

# UNITED NATIONS DEVELOPMENT CORPORATION

## MWBE / SDVOB FORMS

REVISED 9-19-2024

*NOTE: THIS SECTION IS TO BE COMPLETED BY UNDC OR UNDC'S PROPERTY MANAGER*

**CONTRACT / PROJECT NAME:**

\_\_\_\_\_

**CONTRACT CATEGORY:**

- Goods or services
- Construction, demolition, replacement, major repair or renovation of real property and improvements thereon

**CONTRACT GOALS:**

MBE Goal: \_\_\_\_\_%

WBE Goal: \_\_\_\_\_%

Overall MWBE Goal: \_\_\_\_\_%

SDVOB Goal: \_\_\_\_\_%

**FORMS & DOCUMENTS INCLUDED IN THIS PACKAGE:**

- A – Cover Page
- B – Summary of Contractor Requirements
- C – Utilization Plan
- D – Waiver Form
- E – EEO Policy Statement
- F – Staffing Plan
- G – Diversity Practices Questionnaire
- H – Contractor Compliance Report
- I – Workforce Utilization Report Instructions
- J – Your MWBE Utilization and Reporting Responsibilities Under Article 15-A
- Appx. 1 – MWBE Contract Language
- Appx. 2 – SDVOB Contract Language

Rev. 9/19/2024

## UNITED NATIONS DEVELOPMENT CORPORATION

### Summary of Contractor MWBE, SDVOB, and EEO Requirements

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules, and Regulations (“NYCRR”), the United Nations Development Corporation (“UNDC”) is required to promote opportunities for the maximum feasible participation of New York State-certified minority and women-owned business enterprises (“MWBEs”) in the performance of UNDC contracts. In addition, NYS Veterans’ Services Law Article 3 and 9 NYCRR 252 require UNDC to make good faith efforts to maximize contractual opportunities for NYS-certified service-disabled veteran-owned businesses (“SDVOBs”). These requirements apply to contracts in excess of \$25,000 for goods or services, and contracts in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.

MWBEs/SDVOBs may participate as prime contractors, subcontractors, suppliers, consultants, joint ventures, teaming agreements, or other similar arrangements subject to approval by UNDC. Contractors must comply with the MWBE, EEO, and SDVOB requirements and procedures included in the attached appendixes which will be made part of the agreement between UNDC and the winning bidder. Any contractor who willfully and intentionally fails to comply with the MWBE/SDVOB participation requirements set forth in a UNDC contract will be liable to UNDC for damages.

#### **Contract Goals**

UNDC’s MWBE and SDVOB participation goals for purposes of this contract (the “contract goals”) are shown on the cover page of these materials. The current statewide goals are 30% MWBE and 6% SDVOB.

#### **Utilization Plans**

Contractors must submit a utilization plan with their bid or proposal, including a list of each MWBE/SDVOB that the contractor intends to use to satisfy the contract goals. All subcontractors should be disclosed regardless of MWBE/SDVOB status. Contractors that are MWBEs/SDVOBs may list themselves on utilization plans toward the achievement of contract goals. MWBEs/SDVOBs must perform commercially useful functions if their work is to be counted towards the satisfaction of contract goals. MWBE utilization credit can only be taken if the work is consistent with the MWBE’s assigned commodity codes listed in their vendor profile in the [NYS MWBE Directory](#). MWBE utilization credit can only be taken for payments retained by MWBEs.

The following [guidance](#) applies to MWBE subcontractors performing work on construction contracts:

- (1) MWBE brokers will receive MWBE credit for their fee or commission.
- (2) MWBE suppliers will receive MWBE credit for 60% of the contract amount.
- (3) MWBEs that furnish and install will receive full MWBE credit.

UNDC will review the utilization plan and issue a written notice of acceptance or deficiency prior to the execution of the contract. If a notice of deficiency is issued, the contractor must submit a written remedy within seven business days. If the written remedy is not timely provided or is inadequate, UNDC may disqualify the bid or direct the contractor to submit a request for a partial or total waiver of the contract goals within five business days. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid.

