

TO: Business Officers and MWBE Liaisons

FROM: Pamela Swanigan ^{TJS}
Director of University-wide MWBE Program

SUBJECT: SUNY'S RESPONSIBILITIES TO COMPLY WITH EXECUTIVE LAW ARTICLE 15-A

I. PURPOSE

In accordance with New York State Executive Law Article 15-A, this Guidance Bulletin is to inform campuses of the University-wide MWBE Program Office guidelines for assigning the roles and responsibilities when implementing Minority/Women Business Enterprises-Equal Employment Opportunity (MWBE-EEO) program at our campuses and System Administration. These responsibilities replace page eleven of the 2009-2010 MWBE Handbook.

II. APPLICABILITY AND SCOPE

SUNY is required to implement provisions of NYS Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction. The following coordination of responsibilities is designed to facilitate MWBE compliance management.

SUNY University-wide MWBE Program Office:

1. submits to NYS Economic State Development Corporation (ESDC) :
 - 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 M or WBE.
2. publish goal annually in the Goals Bulletin and provide to campuses separate goals, broken down by commodity type, for participation of certified minority- and women owned business enterprises (MWBEs) and equal employment opportunity (EEO) participation on all SUNY contracts', as approved by ESDC;
3. assists campuses with assigning goals on campus contracts through the issuance of a 9-Point Memo; University-wide MWBE Program Director will review and approve services and commodities contracts EEO Policy Statement, Staffing Plan and Utilization Plan;
4. where appropriate, grants a partial or total waiver of goal requirements established on the contract only upon the submission of a waiver form by a vendor/contractor and documentation of good faith efforts by the vendor/contractor to meet the goal requirements of the contract;
5. receives from vendors/contractors, at the direction of campus, copies of all MWBE compliance documentation in a central repository (MWBEProgram@suny.edu);

6. review vendor/contractor and any subcontractor documentation (i.e., compliance reports and other relevant documentation) obtained from the central repository (MWBEProgram@suny.edu) to determine, with appropriate staff whether the contractor made conscientious and active (good faith) efforts to employ and utilize minority group members and women on campus contracts;
7. ensures inclusion by campuses in all contracts and all documents soliciting bids or proposals contracts specific language relevant to provisions of Executive Law Article 15-A. (This language is contained in SUNY's Exhibit A-1 and Attachment A);
8. post approved utilization plan onto SUNY Means Business website, within ten (10) days of contract execution; and
9. provides to campuses a quarterly report on vendor/contractor MWBE performance.

SUNY Campuses:

1. SUNY campuses must document a good faith effort in procurements by employing the following actions, as articulated in 5 NYCRR §141.6(b):
 - a. determine whether there are certified minority- and/or women-owned business enterprises that could participate in the type of procurement opportunities that the campus has to offer as prime contractors or subcontractors;
 - b. determine whether the campus has attempted to *unbundle State contracts* and solicit bids from the certified minority- and women-owned businesses;
 - c. determine whether there are certified minority- and/or women owned business enterprises *outside of the Campuses' region* that could participate in procurement opportunities;
 - d. determine whether the campus has considered *encouraging joint ventures, teaming agreements, partnerships*, or other similar arrangements between prime contractors and minority and women owned business enterprises to participate in the State agency's procurement opportunities;
 - e. determine the number of opportunities that the campus had for *discretionary purchases*, and the number of times the campus used such opportunities;
 - f. determine whether the campus developed *selective bidder lists* that included certified minority- and/or women-owned business enterprises;
 - g. determine the number of times that the campus *negotiated* with certified minority- and women-owned businesses directly and the *number of times and amounts the campus awarded a discretionary contract* to a certified business; and
 - h. any other information submitted by the campus or other criteria that the director deems relevant to determining whether the campus exercised good faith.
2. Require vendors/contractors to submit a original copies of work plan (EEO policy, Staffing Plan and MWBE Utilization Plan) to campus send a copy to the central repository at (MWBEProgram@suny.edu);

3. require vendor/contractor to submit all original MWBE compliance documentation to campus and send a copy to the central repository (MWBEProgram@suny.edu);
4. ensures that established goals can be monitored for compliance during the life of the contract with the assistance of the University-wide MWBE Program Office;
5. require vendors/contractors submit a waiver form and documentation of good faith efforts to the central repository (MWBEProgram@suny.edu) to request a partial or total waiver of goal requirements established on the contract to the University-wide MWBE Program Director for review and approval;
6. require vendors/contractors to submit compliance reports and other relevant documentation (e.g., books, records, 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. submit a copy of approved utilization plan, staffing plan and policy statement upon contract execution to the central repository (MWBEProgram@suny.edu);
8. review vendor/contractor and any subcontractor documentation (i.e., compliance reports and other relevant documentation) to determine whether the contractor made conscientious and active (good faith) efforts to employ and utilize minority group members and women on the contract; and
9. require vendors/contractors to submit quarterly compliance reports by the 5th of the month, subsequent to the close of each quarter to ensure that the University-wide MWBE Program Office can submit to ESDC SUNY's quarterly compliance report in a timely manner pursuant to regulations.

A State contract shall mean:

(1) a written agreement or purchase order instrument, or amendment thereto, providing for a total expenditure in excess of \$25,000, whereby a State agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency;

(2) a written agreement in excess of \$100,000 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon;

A State subcontract shall mean:

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.