

ATTACHMENT E

NYS OPRHP GRANT DOCUMENTS

ATTACHMENT A-1
PROGRAM SPECIFIC TERMS AND CONDITIONS
ENVIRONMENTAL PROTECTION FUND

I. Agency Specific Terms and Conditions

- A.** The **Program Office, Designated Payment Office** and **Designated Refund Office** shall be the STATE AGENCY identified on the face page. Document submission and inquiries should be directed to the Regional Grant Administrator for the Contractor's county of operations.
- B.** For purposes of notice, the **Contractor's designee** shall be the CONTRACTOR DOS INCORPORATED NAME at the CONTRACTOR PRIMARY MAILING ADDRESS, as identified on the face page.
- C.** **Payment** shall be made to CONTRACTOR SFS PAYEE NAME at the CONTRACTOR PAYMENT ADDRESS identified on the Face Page.
- D.** **Special Conditions and Requirements** specific to the project, including the timeline for submission of required documents and reports, are contained in Attachment E (Special Conditions and Requirements).
- E.** **Changes to Budget and Program Work Plan.** Changes shall not be made in the work described in Attachment C (Work Plan) or the proposed expenditure of funds as shown in Attachment B (Budget), without the prior written approval of the State. Such approval will be granted if the changes are not substantive and do not alter the scope, intent or basic elements of the contract. Changes in the Work Plan or Budget that are substantive or alter the scope, intent or basic elements of the contract, if agreed to by the State, will be implemented by an amendment that may require approval and filing with the New York Attorney General Contract Approval Unit (AG) and the Office of the State Comptroller (OSC or State Comptroller), per Section I(B) of this Master Contract.
- F.** **Procurement.** All goods and services required for this project must be procured in a manner so as to assure the prudent and economical use of grant moneys, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against nepotism, favoritism, improvidence, extravagance, fraud and corruption.
 - 1. If the Contractor is subject to General Municipal Law, documentation of the Contractor's compliance with the procurement and bidding requirements of General Municipal Law shall be included with the applicable request for reimbursement.
 - 2. If the total amount of the goods or services is less than the dollar threshold for competitive bidding, or if the Contractor is not subject to General Municipal Law, the Contractor must follow procurement procedures designed to achieve the purpose of this clause. Such procedures may include, but are not limited to, competitive bidding, the solicitation of three price quotes, written requests for proposals, etc. When submitting a request for reimbursement, the Contractor must include a copy of the organizational procurement policy applicable to the relevant expenditures **and/or documentation of the specific procurement process used for those expenditures.**
- G.** The Contractor and all users of this contract are strongly encouraged, to the maximum extent practicable and consistent with legal requirements, to use responsible and responsive New York State businesses as subcontractors, suppliers, and in other supporting roles. The Contractor will be required to identify and describe New York State businesses used and the value of subcontracts and supply contracts.

H. New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) Participation.

1. General Provisions

a. The New York State Office of Parks, Recreation and Historic Preservation is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“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.

b. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Office of Parks, Recreation and Historic Preservation, to fully comply and cooperate with the New York State Office of Parks, Recreation and Historic Preservation in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.

c. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section 7 hereof or enforcement proceedings as allowed by the Contract.

2. Contract Goals

a. For purposes of this procurement, the New York State Office of Parks, Recreation and Historic Preservation hereby establishes New York State certified minority-owned business enterprises (“MBE”) participation and New York State certified women-owned business enterprises (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of qualified MBEs and WBEs as defined in the bidders documentation provided at the time of solicitation. After contract approval, MWBE Contract Goals as defined on the approved utilization plan will be endorsed to determine compliance for the contract term.

b. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section 2.a. hereof, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

c. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the New York State Office of Parks, Recreation and Historic Preservation for liquidated or other appropriate damages, as set forth herein.

3. Equal Employment Opportunity (EEO)

a. The Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated thereunder by the Division of Minority and Women's Business Development of the New York State Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

b. The Contractor shall comply with the following provisions of Article 15-A:

1) Each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2) The Contractor shall submit an EEO policy statement to the New York State Office of Parks, Recreation and Historic Preservation within seventy two (72) hours after the date of the notice by New York State Office of Parks, Recreation and Historic Preservation to award the Contract to the Contractor.

