

**APPENDIX C: SUPPLIER DIVERSITY PROVISIONS**

*Contractor Requirements and Procedures for Participation by New York State-certified Minority, Women, and Service-Disabled Veteran-Owned Businesses and Equal Employment Opportunities for Minority Group Members and Women*

<b>MWBE Goal: 10%</b>	<b>MBE Goal:</b>	<b>WBE Goal:</b>	<b>SDVOB Goal:</b>	<b>Diversity Practices or Mentor/Protege: Yes/No</b>
____ If indicated, Supplier Diversity Provisions will apply to the resulting contract, and actual Supplier Diversity Participation Goals will be assessed based upon the Project Specific Scope and included with the mini-bid process for each Purchase Order Release as further explained in Section II D.				

**REQUIRED ACTION: If MWBE, MBE, WBE, and/or SDVOB Goals are indicated above,** Bidders must submit a Supplier Diversity Utilization Plan (“Utilization Plan”) and identify the New York State-certified firms that will be utilized in the performance of this contract. If the contractor, after making good faith effort, is unable to achieve the stated goals, they may submit a Request for Waiver. MWBE Directory: <https://ny.newnycontracts.com/> SDVOB Directory: <https://online.ogs.ny.gov/SDVOB/search>. Additional information and instructions are below. Any questions regarding this Appendix must be submitted in writing to the Designated Contact Person for this solicitation.

**I. General Provisions**

- A. The contractor to the state contract (the “Contractor”) agrees at no additional cost to the New York Power Authority (“Authority”) and the New York State Canal Corporation (“Canal Corporation”), to fully comply and cooperate with the Authority and Canal Corporation in the implementation of New York State Executive Law Article 15-A and Veteran Services Law, Article 3. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified Minority- and Women-owned Business Enterprises (“MWBEs”) and Service-Disabled Veteran-Owned Businesses (“SDVOBs”). The Contractor’s demonstration of good faith efforts pursuant to 5 NYCRR §142.8 in relation to MWBEs and 9 NYCRR §252.2(n) in relation to SDVOBs 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”), Veteran Services Law Article 3 or other applicable federal, state or local laws.
- B. Pursuant to New York State Executive Law Article 15-A, Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (as may be amended or supplemented from time to time, the “MWBE Regulations”), and the Authority and Canal Corporation policy, the Authority and Canal Corporation are required to promote opportunities for the maximum feasible participation of New York State-certified MWBEs and the employment of minority group members and women in the performance of the Authority and Canal Corporation contracts.
- C. Pursuant to New York State Veteran Services Law Article 3, and Part 252 of Title 9 of the New York Codes, Rules and Regulations (as may be amended or supplemented from time to time, the “SDVOB Regulations”), and the Authority and Canal Corporation policy, the Authority and Canal Corporation are required to promote meaningful participation in public procurement by New York State-certified SDVOB, thereby further integrating such businesses into New York State’s economy.
- D. This Appendix describes certain requirements and procedures applicable to the (1) Request for Qualifications (“RFQ”), Invitation for Bids (“IFB”), or Request for Proposals (“RFP”) of which this Appendix is a part, (the “Solicitation”) and to all Respondents, and (2) any contract or purchase order resulting from this Solicitation (the “Contract”) and to any contractor selected as a result of this Solicitation. The term “Respondent” as used herein shall mean any person or entity responding to the Solicitation, including, without limitation, bidders responding to an IFB, proposers responding to a RFP, or respondents providing quotes pursuant to an discretionary procurement. **Failure by any Respondent to timely provide any of the documents, plans, and the like contemplated in this Appendix that are required to be delivered to the Authority and Canal Corporation prior to the contract award shall be grounds for the Authority and Canal Corporation to reject such Respondents’ quote, bid submission, or proposal as non-responsive.** Capitalized terms used but not defined in this Appendix shall have the meaning set forth in the Solicitation of which this Appendix is a part.

- E. The Respondent, and any selected Contractor, shall submit all forms, documents, data, information, correspondence and the like required to be submitted under this Appendix, in the form and manner required by the Authority and Canal Corporation, and to any other individual and address otherwise designated in writing by the Authority and Canal Corporation for such purposes from time to time.
- F. The Contractor agrees to cooperate in any audits, studies or surveys as may be conducted by the Authority and Canal Corporation, consultant to the Authority and Canal Corporation, or any government agency which may have jurisdiction, as may be necessary to determine the extent of Contractor's compliance with these provisions.

