

Guide to the New York State Education Department's Minority- and Women-Owned Business Enterprise (M/WBE) Program's Grant Review Process

New York State Education Department

Created By: Aimee E. Lang



Expansion of New York State's M/WBE Program Until 2024

The MWBE program, designed to make New York's economy more inclusive by requiring MWBE participation in State contracts, was due to expire at the end of 2019. The reauthorization extends the program until **2024** and amends the law to make it easier for more MWBEs to participate and to give all participating businesses greater benefits. The new terms include:

- Extending the term of MWBE certification from 3 years to 5 years;
- Increasing agency and authority discretionary purchasing threshold from \$200,000 to \$500,000 without a formal competitive process;
- Increasing the Personal Net Worth cap from \$3.5 million to \$15 million tomake more businesses eligible;
- Authorizing the Division of MWBE to organize outreach events, training and educational opportunities for MWBE firms across the state; and
- Establishing a Workforce Diversity Program that requires State agencies overseeing construction projects to utilize a diverse workforce; among additional new terms.

The Approval Process: What Does the M/WBE Unit Assess?

- Does the M/WBE package include all of the required paperwork?
 - FS-10
 - M/WBE Cover Letter
 - Goal Calculation Worksheet
 - Utilization Plan (M/WBE 100)
 - Notice(s) of Intent to Participate (M/WBE 102)
 - Equal Employment Opportunity Staffing Plan (EEO 100)
 - Contractor's Good Faith Efforts (M/WBE 105)
 - Evidence of Good Faith Efforts
 - Request for Waiver (M/WBE 101)
- Does the Goal Calculation Worksheet align with the FS-10?
- Is the arithmetic correct?
- Are there signatures where required?
- Are the vendors NYS M/WBE certified?
- Does the Utilization Plan align with the Notice(s) of Intent?



M/WBE Compliance Checklist (updated)

- It's a quick guide that ensures your Program Office is submitting a completed package
- Please note that we've updated this document and added "Evidence of Good Faith Efforts" as a line item
- We've also removed "original signatures required," since we accept scanned signatures for M/WBE documents

M/WBE Compliance Checklist

M/WBE Documents Package					
Full Participation Request Partial Waiver Request Total Waiver					
	Required Documents				
Documentation	Full	Request Partial	Request		
	Participation	Waiver	Total Waiver		
M/WBE Goal Calculation Worksheet					
M/WBE Cover Letter					
M/WBE 100: Utilization Plan			N/A		
M/WBE 102: Notice of Intent to Participate			N/A		
M/WBE 105: Contractor's Good Faith Efforts	N/A				
Evidence of Good Faith Efforts (please refer to the M/WBE 105 form to distinguish what constitutes as "evidence of good faith efforts")	N/A				
M/WBE 101: Request for Waiver Form and Instructions	N/A				
EEO 100 Staffing Plan and Instructions					

Requesting a Waiver M/WBE 105: Good Faith Efforts

(Bidder/Applicant) (Title) of (Telephone Number) do hereby submit the following as <u>evidence</u> of our good faith efforts to retain certified minority- and women-owned enterprises: (1) Copies of its solicitations of certified minority- and women-owned business enterprises and any responses thereto; (2) If responses to the contractor's solicitations were received, but a certified minority- or woman-owned business enterprise was not selected; the specific reasons that such enterprise was not selected; (3) Copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements; (4) Copies of any solicitations of certified minority- and/or women-owned business enterprises listed in the directory of certified businesses; (5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority- and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals; (6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority- and women-owned business enterprises. (7) Describe any other action undertaken by the bidder to document its good faith efforts to retain certified minority - and women-owned business enterprises for this procurement. Authorized Representative Signature	PROJECT/CONTRACT#	OOD FAITH EFFORTS CERTIFICATION (FORM 10)
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Authorized Representative Signature	Submit additional pages as needed.	
	ī	Authorized Representative Signature
Date		Data

- When requesting a waiver, the grantee must sign and complete an "M/WBE Contractor Good Faith Efforts Certification" form
- <u>In addition to</u> the M/WBE Contractor's Good Faith Efforts Certification form, grantees must also submit "evidence of good faith efforts"
 - If a grantee seeks a waiver, and only signs the Contractor's Good Faith Efforts form without providing evidence of good faith efforts, the package <u>cannot</u> be approved
- An approved waiver request does not automatically transfer to future grant years. Waiver requests are reviewed on an annual basis and updated "evidence of good faith efforts" must be submitted each year a grantee is seeking a waiver.