3) If the Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Office of Parks, Recreation and Historic Preservation may provide the Contractor or Subcontractor a model statement.

4) The Contractor's EEO policy statement shall include the following language:

i. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

ii. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

iii. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

iv. The Contractor will include the provisions of Subdivisions (i) through (iii) of this Subsection 4) and Paragraph "e" of this Section 3, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

c. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and

Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

4. MWBE Utilization Plan

a. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the New York State Office of Parks, Recreation and Historic Preservation, either prior to, or at the time of, the execution of the contract.

b. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section 2.a of this Attachment.

c. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Office of Parks, Recreation and Historic Preservation shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor non-responsiveness.

5. Waivers

a. For Waiver Requests, the Contractor should use the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to New York State Office of Parks, Recreation and Historic Preservation.

b. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Office of Parks, Recreation and Historic Preservation shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

c. If the New York State Office of Parks, Recreation and Historic Preservation, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the New York State Office of Parks, Recreation and Historic Preservation may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

6. Quarterly MWBE Contractor Compliance Report. The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to the New York State Office of Parks, Recreation and Historic Preservation by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

7. Liquidated Damages – MWBE Participation

a. Where New York State Office of Parks, Recreation and Historic Preservation determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the New York State Office of Parks, Recreation and Historic Preservation liquidated damages.

b. Such liquidated damages shall be calculated as an amount equaling the difference between:

1) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

2) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

c. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Office of Parks, Recreation and Historic Preservation, the Contractor shall pay such liquidated damages to the New York State Office of Parks, Recreation and Historic Preservation within sixty (60) days after they are assessed by the New York State Office of Parks, Recreation and Historic Preservation unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Office of Parks, Recreation and Historic Preservation.

I. Non-Discrimination:

1. If the project involves development or acquisition of public facilities, the Contractor shall not limit access or discriminate in the operation of the facilities on the basis of place of residence, race, creed, color, national origin, sex, age, disability or marital status.

2. The Contractor agrees to comply with all applicable Federal, State, and local Civil Rights and Human Rights laws with reference to equal employment opportunities and the provisions of service.

J. Termination. In addition to the options available to the State in the Master Contract, in the event the Contractor fails to comply with its terms and conditions regarding completion of the project, the State at its option may require the Contractor to bring the project to a point of educational/interpretive, historical, recreational or conservation usefulness as determined by the State.

K. Documents submitted to the State may be subject to disclosure under the Freedom of Information Law.

L. Non-Sectarian Purposes. The Contractor agrees that funds made available as shown in Attachment B will only be used to achieve the intended public benefit and will not be used for any sectarian purposes.

M. International Boycott Prohibition. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App.

Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

- N. Prohibition on Purchase of Tropical Hardwoods.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime contractor for the project will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive.

- O. MacBride Fair Employment Principles.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.
- P. Procurement Lobbying.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.
- Q. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors.** To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.
- R. Iran Divestment Act.** By entering into this agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

Contractor further certifies that it will not utilize on this contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this contract, it must provide the same certification at the time the contract is renewed or extended. Contractor also agrees that any proposed Assignee of this contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of this contract, should the State receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the State will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after

the determination of such violation, then the State shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The State reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

II. Program Specific Terms and Conditions

- A.** Funding for this project is provided pursuant to the terms of the Environmental Protection Act, Title 9 of Article 54 of the Environmental Conservation Law, and governed by the Rules and Regulations set forth in 9 NYCRR Sections 439-443.
- B. Retroactive funding.** Notwithstanding the provisions of Section III(A)(2) of this Master Contract, program regulations set forth in 9 NYCRR 440.5 (Project sponsor's match) permit retroactive reimbursement of certain expenses, when those expenses are included in the project Budget.
- C.** Notwithstanding the provisions of Section III(C)(4) of this Master Contract, the State will **withhold ten percent (10%)** of the Contract Funding Amount identified on the face page of this Master Contract as security until all terms and conditions of this Master Contract have been satisfied by the Contractor to the satisfaction of the State.
- D. Project Sign.** At the commencement of the work described in the Work Plan, the Contractor shall erect a sign at the project site noting the State's assistance to the project. The project sign specifications and term length for this requirement are set forth in Attachment E (Special Conditions and Requirements).