## **II. Contract Goals**

- A. The term “Supplier Diversity Participation Goals” used herein shall mean any MWBE Goals, SDVOB Goals, or both, established by the Authority and Canal Corporation for the Contract. Supplier Diversity Participation Goals will be set forth in the first page of Appendix C. If no Supplier Diversity Participation Goals appear in Appendix C, or if the Solicitation indicates that there are no Supplier Diversity Participation Goals, then the Authority and Canal Corporation will be deemed to have set no Supplier Diversity Participation Goals for the Solicitation and the Contract, and no Supplier Diversity Participation Goals will apply.
- B. Except otherwise expressly described below, the Authority and Canal Corporation may have established (1) an overall participation goal for New York State-certified MWBE, and (2) specific participation goals for New York State-certified minority-owned business enterprises (“MBE”) and New York State-certified women-owned business enterprises (“WBE”), for the Contract (based on the current availability of qualified MBEs and WBEs) (collectively, “MWBE Goals”) and/or (3) an overall New York State-certified SDVOB participation goal for the Contract, based on the current availability of qualified SDVOBs (“SDVOB Goal”). Contractors shall demonstrate good faith efforts to meet Supplier Diversity Participation Goals during the entire duration of the contract term, including for any amended term or for work added during the period of performance.
- C. Specifically for design-build construction projects, any established Supplier Diversity Participation Goals will apply to each phase of the project, including but not limited to phase 1: design and professional services; and phase 2: construction services. Contractors shall demonstrate good faith efforts to meet Supplier Diversity Participation Goals and will submit a Utilization Plan or a Request for Waiver, as further described below, prior to the beginning of each defined phase.
- D. For certain value contracts with a general scope of work where an indefinite quantity and/or indefinite delivery schedule, or where the project specific scope is not established, and where a mini-bid among pre-qualified Contractors is required, the Authority and Canal Corporation, at its sole and absolute discretion, may establish Supplier Diversity Participation Goals during the mini-bid process when the Project Specific Scope of work (“Project Specific Scope”) has been identified. The Authority and Canal Corporation will indicate whether this process applies on the first page of Appendix C. Contractors shall demonstrate good faith effort to meet Supplier Diversity Participation Goals and will submit a Utilization Plan or a Request for Waiver, as further described below, prior to when work is awarded through a purchase order release. Additional instructions on Request for Waivers are available in Section V. Waivers.
- E. Firms certified as both MBE and WBE may count toward either the MBE or WBE goal on a single contract, but not both, regardless of whether either goal is thus exceeded. The Respondent and Contractor must choose the one certification to which the participation value is to be applied with the submission of the Utilization Plan.
- F. For contracts that are determined to be construction contracts by the Authority and Canal Corporation, acting in their sole and absolute discretion (“Construction Contracts”), the portion of a Construction Contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be sixty percent (60%) of the total value of the Construction Contract. The portion of a Construction 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 contracts that are not Construction 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 twenty-five percent (25%) of the total value of the contract.

- G. The Respondent and Contractor acknowledge and agree 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 or Quarterly Contractor Compliance and Payment Report 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 bid submissions, proposals, and/or withholding of payments.
- H. The Authority and Canal Corporation may have determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement may be required to include as part of their response to this procurement, as described in Appendix C-1 herein. Visit [nypa.gov/procurement](https://nypa.gov/procurement) for additional information.
- I. Pursuant to State Finance Law, Section 147, the Authority and Canal Corporation reserves the right to implement its Mentor-Protégé program in their procurements, and at their sole and absolute discretion, award additional evaluation points as specified in the best value, RFP procurement, and may award credit towards Supplier Diversity Participation Goals.

**III. Solicitation Provisions. The following provisions apply to the Solicitation and to any contract awarded under the Solicitation. All Respondents responding to this Solicitation and selected Contractors are subject to the following provisions.**

