



Category:  
Financial  
Legal and Compliance

Responsible Office:  
[Diversity, Equity, and Inclusion](#)

**Procedure Title:**

Participation by Minority Group Members and Women (MWBEs) with Respect to State University of New York Contracts

Document Number:  
7557

Effective Date:  
April 01, 2017

This procedure item applies to:  
State-Operated Campuses

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**Summary**

This procedure sets forth guidelines to assist state-operated campuses of the State University of New York (University) in the procurement of materials, supplies, equipment, construction, construction-related services and services (including printing) 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) in order to be in compliance with Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), NYS Executive Law Article 15-A, 5 NYCRR Part 140 and University 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.

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**Process**

University-wide:

The State University of New York's University-wide MWBE Program will comply with NY Executive Law Article 15-A, 5 NYCRR Part 140, Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), University MWBE policy (Procedure Item [7556](#)), and the SUNY Board Resolution January 2012 entitled "Minority and Women Enterprises Utilization Reports." The responsibilities include, but are not limited to the following:

Appointment and Responsibility of Campus MWBE Coordinator:

Each campus shall appoint an MWBE Program Coordinator or designee who shall be responsible for the campus compliance with the MWBE Program.

Responsibilities:

The MWBE Program Coordinator or designee is responsible for full implementation of Procedure 7557 and monitoring for compliance on contracts.

**I. OBJECTIVES**

## 7557 - Participation by Minority Group Members and Women (MWBEs) with Respect to State University of New York Contracts

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It is the policy of the University to ensure that MWBEs, as defined in Article 15-A, have an equal opportunity to receive and participate in University procurements. Through the implementation of this procedure, the University intends to:

- permit only firms certified by Empire State Development Corporation (ESDC) to participate on SUNY contracts as MWBEs;
- create a level playing field on which MWBEs can compete fairly for University procurements;
- ensure nondiscrimination in the award and administration of contracts;
- assist to eradicate artificial barriers to the participation of MWBEs in State contracts.

### II. OVERSIGHT RESPONSIBILITIES

1. Submit to NYS Department of Economic Development (NYDED):
  - a. an annual Master Goal Plan; and
  - b. a quarterly compliance report including, but not limited to, the number of total SUNY contracts awarded, the maximum dollar amount obligated to those contracts, and total expenditures pursuant to all such contracts; same for contracts awarded to certified MBE or WBE.
2. Provide:
  - a. an annual report to the SUNY Board of Trustees that compares established MWBE goals with the University's actual MWBE participation;
  - b. a performance evaluation for campus presidents addressing their respective campus compliance with the University MWBE program;
  - c. an annual Goals Bulletin that provides separate goals, broken down by contract type, for participation of certified minority- and women-owned business enterprises (MWBEs) and equal employment opportunity (EEO) participation on all SUNY contracts;
  - d. assistance to campuses with goal assignment on campus contracts
    - i. goals setting training, goal preparation tools;
    - ii. review and approve goals and utilization plans which fall below established University-wide goals threshold as published in the annual Goals Bulletin;
  - e. a partial or total waiver of goal requirements established on a contract provided there is documentation of good faith efforts by the vendor/contractor to meet the goal requirements of the contract.
3. Training for campuses' designated MWBE Program Coordinator(s) on MWBE requirements and providing updates on regulations.
4. In consultation with the Chief Diversity Officer and Senior Associate Vice Chancellor for Diversity, Equity and Inclusion, review campuses' compliance with MWBE procedures as necessary.
  1. Appointment: The MWBE Program Coordinator or designee who shall be identified by the campus President, or designee on the MWBE Program Coordinator Designation ([Form 7557-122](#)) and forwarded to the University-wide MWBE Program Office.
  2. In order to ensure continuity of operation and training on Procedure 7557, the MWBE Program Coordinator shall notify the University-wide MWBE Program Office prior to vacating this responsibility. The campus President or designee is responsible for notifying the University-wide MWBE Program Office of a replacement.

### III. MWBE REQUIREMENTS - DEMONSTRATING A GOOD FAITH EFFORTS

NYS Executive Law Article 15-A and University policy require campuses, as well as the vendors and contractors with whom they do business, to make a good faith effort to procure materials, supplies, equipment and services (including printing) from NYS certified MWBEs and to meet University-established goals for MWBE participation in a State contract.