E. Public Benefit Requirements.

- 1. In order to ensure a public benefit accrues from an acquisition, development or construction project that is being funded the Contractor shall:
 - a. Afford the public reasonable access to or use of the project as specified by the State;
 - b. Not impose a fee for use of or access to the project without the prior written approval of the State;
 - c. Own or hold by lease or maintain and operate the project as specified by the State;
 - d. Not allow operation of the project, or any portion thereof, by any other person, entity, or organization pursuant to any management agreement, license or other arrangement without first obtaining the written approval of the State;
 - e. Not alter, demolish, sell, lease or otherwise convey the project, in whole or in part, or permit a change in use of the project, without the prior written approval of the State; and

- f. Submit all plans in writing for restoration, rehabilitation, improvement, demolition or other physical change to the completed project for State approval before work commences.
 2. Other public benefit requirements specific to this project, including the term length of any property restriction (e.g., preservation covenant or public access covenant) and the legal mechanism for enforcing the restriction as specified by the State are set forth in Attachment E (Special Conditions and Requirements).
 3. Parkland acquired or improved by a municipality shall not be sold, leased, exchanged or otherwise disposed of (collectively, "disposed of") or converted to other than public park purposes without the express authority of an act of the Legislature, which shall provide for the substitution of other land of equal fair market value and reasonably equivalent usefulness and location to that being disposed of or converted, and such other additional requirements as shall be required by the State.
 4. Land acquired for recreation or conservation purposes by a not-for-profit organization shall be subject to a conservation easement (see, Title 3 of Article 49 of the Environmental Conservation Law) to be held by the State. Parkland shall not be disposed of by the not-for-profit organization except to the State, a local government unit or another qualifying tax exempt not-for-profit organization that shall be required to use it for recreation or conservation purposes. Disposal to any other entity of parkland acquired for recreation or conservation purposes by a not-for-profit corporation shall require the express authority of an act of the Legislature.
- F.** It is the Contractor's responsibility, pursuant to Sections 57 and 220(8) of the Workers' Compensation Law, to maintain for State audit and review either proof that they have Workers' Compensation and Disability Benefits Insurance coverage for any employees, or proof of exemption from the New York State Workers' Compensation Board. The Contractor must also obtain from any contractor or subcontractor hired to provide a service pursuant to this Master Contract, similar proof or waivers from the contractor or subcontractor, and must maintain such documentation on file for audit.
- G. Archeology.** In the event of any unanticipated archeological discoveries, the Contractor shall stop all work and notify the State immediately. Work shall not resume until the State determines how any previously undiscovered archeological remains will be treated. Special attention shall be given to any discovery of burials, graves, or human remains.
- H. Preservation of Historic Properties.** It is the public policy and in the public interest of the State to preserve New York's historical, archeological, architectural and cultural heritage. All activities under this Master Contract shall be reviewed under either Section 106 of the National Historic Preservation Act or Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law to ensure that adverse effects or impacts on significant properties are avoided or mitigated. Any work that affects historic properties shall conform to The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995, The Secretary of the Interior's Standards and Guidelines for Archeological Documentation or any other applicable Secretary of the Interior's Standards (collectively referenced as STANDARDS), which are available from the State.
- I. Planning Requirements.**
1. All planning documents, plans and specifications must be accepted by the State before the Contractor awards contracts for the project or the subject property. These must be prepared by a qualified professional accepted by the State.
 2. Any documents developed under this Master Contract shall include recognition of funding through the Environmental Protection Fund from the Office of Parks, Recreation and Historic Preservation.