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Submit additional pages as needed

M/WBE 1

Authorized Representative Signature

Requesting a Waiver/Good Faith Efforts (cont'd.) M/WBE 105A: Contractor Unavailable

- Common examples of evidence of good faith efforts include:
 - Email exchange with vendor (not solely the initial outreach)
 - School's purchasing policy and a memo on official letterhead explaining how this policy impacts M/WBE utilization
 - RFP along with a memo on official letterhead that explains the lack of M/WBE applicants
 - "M/WBE Contractor Unavailable Certification" form (M/WBE 105A), along with email exchanges

M/WBE CONTRACTOR UNAVAILABLE CERTIFICATION				
RFP#/PROJECT NAME				
L (Authorized Representative) (Title) (Bidder/Applicant's Company)				
(Address)(Phone)				
I certify that the following New York State Certified Minority/Women Business Enterprises were contacted to obtain a quote for work to be performed on the abovementioned project/contract.				
List of date, name of M/WBE firm, telephone/e-mail address of M/WBEs contacted, type of work requested, estimated budgeted amount for each quote requested. DATE M/WBE NAME PHONE/EMAIL TYPE OF WORK BUDGET REASON				
1.				
3.				
<u>4.</u> 5.	-			
To the best of my knowledge and belief, said New York State Certified Minority/Women Business Enterprise contractor(s) was/were not selected, unavailable for work on this project, or unable to provide a quote for the following reasons: <u>Please check appropriate reasons given by each MEE/WBE firm contacted above.</u>)				
Did not have the capability to perform the work Contract too small C. Remote location				
D. Received solicitation notices too late E. Did not want to work with this contractor F. Other (give reason)				
Authorized Representative Signature Date Print Name				

Requesting a Waiver M/WBE 101: Request for Waiver (Updated)

NAME: ADDRESS:	EMAIL:
CITY, STATE, ZIPCODE:	FEDERAL ID NO.:
	RFP NO./PROJECT NO.:
NSTRUCTIONS: By submitting this form and the required information	the bidder/applicant certifies that Good Faith Efforts have been taken to
	nder this RFP/Contract. Please see Page 2 for additional requirements and
document submission instructions.	
BIDDER/APPLICANT IS REQ	UESTING (check all that apply):
MBE Waiver - A waiver of the MBE goal for this procurement is	WBE Waiver - A waiver of the WBE goal for this procurement is
requested.	requested.
Total Partial 9.9% %	☐ Total ☐ Partial %
PREPARED BY (Signature):	DATE:
	ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE
	15-A, 5 NYCRR PART 143, AND THE ABOVE REFERENCED SOLICITATION. (AY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR PROPOSAL
DISOUALIFICATION.	IAT RESULT IN A FINDING OF NONCOMPLIANCE AND/OR PROPOSAL
NAME OF PREPARER:	FOR AUTHORIZED USE ONLY
TITLE OF PREPARER:	REVIEWED BY:
TITLE OF FREFARER.	
TELEPHONE:	DATE:
EMAIL:	WAIVER GRANTED □ YES □ NO
DURIE.	□ TOTAL WAIVER □ PARTIAL WAIVER
	☐ CONDITIONAL WAIVER ☐ NOTICE OF DEFICIENCY
	COMMENTS:
M/WBE 101	

REQUEST FOR WAIVER FORM

TELEPHONE:

BIDDER/APPLICANT:

When requesting a waiver, a "Request for Waiver" form also needs to be submitted. Please note that the waiver percentage is out of 30%.

Example:

Discretionary = \$60,000

M/WBE Goal Percentage = 30%

M/WBE Goal Amount = \$18,000

Actual M/WBE Utilization = \$12,000

\$12,000 (M/WBE Utilization) ÷ \$18,000 (M/WBE Goal Amount) = 0.67

0.67 × 30 (M/WBE Goal Percentage) = 20.1 (M/WBE Utilization Percentage)

30% (M/WBE Goal Percentage) - 20.1% (M/WBE Utilization Percentage)