The University is required to submit an annual plan establishing MWBE goals to the Empire State Development Corporation (ESDC). The University's agency specific goals are published annually on April 1st at the start of the State fiscal year in a MWBE Guidance Bulletin, Volume 5 (2014) [MWBE-EEO Goals](#). Contract specific goals may also be assigned through the MWBE Goal Setting process (See Goal Setting Primer).

The MWBE Guidance Bulletin, Volume 4 (2014) entitled: "Business Rules to Implement a Successful MWBE Program" (hereinafter referred to as "Business Rules") are instructions that a campus shall use to ensure that "Good Faith Efforts" are met and documented at a system-wide level to standardized the process as required

by (5 NYCRR §141.6(b)).

The University is required to document a good faith effort in procurements by employing the actions outlined in sections below.

#### IV. PRE-SOLICITATION PHASE

The primary activity in the pre-solicitation phase is to assign goals that consider certified MWBE firms identified as either a prime or subcontractor on contracts the campuses intend to let.

MWBE goals are defined as the percentage of aggregate agency expenditures targeted for the participation of certified minority- and/or women-owned business enterprises sought to be included in State procurement opportunities as prime contractors, subcontractors, suppliers, consultants, joint ventures, teaming agreements, or other similar arrangements. Goals may be expressed as annual Statewide (also referred to as “Section 313 goals”), agency-specific or contract goals.

##### 1. Goal-Setting Methodology

The MWBE Goal Setting Primer is provided to assist campus MWBE Program Coordinators in the day-to-day administration of SUNY’s contract-specific goal setting process.

When calculating contract-specific goals the MWBE Program Coordinator or designee will:

- a. Determine whether goals are feasible in the participation of certified MWBEs in the procurement opportunity.
- b. Conduct a vendor and spend analysis to determine whether there are NYS certified MWBEs that are available to participate in the procurement.
- c. Determine whether, based upon the commodity codes relevant to the procurement, there are NYS certified MWBEs, both inside and outside of the campuses’ region, that have indicated their availability:
  - i. in the ESD MWBE certification database; or
  - ii. in response to a campus’ inquiry.
- d. Prepare a list of potential MWBE’s that have indicated in the ESDC MWBE certification database an interest in the procurement.
- e. Determine if components of the project can be separately procured or the project can be progressed using a phased contract approach in order to increase participation without compromising project delivery. This approach is referred to as unbundling.
- f. Determine whether the campus can utilize SFL §163.6 to make discretionary purchases to increase the probability of soliciting quotes from NYS certified MWBEs on that procurement.
- g. Insert the MWBE completed Goal Setting form ([7557-115](#)) to the procurement record and upload information into the electronic contract record in SUNY MWBE Portal once contract is awarded.
- h. Prior to advertising in the NYS Contract Reporter, the MWBE Program Coordinator will provide the goals contained in the Goal Setting form ([7557-115](#)) to the contract administrator for insertion into the NYS Contract Reporter, [Exhibit A-1](#) and other solicitation documentation.

##### 2. Factors to Consider when Establishing Contract Goals

- a. MWBE Program Coordinator shall establish goals for participation of certified MWBEs on all State contracts, where applicable. University campuses must notify Contractors in bid documents, requests for proposals, contract announcements or advertisements or otherwise in writing of the goals established on State contracts. University campuses shall provide an electronic link to the NYS or official current list of certified minority- and women-owned business enterprises to each prospective contractor. In determining what goals are appropriate in relation to a particular State contract, the MWBE Program Coordinator must give consideration to the following factors:
  - i. the contract and subcontract scope of work;
  - ii. the number and type of certified MWBEs available in the State or official directory to perform the State contract work, and their availability in the region of contract performance;
  - iii. the total dollar value of the work required by the State contracts, in relation to the dollar value of subcontracts of the contract scope of work;
  - iv. the relationship of the size and term of a State contract to the size and term of a project for which purpose the State contract is awarded;
  - v. the percentage of certified MWBEs located outside the region, and their availability in the region of contract performance;
  - vi. the potential subcontract opportunities available in a contract and the availability of

