals into Exhibit A-1 and incorporate the said Exhibit A-1 into the solicitation along with any other information that the Campus Coordinator deems relevant.
2. In addition to identifying a designated contact for procurement related activities, the campus will identify a designated contact for MWBE-related inquiries. The statement below should be inserted in all procurement solicitations:
 - a. "For inquiries related specifically to minority and women-owned business enterprise (MWBE) provisions of this procurement solicitation, the designated contact is: list name, title, address, telephone number and email address."
 - i. The MWBE contact will respond to questions and requests for clarification by bidders or their representatives.
3. Pre-proposal/Pre-bid Conference or walk through: If the campus holds a Pre-proposal/Pre-bid conference as specified in the solicitation, an opportunity to clarify MWBE related questions and for MWBE firms to meet other prospective bidder's firms must be facilitated.
 - a. The campus contract administrator shall include as a topic of discussion (in any pre-bid, walk through and/or pre-proposal meetings) MWBE goals and participation requirement.
 - b. The MWBE Pre-Proposal/Pre-Bid Information Script is available on 7557-123 - Pre-bid Information Script.
 - c. The Campus Coordinator will discuss with prospective bidders SUNY's MWBE policy and requirements necessary to submit an acceptable utilization plan and good faith efforts documentation.
4. The campus contract administrator will issue a public notice of the procurement opportunity through advertisements and outreach as follows:
 - a. Procurements above \$50,000 require that an advertisement be placed in the New York State Contract Reporter.
 - b. If campuses develop a bidders list, campuses must include NYS Certified MWBEs as listed on the NYS MWBE Directory on the list to prospective bidders
 - c. A notice of solicitation/direct outreach should be sent to NYS Certified MWBEs identified as potentially able to provide a commercially useful function for the procurement opportunity.
 - d. All advertisements and notices should be sent in a timely fashion allowing MWBEs at least 15 days notification in advance of the response date.

VII. SELECTION AND AWARD PHASE

1. The following MWBE documentation is required with submittal of the bid or proposal:
 - a. **Commodities and Services** - The Campus Coordinator will review the forms listed below to ensure the integrity of the MWBE information being submitted. The Campus procurement evaluation committee approves all sub consultants for services. The Campus Coordinator approves whether the MWBE component is meaningful and acceptable. This is done in collaboration with campus selection professionals. The MWBE component is vetted prior to selection and then again

after selection with the submission and review of the following forms:

- i. MWBE Utilization Plan Worksheet (7557-107)
 - ii. MWBE-EEO Staffing Plan (7557-108)
 - iii. Vendor/Contractor EEO Policy (7557-104)
 - iv. MWBE Service/Consultant GFE Rating (7557-119)
- b. **Construction-Related Consultants Services** - The Campus Coordinator will review to ensure the integrity of the MWBE information being submitted (i.e. MWBE certification status, approved commodity codes, etc.). The campus procurement evaluation committee approves all sub consultants. The Campus Coordinator approves whether the MWBE component is meaningful and acceptable. This is done in collaboration with campus design professionals. The MWBE component is vetted prior to selection and then again after selection.
- i. The following MWBE documentation is required within seven days of submittal of the bid or proposal:
Note: Campuses have the option to make this request more restrictive and elect to require the utilization plan submitted with the bid if they choose.
 1. Receipt of the Sub-consultant/MWBE Staffing List
 - a. Architecture/Engineering Design Sub-Consultant/MWBE Staffing List (7555-15)
 - b. Construction Management Sub-Consultant/MWBE Staffing List (7555-16)
 - c. Commissioning Services Sub-Consultant/MWBE Staffing List (7555-17)
 2. Contractor EEO Policy Statement (7557-104)
- c. **Construction** - Receipt of the MWBE utilization plan and staffing plan is required within seven days of submittal of the bid. These documents, as noted below, shall be submitted by the three apparent low bidders to the Campus Coordinator who will review them with campus design professionals.
- i. MWBE Utilization Plan Worksheet (7557-107)
 - ii. EEO Staffing Plan (7557-108)
 - iii. Vendor/Contractor EEO Policy or SUNY Form (7557-104)
 - iv. Additional MWBE forms and documentation will be required if the Utilization Plan is determined deficient.
 1. MWBE-EEO Work Plan (Form 7557-105)
 2. Contract Breakdown (Form 7557-106)
2. **The MWBE Rating Forms** are used by the Campus Coordinator as follows:
- a. For construction related consultant services:
 - i. Evaluation of Design Firm Response (7557-124)
 - b. For non-construction service/consultants, if applicable:
 - i. Diversity Practices Scoring Rubric (7557-125)
 - ii. NYS Diversity Practices Scoring Matrix (7557-126)

