



Category:  
Financial

Responsible Office:  
[Business Services](#)

**Procedure Title:**

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

Document Number:  
7557

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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 NYS certified minority- or women-owned businesses (M/WBEs). Specifically, it outlines steps that campuses will employ in the procurement process (Item 7553) for commodities and services and construction (Item 7554) and construction-related services (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 policy (Item 7556) on New York State Certified Minority- and Women Owned Businesses.

This procedure applies to all procurements exceeding \$25,000 for labor, 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**

***Should you have question regarding this procedure please contact your campus counsel.***

**I. Objectives**

As outlined in Item 7556 (Procurement Opportunities for New York State Certified Minority- and Women Owned Businesses), it is the University's policy to take affirmative action to ensure that New York State certified minority- and women-owned business enterprises (M/WBEs) are given the opportunity to provide the University with commodities and services at competitive prices.

**II. Good Faith Effort**

NYS Executive Law Article 15-A and University policy require campuses, and the vendors and contractors (vendors) with whom they do business, to make a good faith effort to procure materials, supplies, equipment and services (including printing) from NYS certified minority- or women-owned businesses (M/WBEs) and meet University established goals for M/WBE participation in contracts. This procedure applies to all procurements exceeding \$25,000 for labor, services, supplies, equipment, or materials and for procurements exceeding \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of

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real property and improvements.

A. For all procurements exceeding the thresholds indicated above, the campuses should employ a good faith effort that includes, but is not limited to, the following strategies:

1. Notice of Solicitation
  - a. Procurements above \$50,000 require that an advertisement be placed in the New York State Contract Reporter.
  - b. Notice of solicitation (i.e., by phone, letter or email) should be sent to:
    - i. New York State-certified M/WBE vendors, as appropriate for the procurement. The directory of New York State-certified M/WBE 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) M/WBE business associations:
      - ~~ΕΕΕΕΕΕΕ~~ [Εντρεπρευριαλ Ασισταντς Χεντερς](#)
      - ~~ΕΕΕΕΕΕΕ~~ [Νεω Ψορκ Στατε Σμαλλ Βυσινεσσ Δεφελοπιεντ Χεντερ](#)
      - ~~ΕΕΕΕΕΕΕ~~ **Minority & Women Business Development Centers** (see Appendices section)
  - c. Advertisements and notices should be sent in timely fashion (allowing MWBEs at least 15 business days notification in advance of the response date).
  - d. Notice of solicitation, whether made by phone, letter or email, should include the response date for the information requested and a **Minority or Women Contractor Unavailability Certificate** (or similar form) to be completed by the vendor.
  - e. It is strongly suggested that campuses create, maintain and share with other SUNY campuses an M/WBE vendor list.
  - f. It is strongly suggested that advertisements also be placed in minority and women-focused media as appropriate.
2. Documentation of a Good Faith Effort should be part of the procurement record and consists of:
  - a. a copy of the notice of solicitation which includes:
    - i. records showing M/WBE organizations and associations contacted, the contact information ( i.e.,
    - ii. where appropriate, copies of advertisements placed in general circulation media, trade association, publications and/or minority-focused media;
  - b. solicitation responses including:
    - i. bids, quotes or proposals received from M/WBE firms or
    - ii. alternative responses:
      - ~~ΕΕΕΕΕΕΕ~~ emails or letters returned as “undeliverable;”
      - ~~ΕΕΕΕΕΕΕ~~ a vendor completed Unavailability Certificate (or similar) form; or
      - ~~ΕΕΕΕΕΕΕ~~ a statement in writing supplied by an M/WBE 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.
  - c. where appropriate, record of negotiations with M/WBE firms from whom quotes for purchases under the discretionary threshold were received.

B. Additional Elements of a Good Faith Effort for Discretionary Procurements (not exceeding \$200,000.00)

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As stated in Item 7553 (Purchasing and Contracting), and consistent with NYS State Finance Law Section 163, where commodities or services are available from New York State certified M/WBES, purchases may be made by the University in amounts not exceeding \$200,000 without competitive bidding. However, the discretionary threshold to \$200,000 for procurements from small, minority- and women-owned business does **NOT** apply to construction & construction-related services. The campuses are required to document in the procurement record support for both the reasonableness of the price and the selection of the vendor. Advertising requirements under NYS Economic Development Law still apply.

