

## Boilerplate Language

### A. Statement of Policy and Assurance of Equal Opportunity.

It is the policy of the Port of Oswego Authority that minority-owned business enterprises (MBEs), and women-owned business enterprises (WBEs), as defined in paragraph B, below, may not be discriminated against based on race, color, national origin or sex: i) in the process leading to the identification of potential subcontractors; ii) in the negotiation of terms and conditions to be included in subcontracts; and iii) in the standards for measuring performance by subcontractors.

The contractor agrees to take the steps set forth below to assure implementation of and compliance with this policy.

### B. Definitions.

1. Minority-owned Business Enterprise (MBE) shall mean a business that is periodically certified by the State of New York as satisfying the following criteria: i) at least fifty-one percent (51%) of the business is owned and controlled by minority group members who are United States citizens or permanent resident aliens, or in the case of a publicly owned business, at least fifty-one percent (51%) of the stock of the business is owned by minority group members who are United States citizens or permanent resident aliens; ii) the management and daily operations of the business are controlled by one or more of the minority group members who own it.

2. Minority Group Members shall mean the following:

- (1) Black persons, meaning persons having origin in any of the Black African racial groups.
- (2) Hispanic Americans, meaning persons of Mexican, Puerto Rican, Cuban, Central or South American origin regardless of race.
- (3) Asian Americans, meaning persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- (4) American Indians, meaning persons having origin in any of the original peoples of North America and who are recognized as American Indian by either a tribe, tribal organization, or a suitable authority in the community.

3. Subcontract shall mean a contract between a contractor and any other business unrelated to the contractor, through which the other business (*i.e.*, the subcontractor) provides a distinct element of the work, services, goods, supplies, equipment or materials contemplated by, and required for the completion of, the public construction contract.

4. Women-owned Business Enterprise (WBE) shall mean a business that is periodically certified by the State of New York as satisfying the following criteria: i) at least fifty-one percent (51%) of the

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business is owned and controlled by women who are United States citizens or permanent resident aliens, or in the case of a publicly owned business, at least fifty-one percent (51%) of the stock of the business is owned by women who are United States citizens or permanent resident aliens; ii) the management and daily operations of the business are controlled by one or more of the women who own it.

C. Directory of MBEs and WBEs.

The State of New York / Empire State Development compiles and keeps current a directory of certified MBEs and WBEs. Interested persons may obtain a copy by writing or calling the State of New York / Empire State Development. The directory does not purport to record all companies eligible for certification. Bidders and contractors are urged to compile their own lists of MBEs and WBEs and to take steps to promote certification of such companies as MBEs and WBEs.

D. MBE and WBE Utilization Plan.

Within seven days of being notified that it was the successful bidder, an officer of the contractor executed an MBE and WBE Utilization Plan. A copy of this plan is annexed hereto and made a part of the contract.

E. MBE and WBE Goals.

The Goals established for any contract are the Port's best estimate of the level of MBE and WBE participation in contracts that will likely occur if MBEs and WBEs are given an equal opportunity to compete.

F. Attainment of MBE and WBE goals and Positive Efforts to Attain Goals.

The contractor agrees to satisfy these goals or to document that they are unable to despite good faith efforts. Good faith efforts shall include all of the following:

- (1) Identification of MBEs and WBEs that may be able to perform specific subcontracts, by:
  - a) utilizing the State or any local directory of MBEs and WBEs; and/or
  - b) sending appropriate representatives to pre-bid and pre-award meetings conducted by representatives of the Port of Oswego Authority, to inform prime contractors and subcontractors of MBE and WBE requirements and subcontracting opportunities; and/or
  - c) placing advertisements in general circulation, trade association, and minority/female focus media located within reasonable proximity to the construction project, that solicit bids for identified subcontracting opportunities; and/or

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d) contacting minority and women's organizations, contractors' groups and local, state and federal minority and women business assistance offices and other organizations that provide assistance to and promote opportunities for MBEs and WBEs; and/or

e) any other methods that in fact result in the identification of MBEs and WBEs qualified to bid on subcontracting opportunities.