VIII. MWBE DOCUMENTATION REVIEW AND APPROVAL

1. At the direction of the Campus Coordinator, the intended awardee will enter Utilization Plan (UP) information, or if applicable, the MWBE Sub-Consultant Staffing List information, directly online into the NYSCS Statewide Utilization Management Plan (SUMP) module.
2. Prior to contract award, the Campus Coordinator in consultation with appropriate campus staff must review and approve all MWBE documentation (i.e. Staffing Plan, Utilization Plan, etc.) for construction, construction consultant, services and commodity contracts within twenty (20) business days.

- a. A Utilization Plan will only be approved by the Campus Coordinator when it meets or exceeds the approved advertised goals.
- b. If the Utilization Plan submitted is deficient, the Campus Coordinator will provide the contractor with a written Notice of Deficiency (email) of the Utilization Plan within twenty (20) business days of its receipt, and include:
 - i. A list of NYS certified MWBEs that the contractor could potentially use as a subcontractor;
 - ii. Any other information which the Campus Coordinator determines to be relevant to developing an approvable MWBE Utilization Plan.
- c. The contractor shall respond to the Notice of Deficiency by submitting to the Campus Coordinator a written remedy within seven (7) business days.
 - i. If the deficiency is rectified and the revised utilization plan meets or exceeds approved advertised goals, the Campus Coordinator will approve the utilization plan.
 - ii. If the deficiency is not rectified, the campus may assess for a post-solicitation waiver if a good faith effort has been demonstrated.
 1. The Campus Coordinator will notify the contractor and direct the same to submit, within five (5) business days, a request for partial or total waiver of MWBE goals on Form 7557-114 Prime MWBE Post Solicitation Waiver Request.
 2. The Campus Coordinator submits a complete waiver package to the System-wide Supplier Diversity Program, including:
 - a. Form 7557-114 Prime MWBE Post Solicitation Waiver Request;
 - b. 7557-114a Campus MWBE Post Solicitation Waiver Request; and
 - c. Campus and contractor good faith effort documentation.
 3. The System-wide Supplier Diversity Program will determine whether additional action can be taken to assist the vendor/contractor with reaching the goal or whether a request will be made to ESD to review a partial or full waiver of goals.
 4. The campus must wait for the notification of approved waiver (email) from the System-wide Supplier Diversity Program before proceeding with the procurement. The waiver approval email shall be maintained in the procurement file.
3. If a contractor is deemed non-responsive or non-responsible by the System-wide Supplier Diversity Program, the request for a waiver shall be deemed to be moot.
4. The System-wide Supplier Diversity Program, in consultation with ESD, may grant a partial or total waiver of goal requirements only upon the submission of information supporting a waiver request and the verification of good faith efforts by the campus and vendor/contractor to justify a waiver request.
5. Should the waiver request be denied by the System-wide Supplier Diversity Program, this may be grounds for disqualification of the Contractor's bid or proposal.
6. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Contractor's bid or proposal.
7. Business Officer or campus designee, upon consultation with SUNY Counsel, the System-wide Supplier Diversity Program, and the Campus Coordinator, may disqualify a contractor as being non-responsive to the requirements of NYS Executive Law Article 15-A if the contractor:
 - a. Fails to submit a MWBE Utilization Plan;
 - b. Fails to submit a written remedy to a notice of deficiency to a MWBE Utilization

- Plan;
 - c. Fails to submit a request for waiver;
 - d. Receives a waiver request denial from the System-wide Supplier Diversity Program; or
 - e. Has failed to perform good faith efforts.
8. The Campus Coordinator may be required to provide the campus and/or the System-wide Supplier Diversity Program with copies of signed MWBE subcontract agreement(s), should the need arise to verify that the subcontractor/supplier is performing a commercially useful function.