- certified MWBEs to respond to the potential subcontract opportunities;
- b. For construction, construction-related services and equipment from capital funds, campuses should prepare a separate Goal Setting form ([7557-115](#)) for each of the following:
    - i. construction-related consultant services - including design, construction management, and commissioning;
    - ii. construction - including all construction, testing, special inspections and balancing services;
    - iii. equipment - including standard equipment and furniture. Specialized equipment for research/diagnostic testing, proprietary or equipment sourced by sole or single source procurement method which may have fewer MWBE opportunities, should be identified and the value of the identified items reduced from the committed dollar amount upon which MWBE goals are applied.
  - c. A copy of the completed Goal Setting form ([7557-115](#)) must be submitted to the University-wide MWBE Program Office when the goals that are set are below the established agency goal threshold in the annual MWBE Guidance Bulletin;
  - d. Documentation to accompany the formal e-mail request is: (1) A copy of a completed Goal Setting form ([7557-115](#)); and (2) documentation of good faith efforts undertaken at the campus level to ascertain MWBE availability;
  - e. In consultation with the campus, the University-wide MWBE Program Office will determine whether additional action needs to be taken to meet established goals or whether a formal request will be made to assign lower goals.
  - f. 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, University campuses may require the contractor to submit a utilization plan and to comply with other post award requirements during the life of the contract.
3. Diversity Practices

The University 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:

- a. 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
- b. Anticipated to result in an award of two hundred fifty thousand dollars (\$250,000) or greater; and
- c. Not a contract based on lowest price.

The MWBE Program 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.

## V. SOLICITATION PHASE

1. The campus will incorporate the goals agreed upon in the completed Goal Setting form ([7557-115](#)) into the [Exhibit A-1](#) and incorporate the said [Exhibit A-1](#) into the solicitation along with any other information that the MWBE Program 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 Women-Owned Business Enterprises (MWBE) provisions of this procurement solicitation, the designated contact is: list name, title, address, telephone number and email address."
  - b. The MWBE contact will respond to questions and requests for clarification received by telephone or visitation by bidders or their representatives.
  - c. All submission should cite the specific MWBE section in the solicitation prompting the inquiry.
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.
4. 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.
  - a. The MWBE Pre-Proposal/Pre-Bid Information Script can be downloaded from the SUNY Means Business Website.
5. The MWBE Program coordinator will discuss with prospective bidders SUNY's MWBE policy and

- requirements necessary to submit an acceptable utilization plan and good faith efforts documentation.
6. 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. A notice of solicitation (i.e., by phone, letter or email) should be sent to:
      - i. The NYS certified MWBE vendors, as developed through the goal setting process. Note: A disclaimer may be included to state that the MWBE vendor list is not prequalified by the campus.
        1. The full directory of NYS certified MWBE vendors is produced by New York State Department of Economic Development (DED) and is available on-line at <http://www.nylovesmwbe.ny.gov/>.
      - ii. Appropriately located (regional) MWBE business associations:
        1. Entrepreneurial Assistance Centers
        2. New York State Small Business Development Center ([SBDC Website](#))
        3. Minority & Women Business Resource Centers (see Appendices section)
  7. All advertisements and notices should be sent in a timely fashion allowing MWBEs at least 15 days notification in advance of the response date if the procurement is greater than \$50,000.
  8. If campuses develop a selective bidders list, campuses must include MWBEs on this selective list to prospective bidders as identified during the goal setting process pursuant to 5 NYCRR Part §141.6(b)(6)).

## VI. SELECTION AND AWARD PHASE

1. The following MWBE documentation is required **with submittal of the bid or proposal**:
    - a. **Commodities and Services** - The MWBE Program 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 MWBE Program 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 ([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 MWBE Program 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 MWBE Program 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. Receipt of the Sub-consultant/MWBE Staffing List
        1. Architecture/Engineering Design Sub-Consultant/MWBE Staffing List ([7555-15](#))
        2. Construction Management Sub-Consultant/MWBE Staffing List ([7555-16](#))
        3. Commissioning Services Sub-Consultant/MWBE Staffing List ([7555-17](#))
      - ii. Contractor EEO Policy Statement ([7557-104](#))
- 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.
- c. **Construction**
    - i. 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 MWBE Program Coordinator who will review them with campus design professionals.
      1. MWBE Utilization Plan ([7557-107](#))
      2. Vendor/Contractor EEO Policy or SUNY Form ([7557-104](#))