If a contractor changes its utilization plan after submission, it must submit a revised utilization plan and obtain approval from UNDC. UNDC may post the winning bidder’s utilization plan, and waiver if applicable, on its website. When UNDC notifies a contractor of a winning bid, it may also notify any MWBEs identified in the contractor’s utilization plan of such contractor’s receipt of the winning bid.

#### **Change Orders**

If the value of the contract is increased because of a change order, the contractor must make good faith

efforts to achieve a corresponding increase in the value of work subcontracted to MWBEs/SDVOBs. All proposed change orders must include a breakdown of any payments to subcontractors.

### Waivers

If a contractor, after making good faith efforts, is unable to achieve the contract goals, either prior to the award of the contract or during the term of the contract, it must submit a waiver form to UNDC documenting its good faith efforts to meet the contract goals. UNDC will not grant any automatic waivers, and all requests for MWBE waivers will be submitted to Empire State Development for approval. For additional information, see the Waiver Form.

### Commercially Useful Functions

MWBEs/SDVOBs must perform commercially useful functions (“CUF”) to receive credit toward contract goals. The [CUF standard](#) requires MWBEs to perform a useful role proportionate to the payments for their work on a state contract. An MWBE/SDVOB performs a commercially useful function when it is responsible for execution of the work of its contract and is performing, managing, and supervising the work involved. MWBEs/SDVOBs may not act as a pass-through or unnecessary participant.

### Contractor’s Good Faith Efforts

Contractors must make good faith efforts to utilize MWBEs/SDVOBs by taking the following steps:

- (1) Attempt to utilize MWBEs/SDVOBs identified in utilization plans.
- (2) If necessary, solicit bids from MWBEs in the directory at: <https://ny.newnycontracts.com/>
- (3) If necessary, solicit bids from SDVOBs in the directory at: <https://ogs.ny.gov/Veterans>
- (4) Document and maintain records of bid solicitations to and responses from MWBEs/SDVOBs.
- (5) Divide work into smaller portions and include MWBEs/SDVOBs as subcontractors or suppliers.

### Contractor Reporting Requirements & The New York State Contract System

Contractors must submit quarterly compliance reports to UNDC documenting the progress made towards achievement of the contract goals.

Contractors and subcontractors must use the New York State Contract System (“NYSCS”) as follows:

- (1) The contractor and all subcontractors must submit Workforce Utilization Reports including the number of hours employees worked on the contract and the gross wages paid to those employees broken down by gender, ethnicity, and job title.
- (2) The prime contractor must report all payments to MWBE subcontractors.
- (3) MWBE subcontractors must confirm receipt of all payments.

### Required Forms

1	Utilization Plan	Contractors submit with bid or proposal.
2	Waiver Form	Contractors submit with bid or proposal if contractor cannot meet contract goals.
3	EEO Policy Statement	Contractors submit with bid or proposal.
4	Staffing Plan	Contractors submit with bid or proposal if non-construction contract value exceeds \$250,000.
5	Diversity Practices Questionnaire	Contractors submit with bid or proposal if contract value exceeds \$250,000.

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# MWBE / SDVOB UTILIZATION PLAN

## INSTRUCTIONS

Contractors must submit a utilization plan to UNDC with their bid or proposal, including a list of each New York State-certified MWBE and/or SDVOB that the contractor intends to use to satisfy the contract goals. All subcontractors should be disclosed regardless of MWBE/SDVOB status. If the contractor changes its utilization plan after submission, it must submit a revised utilization plan and obtain approval from UNDC. This form must be signed by an officer of the contractor. UNDC may post the winning bidder's utilization plan on its website. **Please read the additional instructions on page 2 before filling in diversity goals information below.**

## CONTRACT INFORMATION

CONTRACT NAME:

CONTRACT AMOUNT:

