



Environmental Facilities Corporation | Department of Health

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Guidance for Mandatory State Financial Assistance Terms and Conditions

For Contracts Funded with New York State Financial Assistance Only

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INTRODUCTION

The New York State Environmental Facilities Corporation (“EFC”) implements various State financial assistance programs, including but not limited to the Water Infrastructure Improvement (“WIIA”) Grant program, the Intermunicipal Grant (“IMG”) program, and the Green Resiliency Grant (GRG) program.

This Guidance provides a brief description of State program requirements for Contracts and Subcontracts funded by State financial assistance and materials to assist entities in complying with these requirements. Contracts that do not meet the required conditions may not be eligible, in whole or in-part, for financing.

The Guidance Materials are for informational purposes only and are not intended to be used as contractual language. Please do not incorporate the Guidance Materials into any Contracts or Subcontracts.

PROGRAM REQUIREMENTS SUMMARY

The following requirements apply to projects funded with State financial assistance only:

- Participation of Minority- and Women-Owned Business Enterprises (“MWBE”) and Equal Employment Opportunities (“EEO”) pursuant to New York State Executive Law, Article 15-A and New York Code of Rules and Regulations, Title 5 (5 NYCRR) Parts 140-145 (Regulations of the Commissioner of Economic Development);
- Participation of Service-Disabled Veteran-Owned Business Enterprises (“SDVOB”) pursuant to New York State Veteran’s Services Law Article 3;
- Applicable State and/or local prevailing wage requirements; and,
- Requirements regarding suspension and debarment pursuant to State Labor Law § 220-b and State Executive Law § 316.

EFC or its authorized representatives, and other governmental entities as applicable, reserve the right to conduct occasional site inspections to verify compliance with State financial assistance program requirements and review recipients monitoring of requirements.

This document is not intended to be inclusive of all applicable legal requirements and there may be other legal requirements that need to be included in a particular Contract or Subcontract that are not set forth here. Accordingly, EFC recommends that Recipients, Contractors, Subcontractors, and any other involved entities consult their legal counsel for advice on compliance with all applicable laws, including but not limited to local laws. This document is not intended to be legal advice.

Refer to the EFC website at www.efc.ny.gov for the latest version of the Mandatory State Financial Assistance Terms and Conditions to ensure that the most recent forms and contract language are being used.

GUIDANCE MATERIALS

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Construction means the process by which a contractor or subcontractor builds, alters, repairs, remodels, improves or demolishes infrastructure.

Contract means an agreement between a Recipient and a Contractor.

Contractor means all bidders, prime contractors, surety that is completing performance for a defaulted contractor pursuant to a performance bond, non-construction service providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

MBO is designated and employed by the Recipient as a Minority Business or Compliance Officer responsible for MWBE/DBE/SDVOB/EEO reporting and compliance.

Non-Construction Provider means any individual or business enterprise that provides one or more of the following: legal, engineering, financial advisory, technical, or other professional services, supplies, commodities, equipment, materials, or travel.

Recipient means the party, other than EFC, to a grant agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part. Responsible through Grant Agreement (GA) to comply with EFC requirements.

State means the State of New York.

Subcontract means an agreement between a Contractor and a Subcontractor.

Subcontractor means any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Contractor.

Supplier means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

APPLICABILITY OF PROGRAM REQUIREMENTS

This table contains a breakdown of the applicable program requirements based on contract type and its value. For further details pertaining to each requirement, refer to the section identified in the heading. The relevant section number is the same in both Part 2 and Part 3 of this document.

Type of Contract	MWBE Section 1	SDVOB Section 2	EEO Section 1	Suspension & Debarment Section 3
Construction				
All				X
If greater than:				
\$100,000	X	X	X	X
Non-Construction Provider				
All				X
If greater than:				
\$25,000	X	X	X	X

SECTION 1

GUIDANCE FOR THE REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS

I. Business Participation Opportunities for MWBEs

A. Contract Goals

MWBE participation goals for a contract will be based on the goals in place at the time of the execution date of each respective contract, unless otherwise specified.