- A. By submitting a response to this Solicitation, the Respondent and Contractor agrees to demonstrate and document its good faith efforts to achieve the Supplier Diversity Participation Goals by submitting evidence thereof to the Authority and Canal Corporation, including, without limitation, all forms, documents, data, information, and the like contemplated in this Appendix. Notwithstanding anything to the contrary herein, if and to the extent required by the Authority and Canal Corporation from time to time, the Respondent and Contractor shall submit all MWBE- and SDVOB-related forms, documents, data, information, and the like contemplated in this Appendix electronically, including, without limitation, to the New York State Contract System (which can be viewed at <https://ny.newnycontracts.com>). Respondent and Contractor shall make any such electronic submissions in the manner and format required by the Authority and Canal Corporation from time to time, and such electronic submissions shall be in addition to the original copies to be submitted to the Authority and Canal Corporation using the forms contemplated in this Attachment.
- B. **Additionally, if Supplier Diversity Participation Goals have been set for this Solicitation or if the Authority has indicated that Supplier Diversity Participation Goals will be set on the Project Specific Scope, the Respondent and Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:**
  - i. For solicitations or when instructed: In accordance with 5 NYCRR § 142.6(b) and 9 NYCRR § 252.2(i), the Respondent and Contractor is required to submit a Utilization Plan using the form attached hereto within ten (10) business days (or such shorter period as may be required by the Authority and Canal Corporation) after receiving notice from the Authority and Canal Corporation that the Respondent has been selected for the contract award or that the bidder to an IFB is the apparent low bidder.
  - ii. For RFQ, RFP and negotiated Contracts: In accordance with 5 NYCRR § 142.6(a) and 9 NYCRR § 252.2(i), the Respondent and Contractor are required to submit a Utilization Plan using the form attached hereto with its proposal in the Solicitation or within ten (10) business days (or such shorter period as may be required by the Authority and Canal Corporation) after receiving notice from the Authority and Canal Corporation for a Project Specific Scope.
  - iii. The Utilization Plan shall list the MWBEs and/or SDVOBs that the Respondent and Contractor intends to use to perform the Contract, a description of the work that the Respondent intends the MWBE and/or SDVOB to perform to meet the Supplier Diversity Participation Goals on the Contract, the estimated dollar amount or percentage of contract value to be paid to a MWBE and/or SDVOB, or, if not known, an estimate of the percentage of Contract work the MWBE and/or SDVOB will perform.
    - i. For the purposes of providing meaningful participation by MWBEs and SDVOBs, the Respondents and Contractor should reference the directory of New York State Certified MWBEs found at: <https://ny.newnycontracts.com> and the

list of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/>. Additionally, the Respondent and Contractor are encouraged to contact the Division of Minority and Woman Business Development at (212) 803-2414 or [mwbusinessdev@esd.ny.gov](mailto:mwbusinessdev@esd.ny.gov) to discuss additional methods of maximizing participation by MWBEs on the Contract, and 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.

- ii. The Respondents and Contractor must document their good faith efforts to provide meaningful participation by MWBEs and/or SDVOBs as subcontractors or suppliers in the performance of the Contract. For guidance on how the Authority and Canal Corporation will determine a Contractor's good faith efforts, refer to 5 NYCRR §142.8 in relation to MWBEs and 9 NYCRR §252.2(n) in relation to SDVOBs, including the guidance provided below.
  - a. Respondent's and Contractor's documentation of such good faith efforts shall include providing written documented evidence of, but not be necessarily limited to:
    - i. Evidence of written outreach, including but not limited to the relevant plans, specifications or terms and conditions of the contract opportunity to MWBEs and SDVOBs made in a timely fashion;
    - ii. Any responses by MWBEs and SDVOBs to the Respondent and Contractor's outreach;
    - iii. Explanation of the specific reasons why any MWBE or SDVOB that responded to Respondents and Contractors' solicitation for MWBE or SDVOB subcontractors or suppliers was not selected.
    - iv. Copies of advertisements for participation by MWBEs and SDVOBs in appropriate general circulation, trade, and minority or women-oriented and veteran-business publications, together with listing(s) and date(s) of the publication of such advertisements;
    - v. Actions to contact and assess the capabilities of all available MWBEs and SDVOBs located both inside and outside of the immediate region in which the work was or will be performed, including all firms that have expressed an interest to the Authority and Canal Corporation or to the Respondent and Contractor.
    - vi. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Authority and Canal Corporation with MWBEs and SDVOBs;
    - vii. Information describing specific steps undertaken by the Respondent and Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE and SDVOB participation, including but not limited to reviewing the terms and conditions of any subcontract offered to MWBEs and SDVOBs and a comparison of such terms and conditions with those offered in the ordinary course of the Respondent and Contractor's business; and,
    - viii. Other information the Authority and Canal Corporation deem relevant to any waiver request submitted by the Respondent and Contractor.
  - iii. The Respondents and Contractor understand and agree that only sums paid to MWBEs and SDVOBs for the performance of a commercially useful function, as that term is defined in 5 NYCRR §140.1 in relation to MWBEs and 9 NYCRR §252.1(f) in relation to SDVOBs, may be applied towards the achievement of the corresponding MWBE Goal and SDVOB Goal.
  - iv. The Authority and Canal Corporation will review the submitted Utilization Plan and advise the Respondent and Contractor of the Authority and Canal Corporation acceptance or issue a notice of deficiency within thirty (30) days of receipt.
  - v. If a notice of deficiency is issued, the Respondent and Contractor will be required to respond to the notice of deficiency

within seven (7) business days of receipt by submitting to the Authority and Canal Corporation a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Authority and Canal Corporation to be inadequate, the Authority and Canal Corporation shall notify the Respondent and direct the Respondent to submit, within five (5) business days, a request for a partial or total waiver of the Supplier Diversity Participation Goals using the Supplier Diversity Request for Waiver Form. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Respondent's bid submission, proposal, or quote.