## DIVERSITY GOALS INFORMATION

A	B	C	D	E	F	G
Goal Type:	UNDC's Required Goal Percent: Enter the UNDC goals for the contract.	UNDC's Required Goal Amount: Apply UNDC's required goal percent to the contract amount	Contractor's Proposed Goal Percent: Enter the contractor's proposed goal percent relative to the contract amount	Contractor's Proposed Goal Amount: Enter the contractor's proposed goal amount considering the guidance on MWBE utilization credit on page 2	ONLY ENTER IF APPLICABLE	
					Contractor's Waiver Request Percent: Enter the difference between UNDC's required goal percent and the contractor's proposed goal percent ( <b>B - D = F</b> )	Contractor's Waiver Request Amount: Enter the difference between UNDC's required goal amount and the contractor's proposed goal amount ( <b>C - E = G</b> )
MBE:	%	\$	%	\$	%	\$
WBE:	%	\$	%	\$	%	\$
Overall MWBE:	%	\$	%	\$	%	\$
SDVOB:	%	\$	%	\$	%	\$

## CONTRACTOR INFORMATION

PREPARER'S NAME, TITLE, AND EMAIL:

OFFICER'S NAME, TITLE, SIGNATURE, AND DATE:

Enter contractor name, address, phone number, fax number, and Federal identification number:

Enter name and email address of:  
a) compliance contact, and  
b) workforce contact

Indicate if the contractor is MBE, WBE, or SDVOB:

Describe the work to be performed by the contractor:

Enter the dollar amount to be retained by the contractor after paying all subcontractors:

**SUBCONTRACTOR INFORMATION**

**GENERAL INSTRUCTIONS:**

Provide the information requested below for each subcontractor that the contractor or any of its subcontractors intend to use to perform work on the contract. All subcontractors should be disclosed regardless of MWBE/SDVOB status. Attach additional sheets if necessary.

**GUIDANCE ON MWBE UTILIZATION CREDIT:**

MWBEs must perform a commercially useful function if their work is to be counted towards satisfaction of contract goals. The commercially useful function standard is explained [here](#).

MWBE utilization credit can only be given for work that is consistent with an MWBE's assigned commodity codes listed in the firm's vendor profile in the NYS MWBE Directory at: <https://ny.newnycontracts.com>.

MWBE brokers on construction contracts can only receive MWBE credit for their fees, and MWBE suppliers on construction contracts can only receive MWBE credit for 60% of the contract amount. Additional information on the relevant NYS policy is available [here](#). MWBEs that furnish and install on construction contracts can receive full MWBE credit. Indicate in the description below if the subcontractor is a broker, supplier, manufacturer, or if the subcontractor is furnishing and installing. If the subcontractor should receive less than full MWBE credit for any reason, indicate both the amount to be retained by the subcontractor and the reduced MWBE credit amount below. Only the reduced MWBE credit amount should be included in column E on page 1.

<p><b><u>SUBCONTRACTOR INFO</u></b> Enter the subcontractor's name, address, phone number, fax number, and federal tax ID number.</p>	<p><b><u>COMPLIANCE &amp; WORKFORCE CONTACTS</u></b> Enter name, title, phone number, and email address of: a) compliance contact b) workforce contact</p>	<p><b><u>MBE / WBE / SDVOB STATUS</u></b> Indicate if the subcontractor is an MBE, WBE, or SDVOB and attach proof of NYS certification if applicable.</p>	<p><b><u>SUBCONTRACTOR TIER</u></b> Indicate who the subcontractor subcontracts to, i.e., who engaged the subcontractor.</p>	<p><b><u>DESCRIPTION OF WORK</u></b> Provide a detailed description of the work to be performed by the subcontractor and the scheduled dates for performance.</p>	<p><b><u>AMOUNT RETAINED BY SUBCONTRACTOR</u></b> Enter: a) the amount to be retained by the subcontractor after paying all lower tier subcontractors b) the reduced MWBE credit amount if applicable</p>

SUBCONTRACTOR INFORMATION - CONTINUED

<u>SUBCONTRACTOR INFO</u>	<u>COMPLIANCE &amp; WORKFORCE CONTACTS</u>	<u>MBE / WBE / SDVOB STATUS</u>	<u>SUBCONTRACTOR TIER</u>	<u>DESCRIPTION OF WORK</u>	<u>AMOUNT RETAINED BY SUBCONTRACTOR</u>

**JOINT VENTURE INFORMATION**

Is the contractor a joint venture, teaming agreement or other similar arrangement that includes an MWBE and/or SDVOB?:  Yes  No

If yes, submit the following information to UNDC for its review and approval:

1. The name, address, telephone number, and federal identification number of each partner or party to the agreement;
2. The Federal identification number of the joint venture or entity established to respond to the solicitation, if applicable;
3. A copy of the joint venture or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party;
4. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture or other similar arrangement.

