

City of Syracuse

Office of Audit
Nader P. Maroun
City Auditor

To: The Honorable Ben Walsh, Mayor
Ms. Sharon Owens, Deputy Mayor

From: Nader P. Maroun

Re: Performance Report on the City of Syracuse Division of Contract Compliance
and Minority Affairs

Date: March 4, 2021

The Office of the City Auditor is responsible for reviewing the activities of all Departments of the City of Syracuse in accordance with Section 5-501(4) of the Charter of the City of Syracuse.

The Audit process is planned and performed to attain a reasonable foundation for the judgments and conclusions regarding the function under examination. Additionally, an Audit includes an assessment of applicable internal controls and compliance with requirements of law and regulations when necessary to satisfy the audit objectives.

In July 2020, the Office of the City Auditor began a Performance Audit Review of the City of Syracuse Division of Contract Compliance and Minority Affairs. However, due to COVID-19 related issues and a staff member leaving City employment, there was a necessary delay in our review and report completion. We conducted an analysis of the program from its inception and authorization by the Common Council of the City of Syracuse in 1993. This Performance Review entails an objective and systemic examination of data provided allowing our Audit staff to make an independent assessment of the performance.

It is management's responsibility to assess risks in internal control operations. The information presented in this report is to assist those charged with governance in decision making and initiating corrective action to improve accountability. The Office of the City Auditor researched the program's internal control effectiveness, efficiency and compliance with Chapter 42 of the Revised General Ordinances of the City of Syracuse (Appendix, p.17).

The report is intended solely for the information of the Mayor, the Common Council and the involved Departments of the City of Syracuse, New York, and it is understood to be a matter of public record and its distribution is not limited. Furthermore, information regarding the audit is available at the City of Syracuse's Office of the City Auditor upon request. The City Auditor would like to thank the City Departments who assisted and cooperated with our office during the period of the audit.

City of Syracuse Division of Contract Compliance and Minority Affairs Audit Report



Submitted to:

Mayor Ben Walsh

and

Hon. Members of the Syracuse Common Council

March 4, 2021

Nader P. Maroun

City of Syracuse Auditor

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Introduction

The Office of the City Auditor hereby submits to the Honorable Mayor and Honorable Common Council members this Performance Audit Review of the Minority Women Business Enterprise Participation Program (henceforth referred to as the MWBE program in the report) operating under the Department of Neighborhood and Business Development. The MWBE program has existed under the NBD since 1993, as authorized by Revised General Ordinance, Chapter 42 derived from General Ordinance No. 9-1991, including 5 amendments from 2007 – 2017 (Appendix p. 25, Sec. 42-7). The program’s objective is to monitor diversity in Syracuse’s construction labor workforce and enforce MWBE regulations when appropriate. The MWBE regulates the City of Syracuse’s construction workforce to ensure it is consistent with 20% MWBE participation, up from the original 15% participation goal. The program has seen success throughout its existence bringing construction contract opportunities to small minority and women business owners.

During this review the MWBE Compliance Officer communicated that the program has transitioned to a point where progress is consistent. The Compliance Officer emphasizes that Syracuse’s population alone does not organically provide enough qualifying MWBEs candidates that can complete a contract or prime contract. The City’s current registered Minority and Women Businesses can’t compete on price quality and efficiency with other local larger, more established construction companies. As a result, the program cannot “as is” acquire enough participation to satisfy new 20% higher goals. The current MWBE program had been operating with one Compliance Officer and no additional funding to support operations since 2013, until a MWBE Specialist was hired in January 2021. The review and attention to this program is supported by the Affirmative Action Plan established in Syracuse in 1980.

The City of Syracuse’s MWBE program is designed to create and enforce diversity in the construction workforce for City funded projects. The Department of Neighborhood & Business Development, administering the MWBE, also receives Section 3 restricted federal funding for development projects and the MWBE program is charged with contract oversight and monitoring responsibilities in most cases. The Common Council is responsible for extending the MWBE’s authority through amendments. In 2013, the program expanded to include professional service contract opportunities for certified MWBEs. The current Administration has objectives that include the MWBE and has been making internal strides to increase local opportunities for minority professional services with its I.D.E.A. Project.

It is management’s responsibility to assess risk in internal control operations. It is the responsibility of the Auditor to gain an understanding to the program under review and obtain substantive evidence to expressing an opinion on the MWBE’s internal control design and that design’s ability to comply with regulations and procedures. Furthermore, all findings and recommendations in this audit review are to assist management and those charged with the governance and oversight in improving program performance and operations.

MWBE History

The Affirmative Action Plan in 1980 required Government entities to increase the number of minority employees within its work force and create opportunities for minorities in the community. This made way for the MWBE Participation Program. (Appendix A)

In 1993, the City of Syracuse had a disparity study conducted. A disparity study helps ensure any race-or gender-based remedial programs will withstand scrutiny in a court of law. The primary goal of the study is to assess, quantify, and evaluate the prevalence, significance (degree and weight) and scope of discrimination in the marketplace, if any, against minority- and women-owned business enterprises. The disparity study that the City of Syracuse had performed, led to the adoption of the legislation in Chapter 42 of the Revised General Ordinances of the City of Syracuse, the MWBE Participation Program. This disparity study provides the legal basis that would protect the City's MWBE Goals in the event of a law suit, and justifies that minority and women owned businesses are at a disadvantage in the City of Syracuse. The original disparity study of Syracuse is on file at the Department of Neighborhood and Business Development; the disparity study being used by the City of Syracuse is the latest 'New York State' study, which includes Onondaga County, but it's not specific to the City of Syracuse.

From the original adoption of Chapter 42, the document has been amended five (5) times; in 2007, 2009, 2013, 2015 and 2017. These Amendments each extend the programs provisions for two (2) years. (Appendix) The 2013 & 2017 Amendments accompanied other changes to the framework for the program. The 2013 Amendment changed the definition of 'Public Construction Contract or Prime Contract' from a minimum amount of \$20,000 to \$50,000 and renamed the Office of Minority Affairs to the 'Division of Contract Compliance and Minority Affairs.' The 2017 Amendment added a set of new participation goals and increased the existing participation goals from 15% to a new total participation of 20% (12% Minority, 8% Female).

The Minority Women Business Enterprise Participation Program is located within the Division of Contract Compliance and Minority Affairs in the Department of Neighborhood and Business Development, is located in City Hall Commons at 201 E Washington St. The Office was originally called The Office of Minority Affairs until 2015. The current MWBE Program has no annual budget and contains only one full-time position.