**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.*

1. When an M/WBE submits a quote for a commodity or service in a discretionary procurement (not exceeding \$200,000) and the quote is deemed high, the campus should engage in direct negotiation with the M/WBE 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).**
2. Generally, reasonableness of price can be determined by:
  - a. comparing the quoted price with the price for the same or similar services within the last six months;
  - b. comparing the price with other quoted prices;
  - c. comparing the quoted price with prices in various procurement publications;
  - d. reviewing the type of work that was previously accepted by the campus at a similar price; or
  - e. comparing the price of the product with the current market value of the same product.

*(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.)*

3. Justification for the Selection of Vendor may be supported by:
  - a. demonstrating reasonableness of cost;
  - b. showing enhanced or additional value provided by the vendor;
  - c. (if applicable) noting the vendor is a NYS small business; and
  - d. identifying the vendor is an MBE or WBE (this **cannot** be the sole justification).
4. Follow-up telephone calls to M/WBE vendors are encouraged (e.g., to determine if the vendor plans on submitting a quote or to engage in negotiations).

### B. Additional Elements of a Good Faith Effort for Procurements with Subcontracting Opportunities

Almost always in construction contracts, occasionally in service contracts and less often in commodity contracts, subcontracting opportunities may be part of the agreement. When a subcontracting opportunity exists, the campuses shall include, but not be limited to, the following strategies to ensure that prime vendors employ a good faith effort to utilize M/WBE subcontractors:

1. Good Faith Effort in the bid solicitation (and if there is a pre-bid walk through):
  - a. The campus will make bidders aware of the [Rules and Regulations](#) regarding Executive Law Article 15-A (Good Faith Efforts required of the Prime Vendor) including but not limited to requiring the prime vendor to;

i. Implement

strategic outreach to M/WBE organizations:

- ~~requests~~ requests for quotes for services, commodities and construction must be made in a timely manner in mainstream media which can reasonably expect to reach the minority and women-owned business communities (i.e., urban media).
- ~~requests~~ strongly suggest that /quotes for services, commodities and construction, advertisements also be placed in minority and women-focused media.

ii. provide the campus with documentation (e.g., monthly utilization reports) of its compliance with the terms of Executive Law Article 15-A.

iii. permit the campus access to its and its subcontractors' books, records and accounts for the purpose of investigating and determining whether it or its subcontractors are in compliance with the requirements of Executive Law Article 15-A .

b. The campus will make bidders aware of the documentation to be submitted to SUNY before, during and at the end of the contract;

c. The campus will inform bidders of the campus' MBE and WBE goals for the contract;

d. The campus will inform bidders of the campus' EEO (Equal Employment Opportunity) goals for the contract;

e. The campus will inform bidders of the NYS [MWBE Directory](http://www.nylovesmwbe.ny.gov) (<http://www.nylovesmwbe.ny.gov>); and

f. The campus will identify to bidders the campus' designated M/WBE Officer.

2. Good Faith Effort Documentation to be submitted to SUNY after the Bid Opening

a. As a pre-condition for award of the contract, and if not required at an earlier date(e.g. as mandated by WICKS Law) require the three apparent lowest bidders to submit, within ten (10) business days of the bid opening, the vendors':

i. **MWBE/EEO**

**Policy Statement**, which commits the Prime Vendor to implement the requirements in Executive Law Article 15-A, identifies the Prime Vendors's designated M/WBE officer, and acknowledges the MWBE & EEO goals in the contract

ii. **MWBE/EEO**

**Work Plan**, which projects the Prime Vendor's M/WBE and EEO usage for the contract;and

iii. **Contract**

**Breakdown**, which assigns monetary value to all sub-contractible items;

b. Within a time frame specified by the campus, require the vendor to submit an acceptable **Utilization Plan** that clearly delineates for subcontractors:

- i. names
- ii. complete addresses
- iii. telephone numbers
- iv. federal ID numbers

- v. value of subcontract/supply order
- vi. scope of work
- vii. WBE or MBE designations

c. Once approved by the campus, the campus shall post the utilization plan (or, if granted, waiver) on its website within ten (10) business days.

d. After commencement of contract work, any waivers of compliance issued by the campus or modifications to the utilization plan shall be posted on the campus' website within ten (10) business days of making such a decision.

3. Good Faith Effort Documentation to be submitted to SUNY Before Work Begins

a. The Prime Vendor shall submit a signed notarized **Campus' Consultant/Contractor Affidavit** to the campus, which formally commits to the MWBE & EEO goals specified in the contract and identifies the items that will be subcontracted to M/WBEs.

b. The Prime Vendor will provide the campus with copies of signed M/WBE subcontract agreement(s) and/or purchase order(s) representative of the M/WBE goal amounts in the contract.