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# WAIVER FORM

## INSTRUCTIONS

If a contractor, after making good faith efforts, is unable to achieve contract MWBE and/or SDVOB goals, either prior to the award of the contract or during the term of the contract, it must submit a waiver form to UNDC documenting its good faith efforts to meet the contract goals. Requests for a waiver made prior to the award of the contract should be submitted with the contractor's utilization plan. Requests for a waiver made during the term of the contract must be filed in a timely manner, prior to the submission of a request for final payment on the contract. This form must be signed by an officer of the contractor. UNDC may post the winning bidder's waiver form on its website. **See page 2 for additional instructions and requirements.**

## CONTRACT INFORMATION

CONTRACT NAME:

CONTRACT AMOUNT:

## DIVERSITY GOALS INFORMATION

A	B	C	D	E	F	G
<b>Goal Type:</b>	<b>UNDC's Required Goal Percent:</b> Enter the UNDC goals for the contract	<b>UNDC's Required Goal Amount:</b> Apply UNDC's required goal percent to the contract amount	<b>Contractor's Proposed Goal Percent:</b> Enter the contractor's proposed goal percent relative to the contract amount	<b>Contractor's Proposed Goal Amount:</b> Apply the contractor's proposed goal percent to the contract amount	<b>Contractor's Waiver Request Percent:</b> Enter the difference between UNDC's required goal percent and the contractor's proposed goal percent ( <b>B - D = F</b> )	<b>Contractor's Waiver Request Amount:</b> Enter the difference between UNDC's required goal amount and the contractor's proposed goal amount ( <b>C - E = G</b> )
MBE:	%	\$	%	\$	%	\$
WBE:	%	\$	%	\$	%	\$
Overall MWBE:	%	\$	%	\$	%	\$
SDVOB:	%	\$	%	\$	%	\$

## CONTRACTOR INFORMATION

CONTRACTOR'S NAME AND FEDERAL ID NUMBER:

CONTRACTOR'S ADDRESS AND PHONE:

PREPARER'S NAME AND TITLE:

PREPARER'S EMAIL:

OFFICER'S NAME AND TITLE:

OFFICER'S SIGNATURE AND DATE:



**Please provide the following information with your waiver request:**

1. Provide a statement setting forth the contractor's basis for requesting a partial or total waiver. Indicate whether the waiver request is due to a lack of subcontracting opportunities or a lack of MWBE and/or SDVOB availability.
2. Provide a description of the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, MWBEs and/or SDVOBs.
3. If the reason for the waiver request is a lack of subcontracting opportunities, explain the lack of subcontracting opportunities and provide a breakout of any scopes of work and their estimated values.
4. If applicable, provide the contractor's MWBE Directory and/or SDVOB Directory search parameters including keywords, commodity codes, etc. and the search results. If the waiver request is due to a lack of MWBE and/or SDVOB availability, search parameters and search results must be provided.
5. Provide the names of general circulation, trade association, and MWBE-oriented publications in which bids were solicited for purposes of complying with the MWBE participation goals, the dates bid solicitations were published, and the text of the bid solicitations.
6. Provide a list of MWBEs and/or SDVOBs which were solicited in writing to provide bids for purposes of complying with the MWBE and/or SDVOB goals, copies of the solicitations, and copies of the responses. If responses to the contractor's solicitations were received, but an MWBE and/or SDVOB was not selected, provide the specific reasons that such enterprises were not selected.
7. Provide a description of any contract documents, plans, or specifications made available to MWBEs and/or SDVOBs for purposes of soliciting their bids, and the dates and manner in which these documents were made available.
8. Provide a description of any negotiations between the contractor and MWBEs and/or SDVOBs undertaken for purposes of complying with the MWBE and/or SDVOB goals.
9. Provide any other information deemed relevant by the contractor.
10. Provide the name, title, address, telephone number, and email address of the contractor's representative authorized to discuss and negotiate this waiver request.