Please contact the MBO if you have any questions about the applicable MWBE participation goals for your contract.

B. Good Faith Efforts

The Contractor must make good faith efforts to develop an adequate MWBE Utilization Plan and must continue such good faith efforts to meet applicable MWBE participation goals. The Contractor shall maintain documentation of good faith efforts to solicit participation of MWBE firms for EFC-funded projects. If a Contractor is unable to meet contract MWBE participation goals, and submits a Request for Waiver, documentation of such good faith efforts must accompany the request. See Terms & Conditions, Section 1(III)(C). The Contractor should also continue good faith efforts to seek opportunities for MWBE participation during the life of the contract even if proposed goals have been achieved.

When MWBE and SDVOB goals both apply to a contract, good faith efforts should be sought simultaneously so that both types of certified firms have an equal opportunity to participate on the contract.

Examples of documentation of good faith efforts are set forth below:

- Information on the scope of work related to the contract, such as a copy of the schedule of values from the bid submission, and specific steps taken to reasonably structure the scope of work to break out tasks or equipment needs for the purpose of providing opportunities for subcontracting with, or obtaining supplies or services from, MBEs or WBEs.
- Printed screenshots of the directory of Certified Minority- and Women- Owned Business Enterprises (“MWBE directory”) on Empire State Development’s (ESD) website for certified MWBEs that provide the services or equipment necessary for the contract. Contact the MBO for assistance in performing a proper search including identifying a sufficient number of solicitations to show that good faith effort was made.
- Copies of timely solicitations and documentation (e.g., emails) that the Contractor offered relevant plans, specifications, or other related materials to MBE and WBE firms on ESD’s MWBE directory to participate in the work, with the responses.
- A log prepared by the Contractor in a sortable spreadsheet documenting the Contractor’s solicitation of MBEs and WBEs for participation as Subcontractors or Suppliers pursuant to a contract. The log should consist of the list of MBE and WBE firms solicited, their contact information, the type of work they were solicited to perform (or equipment to provide), how the solicitation was made (fax, phone, email) and the contact information, the contact’s name and the outcome. If a bid was received, the bid price should also be included in the log.
See sample log at www.efc.ny.gov/mwbe-forms
If no response was received to an initial solicitation, at least one follow-up solicitation should be made in a different format than the first, e.g. email followed by phone call. Any winning bids received from non-MWBE firms for the same areas MWBEs were solicited should also be tracked on the log.
- Copies of any advertisements of sufficient duration to effectively seek participation of certified MBE and WBEs timely published in appropriate general circulation, trade

and MWBE oriented publications, together with listing and dates of publication of such advertisements. EFC recommends the use of the NYS Contract Reporter that is free to all Contractors - <https://www.nyscr.ny.gov> .

- Documents demonstrating that insufficient MBEs or WBEs are reasonably available to perform the work.
- A written demonstration that the Contractor offered to make up any inability to meet the project MWBE participation goals in other Contracts and/or agreements performed by the Contractor on another SRF funded project.
- The date of pre-bid, pre-award, or other public meetings scheduled by the Recipient, if any, and the contact information of any MBEs and WBEs who attended and are capable of performing work on the project.
- Any other information or documentation that demonstrates the Contractor conducted good faith efforts to provide opportunities for MWBE participation in their work. For instance, Prime Contractors and MBOs should develop a list of MWBE firms that have expressed interest in working on EFC-funded projects.

EFC and/or the MBO reserves the right to request additional information and/or documentation to support the adequacy of the MWBE Utilization Plan and/or waiver request.