J. Construction Requirements. If the Project described in this Master Contract includes construction, the following shall apply:

1. Contract plans, specifications, and cost estimates shall be submitted to the State for review prior to the letting of any construction contract by the Contractor. The State shall verify that the plans, specifications and cost estimates are in conformance with the work described in Attachment B and shall so notify the Contractor in writing; the State shall further verify that appropriate documents have been prepared by a professional licensed to practice in the State of New York. All plans and specifications as reviewed shall become part of this Master Contract, and no change or revision may be made to such plans and specifications without the express written consent of the State.
2. The Contractor shall be responsible for assuring that the project is designed and constructed in conformance with the Uniform Federal Accessibility Standards (UFAS Appendix A to 41 CFR part 101 19.6), the Americans with Disabilities Act Accessibility Guidelines (ADAAG Appendix A to 28 CFR part 36) and the New York State Uniform Fire Prevention and Building (I) (Code (parts 1219 1228 of Title 19 NYCRR). Where there are discrepancies among the sets of standards with regard to a particular design/construction requirement, the one providing for the greatest degree of accommodation for the disabled shall apply.
3. It is the Contractor's responsibility to assure that all work on the project complies with the State Environmental Quality Review Act, receives all required permits in advance, and complies with all applicable Federal, State and/or local laws including, but not limited to, zoning ordinances and building codes.

K. Post-Completion Requirements. Following completion of the project, the Contractor shall be responsible for maintaining project records. Where the project involves acquisition of equipment or acquisition of or improvement of real property, the Contractor shall be responsible for maintaining and operating the equipment, property, and/or improvements; providing public access; maintaining public signage related to the project; and seeking any required State approvals. The State shall have the right and responsibility to audit records and inspect the project and property for compliance.

NOTICE: Contractors, subcontractors, suppliers and vendors

This project is funded in part by a grant from the NYS Office of Parks, Recreation and Historic Preservation through Title 9 of the Environmental Protection Act of 1993. All contracts and subcontracts for the project are subject to the terms of the NYS Master Contract for Grants -- Standard Terms and Conditions (*MCG*), which can be found online at <http://grantsreform.ny.gov>, and Attachment A-1 (*A-1*) or Attachment A-2 (*A-2*), attached hereto.

Note particularly the following requirements:

- The State's right to review and approve every subcontract in excess of \$100,000. *MCG IV(B)(2)*
- The requirement that subcontracts contain provisions specifying (1) that work accord with the terms of the Master Contract, (2) that nothing can impair the rights of the State under the Master Contract, and (3) that nothing in the subcontract creates a contractual relationship between the subcontractor and the State. *MCG IV(B)(2)*
- Contractor's responsibility to submit vendor responsibility information to the State, including a Vendor Responsibility Questionnaire for subcontracts that equal or exceed \$100,000. *MCG IV(B)(4)*
- Non-discrimination requirements *MCG IV(I) and A-1 I(I)*
- Equal Opportunity provisions, including a requirement that the following provisions be included in construction subcontracts in excess of \$25,000:
 - The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
 - The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
 - The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
 - At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
 - The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. *MCG IV(J)*
- MWBE requirements *MCG IV(J) and A-1 I(H)* or, if the project uses federal funds, DBE requirements *MC I(V) and A-2 II(E)(I)* [or other guidance provided by the federal agency providing funding]
- Wages and Hours Provisions *MCG IV(Q)*
- New York State business requirement *A-1 I(G)*
- Worker's Compensation and Disability Benefits Insurance coverage *A-1 II(E)*

MINORITY/WOMEN OWNED BUSINESS ENTERPRISES SUMMARY

The following procedures shall be followed to satisfy the requirements of the Omnibus Procurement Act with regard to the procurement of subcontractors and suppliers.

I. A directory of minority and women-owned business enterprises is available from:

Empire State Development
Division Minority and Women's Business Development
Albany, NY 12245
Phone: (518) 292-5250
<https://ny.newnycontracts.com> (MWBE Directory search)

II. Definition. For the purposes of these clauses, the following definition shall apply:

- (a) "Certified business" shall mean either a business certified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law.
- (b) "Director" shall mean the Director of the Division of Minority and Women's Business Development established by section 311 of the Executive Law.
- (c) "Minority group member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
 - (1) Black persons having origins in any of the Black African racial groups;
 - (2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
 - (3) Native American or Alaskan native persons having origins in any of the original peoples of North America;
 - (4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
- (d) "Minority-owned business enterprises" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
 - (1) at least fifty-one percent owned by one or more minority group members;
 - (2) an enterprise in which such minority ownership is real, substantial and continuing;
 - (3) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
 - (4) an enterprise authorized to do business in this state and independently owned and operated.
- (e) "Subcontract" shall mean an agreement providing for total expenditures in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, corporation or not-for-profit corporation, in which a portion of a contractor's obligation under a state contract is undertaken or assumed.
- (f) "Women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
 - (1) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;

- (2) an enterprise in which the ownership interest of such women is real, substantial and continuing;
- (3) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise ; and
- (4) an enterprise authorized to do business in this state and independently owned and operated.