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# UNDC EEO POLICY STATEMENT

The contractor must submit this statement with its bid or proposal. The contractor agrees to comply with the following with respect to the contract/project:

- (a) 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 programs of affirmative action 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 on State contracts.
- (b) The contractor 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, the contractor shall request each employment agency, labor union, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- (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 with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) The contractor will include the provisions of sections (a) through (d) of this policy in every subcontract in such a manner that the requirements of the provisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

02.24.16

# STAFFING PLAN

**THIS FORM ONLY APPLIES TO NON-CONSTRUCTION CONTRACTS WITH A VALUE IN EXCESS OF \$250,000.**

## **INSTRUCTIONS:**

If a non-construction contract is anticipated to result in an award in excess of \$250,000, contractors must submit to UNDC with their bid or proposal a staffing plan of the anticipated work force to be utilized on the State contract, broken down by occupational category. If possible, the work force to be utilized in the performance of the contract should be separated out from the contractor's and/or subcontractor's total work force. If the work force to be utilized in the performance of the contract cannot be separated out from the contractor's and/or subcontractor's total work force, the contractor must submit information on the contractor's and/or subcontractor's total work force.

## **RACE / ETHNIC IDENTIFICATION**

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this report are:

- **WHITE**  
(Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK**  
A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC**  
A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER**  
A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN / ALASKAN NATIVE)**  
A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

## **OTHER CATEGORIES**

- **DISABLED INDIVIDUAL**  
Any person who: has a physical or mental impairment that substantially limits one or more major life activity(ies)  
has a record of such an impairment; or  
is regarded as having such an impairment.
- **VIETNAM ERA VETERAN**  
A veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER**  
Male, Female, or X

Report date:	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
Contract name:	<b>Type of contract:</b> <input type="checkbox"/> Commodities <input type="checkbox"/> Services/consulting <input type="checkbox"/> Professional construction consultant
Contractor's name, address, and telephone number:	Contractor's Federal Identification Number:
Preparer's name, title and email address:	Preparer's signature:
List the names of all entities that are included in this report:	

**In the chart below, enter the total number of employees of the contractor and all subcontractors for each classification in each occupational category:**

Occupational Category	Total Work Force	White			Black			Hispanic			Asian			Native American			Disabled			Veteran		
		Male	Female	X	Male	Female	X	Male	Female	X	Male	Female	X	Male	Female	X	Male	Female	X	Male	Female	X
Officials/ Administrators																						
Professionals																						
Technicians																						
Sales Workers																						
Office/Clerical																						
Craft Workers																						
Laborers																						
Service Workers																						
Temporary/ Apprentices																						
Totals																						

## Diversity Practices Questionnaire Instructions

**IF THE CONTRACT AMOUNT IS EXPECTED TO EXCEED \$250,000, CONTRACTORS MUST SUBMIT THIS QUESTIONNAIRE WITH THEIR BID OR PROPOSAL.**

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBES”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York.

### Diversity Practices Questionnaire

I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company’s gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company’s clients or customers?

3. What percentage of your company’s overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company’s clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?<sup>1</sup>

4. Does your company provide technical training<sup>2</sup> to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

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<sup>1</sup> Do not include onsite project overhead.

<sup>2</sup> Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of  
Owner/Official

Printed Name of  
Signatory

Title

Name of Business

Address

City, State, Zip

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12.1.16

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_

Notary Public

# CONTRACTOR COMPLIANCE REPORT

## INSTRUCTIONS

Contractors must submit quarterly reports to UNDC documenting the progress made towards achievement of the contract MWBE/SDVOB goals. This report must be filed within seven (7) days after the end of each calendar quarter during the term of the contract. **All sections must be completed. Additional instructions appear on page 2.**

### Reporting Period:

- January 1 – March 31, 2024
- April 1 – June 30, 2024
- July 1 – September 30, 2024
- October 1 – December 31, 2024

### Is this a final report:

- No
- Yes

## CONTRACT / PROJECT INFORMATION

Contract / Project Name:

Contract Amount:

## CONTRACTOR INFORMATION

Contractor's Name:

Contractor's Federal Identification Number:

Contractor's Address:

Contractor's Telephone Number:

Preparer's Name, Title, and Email Address:

Preparer's Signature and Date:



**CONTRACTOR & SUBCONTRACTOR INFORMATION**

**INSTRUCTIONS:**

Provide the following information regarding each MWBE/SDVOB the contractor or any of its subcontractors are using or intend to use to comply with the utilization plan. If any vendor is a broker or supplier, please indicate that in column 2 below. Attach additional sheets if necessary.