3. Additional MWBE forms and documentation will be required if the Utilization Plan is determined deficient.
  - a. MWBE-EEO Work Plan ([Form 7557-105](#))
  - b. Contract Breakdown ([Form 7557-106](#))
2. **MWBE Rating Forms shall be used** by the MWBE Program Coordinator for service/consultant, construction consultant and construction contracts.
  - a. Construction Consultant Selection Rating ([7555-06](#))
  - b. Backdrop Term Consultant Mini Selection ([7555-07](#))
  - c. Evaluation of Design Firm Response ([7557-124](#))
  - d. Diversity Practices Scoring Rubric ([7557-125](#))
  - e. NYS Diversity Practices Scoring Matrix ([7557-126](#))

## VII. MWBE DOCUMENTATION REVIEW AND APPROVAL

1. Prior to the contract being signed, the MWBE Program 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, as required by 5 NYCRR §142.4.
2. If approved, the contractor, at the direction of campus, must submit copies of all MWBE Utilization and Staffing Plans to the central repository ([MWBEProgram@suny.edu](mailto:MWBEProgram@suny.edu)).
3. If not approved, the MWBE Program Coordinator will provide the contractor with a written notice of deficiency of the Utilization Plan within twenty (20) business days of its receipt, as required under 5 NYCRR Part 142.6(c). Should a notice of deficiency be issued, it shall include but not be limited to the following:
  - a. A list of NYS certified MWBEs that the contractor could potentially use as a subcontractor;
  - b. The name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals; and
  - c. Any other information which the MWBE Program Coordinator determines to be relevant to developing an approvable MWBE Utilization Plan.
4. In addition to a revised Utilization Plan, the MWBE Program Coordinator may require additional MWBE documentation if awardees submit deficient MWBE good faith effort documentation. These documents are as follow:
  - a. [7557-101: MWBE Contractor Solicitation Letter](#)
  - b. [7557-102: MWBE Participation Quote](#)
  - c. [7557-103: MWBE Contractor Unavailability Certification](#)
  - d. [7557-105: MWBE-EEO Work Plan](#)
  - e. [7557-106: Contract Breakdown and Sample](#).
5. The contractor shall respond to the notice of deficiency by submitting to the MWBE Program Coordinator a written remedy within seven (7) business days, as required by 5 NYCRR Part 142.6(e).
6. If the deficiency is rectified, the contractor, at the direction of campus, is to submit copies of MWBE Utilization and Staffing Plans to the central repository ([MWBEProgram@suny.edu](mailto:MWBEProgram@suny.edu)).
7. If the deficiency is not rectified, and the contractor is requesting a waiver:
  - a. If the written remedy submitted is found to be inadequate, the MWBE Program 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-EEO goals as required by 5 NYCRR Part 142.6 (f) on Form 7557-114 provided by the University-wide MWBE Program Office.
  - b. The MWBE Program Coordinator is to submit a copy of the deficient Utilization Plan, along with the Vendor's/Contractor's good faith documentation, waiver request [Form 7557-114](#) and Governor's Office waiver request [Form 7557-114a](#) to determine the appropriateness of submitting a waiver request to the Chief Diversity Officer.
  - c. The University-wide MWBE Program Office, in consultation with the MWBE Program Coordinator, will determine whether additional action can be taken to assist the vendor/contractor reach their goal or whether a formal request will be made to waive the goal.
  - d. If a contractor is deemed non-responsive or non-responsible by the University-wide MWBE Program Office, the request for a waiver shall be deemed to be moot (5 NYCRR Part 142.7(a) (1) (b)).