IX. CONTRACT EXECUTION AND MONITORING PHASE

1. The Campus Coordinator is responsible for monitoring compliance with the established MWBE goals during the life of the contract.
2. The Campus Coordinator will ensure contracts have been properly verified ("locked in") in the NYSCS and subcontractor information is accurate on the contract management page of the NYSCS.
3. The Campus Coordinator will require the contractor to report their MWBE subcontractor payments directly online in the NYSCS by responding to monthly Compliance Audit Reminders.
 - a. Monthly Compliance Audit Reminders will be sent automatically during reporting periods which payments have been made to the prime.
 - b. Contractors that are required to report should do so upon receipt of the NYSCS Audit Reminder over the term of the contract documenting the progress made toward achievement of the MWBE goals of the Contract.
4. The Campus Coordinator will require the contractor to submit the Workforce Utilization Report directly online by responding to NYSCS Workforce Audit Reminders, and to require any of their subcontractors on the contract to do the same, on a monthly basis for construction contracts, and a quarterly basis for all other contracts, during the term of the contract.
5. The Campus Coordinator is required to review the aforementioned submitted audits to ensure the contract is on track to meet the established goals during the life of the contract.
6. SUNY's compliance process will be outlined in a training documents to assist campus staff in developing internal controls to ensure contractors' adherence to NYS Executive Law Article 15-A.
7. Within one hundred twenty (120) business days after completion of a contract, the Campus Coordinator will close out the contract in the NYSCS.

X. DOCUMENTATION OF GOOD FAITH EFFORTS - Campus Responsibility

1. The campus should be pro-active in their outreach and make it easier for MWBEs to participate directly and/or partner with prime contractors by:
 - a. Directly notifying MWBEs of open eligible procurements posted to Contract Reporter;
 - b. Directly inviting MWBEs to participate as a prime or subcontractor;
 - c. Providing prime contractors with lists of MWBEs who may be able to subcontract.
2. The Campus Coordinator is responsible for verifying documentation provided by the vendor to demonstrate good faith efforts to obtain MWBE participation in State contracts to facilitate compliance with this obligation.
3. The Campus Coordinator, in coordination with other campus staff, should include relevant documents as described below in the procurement record:
 - a. Approved MWBE forms:

- i. MWBE Utilization Plan approved in the NYSCS;
 - ii. MWBE-EEO Staffing Plan (7557-108).
- b. Other relevant documentation as outlined in Section VII.
- c. Approved waiver notification (email) from the System-wide Supplier Diversity Program, if applicable.
- d. Good faith effort documentation, if applicable.

XI. DISCRETIONARY BUYING AUTHORITY

1. Consistent with NYS State Finance Law Section 163.6, where commodities or services are available from New York State certified MWBEs, purchases may be made by the campus in amounts not exceeding \$750,000 without competitive bidding.
 - a. The MWBE discretionary threshold of up to \$750,000 does NOT apply to construction and construction-related consultant services.
 - b. The campus is required to document in the procurement record support for both the reasonableness of the price and the selection of the vendor.
 - c. Advertising requirements under NYS Economic Development Law still apply. Appropriate language when advertising in the NYS Contract Report is required.
2. NYS Procurement Council Bulletin: Discretionary Purchasing Guidelines, published August 2024, provides guidelines for the use of the discretionary purchasing authority granted by the NYS Finance Law, including language for advertising.

Please note: NYS Finance Law 163 6-b stipulates that the reasonably expected aggregate amount of all purchases of the same commodities or services from the same provider within the twelve-month period commencing on the date of the first purchase cannot be an amount greater than the discretionary buying threshold amount for that agency. Additionally, purchases of services or commodities shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds. Finally, unbundling is recognized as a best practice when utilizing this provision of the SFL.

3. Elements of Good Faith Effort for MWBE Discretionary Procurements (not exceeding \$750,000):
 - a. Justification for the selection of vendor may be supported by:
 - i. demonstrating reasonableness of price.
 - ii. showing enhanced or additional value provided by the vendor.
 - iii. noting the vendor is a NYS small business (if applicable) – small business discretionary threshold is \$500,000.
 - iv. identifying the vendor is an MBE or WBE (this cannot be the sole justification).
 - b. Reasonableness of Price (methods of establishing) - including, but not limited to:
 - i. comparing the quoted price with the price for the same or similar services within the last six months;
 - ii. comparing the price with other quoted prices;
 - iii. comparing the quoted price with prices in various procurement publications;
 - iv. reviewing the type of work that was previously accepted by the campus at a similar price; and
 - v. comparing the quoted price with cost to other governmental entities.