Contractors that are MWBEs/SDVOBs should list themselves below, along with any subcontractors they are using or intend to use.

1	2	3	4	5	6	7
MWBE/SDVOB name, address, telephone number, and Federal ID number:	Brief description of the work to be performed by the MWBE/SDVOB and the scheduled dates for performance:	Does the contractor have a written agreement with the MWBE/SDVOB?	Actual amount retained by the MWBE/SDVOB <i>during the reporting period indicated on page 1:</i>	Actual amount retained by the MWBE/SDVOB <i>to date, including all previous reporting periods:</i>	Total cost of the work to be performed by the MWBE/SDVOB:	Did the contractor notify the MWBE/SDVOB that the contractor is the winning bidder?



## **Instructions for Submitting Workforce Utilization Reports**

Contractors and subcontractors who are party to a state contract with UNDC are required to submit Workforce Utilization Reports during the term of the contract. The reports must include the number of hours employees worked on the contract and the gross wages paid to those employees broken down by gender, ethnicity, and job title. Prime contractors are responsible for ensuring that their subcontractors comply with this reporting requirement, and all subcontractor reports must be approved by the prime. The reports are due quarterly for services contracts and monthly for construction contracts. Workforce Utilization Reports are submitted online in the New York State Contract System (“NYSCS”).

### **Executive Order No. 162**

Pursuant to Executive Order No. 162 (“EO 162”), Workforce Utilization Reports must include the gross wages paid to each employee for their work on the contract. Gross wages are those reported by employers to employees on their wage statements, and typically include every form of compensation paid by an employer to its employees. Click [here](#) for additional information on EO 162.

### **Exempted Contracts**

Contractors with employees who exclusively perform work on a state contract outside of New York State will generally be exempted from this reporting requirement. Subcontractors exclusively providing goods or transportation on a state contract are exempted from this reporting requirement.

### **How to File**

1. [Log in](#) to NYSCS or visit the [Vendor Account Lookup](#) and follow the on-screen instructions to look up your firm’s account and then access the System. Contact Customer Support via any of the System links if you have any questions while attempting to access your account.
2. Go to View >> My Workforce Audits.
3. View Workforce Audits by status, date, contract, and contract type (Prime/Subcontractor).
4. The System will notify contractors and subcontractors to log in to review and record the workforce details for the applicable audit.

### **Vendor Training**

You can view a training video by clicking on “Help & Support” from any screen in the System, then “Video Library”, and selecting “Workforce Utilization Reporting Vendor Training”.



## Your MWBE Utilization and Reporting Responsibilities Under Article 15-A

The New York State Contract System (“NYSCS”) is your one stop tool for compliance with New York State’s MWBE Program. It is also the platform New York State uses to monitor state contracts and MWBE participation.


### GETTING STARTED

To access the system, you will need to login or create a user name and password at <https://ny.newnycontracts.com>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to your contract’s project manager. For verification, in the email, include your business name and contact information.

### VENDOR RESPONSIBILITIES

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your solicitation or contract document. NYSCS is the tool that New York State uses to monitor MWBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, submit workforce utilization reports, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support >>** link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on

all features of the NYSCS. You may also click on the  icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the “Knowledge Base” through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com>).

For more information, contact your project manager.

## **APPENDIX 1 – MWBE CONTRACT LANGUAGE**

### **PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**

#### **I. General Provisions**

- A. The United Nations Development Corporation (“UNDC”) is required to implement the provisions of New York State Executive Law Article 15-A (“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.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to UNDC, to fully comply and cooperate with UNDC in the implementation of 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.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to UNDC pursuant to the Contract and applicable law.