In 2010, Mr. Bill Owens was the MWBE programs Compliance Officer before the Miner administration. At that point in time the program had a fully funded position. In 2010, Ms. Sharon Owens took over the responsibilities of Mr. Owens when she joined the City of Syracuse during Mayor Stephanie Miner's administration. Ms. Owens was brought on as the Deputy Commissioner for The Department of Neighborhood and Business Development and was additionally assigned the duties of Compliance Officer for the MWBE program.

The position of Compliance Officer involves the oversight and monitoring of minority and women participation and inclusion in City projects and City projects that are funded by State or Federal funds. The objective of this program is to make sure contractors abide by MWBE goals and regulations. When Ms. Owens was managing the MWBE program, she developed the MWBE Directory, which lists all of the current certified MWBE companies. The Directory is able to quickly display and inform a contractor of all the certified minority companies that are available for hire in compliance with the MBE program. In 2011, Mr. Lamont Mitchell transferred from the Law department to assist Ms. Owens with compliance operations. This is when Mr. Lamont Mitchell became the new Compliance Officer for the MWBE program.

Since then, the program has seen success with limited resources and staff. There are several obstacles when enforcing the provisions of the MWBE program. One of the main obstacles highlighted by the Program is there are simply not enough minority or women owned businesses qualified to do the specialized construction jobs offered by the City. MBE's and WBE's certified by New York State do not count towards meeting the goals of the MWBE program; they must be City certified. The City funds specialized projects and annual projects; for example, projects dealing with the City's Water Works and Road Reconstruction.

The City has outsourced enforcement of the goals and regulations of the MWBE to *Landing & Ryan*, a specialist in compliance services, regarding contractors involved in the New York State funded Joint School Construction Board (JSCB) Projects, where 150+ construction contracts need to be organized and inspected for compliance. The MWBE Compliance Officer is responsible for reviewing the work of *Landing and Ryan*.

The MWBE has adapted to the needs of the community and has been providing opportunities for smaller construction companies through places like Home Headquarters, Housing Visions and JCSB Projects for schools. The majority of the City's MWBE companies do not have the means to complete the larger, more specialized contracts, but the City's MWBE has been offering and providing manageable job opportunities. The MWBE program has been successful in meeting and/or surpassing expectations of the Ordinance despite a lack of personnel resources, while being creative in advising these smaller construction companies in navigating challenging circumstances.

Scope:

We focused our Audit review of the ‘Division of Contract Compliance and Minority Affairs’ on the performance of participation goals, information system designs and system quality control. The review was subject to, but is not limited to, the requisition of information concerned with the MWBE Participation Program and matters of its creation. Our preliminary procedures included communications with management and employees in relation to the areas under review. The communications held and the evidence obtained is required to support the activities and operations carried out by the program. This evidence is used for audit testing and analytical procedures required of the review.

Objectives:

The Audit objectives are to review and provide reasonable assurance, to the public, that all areas under review are free from material weakness, misstatement and managerial practices not aligned with those described in Chapter 42 of the Revised General Ordinances. Listed below are the areas under review:

- 1.) All materials that facilitate the participation of WBE’s and MBE’s.
- 2.) All administrative procedures used to certify companies as MBE’s and WBE’s.
- 3.) All detailed information from construction contract pre-bid meetings and pre-award meetings.
- 4.) The Business Directory for periodic updates to the certified MBE’s and WBE’s.
- 5.) The reporting systems that are supposed to prevent discrimination against MBE’s and WBE’s.

Project Participation Goals

The MWBE’s participation goals were originally set at 9% Minority Business Enterprises (MBE) and 6% Women Business Enterprises (WBE), for construction projects funded by the City of Syracuse. These goals were increased to 12% MBE and 8% WBE in 2017, by Gen. Ord. No. 10 6-19-2017 (Appendix p. 25, Sec. 42-7). The City has been meeting these goals consistently. The Division of Contract Compliance and Minority Affairs, monitors the activities associated with two main funding sources for urban development. The first resource is the U.S. Department of Housing Urban Development (HUD). The second resource is the City’s own budget funds. The HUD funds are restricted with specific guidelines. The City’s funds are not restricted; although the MWBE is responsible for ensuring diversity goals in the work force are being met.

Performance Review Results:
MWBE Project Participation Goals

HUD Funded Projects	2018 (7 projects)	2019 (11 Projects)	\$ Change	% Change	# of MWBE's Utilized (2018)	# of MWBE's Utilized (2019)
Total Allocated Funds (HUD Funded Projects)	\$599,000	\$1,168,080	\$569,080	95.0%	N/A	N/A
MBE Participation (% of Allocated Funds)	58.5%	53.6%	N/A	-4.9%	11	14
WBE Participation (% of Allocated Funds)	28.6%	36.2%	N/A	7.6%	10	17
MBE Participation (Allocated Funds)	\$350,415	\$626,091	\$275,676	N/A	N/A	N/A
WBE Participation (Allocated Funds)	\$171,314	\$422,845	\$251,531	N/A	N/A	N/A
Total MWBE Participation (%)	87.1%	89.8%	N/A	2.7%	N/A	N/A
Total MWBE Participation (Allocated Funds)	\$521,729	\$1,048,936	\$527,207	101.0%	N/A	N/A

City Funded Projects	2018 (7 Projects)	2019 (9 City Projects)	\$ Change	% Change	# of MWBE's Utilized (2018)	# of MWBE's Utilized (2019)
Total Allocated Funds (City Funded Projects)	\$3,382,243	\$4,231,654	\$849,411	25.1%	N/A	N/A
MBE Participation (% of Allocated Funds)	13.7%	19.9%	N/A	6.2%	13	9
WBE Participation (% of Allocated Funds)	10.0%	3.7%	N/A	-6.3%	19	10
MBE Participation (Allocated Funds)	\$463,367	\$842,099	\$378,732	N/A	N/A	N/A
WBE Participation (Allocated Funds)	\$338,224	\$156,571	-\$181,653	N/A	N/A	N/A
Total MWBE Participation (%)	23.7%	23.6%	N/A	-0.1%	N/A	N/A
Total MWBE Participation (Allocated Funds)	\$801,592	\$998,670	\$197,079	24.6%	N/A	N/A

The charts above represent the 2018 and 2019 participation percentage of MBE's and WBE's by funding source (Federal and City). The project percentages represent the MWBE portion of the total allocated funds towards construction and urban development. The remaining portion is retained by the prime contractor. The information shows a 24.6% increase in the City's MWBE activity and a 101% increase in HUD MWBE activity. HUD funds are highly regulated with specific diversity guidelines. City funds are not restricted with fewer guidelines, although the MWBE is responsible for ensuring diversity goals authorized by the programs' Ordinance, are being met in construction contracts. The City does not appear to have the capacity to increase and meet MWBE Goals beyond current levels; this is mainly due to the aforementioned obstacles regarding an overall shortage of MBE's and WBE's having the means to complete larger, more specialized contracts, combined with minimal resources dedicated to the MWBE program.