= 9.9% Waiver Request

M/WBE 102: Notice of Intent to Participate (Updated)

	bcontractors/suppliers. The Bio		pplicant unless requesting a total waiver. Parts B & C of this form must be completed by parate M/WBE Notice of Intent to Participate form for each MBE or WBE as part of the
Bidder/Applicant N	ame:		_ Federal ID No.:
ddress:			Phone No.:
ity		State Zip Code	E-mail:
gnature of Authori	zed Representative of Bidder/	Applicant's Firm	Print or Type Name and Title of Authorized Representative of Bidder/Applicant's Fi
ate:	DEDSIGNED INTENDS TO B	DOVIDE SERVICES OR SUR	LIES IN CONNECTION WITH THE ABOVE PROCUREMENT/APPLICATION:
ame of M/WBE:			Federal ID No.:
ddress:			Phone No.:
			Phone No.: E-mail:
City, State, Zip Co	de		E-mail:
ity, State, Zip Co	de		E-mail:
ity, State, Zip Ca	de		E-mail:
ity, State, Zip Co	de	IES TO BE PERFORMED BY I	E-mail:
ity, State, Zip Carlet Description	MBE Subcontractor FICATION STATUS:	LIES TO BE PERFORMED BY I	E-mail: MBE OR WBE: MBE Supplier WBE Supplier
Eity, State, Zip Co	MBE Subcontractor FICATION STATUS:	LIES TO BE PERFORMED BY I	E-mail:
ESIGNATION: ART C - CERTI The under	MBE Subcontractor FICATION STATUS: ersigned is a certified M/WBE I	WBE Subcontractor	E-mail: MBE OR WBE: MBE Supplier WBE Supplier
DESIGNATION: The under signer belonger to the condestrate of the conde	MBE Subcontractor FICATION STATUS: ersigned is a certified M/WBE I	WBE Subcontractor by the New York State Division of the Services or Supplies ADD THE BIDDER/APPLICANT	E-mail: MBE OR WBE: MBE Supplier WBE Supplier Minority and Women-Owned Business Development (MWBD). S DESCRIBED ABOVE AND WILL ENTER INTO A FORMAL AGREEMENT WITH

- The M/WBE Unit only accepts M/WBE certification from <u>currently</u> certified New York State firms
- We do not accept certification from:
 - New York City
 - New Jersey
 - Port Authority
 - Or any other entity outside of New York State
- We do not accept firms that have applied and/or are seeking certification – these firms will not count towards the M/WBE goal
 - On average, the NYS M/WBE certification takes two years to process. Due to the length of time it takes to become certified and the uncertainty of the outcome, we only accept firms currently certified by Empire State Development

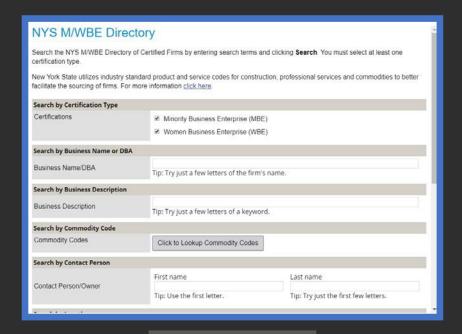
The University of the State of New York THE STATE EDUCATION DEPARTMENT (see instructions for mailing address)	PROPOSED AMENDMENT FOR A FEDERAL OR STATE PROJECT FS-10-A (03/15)			
Agency Name and Address				
	1	Amend		
		AIIIEIR		
	County			
Agency Code:	Amendment #			
Project#:				
Contract#:				
Contract #:	Tel #:			
E-Mail Address:	FS-10-A Pag	ge 2		
L-MIAL Address.				
INSTR Submit the original and two copies directly to the same S NOT submit this form to Grants Finance.	THONS EXPLANATION SUBTOTAL (Provide same detail as required in	SUBTOTAL SUBTOTAL INCREASE DECREASE		
NOT submit this form to Grants Finance. Enter whole dollar amounts only.	15 Professional Salaries			
 This form need only be submitted for budget changes that re 	Salaties			
Personnel positions, number and type Equipment items having a unit value of \$5,000 or n	16 Support StaffSalaries			
 Minor remodeling Any increase in a budget subtotal (professional signature) S1,000, whichever is greater Any increase in the total budget amount. 	40 um Purchasedos, transl. otc.) by more than 10 percent or Services			
Amendment # at top of this page must be completed. Do not use the FS-10-A for requesting a project extens.	45 Supplies & Materials			
CHIEF ADMINISTR. By signing this report, I certify to the best of my knowled and the expenditures, disbursements, and cash receipt	(146 S CTravel ICATIO) and be Enpenses report is true, complete, and accurate, before the proposes and no existing set from in the serms			
and conditions of the Federal (or State) award. I am aw omission of any material fact, may subject me to crimina false claims, or otherwise. (U.S. Code Title 18, Section	that am false fictilious, or fraudulent information, or the 80 or Employee is penalties for fraud, false statements, cort and Benefits ections 1720-3730 and 3801-3812).			
.DATE: SIGNATURE:	90 Indirect hief Admid strative Officer Cost			
FOR DEPART	ENT USE ONLY			
Program Approval:	49 BOCES Date:			
Finance: Log #	30 Minor Remodeling			
	20 Equipment			
	Total Increase or Decrease	(+) \$		
	Net Increase or Decrease			
	Previous Budget Total			
	Proposed Amended Total			