- (2) Where technically feasible, and consistent with the efficient performance of the prime contract, dividing the prime contract into segments that create subcontracting opportunities for qualified and available MBEs and WBEs.
- (3) Notifying a reasonable number of specific MBEs and WBEs in writing, that their interest in specified subcontracts is being solicited with sufficient time to allow them to participate effectively; such notice must include complete and accurate information about the plans, specifications and other requirements of a given subcontract, and must state the date bids and a response to the notice are due.
- (4) Following-up initial solicitations of interest by contacting MBEs and WBEs to determine with certainty whether they are interested and whether they need additional information to submit a bid.
- (5) Negotiating with, and considering and awarding subcontracts to interested MBEs and WBEs in the same manner and subject to the same procedures, standards and requirements the contractor follows with companies that are not MBEs and WBEs (e.g., the contractor shall not negotiate more demanding contract terms with MBEs and WBEs; or, in evaluating the merits of a bid by an MBE or a WBE, a commercially insignificant difference in price shall not be a basis for rejecting the bid).
- (6) Such additional measures that assure non-discriminatory treatment of MBEs and WBEs.

G. Reporting and Record Keeping.

The contractor will file monthly reports with the Port of Oswego Authority documenting that it will satisfy the MBE and WBE goals or that it is unable to do so despite positive efforts. More specifically, the contractor shall on the 15th day of each month following the signing of this contract provide the following documents and information:

- 1) A copy of each written subcontract for work or services -- including a copy of each agreement or order for goods, supplies, equipment or materials executed during the previous month;
- 2) The name of each company that was awarded a subcontract; whether the company is an MBE or a WBE; the date the subcontract was awarded; the dollar amount of the subcontract; the trade or specialty involved; the date

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work or services under the subcontract will (or has) commence(d) and will be (or has been) completed or the date the goods, supplies, equipment or materials will be or have been provided;

If the successful company is an MBE or a WBE not listed in the Utilization Plan, the race or ethnicity and sex of the individual(s) who own and manage the company (e.g., Black, Hispanic American, Asian- American, American Indian, Woman);

- 3) In the event a contractor has not awarded a subcontract to an MBE or WBE that was specifically identified in the contractor's Utilization Plan as likely to receive the subcontract, the contractor shall provide reasons the subcontract was not awarded, and approved by the Executive Director, as originally contemplated by the Utilization Plan;
- 4) In the event a company was found by the contractor to be unqualified or unable to perform a subcontract after the subcontract had been awarded to that company, the name of each such company; The contractor shall document the reason the company was found unqualified to perform the subcontract; whether the company is an MBE or a WBE and, if either an MBE or a WBE, the race or ethnicity and sex of the individuals who own and manage the company;
- 5) The percentage of each subcontract completed; the amount paid to each subcontractor and the balance due each subcontractor under each subcontract;
- 6) All revisions to the Utilization Plan, in the form and with all information required for the initial Utilization Plan;
- 7) If the Utilization Plan, as originally tendered or as revised, reveals that the contract goals will not be satisfied, then a detailed statement and documentary proof of the positive efforts that the contractor has made and will make to satisfy the goals. Included in the report shall be a listing of MBEs and/or WBEs, if any, that were considered for each subcontracting opportunity, the race or ethnicity of the individuals who own and manage each of those companies, the name and title of the person at each of those companies with whom the contractor dealt or negotiated, and the reason(s) such companies were denied the subcontracting opportunity.

H. Retention of Records.

The contractor shall retain, and make available to the Port Authority upon request, for a period of three years subsequent to the completion of the contract, all records relied upon for the compilation of each report and shall provide electronic copies of such files to the Port of Oswego Authority. Appropriate legal action will be taken against a contractor that willfully makes false statements or that provides incorrect information.

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I. Determination of Compliance or Non-Compliance.

The Port of Oswego Authority, with assistance from legal counsel, shall determine whether the contractor has failed to comply with any requirement of the Equal Opportunity Provisions of this contract.

The Port of Oswego Authority shall give notice to the contractor of a proposed finding of non-compliance. The contractor shall be afforded a hearing, upon ten (10) days' notice, to show cause of why a finding of non-compliance should not be entered.

J. Effect of Determination of Non-Compliance.

A determination of non-compliance shall constitute a finding that the contractor breached the contract. The Port Authority may impose appropriate remedies for non-compliance such as:

(1) Directing that part or all of the payments to the contractor be withheld until non-compliance is cured;

(2) Directing the contract be terminated;

(3) Directing that the contractor be barred from bidding on future contracting opportunities with the Port of Oswego Authority;

(4) Imposing a requirement that the contractor, in future bidding for Port of Oswego Authority contracts, guarantee that it will meet a specific MBE or WBE goal;

(5) If it is determined that a particular MBE or WBE subcontractor has been victimized by discrimination, a remedy could include directing said contract be awarded to that subcontractor;

(6) Any other remedy that the Port Authority deems appropriate given the facts and circumstances of the particular case.