- vi. In addition to and without limiting any rights the Authority and Canal Corporation may have, if the Supplier Diversity Participation Goals have been set for the Solicitation, then the Authority and Canal Corporation may disqualify a Respondent and Contractor as being non-responsive under the following circumstances:
  - a.) If a Respondent and Contractor fails to submit a Utilization Plan;
  - b.) If a Respondent and Contractor fails to submit a written remedy to a notice of deficiency;
  - c.) If a Respondent and Contractor fails to submit a Request For Waiver; or
  - d.) If the Authority and Canal Corporation determines that the Respondent and Contractor has failed to document good faith efforts.

- C. The Authority and Canal Corporation reserves the right to reject any firm as counting toward meeting the Respondent and Contractor's Supplier Diversity Participation Goal if, in the opinion of the Authority and Canal Corporation, the facts as to that firm's business and technical organization and practices justify the rejection.

**IV. Contract Provisions. The following provisions apply to any contract awarded pursuant to this Solicitation that is described in A below, and to any respective Contractor.**

- A. Contractor and the Authority and Canal Corporation hereby agree that the provisions of the MWBE Regulations and the SDVOB Regulations shall apply to the Contract and are incorporated herein by reference if this is a contract (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. If awarded a contract with Supplier Diversity Participation Goals, the Contractor represents and warrants that Contractor has submitted to the Authority and Canal Corporation a Utilization Plan or shall submit a Utilization Plan at such time as may be required by the Authority and Canal Corporation, in the form and manner required by the Authority and Canal Corporation. The Contractor certifies that it will follow the submitted Utilization Plan for the performance of MWBEs and/or SDVOBs on the Contract pursuant to the prescribed Supplier Diversity Participation Goals. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to the Authority and Canal Corporation for approval. The Contractor further agrees that a failure to use MWBEs and/or 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, the Authority and Canal Corporation shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.
- C. The Contractor understands and agrees that only sums paid to MWBEs and SDVOBs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140 in relation to MWBEs and 9 NYCRR § 252.1(f) in relation to SDVOBs, may be applied towards the achievement of the corresponding MWBE Goal and SDVOB Goal.
- D. The Contractor further acknowledges and agrees 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 bid submissions, proposals, and/or withholding of payments.

- E. As discussed further below, the Contractor will be required to attempt to utilize, in good faith, any MBE, WBE, or SDVOB identified within its Utilization Plan, during the performance of the Contract. Requests for Waiver of established Supplier Diversity Participation Goals made subsequent to Contract Award may be made at any time during the term of the Contract to the Authority but must be made no later than prior to the submission of a request for final payment on the Contract.
- F. **If awarded a contract with Supplier Diversity Participation Goals and in accordance with 5 NYCRR § 142.11 and 9 NYCRR § 252.2(q), Contractor is required to report MWBE and/or SDVOB participation during the term of the contract for the preceding three month's activity, documenting progress made towards achieving the Supplier Diversity Participation Goals. This information must be submitted using the Quarterly Contractor Compliance & Payment Report form provided by the Authority and Canal Corporation from time to time, or otherwise in the form and manner required by the Authority and Canal Corporation and must be completed by the Contractor and submitted to the Authority and Canal Corporation along with supporting documentation, by the tenth (10<sup>th</sup>) day following each end of quarter over the term of the contract. Contractor shall provide proof of payment to all diverse subcontractors. Failure to provide such proof of payment may constitute default of the Contractor's obligations.**
- G. To the best of the Contractor's ability, the Quarterly Contractor and Compliance & Payment Report shall include details on payments made to subcontractors and suppliers that may be deemed as NYS Small Businesses, which will include businesses that employ 100 or fewer persons; is a resident in New York; is independently owned and operated; and is not dominate in its field as defined by Article 11 of the New York State Finance Law.