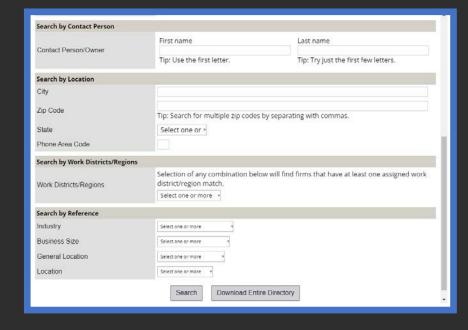
Amendments (FS-10-A)

- Submit an amendment to your Program Office for M/WBE review when there are changes to the M/WBE goal amount
- All amendments require the following:
 - An <u>updated Goal Calculation Worksheet</u>
 - Aligns with the "Proposed Amended Total," not "Net Increase or Decrease"
 - An updated and cohesive Utilization Plan
 - For instance, if a grantee is adding an M/WBE firm, they shouldn't submit a Utilization Plan with only the additional vendor. Instead, they need to submit a Utilization Plan listing <u>all</u> vendors being utilized during the grant year.
 - <u>Notice of Intent</u> for any M/WBE vendors that are added to the Utilization Plan

New York State M/WBE Directory

- By visiting the New York State Contract System (https://ny.newnycontracts.com/), and selecting "SEARCH THE DIRECTORY," grantees can search for New York State certified M/WBE vendors that align with their needs.
- The New York State M/WBE Directory is also a great way for grantees to confirm a vendor is NYS M/WBE certified. Simply "Search by Business Name," and if the vendor is certified, they will appear in the search results.
 - Grantees can also email: <u>MWBEcertification@esd.ny.gov</u> to confirm avendor's certification status

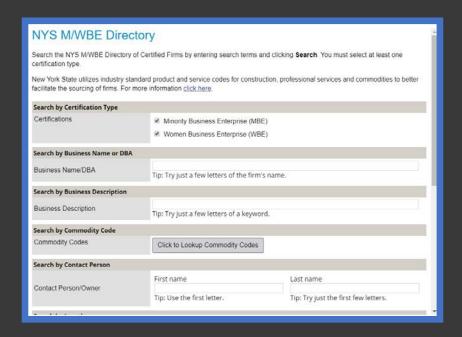


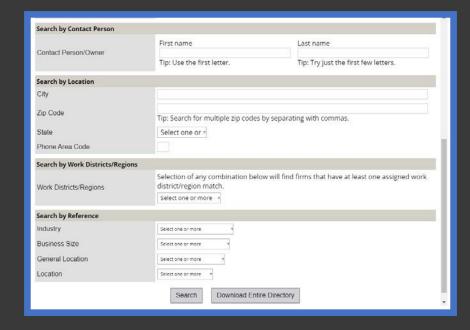


New York State M/WBE Directory: Search Tools

- Grantees can search for M/WBE vendors by:
 - Certification: Minority Business Enterprise or Women Business Enterprise
 - Business Name/DBA
 - Business Description (it's best to use a keyword)
 - Commodity Codes
 - NAICS (North American Industry Classification System)
 - NIGP (National Institute of Governmental Purchasing)
 - Commodity codes can also be searched by using a keyword(s)
 - Contact Person
 - Location
 - Work Districts/Regions

If a grantee is experiencing a difficult time identifying M/WBE vendors, they can always email MWBEgrants@nysed.gov, and we will pull vendor lists for them based on their needs.