- e. The University-wide MWBE Program Office, in consultation with the Chief Diversity Officer in the Governor's Office, may grant a partial or total waiver of goal requirements established on the contract only upon the submission of information supporting a waiver request by the vendor/contractor and the verification of requisite documentation of good faith efforts by the vendor/contractor to justify a waiver request.
  - f. Should the waiver request be denied by the University-wide MWBE Program Office, this may be grounds for disqualification of the Contractor's bid or proposal.
  - g. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Contractor's bid or proposal.
8. The Business Officer or campus designee, upon consultation with SUNY Counsel, the University-wide MWBE Program Office and the MWBE Program Coordinator, may disqualify (5 NYCRR §142.6(f)) 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. Receipt of a waiver request denial from the University-wide MWBE Program Office; or
  - e. Determines that the vendor/contractor/consultant has failed to perform good faith efforts.
9. The campus contract administrator will ensure that the [Exhibit A-1](#) with the contract specific goals is included in the contract.
10. Workforce Employment Utilization Report ("Workforce Report")
- a. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report on the following forms:
    - i. Form [7557-110](#) Monthly EEO Workforce Utilization Report: Construction
    - ii. Form [7557-112a](#) Quarterly EEO Workforce Utilization Report: Advertising and Marketing
    - iii. Form [7557-112b](#) Quarterly EEO Workforce Utilization Report: Legal Services
    - iv. Form [7557-112c](#) Quarterly EEO Workforce Utilization Report: Software Development
  - b. Instructions to complete the forms are provided in the SUNY Guidance [Bulletin](#) Volume 7: Workforce Utilization Report below.
  - c. Workforce Reports shall be collected on a monthly basis for construction contracts and a quarterly basis for all other contracts.
  - d. Separate forms shall be completed by the Contractor and the Subcontractor.
  - e. The MWBE Program Coordinator will direct the prime contractors to submit the forms in the timeframes prescribed above to the MWBE central repository ([MWBEProgram@suny.edu](mailto:MWBEProgram@suny.edu)) and copy the MWBE Program Coordinator.
11. Within (10) business days of contract award, the MWBE Program Coordinator will submit a copy of the approved utilization plan and staffing plan to the MWBE central repository ([MWBEProgram@suny.edu](mailto:MWBEProgram@suny.edu)).
12. The MWBE Program Coordinator may be required to provide the campus with copies of signed MWBE subcontract agreement(s), *a copy of which is forwarded by the MWBE Program Coordinator to the central repository at [MWBEProgram@suny.edu](mailto:MWBEProgram@suny.edu)* should the need arise to verify that the subcontractor/supplier is performing a commercially useful function.

#### VIII. CONTRACT EXECUTION AND MONITORING PHASE

1. The MWBE Program Coordinator will, with the assistance of other campus staff, be responsible for monitoring compliance with the established MWBE goals during the life of the contract.
2. The campus will monitor and verify the contractor's compliance with Executive Law Article 15-A by discussing the following items during progress meetings:
  - a. any and all MWBE issues
  - b. any and all EEO issues
  - c. copies of meeting minutes and e-mail communications
  - d. MBE utilization

- e. WBE utilization
- f. EEO utilization.
3. The MWBE Program Coordinator will require the contractor to submit the following compliance reports to the campus and the MWBE central repository ([MWBEProgram@suny.edu](mailto:MWBEProgram@suny.edu)). The SUNY MWBE Portal will replace the central repository in January 2018.
  - a. **Monthly or Quarterly MWBE Utilization Reports; and**
  - b. **Quarterly EEO Work Force Utilization Report.**
4. In accordance with 5 NYCRR § 141.4, the University is required to review the aforementioned submitted reports to ensure the following:
  - a. If payments have been made to the Prime?
  - b. If payments have been made to the Sub?
  - c. Is there a submitted Utilization Plan or does the current Utilization Plan require modification? (see #6 below)
  - d. Review solicitation to ensure appropriate application of goals.
5. SUNY's compliance process will be outlined in a guidance memo to assist campus staff in developing an internal controls to ensure contractor adherence to NYS Executive Law Article 15-A.
6. If requested, the Business Officer or campus designee, shall require the contractor to provide access to other relevant documentation (e.g., books, records, and payroll records) relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the contract is executed.
7. Any waivers of compliance issued by the University-wide MWBE Program Office, or modifications to the utilization plan, shall be posted on the University-wide MWBE Program office website, or a campus website, if they have the capacity, within ten (10) business days of making such a decision.
8. Within forty-five (45) business days after completion of a contract, the MWBE Program Coordinator shall submit to the central repository at [MWBEProgram@SUNY.edu](mailto:MWBEProgram@SUNY.edu) a final MWBE Compliance Report detailing total expenditures by the contractors to MWBE subcontractors. The SUNY MWBE Portal will replace the central repository in January 2018.