#### **V. Waivers.**

- A. Any request by the Respondent and Contractor for a partial or total waiver of the Supplier Diversity Participation Goals must be submitted in the form and manner required by the Authority and Canal Corporation (a "Request for Waiver").
- B. Prior to submission of a Request for Waiver, Respondent and Contractor may contact the Authority and Canal Corporation for guidance.
- C. In accordance with 5 NYCRR § 142.7 and 9 NYCRR § 252.2(m), if the Respondent and Contractor, after making good faith efforts, is unable to achieve the Supplier Diversity Participation Goals, the Respondent and Contractor may submit a Request for Waiver. Such Request for Waiver must be supported by evidence of the Respondent and Contractor's good faith efforts to achieve maximum feasible participation towards the Supplier Diversity Participation Goals. If the Request for Waiver is complete, and the Contractor has provided to the Authority and Canal Corporation's satisfaction such additional documentation that may be required by the Authority and Canal Corporation, the Authority and Canal Corporation shall evaluate the Request for Waiver and issue a written notice of approval or denial within twenty (20) business days of receipt.
- D. The Respondent and Contractor shall attempt to utilize, in good faith, the MWBEs and SDVOBs identified within its Utilization Plan, during the performance of the Contract. Requests for Waiver of established Supplier Diversity Participation Goals made subsequent to the contract award may be made at any time during the term of the Contract to the Authority and Canal Corporation but must be made no later than prior to the submission of a request for final payment on the contract.
- E. If the Authority and Canal Corporation, upon review of the Utilization Plan and updated Quarterly Contractor Compliance & Payment Report described in Section IV(F) above, or any other relevant information, determines that the Respondent and Contractor is failing or refusing to comply with the Supplier Diversity Participation Goals and no waiver has been issued in regard to such non-compliance, the Authority and Canal Corporation 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 Waiver.

#### **VI. Breach of Contract and Damages.**

- A. The Contractor expressly agrees to comply with the requirements outlined in this Appendix. Failure by any Contractor to comply with the any of the following requirements may, in the sole and absolute discretion of the Authority and Canal Corporation unless otherwise noted, result in a finding of non-responsibility and/or a breach of the Contract, leading to the



withholding of funds, assessment of liquidated damages, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract, at law or in equity.

- B. Where the Authority and Canal Corporation determine 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 Goals, Contractor shall be obligated to pay to the Authority and Canal Corporation liquidated damages.
- C. Such MWBE liquidated damages shall be calculated as an amount equaling the difference between:
  - i. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE Goals; and
  - ii. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- D. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Authority and Canal Corporation, the Contractor shall pay such liquidated damages to the Authority and Canal Corporation within sixty (60) days after they are assessed by the Authority and Canal Corporation; provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant 5 NYCRR 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.
- E. In the event a complaint against the Authority is referred to the American Arbitration Association for resolution in accordance with Section 316 of the Executive Law, the parties agree that the Arbitrator will have no jurisdiction to award monetary damages, fines or other monetary penalties against the Authority. The parties further agree that each party will bear its own legal fees and expenses, regardless of the outcome of the Arbitration.
- F. 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. Such damages shall be calculated based on the actual cost incurred by the Authority and Canal Corporation related to the Authority and Canal Corporation's expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing SDVOB programmatic goals.

## **VII. Equal Employment Opportunity.**

- A. Equal Employment Opportunity Requirements
  - i. By submission of a bid Submission, proposal, or quote in response to this Solicitation, the Respondent agrees that 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 contained in this Solicitation shall apply to the Contract. The Respondent shall submit to the Authority and Canal Corporation an MWBE and Equal Employment Opportunity Policy Statement ("EEO Policy Statement") in form and substance acceptable to the Authority and Canal Corporation and within ten (10) days of the Authority and Canal Corporation's request, and the Authority and Canal Corporation shall have the right to make the submission of an MWBE / EEO Policy Statement a condition of the contract award.
  - ii. In performing the Contract, the Contractor shall ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Contractor, undertake or continue 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 or domestic violence victim status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to

the Contract; or (ii) employment outside New York State.

- iii. Further, pursuant to Article 15 of the Executive Law, all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and all subcontractors will 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. If the Contractor or any of its subcontractors does not have an existing EEO Policy Statement, the Authority and Canal Corporation may require the Contractor or subcontractor to adopt a model EEO Policy Statement provided by the Authority and Canal Corporation.
  - a. The Contractor's EEO Policy Statement shall include the following language:
    - i. 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 or domestic violence victim 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.
    - ii. 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 or domestic violence victim status.
    - iii. 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 or domestic violence victim status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
    - iv. The Contractor will include the provisions of Subdivisions (i.) through (iii.) of this Subsection (iv) and Paragraph "ii" of this Section B 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 performed in connection with the contract.