Funding and Projects Available for MWBE Participation

	Fund Restrictions:	Requirements:	Regulations:
HUD Funds	<ul style="list-style-type: none"> • Housing Urban Development • Water Works Construction* 	<ul style="list-style-type: none"> • Basic Construction Equipment • Heavy Equipment • Specialized Equipment 	<ul style="list-style-type: none"> • Federal MWBE Regulations
City Funds	<ul style="list-style-type: none"> • Road Construction* • Bridge Construction* • Professional Services 	<ul style="list-style-type: none"> • Heavy Equipment • Professional Qualifications 	<ul style="list-style-type: none"> • City of Syracuse MWBE Regulation

**(Most Contracts Require Heavy and/or Special Equipment and Training)*

The City of Syracuse NBD receives the ‘Housing Urban Development’ funding commonly known as HUD. These HUD funds are restricted to certain projects of urban development involving things such as, the clean-up of ‘Lead Paint’ in neighborhoods to Community Development Block Grants (CDBG), which provides funding for local agencies. These funds are not only restricted to specific activities but further regulated with ‘Section 3’ goals (Appendix p. 35). Local agencies like Home Headquarters and Housing Visions, along with many other qualifying prime contractors, can apply for the funds from the City.

When awarded the funds, these entities are expected to abide by Section 3 goals as well as MWBE goals. These local agencies create opportunities for smaller MWBE contractors who might not have the means to perform a ‘prime contract.’ Companies who have had limited abilities or no experience, successfully take advantage of these smaller valuable opportunities and building their business.

Syracuse Industrial Development Agency (SIDA) is a local operation that also receives state funds and has its own regulations and development objectives. The MWBE program currently has no oversight of these projects as discussed. SIDA may possibly develop minority inclusion guidelines and collaborate with the City’s MWBE program.

Findings & Recommendations:

Finding 1 - The program is not sufficiently staffed to maintain and expand MWBE Participation Goals.

Under Staffed

At the time of our initial review, there was only one staff member assigned to the MWBE program, tasked with overseeing 246 City approved MWBE contractors. The MWBE program monitors HUD funded projects and City funded projects. The HUD funded projects acquire the majority of the manpower available in the program. This stresses the internal control design and the amount of compliance that can be enforced at any given time (Appendix p. 20, Sec. 42-2-5).

Recommendation 1 - Hire an Additional Staff Member

A recent hire has been added to the staff for compliance assistance and the effective management of expanding participation goals.

Management Response 1 - This recommendation has been fully implemented by the Department of Neighborhood and Business Development. As noted in the Updated Draft of the performance report, the City hired an additional staff person in November 2021 to work in the Office of Minority Affairs and assist with outreach and technical assistance to businesses and contractors, compliance, data entry and reporting. This will enable more effective management of expanding participation goals.

Finding 2 - The program's information system is too paper heavy and outdated to maintain expanding MWBE Participation Goals.

Internal Processes Too Paper Dominant

The MWBE program relies heavily on processing physical pieces of paper to document activities. This causes delays when essential information is needed for approval of funds and monitoring requirements by the MWBE program.

Recommendation 2 - Digitize Programs and Information Processes

Management needs to invest in software that can organize, collect, track and share the program's information, such as **B2GNow**, one of the country's leading diversity management software programs. Information is currently collected on forms A, B and C required by the General Ordinance (Appendix p. 19, Sec. 42-2-1). These forms should exist as a digital interface where the Officer user and Client user can communicate without delay.

Management Response 2 - The City agrees with this recommendation. The Office of Minority Affairs has scheduled a Demo of the BG2Now software on March 2, 2021. Following the software demo, the City will evaluate software options and costs, and develop a plan to acquire a technology solution that will digitize the required forms and automate work and information flows between City management and contractor businesses. During the software research and assessment process, we will evaluate the ability of the tool to upload notes, forms and/or other documentation which addresses finding 4. A plan will be finalized by June 30, 2021.

Finding 3 - No policies or procedures exist for the operations within the monitoring program.

No Policies and Procedures Manual

The program uses three (3) forms A, B and C to record and monitor the awarded prime contractors. No literature exists within the program that properly explains how the forms are to be administered and what procedures to take if forms are incomplete or missing. These forms are essential to fulfilling monitoring requirements and ensuring the fair treatment of MBE's and WBE's by prime contractors. The timeliness of completion, the proper handling and record keeping of these forms is critical to the information system and for the program's overall quality control.

Recommendation 3 - Create a 'Policies and Procedures' Manual for the MWBE Program
Management should review Chapter 42 of the Revised General Ordinances of the City of Syracuse (Appendix p. 17) and the internal controls to create a flow chart of the operations that are supposed to be present whether functioning or not. Then management should critique the flow chart and write a narrative defining the flow chart. Management should then create literature expressing the nature, extent and timing of carrying out the procedures and operations in the program.

Management Response 3 - The City agrees with this recommendation. The MWBE Compliance Officer will work with the Office of Accountability, Performance and Innovation to create a process flow chart based on the requirements of Chapter 42, and will also create a Standard Operating Procedure (SOP) Manual that provides a narrative description of the sequence and timing of the required processes and procedures to operate the program. The flow chart and SOP will be completed by the end of the current fiscal year, June 30, 2021.

Finding 4 - No Documentation of Pre-Bid meetings and Pre-Award meetings.

No Record of Meeting Minutes

The documentation of meeting minutes is required by the program's Ordinance (Appendix p. 20, Sec. 42-2-3). They should record important details, decisions and assignments. Written minutes can help prevent disagreements and misunderstandings that may arise in the course of business.

Recommendation 4 - Keep Detailed Records of Pre-Bid and Pre-Award meetings

Create a binder or computer file that organizes all information and communications between the MWBE compliance officer and a Prime Contractor during Pre-Bid conversations and Pre-Award conversations.

Management Response 4 - The City agrees that the MWBE Compliance Officer should keep a centralized repository of all records and minutes of the pre-bid and pre-award meetings. Today, pre-bid and pre-award meetings are conducted according to Sec. 42-2 (3). Minutes and records of these meetings are completed by the project lead (City's lead Engineer, department staff or Consultant). The Office of Minority Affairs will immediately begin to organize and store meeting minutes in a centralized computer file for each project.

Finding 5 - Improper Annual Reports to Common Council.

The documentation supplied to our office representing the levels of MBE and WBE participation attained for public construction contracts awarded during the previous year and providing notice of any violations, does not reflect the categories required by the General Ordinance.

Recommendation 5 - Generate a new annual report outlining the items referenced in Appendix (p. 25, Sec. 42-6).