4. Good Faith Effort Documentation to be submitted to SUNY After Work Begins

The Prime Vendor shall submit:

i. **Monthly M/WBE Utilization Reports** which verify participation, including the type of work completed by M/WBEs (This report must be submitted to and accepted by the campus designated MWBE officer for the Prime Vendor to receive payment);

ii. **Quarterly M/WBE Utilization Reports** which are required for internal reporting purposes (see III. Internal Reporting Requirements);

iii. **Quarterly EEO Work Force Utilization Report** which documents (by gender and race/ethnicity) employees on the job during a three (3) month period; and

iv. **Exclusions** for specialty or proprietary items.

5. Good Faith Effort in Progress Meetings

a. The campus shall monitor and verify the Prime Vendor's compliance with Executive Law Article 15-A by discussing:

- i. any and all MWBE issues;
- ii. any and all EEO issues;
- iii. MBE utilization;
- iv. WBE utilization;
- v. EEO utilization.

b. The campus may grant a waiver (partial or total) of M and/or WBE goal requirements established on the contract if the Prime Vendor submits a **Request for Waiver** and good faith effort documentation.

c. If it appears that, based on the utilization plan or periodic utilization reports, the Prime Vendor is failing or refusing to comply with the M/WBE participation requirements established on the contract, and no waiver is granted, the campus shall contact the University-wide MWBE Procurement Specialist.

**I. Records and Internal Reporting Requirements**

A. The campus shall maintain, as required by NYS Executive Law Article 15-A, suitable and auditable records of all such administration and expenses for procurements exceeding \$25,000 for labor, services, supplies, equipment, or materials and exceeding \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements.

B. The campus shall notify the University-wide MWBE Procurement Specialist via email when the campus receives money from the State University Construction Fund (SUCF) to manage a campus-let project. The contract information to be provided to System Administration is:

1. the project name/title;
2. the start date;
3. the total value of the contract;
4. a copy of the approved utilization plan;
5. the contact information for the designated MWBE officers for the campus and prime vendor;

C. Five (5) days after the close of the quarter, for any new contracts let after April 1, 2013, all prime contractors are to scan and submit their quarterly reports via e-mail to MWBEProgram@suny.edu.

D. Five (5) days after the close of the quarter, all campuses are to scan and submit via e-mail to MWBEProgram@suny.edu all quarterly reports they have received from prime contractors.

E. Within forty-five (45) business days after completion of a contract, the campus shall submit via email a final M/WBE Compliance Report (use form 113) to System Administration (Office of Business Operations and Procurement) detailing total expenditures by the contractors and consultants to M/WBE subcontractors/consultants.

## Definitions

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

**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.

**Women-owned business enterprise** – a business enterprise, including a sole proprietorship, partnership or corporation that has been certified as women-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.

**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.

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## Forms

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

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

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

[MWBE-EEO Policy Statement \(Form 104\)](#) - MWBE-EEO Policy Statement

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

[Contract Breakdown and Sample \(Form 106\)](#) - Contract Breakdown and Sample

[M/WBE Utilization Plan \(Form 107\)](#) - M/WBE Utilization Plan

[EEO Staffing Plan \(Form 108\)](#) - EEO Staffing Plan

[Campus' Consultant/Contractor Affidavit \(Form 109 Part 1\)](#) - Campus' Consultant/Contractor Affidavit Part 1

[Campus' Consultant/Contractor Affidavit \(Form 109 Part 2\)](#) - Campus' Consultant/Contractor Affidavit Part 2

[Monthly EEO Workforce Utilization \(Form 110\)](#) - Monthly EEO Workforce Utilization

[Monthly MWBE Compliance Report \(Form 111\)](#) - Monthly MWBE Compliance Report

[Quarterly EEO Workforce Utilization \(Form 112\)](#) - Quarterly EEO Workforce Utilization

[Quarterly MWBE Compliance Report \(Form 113\)](#) - Quarterly MWBE Compliance Report

[Request for Waiver \(Form 114\)](#) - Request for Waiver

[9-Point Goal Development Memo](#)

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## Related Procedures

[Purchasing and Contracting \(Procurement\)](#)

[Construction Contracting](#)

[Construction-Related Consultant Contracting Procedures](#)

[Contract Award Protest Procedure](#)

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## Other Related Information

[Procurement Opportunities for New York State Certified Minority- and Women-Owned Businesses](#)

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## Authority

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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

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### History

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

[NYS MWBE Development Centers](#)

[Guidance Document 1: Exemption and Exclusion Policy and List](#)

[Guidance Document 2: MWBE\\_EEO Goals for Current SFY](#)

[Guidance Document 3: SUNY's MWBE Responsibilities](#)

[Guidance Document 4: MWBE Business Rules](#)