



**MEMORANDUM**

**January 25, 2012**

**To: Members of the Board of Trustees**

**From: Nancy L. Zimpher, Chancellor**

**Subject: Minority- and Women-owned Business Enterprise (MWBEs)  
Utilization Reports**

**Action Requested**

The proposed resolution requires annual reporting to the Board of Trustees and mandatory staff training with respect to State-operated institutions' utilization of Minority- and Women-owned Business Enterprises (MWBEs).

**Resolution**

I recommend that the Board of Trustees adopt the following resolution:

Whereas it is the University's policy to take affirmative action to ensure that minority- and women-owned business enterprises (MWBEs) are given the opportunity to participate in providing the University with goods and services at competitive prices; and

Whereas on February 17, 2011, Governor Cuomo issued Executive Order 8, Removing Barriers to Minority and Women Business Enterprises' Participation in State Contracting; and

Whereas there have been recent amendments to NYS Executive Law Article 15-A (Ch. 175 L. 2010) that establish State-wide MWBE utilization goals (and allow an agency to institute agency-specific goals) and impose sanctions on agencies that substantially fail to meet their goals; and

Whereas the University believes that increasing utilization of MWBEs is an important element of the University's contribution to growth of our economy and community, and the University includes MWBE utilization as a component of presidential evaluations; and

Whereas the University is dedicated to meeting or exceeding its University-wide MWBE goals and complying with NYS procurement laws; now, therefore, be it

Resolved that promptly after the end of each fiscal year the Chief Financial Officer at System Administration shall report to the Board of Trustees the total amount and percentage of expenditures for contracts that each State-operated campus made with State-certified MBEs and WBEs and discuss strategies to increase the University's contracting with these business entities; and, be it further

Resolved that System Administration will develop enhanced training, and the purchasing staff and facilities staff (with job responsibilities that include construction-related procurement) of all State-operated campuses will complete mandatory training of procurement and construction procedures related to the fulfillment of the requirements of Executive Law Article 15-A; and, be it further

Resolved that System Administration will make modifications to its central accounting system and work with the Department of Economic Development (DED) to allow automated reporting by campuses of the payments by prime contractors, who are hired by the University, to MBE and WBE sub-contractors and sub-consultants in order for campuses to receive credit for the aforementioned utilization.

### **Background**

The resolution establishes specific reporting requirements on the State-operated campuses' utilization of Minority- and Women-owned Business Enterprises (MWBEs) to the Board of Trustees to ensure progress toward meeting established MWBE goals and complying with NYS procurement laws and SUNY procurement procedures.

In 1981, Governor Hugh Cary issued Executive Order 117, which prescribed arrangements for establishing a program for Minority Business Enterprises (MBE), and in 1983 Governor Mario Cuomo issued Executive Order 21 to include Women and established an Executive Committee on Minority and Women Owned Business Development (M/WBE). Since 1983 it has been the

University's policy to take affirmative action to ensure that minority- and women-owned business enterprises are given the opportunity to participate in providing the University with goods and services at competitive prices.

While many campuses have had difficulty in reaching their University-wide MWBE goals, which were set at 3% for minority-owned businesses and 3% for women-owned businesses, SUNY recently made notable progress in the utilization of MWBEs. The University exceeded overall goals in the procurement of commodities and services for the first time in 2010-2011.

In 2010, based on a NYS commissioned Disparity Study, amendments to Executive Law Article 15-A established State-wide MWBE goals in the areas of commodities, services, construction and construction-related services. The specific State-wide goals<sup>1</sup> are:

Category	MBE	WBE	M/WBE
Construction	14.33%	8.41%	22.74%
Construction-related services	13.21%	11.32%	24.53%
Non construction-related services	19.60%	17.44%	37.04%
Commodities	16.12%	10.93%	27.05%
Total	16.53%	12.39%	28.92%

As allowed by the Department of Economic Development (DED) regulations and due to the location of campuses, MWBE availability and several other factors, SUNY established University-specific goals for 2011-12. These goals are considerably higher than previous University goals but lower than the State-wide goals. SUNY's intention is to incrementally bring the University-wide goals in line with the State-wide goals by 2015.

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<sup>1</sup> MWBE goal percentages are based on the total MBE or WBE expenditures divided by the campus' or University's total base expenditures. Excluded from the total base expenditures are: non-discretionary commodities and services (including those not offered by a NYS certified MBE or WBE), payments to Community Colleges, Auxiliary Services, Preferred Sources, Sole Source Vendors and for State Contracts (unless the contract is with a MBE or WBE).

**SUNY 2011-12 Goals**

Category	MBE	WBE	M/WBE
Construction	7.00%	4.00%	11.00%
Construction-related services	7.00%	7.00%	14.00%
Non construction-related services	10.00%	8.00%	18.00%
Commodities	8.00%	6.00%	14.00%
Total	10.00%	10.00%	20.00%

Along with the establishment of State-wide MWBE goals, amendments to Executive Law Article 15-A impose sanctions on an agency that “substantially fails to meet the agency-specific goals prescribed in its most recently filed goal plan.” Ultimately, if an agency “has failed to take affirmative measures to implement a remedial plan” and to follow any of the remedial actions set forth by DED, the Director may “require that some or all of the agency’s procurement, for a specified period of time, be placed under the direction and control of another agency or agencies.”