When an MWBE submits a quote for a commodity or service for a discretionary procurement (not exceeding \$750,000) and the quote is deemed high, the campus is encouraged to engage in direct negotiation with the MWBE firm in an attempt to reach reasonableness of price. This good faith effort is not applicable for a formal competitive procurement (i.e., sealed bid) as

defined in SUNY Procedure Item 7553.

4. Follow-up telephone calls to MWBE vendors are encouraged (e.g., to determine if the vendor plans on submitting a quote or to engage in negotiations).

(See SUNY Policy Item 7553 [Purchasing and Contracting] for an explanation of discretionary procurements under \$50,000 and between \$50,000.01 and \$750,000)

Forms

[7557-104](#) - MWBE-EEO Policy Statement

[7557-105](#) - M/WBE-EEO Work Plan

[7557-107](#) - MWBE Utilization Plan

[7557-108](#) - EEO Staffing Plan

[7557-111](#) - Monthly MWBE Compliance Report

[7557-113](#) - Quarterly MWBE Compliance Report

[7557-114](#) - Prime MWBE Post Solicitation Waiver Request

[7557-114a](#) - Campus MWBE Post Solicitation Waiver Request

[7557-114b](#) - Campus MWBE Pre Solicitation Waiver Request

[7557-120](#) - Compliance Check List

[7557-121a](#) - Prospective Bidders Notice Commodities Services

[7557-121b](#) - Prospective Bidder's Notice Construction

[7557-121c](#) - Prospective Bidder's Notice Construction-Related Consultant Services

[7557-122](#) - MWBE Program Coordinator Designation

[7557-123](#) - Pre-bid Information Script

[7557-124](#) - Good Faith Efforts - Criteria to Evaluate Quality of Design Firm Response (Construction Consult Selection Process)

[7555-15](#) - Sub-Consultant Staffing List - Architecture and Engineering

[7555-16](#) - Sub-Consultant Staffing List - Construction Management

[7555-17](#) - Sub-Consultant Staffing List - Commissioning

[7557-125](#) - Diversity Practices Scoring Rubric Form

[7557-126](#) - Diversity Practices Scoring Matrix Form

[7557-110](#) - EEO Workforce Utilization Report

[7557-109](#) - Campus Consultant/Contractor Affidavit

Related Procedures

[SUNY Procedure Document No. 7553](#) - Purchasing and Contracting - Procurement

[SUNY Procedure Document No. 7554](#) - Construction Contracting

[SUNY Procedure Document No. 7555](#) - Construction-Related Consultant Contracting Procedures

[SUNY Procedure Document No. 7561](#) - Contract Award Protest Procedure

[SUNY Procedure Document No. 7564](#) - Participation by Service-Disabled Veteran-Owned Business (SDVOBs) with Respect to State University of New York Contracts

Other Related Information

[SUNY Policy Document No. 7556](#) - Procurement Opportunities for New York State Certified Minority- and Women-Owned Businesses

Authority

[NYS Executive Law: Article 15-A - \(§§310-318\)](#) Participation by Minority Group Members and Women with Respect to State Contracts

[NYS Education Law §355](#) (Powers of Trustees).

[NYS State Finance Law Article 11 \(§§160 -168\) State Purchasing](#)

[New York State laws are available through the [New York State Legislature materials website](#), under '[Laws of New York State](#)' section].

History

On July 15, 2019, Governor Cuomo signed legislation reauthorizing Executive Law Article 15-A.

On January 25, 2012 the State University of New York Board of Trustee adopted a resolution on Minority- and Women-owned Business Enterprise (MWBES) Utilization Reports.

New Rules and Regulations were created and took effect on December 22, 2010, under 5 NYCRR Part 140. On July 15, 2010 New York State passed the Business Diversification Act, amending Article 15-A.

On April 29, 2010 the New York State Disparity Study was released by Department of Economic Development Article 15-A of the Executive Law, signed into law on July 19, 1988, authorized the creation of an Office (now Division) of Minority and Women's Business Development to promote

employment and business opportunities on state contracts for minorities and women.

Memorandum to Presidents 84-3 dated April 6, 1984, Amendment to Policy on Minority Business Enterprises. On August 3, 1983, Governor Cuomo issued Executive Order 21 that superseded Executive Order 117 and included women-owned business enterprises.

Memorandum to Presidents 83-8 dated July 1, 1983, Policy on Minority Business Enterprises. On December 9, 1981, Governor Carey issued Executive Order 117 related to minority-owned business enterprises.

Appendices

There are no appendices relevant to this procedure.