#### **IX. DOCUMENTATION OF GOOD FAITH EFFORTS - The University's Responsibility**

1. The University is responsible for verifying documentation to demonstrate good faith efforts to obtain MWBE participation in State contracts to facilitate compliance with this obligation. The MWBE Program Coordinator in coordination with other campus staff should include a completed SUNY Compliance Checklist ([Form 7557-120](#)) and any other relevant documents as described below in the procurement record:
  - a. Copy of an approved Goal Setting form ([7557-115](#));
  - b. Approved MWBE forms (i.e. Utilization Plan, MWBE Contractor Unavailability Certification([Form 7557-103](#)));
  - c. A copy of the notice of solicitation and any advertisements placed in general circulation media, trade association, publications and/or minority-focused media;
  - d. Records showing the contact information of the MWBE organizations and associations contacted for that procurement;
  - e. All solicitation responses including:
    1. Bids, quotes or proposals received from MWBE firms; or
    2. Emails or letters returned as "undeliverable;"
    3. Completed Unavailability Certificates ([Form 7557-103](#)) or similar forms;
    4. A statement in writing supplied by an MWBE or documentation in writing by the campus of a conversation with an MWBE indicating why the vendor did not provide a quote, proposal or bid;
    5. Where appropriate, (i.e. minority commerce weekly) pursuant to 5 NYCRR §142.8(a) (3) record of negotiations with MWBE firms from whom quotes for purchases under the discretionary threshold were received.

#### **X. DISCRETIONARY BUYING AUTHORITY**

##### **1. NYS Finance Law 163.6 (b) - Discretionary Buying Threshold for the MWBE Program**

As stated in Item [7553](#) (Purchasing and Contracting), and 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 University in amounts not exceeding \$200,000 without competitive bidding.

- a. The discretionary threshold of up to \$200,000 for procurements from small, minority- and women-owned business does **NOT** apply to construction & construction-related consultant services.



- b. The campuses are 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. The appropriate language when advertising in the NYS Contract Report is provided below:

*“SUNY intends to procure (insert project description, i.e. 1,000 widgets) pursuant to its discretionary purchasing authority under State Finance Law section 163(6). This procurement opportunity is limited to New York State businesses certified pursuant to Article 15-A of the New York State Executive Law.”*

**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 (5 NYCRR Part 141.5(c) (2)) is recognized as a best practice when utilizing this provision of the SFL.

2. Elements of Good Faith Effort for Discretionary Procurements (not exceeding \$200,000):

*(See SUNY Policy Item 7553 [Purchasing and Contracting] for an explanation of discretionary procurements under \$50,000 and between \$50,000.01 and \$200,000)*

- 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)
- iv. identifying the vendor is an MBE or WBE (this **cannot** be the sole justification)

When an MWBE submits a quote for a commodity or service for a discretionary procurement (not exceeding \$200,000) 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.

- b. Reasonableness of Price (methods of establishing) - including, but not limited to:
  - 1. comparing the quoted price with the price for the same or similar services within the last six months;
  - 2. comparing the price with other quoted prices;
  - 3. comparing the quoted price with prices in various procurement publications;
  - 4. reviewing the type of work that was previously accepted by the campus at a similar price; and
  - 5. comparing the quoted price with cost to other governmental entities.
- c. 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).

## Definitions

**Bid** - binding price offering that has been submitted in a sealed envelope to prevent dissemination of its contents before the deadline for the submission of all bids.

**Equal employment opportunities (EEO)** - The conscientious and active efforts by a contractor to afford employment opportunities to minority group members and women without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

**Goals** - The term referring to the percentage of aggregate agency expenditures targeted for the participation of certified minority- and/or women-owned business enterprises sought to be included in State procurement opportunities as prime contractors, subcontractors, suppliers, consultants, joint ventures, teaming agreements, or other similar arrangements. Goals may be expressed as annual Statewide (also referred to as "Section 313 goals"), agency-specific, or contract goals.

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**Joint venture** - A contractual agreement joining together two or more business enterprises, one of which is a certified minority - or women-owned business enterprise, for the purpose of performing on a State contract. The certified minority- or women-owned business enterprise must provide a percentage of value added services representing an equitable interest in the joint venture. All parties agree to share in the profits and losses of the business endeavor according to their percentage of equitable interest.

**Mentor-Protégé Agreement** - A contract between a prime contractor, the "Mentor," and a minority- or women-owned business enterprise, the "Protégé," in which there is a transfer of knowledge, technology, or other resources, which promotes the economic growth of the minority- or women-owned business enterprise or fosters the establishment of a long term business relationship between the parties.

**Minority group member** - 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, South East Asia, the Indian subcontinent or the Pacific Islands.