Management Response 5 - The City agrees with this recommendation. The Minority Affairs Activity Report is provided annually to the City of Syracuse Common Council as part of the Budget process. In accord with this recommendation from the performance report, a revised report template will be created to include the information required by Sec. 42-6, specifically levels of MBE & WBE participation attained for all public construction contracts in the previous year, violations of the MWBE program that were found by the MWBE Compliance Officer and Corporation Counsel, and recommendations of modifications needed to Chapter 42, if any. A final version of this report summarizing the relevant data from the prior fiscal year will be furnished by the end of the 1st quarter of the subsequent fiscal year (e.g., Final FY20-21 Report will be issued to Common Council by Sept 30, 2021).

Conclusion:

In conclusion, the City Auditor would like to thank all the parties involved throughout this process and we appreciate the assistance and patience from everyone. We have concluded that the MWBE program is, with reasonable assurance, satisfying, without material misstatement, the requirements of the program's objective. We would like to bring to management's attention the absence of essential supporting documentation that was not available. Although this limitation of information was estimated to be immaterial, this is a clear sign of a 'weak internal reporting system.'

APPENDIX

City of Syracuse

CITY CLERK'S OFFICE

I, JOHN P. COPANAS, City Clerk of the City of Syracuse, New York do hereby certify that the attached is a true copy of an ORDINANCE:

Adopted by the Common Council on

September 14, 2015

Signed by the Mayor on

September 16, 2015


City Clerk

TO:

Mayor
Assessment Commissioner
Aviation Commissioner
Board of Elections
Bureau of Accounts
Citizen Review Board
City Auditor
City School District
Code Enforcement
Neighborhood and Business Development
Finance Commissioner
Corporation Counsel
United States Congressperson
Governor of New York State
New York State Senate
New York State Assembly
New York State Senator
Onondaga County Legislature

Management & Budget Director
Parks & Recreation Commissioner
Personnel & Labor Relations Dir.
Police Chief
Public Works Commissioner
Public Works/Bookkeeper
Purchase Department
Real Estate Division
Research Director
Water Department
Zoning Administration
United States Senator
Department of Engineering
Finance/Treasury
Finance (Water Bureau)
Fire Chief
Grants Management Director
Board of Education

General Ordinance No. 23

2015

**ORDINANCE AMENDING GENERAL
ORDINANCE NO. 22-1991 AS LAST AMENDED
BY GENERAL ORDINANCE NO. 24-2013 AND AS
PREVIOUSLY AMENDED BY GENERAL
ORDINANCE NO. 25-2011 RELATIVE TO
CHAPTER 42 OF THE REVISED GENERAL
ORDINANCES OF THE CITY OF SYRACUSE, AS
AMENDED, ENTITLED MINORITY AND
WOMEN BUSINESS ENTERPRISE
PARTICIPATION PROGRAM**

BE IT ORDAINED, that Chapter 42 of the Revised General Ordinances of the City of Syracuse is hereby amended as follows:

WHEREAS, it is the policy of the City of Syracuse that business enterprises owned by women and by members of minority groups have a full and non-discriminatory opportunity to obtain prime contracts and subcontracts let by and through the City of Syracuse for public construction projects; and

WHEREAS, this Common Council on February 11, 1991 adopted General Ordinance No. 22 amending Chapter 42 of the Revised General Ordinances of the City of Syracuse, as amended, entitled Minority and Women Business Enterprise Participation Program; and

WHEREAS, this Common Council by General Ordinance No. 24-2013, authorized the extension of the Minority and Women Business Enterprise ("MWBE") Participation Program for an additional two (2) year period expiring May 29, 2015; and

WHEREAS, this Common Council finds that minority-owned and women-owned business enterprises seeking subcontracts in Syracuse public construction projects will continue to be discriminated against by prime contractors unless the goals participation program established by General Ordinance No. 22-1991 as extended by General Ordinance No. 24-2013 is continued; and

WHEREAS, this Common Council finds that:

(a) The measures contained in General Ordinance No. 22-1991 as amended continue to be necessary to prevent the City from acquiescing in discrimination against minority-owned and women-owned business enterprises in the awarding of subcontracts under prime contracts let by the City of Syracuse for public works projects; and

(b) That race-neutral means alone are not sufficient to increase participation by women and minority-owned businesses in public construction type projects; and

(c) That the recent experience of the City's Joint Schools Construction Board ("JSCB") confirms that the MWBE program is an effective and efficient method to ensure that City public works contracts are made available to all business enterprises within Onondaga County; NOW, THEREFORE,

BE IT ORDAINED, that General Ordinance No. 22-1991 as last amended by General Ordinance No. 24-2013 amending Chapter 42 of the Revised General Ordinances of the City of Syracuse, as amended, is amended as follows:

(a) Section 42-18 shall be amended to reflect that General Ordinance No. 22-1991, as last amended by General Ordinance No. 24-2013 is hereby renewed for a period of two (2) years from May 29, 2015 through May 29, 2017 hereof unless prior thereto, it is renewed or repealed by the Common Council; and

(b) All other terms and conditions of said General Ordinance No. 22-1991 as last amended by General Ordinance No. 24-2013 not amended by this ordinance shall remain in full force and effect as written; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect immediately.

Chapter 42 - MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION PROGRAM (1)

Footnotes:

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Editor's note— Gen. Ord. No. 19-1994, adopted June 20, 1994, extended the provisions of Ch. 42, as amended, for three (3) years following the adoption of said ordinance. Chapter 42 derives from Gen Ord. No. 9-1991, adopted Feb. 11, 1991, and extensions in the expiration date were enacted by Gen. Ord. No. 2-1994 (from April 4, 1994 to May 19, 1994) and Gen. Ord. No. 9-1994 (from May 19, 1994 to June 30, 1994).

Cross reference— Affirmative action plan, Pt. O, Ch. 39

Sec. 42-1 - Definitions.