III. Good Faith Efforts. In order to show good faith efforts comply with the M/WBE participation goals of this contract, the contractor shall submit such documentation as will enable the STATE to make a determination in accordance with the following criteria:

- (a) Did the contractor submit a completed, acceptable utilization plan and EEO program aimed at meeting the goals for the participation of minorities and women in the contract?
- (b) Did the contractor place advertisements in appropriate general circulation, trade and minority or woman-owned publications in a timely fashion?
- (c) Did the contractor make written solicitations to women and minority-owned business enterprises listed in the directory of certified businesses in a timely fashion and include plans, specifications and contract terms. Did the businesses solicited respond in a timely fashion?
- (d) Could the contractor have reasonably structured the work to be performed under subcontracts so as to increase the likelihood of participation by certified businesses?
- (e) Did the contractor attend any prebid or preaward meetings scheduled by the STATE with M/WBE's which the STATE determined were capable of performing work or supplying materials on the contract?
- (f) Were the subcontract terms and conditions offered to M/WBE's comparable to those offered in the ordinary course of the contractor's business to other subcontractors on the contract?

IV. Utilization Plans

- (a) If goals have been established by the STATE for the participation of certified M/WBE's on this agreement, at the direction of the STATE, but in no case later than execution of the agreement the contractor shall submit to the STATE a utilization plan on forms to be provided by the STATE. The utilization plan shall list all subcontractors and suppliers the contractor intends to use on the contract and indicate which are certified M/WBE's.
- (b) The STATE will review the utilization plan and will issue to the contractor a written notice of acceptance or deficiency within twenty days of receipt. A notice of deficiency shall include;
 - (1) the name of any M/WBE which is not acceptable for the purpose of complying with M/WBE participation goals;
 - (2) elements of the contract scope of work which the STATE has determined can be reasonably structured by the contractor to increase the likelihood of participation of M/WBES; and
 - (3) other information which the STATE determines to be relevant to the utilization plan.
- (c) The contractor shall respond to the notice of deficiency within seven days of receipt by submitting to the STATE a written statement which remedies the deficiencies in the original plan. If the written remedy which the contractor submits is not timely or is found by the STATE to be inadequate, the STATE shall so notify the contractor within five days and direct the contractor to submit a request for a partial or total waiver of M/WBE participation goals on forms to be provided by the STATE. The request for waiver must be submitted within five days of the contractors receipt of a notice that the statement of remedy was untimely or inadequate.

- (d) A contractor who has made good faith efforts to obtain commitments from M/WBE subcontractors and suppliers prior to submitting its utilization plan may request a waiver at the same time it submits its utilization plan. If a request for waiver is submitted with the utilization plan, and is not accepted by the STATE at that time, the provisions of clauses (b) and (c), regarding the notice of deficiency and written remedy will apply. In this case, the contractor may submit a second request for waiver as directed by the STATE.
- (e) If the contractor does not submit a request for waiver, or if the STATE determines that the utilization plan does not indicate that the M/WBE participation goals will be met and that the good faith efforts of the contractor have been inadequate to justify the granting of the request for waiver, the STATE shall terminate the contract, or if the contract has not been executed, the STATE shall withdraw from contract negotiations. Notice of termination or withdrawal, along with a denial of a request for waiver, where applicable, shall be delivered to the contractor no later than twenty days after the STATE receives the request for waiver.
- (f) The contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its utilization plan, at least to the extent indicated in the plan.