#### **II. Contract Goals**

- A. For purposes of this Contract, UNDC has established goals for MWBE participation (“MWBE Contract Goals”) which are set forth in the solicitation materials for this procurement, based on the current availability of MWBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals referred to in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <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.

- C. 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. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract]
- D. 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:
1. Evidence of outreach to MWBEs;
  2. Any responses by MWBEs to the Contractor’s outreach;
  3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by UNDC with MWBEs; and,
  5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.
- E. If the value of the Contract is increased as a result of change orders, the Contractor shall make “good faith efforts” to achieve a commensurate increase in the value of work subcontracted to MWBEs to meet the MWBE Contract Goals.

### **III. Equal Employment Opportunity (“EEO”)**

- A. The provisions of Article 15-A and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
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.

2. The Contractor shall submit an EEO policy statement to UNDC with its bid or proposal.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, UNDC may require the Contractor or subcontractor to adopt a model statement (see–UNDC Equal Employment Opportunity Policy Statement Form).
4. The Contractor’s EEO policy statement shall include the following language:
  - a. 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.
  - b. 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.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph “E” of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

#### C. Staffing Plan Form

To ensure compliance with this Section, if a non-construction contract is anticipated to result in an award in excess of \$250,000, 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.

#### D. Workforce Utilization Report Form

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be

- required by UNDC on a monthly basis for construction contracts and on a quarterly basis for non-construction contracts during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.
  3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination 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 with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan to UNDC prior to the execution of the contract. The Contractor agrees to submit the MWBE Utilization Plan through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, at the time of the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, UNDC shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

#### **V. Waivers**

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals referred to herein, the Contractor may submit a request for a waiver to UNDC. Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, UNDC shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If UNDC, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, 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 regards to such non-compliance, UNDC 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.

## **VI. Quarterly MWBE Contractor Compliance Report**

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report to UNDC by the 7<sup>th</sup> day following the end of each quarter during the term of the Contract, and the Contractor and its subcontractors are required to submit periodic reports through the NYSCS as directed by UNDC.

## **VII. Liquidated Damages - MWBE Participation**

- A. Where UNDC 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 UNDC liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by UNDC, the Contractor shall pay such liquidated damages to UNDC 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.



\_\_\_\_\_ is designated as the Contractor's MWBE Liaison responsible  
(Name of Designated Liaison)

for administering the Contractor's M/WBE-EEO Opportunity program.

**M/WBE Contract Goals**

\_\_\_\_\_ % Overall Minority and Women's Business Enterprise Participation

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women's Business Enterprise Participation

\_\_\_\_\_  
(Signature of Authorized Representative)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Revised 2/6/2024

## **APPENDIX 2 - SDVOB CONTRACT LANGUAGE**

### **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. The United Nations Development Corporation ("UNDC") recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of UNDC contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

#### **I. Contract Goals**

- A. UNDC has established a goal for SDVOB participation which is set forth in the solicitation materials for the Contract, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to UNDC compliance staff. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

#### **II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan with their bid or proposal.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows 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 SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to UNDC.

- C. UNDC will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of UNDC acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to UNDC a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by UNDC to be inadequate, UNDC shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by UNDC, a request for a partial or total waiver of SDVOB participation goals on the UNDC Waiver Form. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. UNDC may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If UNDC determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals referenced above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, UNDC shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### **III. Request for Waiver**

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to UNDC compliance staff for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on the UNDC Waiver Form, accompanied by supporting documentation. A Bidder may submit the request for

waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by UNDC at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, UNDC shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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 UNDC, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If UNDC, upon review of the SDVOB Utilization Plan and Quarterly SDVOB Compliance Report determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, UNDC may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to UNDC compliance staff.

#### **IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by UNDC with certified SDVOBs whom UNDC determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

#### **IV. Quarterly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Quarterly SDVOB Contractor Compliance to UNDC during the term of the Contract for the preceding quarter's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using the form provided by UNDC and should be completed by the Contractor and submitted to UNDC by the 7th day of each month during the term of the Contract, for the preceding month's activity.

**V. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

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