For purposes of this chapter, the following terms shall have the meaning defined in this section, unless otherwise apparent from the context:

- (a) *Bid* shall mean an offer by a business to enter into a public construction contract.
- (b) *Bidder* shall mean a business that submits a bid.
- (c) *Certification* shall mean the process by which the city's office of minority affairs determines that a business entity should be recognized as a minority-owned and/or women-owned business enterprise for the purposes of this chapter.
- (d) *City* shall mean the city of Syracuse, New York.
- (e) *Contractor* or *prime contractor* shall mean a business that is awarded a public construction contract
- (f) *Minority-owned business enterprise (MBE)* shall mean a business that is periodically certified by the city division of contract compliance and minority affairs as satisfying the following criteria: (i) at least fifty-one (51) percent 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 (51) percent 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; and (iii) the business has its principal operations, or has permanently staffed offices, located within Onondaga County.
- (g) *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.
- (h) *Positive efforts* by a contractor shall include all of the following:
- (1) Identification of MBEs and WBEs that may be able to perform specific subcontracts, by:
 - a. Perusing the Syracuse directory of MBEs and WBEs; and/or
 - b. Sending appropriate representatives to pre-bid and pre-award meetings conducted by representative of the office of minority affairs, 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
 - 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 method(s) that in fact results 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 in sufficient time to allow them to participate effectively; such notice must include complete and accurate information about the plans, specifications, change orders 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 make 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., it may 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) After awarding a subcontract to an MBE or a WBE, imposing requirements and performance standards no more stringent than those imposed on companies that are not MBEs or WBEs.
- (i) *Public construction contract or prime contract* shall mean: (a) Any contract, in the amount of at least fifty thousand dollars (\$50,000.00), awarded by the city for the construction, rehabilitation, alteration, conversion, extension, repair or demolition of city buildings, streets or other improvements to its real property whereby the city is committed to expend or does expend its funds in return for such construction, rehabilitation, alteration, conversion, extension, repair or demolition; or (b) any contract or loan, in the amount of at least fifty thousand dollars (\$50,000.00), for the rehabilitation or construction of buildings administered by the department of community development; provided, however, that the term shall not include any contract under which federal or state authorities expressly prohibit the city from imposing the requirements of this chapter.
- (j) *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.
- (k) *Women-owned business enterprise (WBE)* shall mean a business that is periodically certified by the city office of minority affairs as satisfying the following criteria: (i) At least fifty-one (51) percent of the 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 (51) percent 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; and (iii) the business has its principal operations, or has permanently staffed offices, located within Onondaga County.

(Gen. Ord. No. 22-1991, 3-25-91; Gen. Ord. No. 24-2013, 5-28-13)

Sec. 42-2 - Administration.

The city office of minority affairs, a unit of the department of community development ("Office of Minority Affairs"), in addition to the specific powers and duties set forth elsewhere in this chapter shall:

- (1) Develop techniques, materials and procedures consistent with this chapter, to facilitate the participation of WBEs and MBEs in public contracting opportunities and to facilitate compliance with this chapter by contractors;
- (2) Subject to the prior approval of the commissioner of community development, adopt administrative rules and procedures to implement its responsibilities under this chapter (e.g., to certify companies as MBEs and WBEs);

- (3) For each public construction contract, conduct a pre-bid meeting and a pre-award meeting to inform WBEs and MBEs of subcontracting opportunities and to review with the successful bidder its MBE and WBE responsibilities;
- (4) Maintain and periodically update a directory of businesses that have been certified as MBEs and WBEs under this chapter;
- (5) Develop and implement internal auditing and reporting systems to determine the effectiveness of this chapter in preventing discrimination against MBEs and WBEs.

(Gen. Ord. No. 22-1991, 3-25-91)

Sec. 42-3 - Establishment of MBE and WBE participation goals.

- (a) *Overall goal.* Goals for MBE and WBE participation in public construction contracts, for the three-year period commencing from and after the effective date of this chapter, are as follows:

Ten (10) percent minority workforce and ten (10) percent women workforce for a total of twenty (20) percent (EEO) for project personnel used by the contractor awarded public construction work by the City of Syracuse.

MBE goal, twelve (12) percent of the total amount of all public construction contracts; WBE goal, eight (8) percent of the total amount of all public construction contracts.

Limit the use of suppliers to meet the MWBE goals to fifty (50) percent of the value of the MWBE goals for each contract.

- (b) *Contract goals.* The division of contract compliance and minority affairs shall apply the overall goals set forth in section 42-3(a) to all public construction contracts regardless of the type and nature of the work to be performed. The goals shall be submitted to the division of purchase as the MWBE utilization plan upon notice of contract award in conjunction with the submittal of insurance and performance bond documentation. Projects that are being funded by federal and state grants shall follow the utilization goals, if any, required by the grant agreement. In addition, the division of contract compliance and minority affairs shall develop a minority and women enterprise participation program for professional services in consultation with the director of management and budget. The MWBE professional program will be designed to encourage firms submitting proposals to the city's RFP committee to have either a diverse workforce or to utilize subcontractors from a certified list to be provided by the division of contract compliance and minority affairs. The program to be established shall be in accordance with the City Charter specifically, section 5-205A(8)(a), (b) and (c) which sets forth the procedure for the selection of professional service contracts; and

- (c) *Modification of contract goal.* A contract goal may be modified by the office of minority affairs, with the prior approval of the commissioner of community development, and after consultations with a representative of the Engineering Department, the purchasing department and the department for which the contract is being awarded, based on:
- (1) Changes in the plans, specifications or other relevant terms of the contract;
 - (2) The receipt of relevant information not available or considered when the contract goal was first established;
 - (3) The receipt of an objection to the goal urged by any potential contractor or subcontractor on the grounds that: (a) The goal will result in inadequate competition for a subcontract or for a group of subcontractors; or (b) the goal for the specific public construction contract and the goal for similar prior contracts has necessarily excluded a particular company from consideration for subcontracting opportunities. Such an objection shall be made in writing to the office of minority affairs, prior to the deadline for the submission of bids on the contract, and shall fully explain the basis for, and establish the soundness of, the objection.
- (d) *Standards controlling whether MBE and WBE goals have been achieved.* The dollar amount of all subcontracts awarded to certified MBEs and WBEs will be credited toward the satisfaction of the MBE and the WBE goals, subject to the following limitations:
- (1) A contractor that awards a subcontract to a business certified as both an MBE and a WBE must elect to apply the amount of that subcontract to either the MBE or the WBE goal.
 - (2) A contractor that awards a subcontract to a joint venture may apply toward the MBE or WBE goal, the percentage of the total dollar amount of the subcontract equal to the percentage of the joint venture in fact owned and controlled by the MBE or WBE joint venture(s).
 - (3) A contractor will be given credit for a subcontract only if it serves a commercially useful function. To determine whether a subcontract satisfies this requirement, the office of minority affairs will consider the nature and amount of the subcontract, customary industry subcontracting practices for the given public construction contract, and such other factors it finds relevant.
 - (4) A contractor will receive credit for the full amount of a subcontract even if the MBE or the WBE subcontractor enters into subcontracts with businesses that are not MBEs or WBEs. However, if an MBE or WBE subcontractor sub-subcontracts a significantly greater portion of the work of the subcontract than would be expected under customary industry practices, the contractor will not receive credit for the subcontract.