**B. Staffing Plan and Workforce Utilization Report**

- i. As required by the Authority and Canal Corporation, the Contractor shall submit or have submitted an Equal Employment Opportunity Staffing Plan ("Staffing Plan"), using a form required by the Authority and Canal Corporation, 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. Contractors shall have completed and submitted the Staffing Plan within ten (10) days of the Authority and Canal Corporation's request.
- ii. **If awarded a contract, the Contractor shall submit a Workforce Utilization Report and shall require each of its subcontractors to submit separate Workforce Utilization Reports, in such form, manner, and frequency as may be required by the Authority and Canal Corporation during the term of the contract. Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report. Additional instructions to complete a Workforce Utilization Report is available on [nypa.gov/procurement](http://nypa.gov/procurement).**



## SUPPLIER DIVERSITY (MWBE/SDVOB) - UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, proposed/negotiated contract or as otherwise required by the Authority and Canal Corporation. **The Utilization Plan must contain details of the services and/or supplies to be provided by each NYS certified business and indicate the dollar amount or percentage of contract utilization.** Attach additional sheets if necessary. Additional resources are available on [nypa.gov/procurement](http://nypa.gov/procurement) or from the Supplier Diversity team.

**Bidder/Proposer's Name:**

**Address:**

**City, State, Zip Code:**

**Telephone No.:**

**Region/Location of Work:**

**Federal Identification No.:**

**Solicitation No.:**

**MWBE Goals:** MWBE      % or (MBE      % WBE      %)

**SDVOB Goal:**      %

**Total Dollar Value of Proposed Prime Contract:** \$

NYS-certified MWBE & SDVOB Subcontractors/Suppliers Contact Information	NYS Certification (Check One)	Subcontract Information			
		Description of Work / Supplies Provided	Contract Value \$ or %	Start Date	Completion Date
Company Name: FEIN: Address: Contact Name: Phone #: E-Mail Address:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$  OR %		
Company Name: FEIN: Address: Contact Name: Phone #: E-Mail Address:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$  OR %		
Company Name: FEIN: Address: Contact Name: Phone #: E-Mail Address:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$  OR %		

Note: If unable to fully meet the Supplier Diversity (MWBE and/or SDVOB) - Participation Goals set forth in the solicitation, the bidder/proposer must submit a Supplier Diversity - Request for Waiver form for a partial waiver, in addition to the Utilization Plan.

**Select One:** ☐ New Utilization Plan or ☐ Modification to Existing/Approved Utilization Plan

**Prepared By** (Signature): \_\_\_\_\_

**Date:**

**Name and Title of Preparer** (Print or Type):

**Email Address:**

SUBMISSION OF THIS FORM CONSTITUTES THE BIDDER/PROPOSER'S ACKNOWLEDGEMENT AND CONTRACT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLE 15-A AND VETERAN SERVICES LAW ARTICLE 3, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NON-RESPONSIVENESS, NONCOMPLIANCE AND POSSIBLE TERMINATION OF THE CONTRACT. DOCUMENTS SUBMITTED BY VENDORS MAY BE SUBJECT TO DISCLOSURE UNDER APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, BY THE AUTHORITY AND CANAL CORPORATION POSTING DOCUMENTS TO ITS WEBSITE.

### NYPA & CANAL – SUPPLIER DIVERSITY

**REVIEWED BY:**

**DATE:**

**MWBE PARTICIPATION:** ☐

**SDVOB PARTICIPATION:** ☐

**Utilization Plan Approved:**

☐ YES ☐ NO Date: \_\_\_\_\_

**Notice of Deficiency Issued:**

☐ YES ☐ NO Date: \_\_\_\_\_

**Notice of Acceptance Issued:**

☐ YES ☐ NO Date: \_\_\_\_\_

## SUPPLIER DIVERSITY (MWBE/SDVOB) - REQUEST FOR WAIVER

**INSTRUCTIONS:** This form must be submitted if the bidder/proposer/contractor is unable to meet the Supplier Diversity (MWBE and/or SDVOB) Participation Goals set forth in the solicitation or contract. **To be considered, the Request for Waiver form must be accompanied by written responses to questions 1 – 9, as listed on the second page of this form, along with all relevant supporting documentation.** Attach additional sheets as necessary.

