

**APPENDIX E
MWBE AND EEO REQUIREMENTS**

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE
CONTRACTS**

1. GENERAL PROVISIONS

The Office of Cannabis Management (“OCM”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

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

Failure to comply with all the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section 9 of this Appendix and such other remedies are available to OCM pursuant to the Contract and applicable law.

OCM’s agency MWBE goals are an overall goal of **30** percent for MWBE participation, **15** percent for New York State-certified minority-owned business enterprise (“MBE”) participation and **15** percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”).

2. CONTRACT GOALS

For purposes of this Contract, OCM hereby establishes an overall goal of 30% percent for MWBE participation, 15% percent for New York State-certified minority-owned business enterprise (“MBE”) participation and 15% percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

OCM encourages contractors to make every effort to include the participation of MWBE firms whenever practical in the performance of this contract to meet its agency goals.

For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in the first paragraph of this section 2, the Contractor should reference the directory of MWBEs at <https://ny.newnycontracts.com/>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that

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shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:

- Evidence of outreach to MWBEs;
- Any responses by MWBEs to the Contractor’s outreach;
- Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority- or women-oriented publications;
- The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OCM with MWBEs; and,
- Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

2. EQUAL EMPLOYMENT OPPORTUNITY (“EEO”)

The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.

1.1. In performing the Contract, the Contractor shall:

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

1.1.2. **The Contractor shall submit an EEO policy statement to OCM within seventy-two (72) hours after the date of the notice by OCM to award the Contract to the Contractor.**

1.1.2.1. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, OCM may require the Contractor or subcontractor to adopt a model statement (see [Equal Employment Opportunity Policy Statement](#)).

1.1.2.1.1. The Contractor’s EEO policy statement shall include the following language:

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

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- The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- The Contractor shall request each employment OCM, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment OCM, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- The Contractor will include the provisions of 3.1.2.1.1 and 5.1 of this Appendix L, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

2. ATTACHMENT 7 – EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by OCM.

3. EXHIBIT 7 - WORKFORCE EMPLOYMENT UTILIZATION REPORT (“WORKFORCE UTILIZATION REPORT”) COMPLETE ONLY IF CONTRACT VALUE EXCEEDS \$250,000.

The Contractor shall submit a Workforce Utilization Report and shall require each of its subcontractors to submit a Workforce Utilization Report to procurement@ocm.ny.gov, in such form as shall be required by OCM on a QUARTERLY basis during the term of the Contract by the 10th day of April, July, October, and January.

Separate forms shall be completed by the Contractor and any subcontractors.

- 3.1.** The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional nondiscrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law regarding nondiscrimination on the basis of prior criminal conviction and prior arrest.

4. MWBE UTILIZATION PLAN

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In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on **Form Attachment 8 – MWBE Utilization Plan** with their bid. At such time as shall be requested by OCM, the Utilization Plan may be submitted through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com/>.

The Contractor agrees to adhere to the submitted MWBE Utilization Plan in the performance of the Contract. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, and the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OCM.

By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

OCM will review the submitted MWBE Utilization Plan and advise the Bidder of OCM acceptance or issue a notice of deficiency within 30 days of receipt.

If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OCM a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OCM to be inadequate, OCM shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OCM, a request for a partial or total waiver of MWBE participation goals on the MWBE Application for Waiver. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

OCM may disqualify a Bidder’s bid/proposal as being non-responsive under the following circumstances:

- If a Bidder fails to submit an MWBE Utilization Plan;
- If a Bidder fails to submit a written remedy to a notice of deficiency;
- If a Bidder fails to submit a request for waiver; or
- If OCM determines that the Bidder has failed to document good faith efforts.

If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in the first paragraph of Section 2 above.

5. REQUEST FOR WAIVER

Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Business Enterprises for guidance.

If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver on **Attachment 9 – Application for Waiver of MWBE Participation Goals** provided by OCM. Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the

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applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, OCM shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OCM, but must be made no later than prior to the submission of a request for final payment on the Contract.

If OCM, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described below in Section 8, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regard to such noncompliance, OCM may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

6. QUARTERLY MWBE CONTRACTOR COMPLIANCE REPORT

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to OCM by the 10th day following the end of each quarter during the term of the Contract.

When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. Quarterly, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding months. The Contractor must also report when no payments have been made to a subcontractor or supplier in particular months with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "LOGIN" and then "Forgot Username / Account Lookup" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "Change Info." It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "Request New User." When identifying the person responsible, please add ". MWBE Contact" after his or her last name (i.e., John Doe - MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.

7. LIQUIDATED DAMAGES - MWBE PARTICIPATION

Where OCM determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to OCM liquidated damages.

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

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- All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

7.2. In the event a determination has been made that requires the payment of liquidated damages and such identified sums have not been withheld by OCM, the Contractor shall pay such liquidated damages to OCM within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

8. FRAUD

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692 or by filling out the form located here: <https://esd.ny.gov/mwbe-report-fraud>.

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EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

By signing this Contract, the Contractor agrees to adopt the following policies with respect to the project/program/product being developed or services rendered for the NYS Office of Cannabis Management

MWBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MWBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

1. Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MWBE contractor associations.
2. Request a list of State-certified MWBEs from AGENCY and solicit bids from them directly.
3. Ensure that plans, specifications, requests for proposal and other documents used to secure bids will be made available in sufficient time for review by prospective MWBEs.
4. Where feasible, divide the work into smaller portions to enhanced participations by MWBEs and encourage the formation of joint venture and other partnerships among MWBE contractors to enhance their participation.
5. Document and maintain records of bid solicitation, including those to MWBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting MWBE contract participation goals.
6. Ensure that progress payments to MWBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage MWBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law regarding non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.