- (5) A contractor will receive credit for a subcontract that entails the supplying of materials or products only if the subcontractor is regularly engaged in the business of supplying materials or products and has a warehouse or other storage facility where the materials or products provided through the subcontract are regularly stored.
- (6) In addition to credit received through subcontracts, a prime contractor that is certified as an MBE or WBE shall receive credit toward the MBE or WBE goal equal to the percentage of the total contract amount that it undertakes and completes, i.e., that it does not perform through subcontracts.

(Gen. Ord No. 22-1991, 3-25-91; Gen Ord. No. 19-1994, 6-20-94; Gen. Ord. No. 24-2013, 5-28-13; Gen. Ord. No. 10-2017, 6-19-17)

Sec. 42-4 - Obligations of successful bidders and contractors.

- (a) Every successful bidder shall, as a condition precedent to the award of the prime contract, submit to the office of minority affairs, within ten (10) business days of being notified that it is the successful bidder, an MBE and WBE utilization plan, executed before a notary by the appropriate officer of the bidder, which shall:
 - (1) State the name, title and telephone number of the individual(s) responsible for: Assuring compliance with this chapter; supervising efforts to identify subcontractors; negotiating and awarding subcontracts; and monitoring performance of subcontracts;
 - (2) Provide a brief description of each item of work, services, goods, supplies, equipment or material that it expects to complete or provide through subcontracts and the dollar amount of each such subcontract;
 - (3) State the month the work under each subcontract will likely commence or the month the services, goods, supplies, equipment or materials under each subcontract will likely be provided;
 - (4) Identify each subcontract listed in response to paragraphs (2) and (3), immediately above, that it expects to award to an MBE or WBE; the name, address and telephone number of each such MBE or WBE; the name, race (or ethnicity) and sex of the chief executive officer of each such MBE or WBE;
 - (5) Contain a promise by the bidder that it will satisfy the MBE and WBE contract goals or will make positive efforts to do so.

- (b) Every contractor shall be required to agree, by contract, as fully set forth in "Appendix A" to this chapter:
- (1) That it will not discriminate against MBEs or WBEs in the identification of potential subcontractors and in the negotiation, awarding and performance of subcontracts.
 - (2) That it will document that it in fact satisfied the MBE and WBE goals set for the contract, or document that it was unable to do so despite positive efforts. More specifically, it will file monthly reports with the office of minority affairs, on the fifteenth day of each month following the signing of the public construction contract, providing the following documents and information:
 - a. 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;
 - b. 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 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 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);
 - c. 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 reasons the subcontract was not awarded as originally contemplated by the utilization plan;
 - d. 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 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;
 - e. The percentage of each subcontract completed; the amount paid to each subcontractor and the balance due each subcontractor under each subcontract;
 - f. All revisions to the utilization plan, in the form and with all information required for the initial utilization plan;

- g. 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.
- (3) That it will retain, and make available to the city upon request, for a period of three (3) years subsequent to the completion of the contract all records relied upon for the compilation of each monthly report.

(Gen. Ord. No. 22-1991, 3-25-91)

Sec. 42-5 - Enforcement provisions

- (a) The office of minority affairs, upon concluding that a contractor has failed to comply with any requirement of this chapter, shall report its findings, with specificity and in writing, to the commissioner of community development and the office of the corporation counsel. The office of the corporation counsel shall then give notice of the specific deficiencies to the prime contractor who shall then be given ten (10) days to show cause at a hearing why a determination of noncompliance by the office of the corporation counsel should not be entered.
- (b) A determination of noncompliance by the office of the corporation counsel shall constitute a finding by the city that the contractor breached the contract. The office of the corporation counsel may impose appropriate remedies for noncompliance such as:
 - (1) Directing that part or all of the payments to the contractor be withheld until noncompliance is cured;
 - (2) Directing that the contract be terminated;
 - (3) Directing that the contractor be barred from bidding on future contracting opportunities with the city;
 - (4) Imposing a requirement that the contractor, in future bidding for city 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, directing that a specific subcontract be awarded to that subcontractor;
 - (6) Any other remedy that the corporation counsel finds appropriate given the facts and circumstances of the particular case.

(Gen. Ord. No. 22-1991, 3-25-91)

Sec. 42-6 - Annual review and evaluation of program

The office of minority affairs with the assistance of, and after consultation with, all other appropriate city departments, shall issue a report to the common council stating the levels of MBE and WBE participation attained for public construction contracts awarded during the previous year; whether and to what extent the office of minority affairs and the office of the corporation counsel have found violations of this chapter; whether, in light of the city's experiences under this chapter, including reports submitted by contractors, any modifications to this chapter should be adopted.

(Gen. Ord. No. 22-1991, 3-25-9)

Sec. 42-7 - Effective and expiration dates.

This chapter shall take effect immediately upon its adoption. It shall be applicable to solicitations for bids issued from and after the effective date. Gen. Ord. No. 22-1991, as last amended by Gen. Ord. No. 10-2017, is hereby made permanent by this common council until such time that a future council determines that it is no longer necessary.

(Gen. Ord. No. 22-1991, 3-25-91; Gen. Ord. No. 19-1994, 6-20-94; Gen. Ord. No. 17-1997, 5-27-97; Gen. Ord. No. 21-2001, 5-7-01; Gen. Ord. No. 27-2003, 8-18-03; Gen. Ord. No. 48-2004, 11-8-04; Gen. Ord. No. 8-2008, 3-24-08; Gen. Ord. No. 16-2009, 5-11-09; Gen. Ord. No. 25-2011, 5-23-11; Gen. Ord. No. 24-2013, 5-28-13; Gen. Ord. No. 23-2015, 6-22-15; Gen. Ord. No. 10-2017, 6-19-17)

**APPENDIX A TO CHAPTER 42
AWARDING OF SUBCONTRACTS
EQUAL OPPORTUNITY PROVISIONS**

A. Statement of policy and assurance of equal opportunity.

It is the policy of the city of Syracuse 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 City Office of Minority Affairs as satisfying the following criteria: (i) At least fifty-one (51) percent 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 (51) percent 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; and (iii) the business has its principal operations, or has permanently staffed offices, located within Onondaga County.
- (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 City Office of Minority Affairs as satisfying the following criteria: (i) At least fifty-one (51) percent of the 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 (51) percent 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; and (iii) the business has its principal operations, or has permanently staffed offices, located within Onondaga County.

C. Directory of MBEs and WBEs.

The Syracuse Office of Minority Affairs compiles and keeps current a directory of certified MBEs and WBEs. Interested persons may obtain a copy by writing or calling The Office of Minority Affairs, (address/phone number). 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 by the Office of Minority Affairs.

D. MBE and WBE utilization plan.

Within seven (7) 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 this contract.

E. MBE and WBE goals.

The goals established for this contract — expressed as a percentage of the total contract price — are:

MBE ____percent.

WBE ____percent.