**Bidder/Proposer/Contractor's Name:**

**Address:**

**City, State, Zip Code:**

**Telephone No.:**

**Region/Location of Work:**

**Federal Identification No.:**

**Solicitation/Contract/Purchase Order No.:**

**MWBE Goals:** MWBE      % or (MBE      % WBE      %)

**SDVOB Goal:**      %

**Total Dollar Value of Prime Contract:** \$

**Waiver Type Being Requested (select all that apply):**

- |   |                                       |  |                         |
|---|---------------------------------------|--|-------------------------|
| 1. <input type="checkbox"/> <b>MBE Waiver</b> – A waiver of the MBE Participation Goal for this procurement is requested:     | <input type="checkbox"/> <b>Total</b> | <input type="checkbox"/> <b>Partial:</b> _____ | % <b>Requested Goal</b> |
| 2. <input type="checkbox"/> <b>WBE Waiver</b> – A waiver of the WBE Participation Goal for this procurement is requested:     | <input type="checkbox"/> <b>Total</b> | <input type="checkbox"/> <b>Partial:</b> _____ | % <b>Requested Goal</b> |
| 3. <input type="checkbox"/> <b>MWBE Waiver</b> – A waiver of the MWBE Participation Goal for this procurement is requested:   | <input type="checkbox"/> <b>Total</b> | <input type="checkbox"/> <b>Partial:</b> _____ | % <b>Requested Goal</b> |
| 4. <input type="checkbox"/> <b>SDVOB Waiver</b> – A waiver of the SDVOB Participation Goal for this procurement is requested: | <input type="checkbox"/> <b>Total</b> | <input type="checkbox"/> <b>Partial:</b> _____ | % <b>Requested Goal</b> |

BY SUBMITTING THIS FORM AND THE REQUIRED INFORMATION, THE BIDDER/PROPOSER/CONTRACTOR CERTIFIES THAT EVERY GOOD FAITH EFFORT HAS BEEN TAKEN TO PROMOTE NYS-CERTIFIED MWBE AND SDVOB PARTICIPATION PURSUANT TO THE REQUIREMENTS SET FORTH UNDER THE SOLICITATION AND/OR CONTRACT.

**Submitted** (Select One): ☐ With Bid/Proposal   or   ☐ During Contract Term

**Prepared By** (Signature): \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name and Title of Preparer** (Print or Type): \_\_\_\_\_

**Email Address:** \_\_\_\_\_

SUBMISSION OF THIS FORM CONSTITUTES THE BIDDER/PROPOSER/CONTRACTOR'S ACKNOWLEDGEMENT AND CONTRACT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLE 15-A AND VETERAN SERVICES LAW ARTICLE 3, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION AND/OR CONTRACT. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NON-RESPONSIVENESS, NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT. DOCUMENTS SUBMITTED BY VENDORS MAY BE SUBJECT TO DISCLOSURE UNDER APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, BY THE AUTHORITY AND CANAL CORPORATION POSTING DOCUMENTS TO ITS WEBSITE.

**NYP&A & CANAL – SUPPLIER DIVERSITY**

**REVIEWED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**Waiver Granted:** ☐ YES  
☐ NO - Notice of Deficiency Issued: \_\_\_\_\_

**If Yes –**

- ☐ **Total Waiver – MWBE Participation Goal**  
☐ **Total Waiver – SDVOB Participation Goal**  
☐ **Partial Waiver:**

☐ MBE   ☐ WBE   ☐ MWBE   ☐ SDVOB

**Revised M/WBE Goal:** \_\_\_\_\_

**Revised SDVOB Goal:** \_\_\_\_\_

☐ **Conditional Waiver**

**Comments:** \_\_\_\_\_

## **SUPPLIER DIVERSITY (MWBE/SDVOB) – REQUEST FOR WAIVER REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS**

1. Provide a statement to explain the reason for requesting a partial or total waiver of Supplier Diversity (MWBE and/or SDVOB) Participation Goals. Provide the name, title, address, telephone number and email address of the representative authorized to discuss and negotiate this Request for Waiver.
2. List all NYS-certified MWBEs and/or SDVOBs appearing in the NYS MWBE and/or SDVOB Directories, include the search parameters used, and the actions taken by you (the Bidder/Proposer/Contractor) to assess the capabilities of NYS-certified MWBE and/or SDVOB firms. Indicate which firms were solicited for the purpose of outreach to comply with the Supplier Diversity Participation Goals.
3. List all notices and dates of contact when outreach was conducted in writing to all NYS-certified MWBEs and/or SDVOBs, for the purpose of complying with the Supplier Diversity Participation Goals, and describe the efforts made by you (the Bidder/Proposer/Contractor) to reasonably structure the contract scope of work for purposes of subcontracting with, or obtaining supplies from, NYS-certified MWBE and/or SDVOB firms.
4. Provide a description or copies of any contract documents (terms and conditions), plans, or specifications made available to NYS-certified MWBEs and/or SDVOBs for the purposes of soliciting their bids, proposal, and/or quotes, and the date and way these documents were made available.
5. Provide copies of your solicitation (or a sample copy of an identical solicitation), letters, and other correspondence, and all responses made by NYS-certified MWBEs and/or SDVOBs for purposes of complying with the Supplier Diversity Participation Goals.
6. Provide documentation of any negotiations between you (the Bidder/Proposer/Contractor), and the NYS-certified MWBEs and/or SDVOBs undertaken for purposes of complying with the Supplier Diversity Participation Goals.
7. If applicable, list the names, date(s) and provide copies of the New York State Contract Reporter, general circulation, media, trade association, and supplier diversity-oriented publications (MWBE/SDVOB) in which you solicited NYS-certified MWBEs and SDVOBs for the purposes of complying with the Supplier Diversity Participation Goals.
8. If applicable, list the attendee(s) name and date(s) by you (the Bidder/Proposer/Contractor) at pre-bid, pre-award, or any meeting scheduled by NYPA and/or Canals for any purposes of complying with the Supplier Diversity Participation Goals.
9. Provide any other information you deem relevant which may help NYPA and Canals in evaluating your Request for Waiver.