**Minority-owned business enterprise** - A business enterprise, including a sole proprietorship, partnership or corporation which has been certified as minority-owned by the Empire State Development's Division of Minority and Women-Owned Business Development.

**Quote** - non-binding statement of price, terms of sale, and description of goods or services offered by a vendor as a basis for negotiations for entering into a contract.

**State Contract** - (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

**Subcontract** - Any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

**Teaming Agreement** - A utilization plan arrangement between two or more parties, one of which is a certified minority- or women-owned business enterprise, to perform on a specific State contract if awarded to the team. The team itself may be a joint venture, or one of the team members may be designated to act as the prime contractor, and the other member(s) designated to act as subcontractors.

**Unbundling** - a process whereby the procurement contract is divided into smaller parts to provide NYS certified MWBEs better access to SUNY's procurement opportunities. Unbundling can be divided into two types, horizontal and vertical. The horizontal unbundling divides the procurement contract into multiple lots. Vertical unbundling divides each lot into different phases of the procurement process. This offers opportunities for campuses to prepare a bid on one or a larger set of lots, where each of the phases offers new opportunity for MWBE participation. Procurement staff may reduce barriers to bid packages by employing the strategy of "unbundling" projects.

**Utilization plan** - The plan which must be submitted by a contractor to a State agency listing certified minority- and/or women-owned business enterprises that the contractor intends to use in the performance of a proposed State contract, or any components of the contract scope of work which the contractor intends certified minority- and/or women-owned business enterprises to perform. The plan shall specifically contain a list, including the name, address and telephone number of each certified enterprise with which the contractor intends to subcontract, or otherwise submit in connection with satisfaction of the contract goals.

**Women-owned business enterprise** - a business enterprise, including a sole proprietorship, partnership or

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corporation that has been certified as women-owned by the Empire State Development's Division of Minority and Women-Owned Business Development.

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### Forms

[7557-101](#) - M/WBE Contractor Solicitation Letter

[7557-102](#) - M/WBE Participation Quote

[7557-103](#) - M/WBE Contractor Unavailability Certification

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

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

[7557-106](#) - Contract Breakdown and Sample

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

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

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

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

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

[7557-114](#) - Request for Waiver

[7557-114a](#) - MWBE Waiver Governor's Office

[7557-114b](#) - Pre-RFP Waiver Request Governor's Office

[7557-115](#) - Goal Setting Form

[7557-115a](#) - Goal Setting Process - Project Specific Methodology - Compliance Checklist

[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

[7557-112a](#) - Quarterly EEO Workforce Utilization Report: Advertising and Marketing

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[7557-112b](#) - Quarterly EEO Workforce Utilization Report: Legal Services

[7557-112c](#) - Quarterly EEO Workforce Utilization Report: Software Development

[7557-112d](#) - Quarterly EEO Workforce Utilization Report: Service Contracts

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

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

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### 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

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### Other Related Information

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

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### 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](#)

[5 NYCRR Part 140 as amended.](#)

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

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### History

On January 25, 2012 the State University of New York Board of Trustees 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.

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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.

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### Appendices

[SUNY Guidance Bulletin, Volume 4: MWBE Business Rules \(April 1, 2013\)](#) - SUNY Guidance Bulletin: MWBE Business Rules, Volume 4 (April 2017)

[SUNY Guidance Bulletin, Volume 5: MWBE EEO Goals for Current SFY \(April 1, 2014\)](#) - SUNY Guidance Bulletin: MWBE Goals for State Contracts, Volume 5 (April 2017)

[Exhibit A-1](#) - Standard Contract Clauses - Affirmative Action Clauses - Exhibit A-1

[NYS MWBE RESOURCE ORGANIZATIONS](#) - NYS MWBE Resource Organizations

[SUNY Guidance Bulletin, Volume 7: Instructions for Submitting the Workforce Utilization Report \(2016\)](#) - SUNY Guidance Bulletin, Volume 7: Instructions for Submitting the Workforce Utilization Report (2016)

[EEO-1 Job Classification Guide, 2014](#) - EEO-1 Job Classification Guide, 2014

[SUNY Guidance Bulletin: MWBE/SDVOB Exemption and Exclusion Procedure, Volume 6, SFY 2017-18 \(January 17, 2017\)](#)

[SUNY MWBE Waiver Procedure and Submission Guidelines, Volume 8, SFY 2017-18 \(January 17, 2017\)](#)