These goals represent the city's best estimate of the level of MBE and WBE participation in the contract that will likely occur if MBEs and WBEs are given an equal opportunity to compete for subcontracts available under this contract.

F. Attainment of MBE and WBE goals and positive efforts to attain goals.

- (1) Identification of MBEs and WBEs that may be able to perform specific subcontracts, by:
 - a. Perusing the Syracuse directory of MBEs and WBEs; and/or
 - b. Sending appropriate representatives to pre-bid and pre-award meetings conducted by representatives of the Office of Minority Affairs, 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
 - 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 in sufficient time to allow them to participate effectively; such notice must include complete and accurate information about the plans, specifications, change orders 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 make 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., it may not negotiate more demanding contract terms with MBEs and WBEs; or, in evaluating the merits of a bid by an MBE or WBE, a commercially insignificant difference in price shall not be a basis for rejecting the bid).
- (6) After awarding a subcontract to an MBE or a WBE, imposing requirements and performance standards no more stringent than those imposed on companies that are not MBEs or WBEs.
- (7) Such additional measures that assure nondiscriminatory treatment of MBEs and WBEs.

G. Reporting and record keeping.

- (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 WBE; the date the subcontract was awarded; the dollar amount of the subcontract; the trade or specialty involved; the date 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 reasons the subcontract was not awarded 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 reason the company was found unqualified to perform the subcontract; whether the company is an MBE or 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 city upon request, for a period of three (3) years subsequent to the completion of the contract all records relied upon for the compilation of each report. Appropriate legal action will be taken against a contractor that willfully makes false statements or that provides incorrect information.

I. Determination of compliance or noncompliance.

Upon request of the Office of Minority Affairs, the Office of the Corporation Counsel shall determine whether the contractor has failed to comply with any requirement of the Equal Opportunity Provisions of this contract.

The office of the Corporation Counsel shall give notice to the contractor of a proposed finding of noncompliance. The contractor shall be afforded a hearing, upon ten (10) days' notice, to show cause why a finding of noncompliance by the Office of the Corporation Counsel should not be entered.

J. Effect of determination of noncompliance.

- (1) Directing that part or all of the payments to the contractor be withheld until noncompliance is cured;
- (2) Directing that the contract be terminated;
- (3) Directing that the contractor be barred from bidding on future contracting opportunities with the city;
- (4) Imposing a requirement that the contractor, in future bidding for city 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, directing that a specific subcontract be awarded to that subcontractor;
- (6) Any other remedy that the corporation counsel finds appropriate given the facts and circumstances of the particular case;
- (7) Such additional measures found appropriate by the contractor that assure nondiscriminatory treatment of MBEs and WBEs.

Form A Utilization Plan:

*Utilization Plan
prior to award of
contract*

**FORM A
City of Syracuse**

M/WBE Participation Plan (Page ____ of ____)

Project Address: _____ Agency: _____

Total Contract Amount: _____ MBE \$ Goal: _____ WBE \$ Goal: _____

General/Prime Contractor Information

Name of General/Prime Contractor: _____

Address: _____ Email: _____

Business Phone: _____ Cell Phone: _____ Other: _____

Tax I.D. or SS #: _____ *Ethnicity: _____

List below the names of all proposed Minority/Women Business Enterprises that are Certified by the City of Syracuse, the services they will provide, the amount of money they will receive, the date the project will start and its estimated date of completion.

Name: _____ Address: _____

Phone: _____ Cell: _____ Tax ID or Soc. Sec. #: _____ MWBE WBE (check one)

Amount: _____ Type of work, services, supplies _____

Start Date: _____ Completion Date: _____

Name: _____ Address: _____

Phone: _____ Cell: _____ Tax ID or Soc. Sec. #: _____ MWBE WBE (check one)

Amount: _____ Type of work, services, supplies _____

Start Date: _____ Completion Date: _____

Name: _____ Address: _____

Phone: _____ Cell: _____ Tax ID or Soc. Sec. #: _____ MWBE WBE (check one)

Amount: _____ Type of work, services, supplies _____

Start Date: _____ Completion Date: _____

I hereby certify that the dollar amount to be contracted with City of Syracuse Certified M/WBE sub contractors is at least _____ % of the total contract price for the above named project, and that the foregoing and attached information is true and accurate and complete to the best of my knowledge.

***Note: This Plan must be approved by the City of Syracuse prior to execution of the contract.**

Print Name: _____ Title: _____

Signature(s): _____ Date: _____
Authorized signature(s) of General/Prime Contractor or Designee

For Official Use Only

Approved By: _____ Date: _____

***For Neighborhood and Business Development Monitoring Purposes Only**
Return To: Lamont Mitchell, MWBE Compliance Officer, Dept. Neighborhood & Business Development Room
City Hall Common, 201 E. Washington Street, Room 600, Syracuse, N.Y. 13202
Phone: 448-8174 Fax: 448-8036
Revised (5-13)

Fillable Form B with Notary:

FORM B

**City of Syracuse Department of Neighborhood & Business Development
Final M/WBE Utilization Report**

Project Address: _____ Total Contract Amount: _____

Agency Name: _____

Amount of MBE Participation: \$ _____ Amount of WBE Participation \$ _____

General/Prime Contractor Information

Name of General/Prime Contractor: _____ *Ethnicity: _____

Address: _____

Phone: _____ Tax ID or Soc Sec Num: _____

I hereby certify that the above listed amount is correct and accurate to the best of my knowledge.

Name (print) _____ Title: _____

Signature: _____ (General/Prime Contractor) Date: _____

Minority/Women Business Enterprise Information

Name of M/WBE: _____ *Ethnicity: _____

Address: _____

Phone: _____ Tax ID or Soc. Sec. Num: _____

Please state total amount received by the M/WBE on the above named project to date: \$ _____ %

Please state the remaining balance on the above named project to the M/WBE: \$ _____ %

Please state the remaining retention balance on the above named project to the M/WBE \$ _____

I hereby certify that the above listed amount is true and accurate to the best of my knowledge.

Name (print): _____ Title: _____

Signature: _____ Date: _____

(Sub Contractor)

Notary Stamp & Signature: _____

Office Use Only

Approved By: _____ Date: _____

***For Neighborhood and Business Development Monitoring Purposes Only**
Return To: Lamont Mitchell, Director of Minority Affairs, Department of Neighborhood and Business Development
City Hall Commons, 201 E. Washington Street, Suite 600, Syracuse, N.Y. 13202
Phone: 448-8109 Fax: 448-8036

Example of Completed Form B:

Example

FORM B
City of Syracuse Department of Neighborhood & Business Development
Final M/WBE Utilization Report

Project Address: Fluoridation Improvements Skaneateles, NY Total Contract Amount: \$812,450.00

Agency Name: City of Syracuse Department of Water

Amount of MBE Participation: \$ 121,867.50 Amount of WBE Participation \$ 121,867.50

General/Prime Contractor Information

Name of General/Prime Contractor: John R. Dudley Construction, Inc. *Ethnicity: Caucasian

Address: PO BOX 3076 (5848 ST. RT. 104 E), OSWEGO, NY 13126

Phone: 315-343-7865 Tax ID or Soc Sec Num: 16-0950809

I hereby certify that the above listed amount is correct and accurate to the best of my knowledge.