Note: Unless a Total Waiver has been granted, the Bidder/Proposer/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the solicitation and/or contract, as deemed appropriate by The Authority and Canal Corporation, to determine MWBE and/or SDVOB participation compliance.

## SUPPLIER DIVERSITY (MWBE/SDVOB) - CONTRACTOR COMPLIANCE & PAYMENT REPORT

**INSTRUCTIONS:** This report must be submitted each reporting period by the Contractor to demonstrate compliance with Supplier Diversity (MWBE and/or SDVOB) Participation Goals set forth in the agreement referenced below. Use this form to list the payments made to NYS-certified MWBEs, SDVOBs, and NYS SBEs. **This form must be accompanied by supporting documentation to validate and verify payment.** Attach additional sheets as needed. [DiversityComplianceReporting@nypa.gov](mailto:DiversityComplianceReporting@nypa.gov).

Contractor's Name:

Address:

City, State, Zip Code:

Telephone No.:

Federal Identification No.:

Value Contract/Purchase Order #:

Project Customer Name: / WBS Code #:

Project Description:

Reporting Period (Monthly or Quarterly)	Authority Contract Information	MWBE/SDVOB Goals - Subcontract Amt.	MWBE/SDVOB Utilization to Date (%)
Construction / Construction-Related Contracts:	Final Report (select one): <input type="checkbox"/> Yes <input type="checkbox"/> No Project Completion Date: Payment to Contractor This Period: \$ Total Paid to Contractor to Date: \$	MWBE % = \$	MWBE % = \$
Reporting Month:		OR	OR
All Other Contracts: (Select One)		MBE % = \$	MBE % = \$
<input type="checkbox"/> 1 <sup>st</sup> Quarter (1/1-3/31) <input type="checkbox"/> 2 <sup>nd</sup> Quarter (4/1-6/30) <input type="checkbox"/> 3 <sup>rd</sup> Quarter (7/1-9/30) <input type="checkbox"/> 4 <sup>th</sup> Quarter (10/1-12/31)		WBE % = \$	WBE % = \$
		SDVOB % = \$	SDVOB % = \$

NYS-certified MWBE, SDVOB, SBE Subcontractors/Suppliers	Product Code*	NYS Certification	Work Status This Report	Subcontract Information		
				Payments Reported In This Period	Previously Reported Payments	Total Payments Made to Date
Name: Address: FEIN:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> SBE	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete	\$	\$	\$
Name: Address: FEIN:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> SBE	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete	\$	\$	\$
Name: Address: FEIN:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> SBE	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete	\$	\$	\$
<b>Total</b>				\$	\$	\$

I certify that the information presented in the Supplier Diversity (MWBE/SDVOB) - Contractor Compliance & Payment Report is accurate and complete. Submission of this Report for MWBE firms with a *Complete* Work Status shall constitute a post completion certification indicating that the MWBE firm performed the work on the approved Utilization Plan.

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

Date:

Name and Title of Preparer (Print or Type):

Email Address:

**NYPA & CANAL – SUPPLIER DIVERSITY**

REVIEWED BY:

DATE:

REV: 5/2025

## **SUPPLIER DIVERSITY (MWBE/SDVOB) - \*PRODUCT KEY CODE**

A	=	Agriculture/ Landscaping (e.g., all forms of landscaping services)
B	=	Mining (e.g., geological investigations)
C	=	Construction
C15	=	Building Construction – General Contractors
C16	=	Heavy Construction (e.g., highway, pipe laying)
C17	=	Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)
D	=	Manufacturing
E	=	Transportation, Communication and Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
F/G	=	Wholesale/Retail Goods (e.g. hospital supplies and equipment, food stores, computer stores, office supplies)
G52	=	Construction Materials (e.g., lumber, paint, law supplies)
H	=	Financial, Insurance and Real Estate Services
I	=	Services
I73	=	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)
I81	=	Legal Services
I82	=	Education Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
I83	=	Social Services (Counselors, vocational training, child care)
I87	=	Engineering, architectural, accounting, research, management and related services