V. Administrative Hearing on Disqualification of Contractor.

- (a) If the STATE disqualifies the contractor on the ground that the contractor has failed to remedy deficiencies in its utilization plan or document good faith efforts to remedy such deficiencies, the contractor shall be entitled to an administrative hearing, on the record, before a hearing officer appointed by the STATE, to review the determination of disqualification of the contractor.
- (b) The hearing officer's determination shall be a final administrative determination of the STATE and shall be reviewable by a proceeding brought pursuant to the Civil Practice Law and Rules, provided such proceeding is commenced within thirty days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of section 313 of the Executive Law.
- (c) Such review shall be commenced in the Supreme Court, Appellate Division, Third Department, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the Court of Appeals of the State of New York shall be subject to the same preference.

VI. Reports.

The contractor shall submit, and shall require subcontractors to submit, reports showing the participation of all business enterprises on this contract, including minority and women-owned business enterprises on forms and at intervals to be established by the STATE. Reports not submitted at such times as shall be required by the STATE shall be cause for the STATE to delay implementing scheduled payments to the contractor.

VII. Contractor's Failure or Inability to Meet M/WBE Participation Goals.

- (a) If the contractor, after making good faith efforts, is unable to comply with a contract's M/WBE participation goals, the contractor may submit a request for a partial or total waiver on forms provided by the STATE. If the documentation required with the request for a waiver is complete, the STATE shall evaluate the request and issue a written notice of acceptance or denial within twenty days of receipt.
- (b) If the STATE, upon review of the contractor's utilization plan and compliance reports, determines that the contractor is failing or refusing to comply with M/WBE participation goals, and no waiver has been issued in regards to such non-compliance, the STATE may issue a notice of deficiency to the contractor. The contractor must respond to the notice within seven days of receipt. This response may include a request for partial or total waiver of M/WBE participation goals.

VIII. Contractor and Agency Complaints, Arbitration.

- (a) If the contractor submits a request for a waiver of M/WBE participation goals and the STATE denies the request or fails to respond within twenty days of receiving it, the contractor may file a complaint with the Director according to the provisions of section 316 of Article 15-A of the Executive Law. The complaint must be filed within twenty days of the STATE's receipt of the request for waiver, if the STATE has not responded in that time, or within twenty days of a notification that the request has been denied by the STATE.
- (b) If the contractor fails to respond to a notice of deficiency, the STATE may file a complaint with the Director pursuant to section 316 of Article 15-A of the Executive Law.
- (c) A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
- (d) The party filing a complaint, whether the contractor or the STATE, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.
- (e) Upon receipt of a complaint, the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty days of receipt of the complaint, the Director is unable to resolve the complaint to the satisfaction of the STATE and the contractor, the complaint shall be referred to the American Arbitration Association for resolution pursuant to section 316 of Article 15-A of the Executive Law and the applicable requirements of Article 75 of the Civil Practice Law and Rules.
- (f) Upon conclusion of the arbitration proceedings, the arbitrator will submit to the Director his or her award regarding the alleged violation of the contract or the refusal of the STATE to grant a waiver request by the contractor. The award of the arbitrator with respect to an alleged violation of the contract or the refusal of the state agency to grant a waiver shall be final and may be vacated or modified only as provided by Article 75 of the Civil Practice Law and Rules.
- (g) Upon conclusion of the arbitration proceedings and the rendition of an award, the arbitrator will also recommend to the Director a remedy, including, if appropriate, the imposition of sanctions, fines or penalties. The Director will either;
 - (1) adopt the recommendation of the arbitrator;
 - (2) determine that no sanctions, fines or penalties should be imposed; or
 - (3) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or imposed by any new sanction, or increase the amount of any recommended fine or penalty.
- (h) The Director, within ten days of receipt of the arbitrator's award and recommendations, will file a determination of such matter and shall cause a copy of such determination to be served upon the parties by personal service or by certified mail, return receipt requested. The determination of the Director as to the imposition of any fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
- (i) The determination of the STATE or the contractor to proceed with a complaint shall not preclude the STATE, in its discretion, from pursuing any-other remedies which it may have pursuant to law and the contract.

IX. Subcontracts. The contractor will include the provisions of sub-paragraphs (V) and (VIII) above in every subcontract, as defined in sub-paragraph (II), in such a manner that such provisions will be binding upon the subcontractor as to work in connection with this contract.