Name (print) Todd R. Dudley Title: Secretary

Signature: _____ (General/Prime Contractor) Date: _____

Minority/Women Business Enterprise Information

Name of M/WBE: MS UNLIMITED, INC. *Ethnicity: WBE

Address: PO BOX 577, SYRACUSE, NY 13206

Phone: 315-437-1291 Tax ID or Soc. Sec. Num: 16-128-1119

Please state total amount received by the M/WBE on the above named project: \$ 908.28 % <1

I hereby certify that the above listed amount is true and accurate to the best of my knowledge.

Name (print): MARY SBARAGALA Title: PRESIDENT

Signature: _____ Date: 12-9-19

(Sub-Contractor)

Office Use Only

Approved By: _____ Date: _____

***For Neighborhood and Business Development Monitoring Purposes Only**
Return To: Ashley Wilson, MWBE Compliance Officer, Department of Neighborhood and Business Development
201 E. Washington Street, Suite 600, Syracuse, N.Y. 13202
Phone: 448-8100 Fax: 448-8036
Revised (5/10)

Form C:

Form C

MONTHLY REPORT
City of Syracuse

CONTRACTOR'S MINORITY AND WOMEN'S BUSINESS (MWBE) MONTHLY REPORT

MONTH _____ YEAR _____

CONTRACTOR _____ CONTRACT # _____

CONTRACT AMOUNT _____ AMOUNT PAID TO CONTRACTOR THIS MONTH \$ _____

MBE: Goal/Amount _____ WBE, Goal/Amount _____

Subcontractor	Work Status This Report	Total Sub. Contact Amt \$		Payments This Month		Previous Payments		Total Payments Made to Date	
		MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
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Date

Signature

Section 3

What is Section 3?

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods.

How does Section 3 promote self- sufficiency?

Section 3 is a starting point to obtain job training, employment and contracting opportunities. From this integral foundation coupled with other resources comes the opportunity for economic advancement and self-sufficiency.

- Federal, state and local programs
- Advocacy groups
- Community and faith-based organizations

How does Section 3 promote homeownership?

Section 3 is a starting point to homeownership. Once a Section 3 resident has obtained employment or contracting opportunities they have begun the first step to self-sufficiency.

Remember, "It doesn't have to be fields of dreams". Homeownership is achievable. For more information visit our HUD [website](#).

Who are Section 3 residents?

Section 3 residents are:

- Public housing residents or
- Persons who live in the area where a HUD-assisted project is located and who have a household income that falls below [HUD's income limits](#).

Determining Income Levels

- Low income is defined as 80% or below the median income of that area.
- Very low income is defined as 50% or below the median income of that area.

What is a Section 3 business concern?

A business that:

- Is 51 percent or more owned by Section 3 residents;
- Employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or

- Provides evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or more of the dollar amount of the awarded contract.

What programs are covered?

Section 3 applies to HUD-funded Public and Indian Housing assistance for development, operating, and modernization expenditures.

Section 3 also applies to certain HUD-funded Housing and Community Development projects that complete housing rehabilitation, housing construction, and other public construction.

What types of economic opportunities are available under Section 3?

- Job training
- Employment
- Contracts

Any employment resulting from these expenditures, including administration, management, clerical support, and construction, is subject to compliance with Section 3.

Examples of Opportunities include:

- | | | |
|------------------------|-------------------------|-----------------------|
| • Accounting | • Electrical | • Marketing |
| • Architecture | • Elevator Construction | • Painting |
| • Appliance repair | • Engineering | • Payroll Photography |
| • Bookkeeping | • Fencing | • Plastering |
| • Bricklaying | • Florists | • Plumbing |
| • Carpentry | • Heating | • Printing Purchasing |
| • Carpet Installation | • Iron Works | • Research |
| • Catering | • Janitorial | • Surveying |
| • Cement/Masonry | • Landscaping | • Tile setting |
| • Computer/Information | • Machine Operation | • Transportation |
| • Demolition | • Manufacturing | • Word processing |
| • Drywall | | |

Who will award the economic opportunities?

Recipients of HUD financial assistance will award the economic opportunities. They and their contractors and subcontractors are required to provide, to the greatest extent feasible, economic opportunities consistent with existing Federal, State, and local laws and regulations.

Who receives priority under Section 3?

For training and employment:

- Persons in public and assisted housing
- Persons in the area where the HUD financial assistance is spent
- Participants in HUD Youthbuild programs
- Homeless persons

For contracting:

- Businesses that meet the definition of a Section 3 business concern

How can businesses find Section 3 residents to work for them?

Businesses can recruit Section 3 residents in public housing developments and in the neighborhoods where the HUD assistance is being spent. Effective ways of informing residents about available training and job opportunities are:

- Contacting resident organizations, local community development and employment agencies
- Distributing flyers
- Posting signs
- Placing ads in local newspapers

Are recipients, contractors, and subcontractors required to provide long-term employment opportunities, not simply seasonal or temporary employment?

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very low-income persons, including permanent employment and long-term jobs.

Recipients and contractors are encouraged to have Section 3 residents make up at least 30 percent of their permanent, full-time staff.

A Section 3 resident who has been employed for 3 years may no longer be counted towards meeting the 30 percent requirement. This encourages recipients to continue hiring Section 3 residents when employment opportunities are available.

What if it appears an entity is not complying with Section 3?

There is a complaint process. Section 3 residents, businesses, or a representative for either may file a complaint if it seems a recipient is violating Section 3 requirements are being on a HUD-funded project.

Will HUD require compliance?

Yes. HUD monitors the performance of contractors, reviews annual reports from recipients, and investigates complaints. HUD also examines employment and

contract records for evidence that recipients are training and employing Section 3 residents and awarding contracts to Section 3 businesses.

How can Section 3 residents or Section 3 business concerns allege Section 3 violations?

You can file a written complaint with your [local HUD Field Office](#).

A written complaint should contain:

- Name and address of the person filing the complaint
- Name and address of subject of complaint (HUD recipient, contractor or subcontractor)
- Description of acts or omissions in alleged violation of Section 3
- Statement of corrective action sought i.e. training, employment or contracts