General Housekeeping

How do I print this guide?

File → Print → Print Settings → Pure Black and White

What is the difference between MWBEgrants@nysed.gov and MWBE@nysed.gov?

<u>MWBEgrants@nysed.gov</u> is a general mailbox that is open to the public and program offices. Program offices, and grantees alike, can send general inquiries to this email address. Moreover, grantees submit their quarterly compliance reports to this email address.

MWBE@nysed.gov is for procurements and is open to the public.

M/WBE Vendors

What are examples of services provided by M/WBE vendors?

There are over 8,000 M/WBE vendors that provide an array of services. If a grantee is having a difficult time identifying vendors to meet their M/WBE goal, please refer them directly to MWBEgrants@nysed.gov. Below are only a few examples of services provided by M/WBEs:

- Accountants and bookkeepers
- Books (from children's to college-level to teacher resources)
- Catering and food service
- Childcare
- Computers/tablets/hardware/software
- College access programs
- Custodial services
- Diversity consultants
- Education consultants (from Universal Pre-K to STEM to teacher effectiveness/curriculum development)
- English Language Learners programs
- Furniture

- Hygienic products
- IT consultants
- Medical supplies
- Office, school, and art supplies
- Playground developers
- Printing
- Professional development services
- Promotional items (or personalized items)
- Snacks (and breakroom supplies)
- STEM supplies
- Travel (includes travel agencies and chartering vehicles)
- Tutors (online and in-person)

M/WBE Vendors

What if the vendor is undergoing the certification process? Will their utilization apply to the M/WBE goal?

Due to the length of time it takes to become certified and the uncertainty of the outcome, we only accept firms that are currently certified by Empire State Development. Thus, their utilization will not apply to the M/WBE goal.

If a vendor is New York City certified, does that mean they are New York State certified too?

No, New York City certification is not the same as New York State certification. We do not accept New York City certification (or M/WBE certifications from other entities). We only accept New York State certification.

Governor Cuomo's office is working on creating a shared portal, so that vendors seeking certification will be able to apply for multiple certifications at once.

Notices of Intent

For every year of the grant term, a grantee is utilizing the same vendor. Do they need to submit a Notice of Intent with an original signature from that vendor, every year?

No, once a grantee submits a Notice of Intent during the grant term, with an original signature, they illustrate to us that they've established a relationship with the M/WBE vendor. Thereafter, when submitting an M/WBE package, the grantee can submit a historical Notice of Intent, along with an updated Utilization Plan.

Partial Waivers

When a grantee receives a partial waiver, does it automatically apply to future years of the grant term?

No, a partial waiver approval is only issued for the grant year that it is requested and approve for.

Why doesn't a waiver extend into future years of the grant?

The reason a partial waiver does not extend into future years of the grant is because the M/WBE database is constantly updated. While a vendor may not be available to meet the needs of a grantee one year, there is a chance that a vendor is available during future years of the grant.

Amendments

When is an amendment required?

Submit an amendment to your program office for M/WBE review when there are changes to the M/WBE goal amount.

What needs to be submitted along with an amendment?

An amendment always requires an FS-10-A, updated Goal Calculation Worksheet, updated and cohesive Utilization Plan, and Notices of Intent if the grantee is adding new vendors.

If an amendment has a net increase or decrease, we require an amendment package for the "Proposed Amended Total," not the "Net Increase or Decrease."

Good Faith Efforts

Is it sufficient to send a memo as evidence of Good Faith Efforts?

It is only sufficient to send a memo as "evidence of good faith efforts" when describing a policy, such as a school's transportation policy. It is not sufficient to submit a memo as evidence of good faith efforts if there are areas of opportunity and the grantee is stating, "we were unable to locate an M/WBE for abc" or "we contacted XYZ M/WBE vendor, but they never responded." For both of these examples, grantees must show evidence that they contacted vendors (e.g. email exchange).

Furthermore, Article 15A is a legal requirement for all New York State contracts; therefore, all grantees must adhere to the requirements of the law. If an M/WBE vendor is significantly more expensive than a non-M/WBE vendor, the M/WBE Unit must see evidence of good faith efforts, such as a price comparison between the M/WBE vendor and the non-M/WBE vendor, to process a waiver. It is not sufficient to simply state "M/WBE prices are too high," without providing any evidence that the grantee contacted M/WBE vendors.