C. Review of the MWBE Utilization Plan

The MBO will evaluate a completed MWBE Utilization Plan. If the MBO finds the Utilization Plan sufficient, including necessary supporting documentation, it will be forwarded to EFC for review. If the MBO finds the Utilization Plan insufficient, the MBO will work with the Contractor to address deficiencies before submitting to EFC for review. A written notice of acceptance or deficiency will be issued by EFC within 20 business days of receipt of the completed Utilization Plan. Upon receipt of a notice of deficiency from either the MBO or EFC, the Contractor shall respond with a written remedy to such notice within seven (7) business days of receipt.

D. Eligibility for MWBE Participation Credit

1. To receive MWBE participation credit, Contractors or Subcontractors performing work that have been identified in an approved MWBE Utilization Plan must be certified as an MBE or WBE by ESD.
 - a. A Contractor, who is a certified MBE or WBE, will be credited for up to 100% of the category of their certification. However, good faith efforts to seek participation in the other category are also required.
2. Prime Contractors may include second or lower tier Subcontractors (Subcontractors hired by Subcontractors) on their MWBE Utilization Plan.
3. Commercially Useful Function

Credit for MWBE participation shall be granted only for MWBE firms performing a commercially useful business function according to custom and practice in the industry. An MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

- a. "Commercially useful functions" normally include:
 - i. Providing technical assistance to a purchaser prior to a purchase, during installation, and after the supplies or equipment are placed in service;
 - ii. Manufacturing or being the first tier below the manufacturer of supplies or equipment;
 - iii. Providing functions other than merely accepting and referring requests for supplies or equipment to another party for direct shipment to a Contractor; or,
 - iv. Being responsible for ordering, negotiating price, and determining quality and quantity of materials and supplies.

- b. For construction Contracts or Subcontracts, the following rules apply when calculating MWBE utilization:
 - i. The portion of a Contract or Subcontract with an MWBE serving as a manufacturer that shall be deemed to represent the commercially useful function performed by the MWBE shall be 100% of the total value of the Contract or Subcontract.
 - ii. the portion of a Contract or Subcontract with an MWBE serving as a Supplier (as denoted by a NAICS code beginning with 423 or 424, or a NIGP code that does not begin with the number 9), and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract.
 - iii. the portion of a Contract or Subcontract with an MWBE serving as a Broker (as denoted by NAICS code 425120) 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.
- c. For Non-Construction Provider Contracts or Subcontracts, the following rules apply when calculating MWBE utilization:
 - i. the portion of a Contract or Subcontract 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. Any firms that are listed as Brokers or manufacturers' representatives (NAICS code 425120) and not specifically as Suppliers fall in this category.
- d. No credit will be granted for MWBEs that do not perform a commercially useful function.

E. Requests for Waiver

- 1. If the Contractor's application of good faith efforts does not result in the utilization of MWBE firms to achieve the aforementioned goals or a specialty equipment/service waiver is requested, the Contractor may request a full or partial waiver of MWBE participation goals by completing a Request for Waiver form, attaching appropriate documentation of good faith efforts, and submitting same to the MBO. When the MBO deems the documentation acceptable, the MBO will submit the documentation to EFC for final review. See also Terms & Conditions, Section 1(III)(C).
- 2. The MBO and EFC will review each waiver request based on the good faith effort criteria presented above and the documentation submitted with the waiver request. EFC will not issue any automatic waivers from MWBE responsibilities.
- 3. In cases where EFC accepts a full or partial waiver of MWBE participation goals, the waiver request will be posted to EFC's website.
- 4. The Contractor may request a specialty equipment/service exclusion from the MBO in cases where:
 - a. equipment is made by only one non-MWBE manufacturer;
 - b. the technical specifications call for equipment that is not available through an MWBE Supplier;
 - c. the equipment is constructed on site by specially trained non-MWBE labor;
 - d. the service is not available through an MWBE (such as work done by National Grid);
 - e. the service is proprietary in nature (such as use of certain computer software necessary for control systems); or,
 - f. the service cannot be subcontracted (such as litigation services).

If the contract includes specialty equipment or services, and documentation is submitted

demonstrating that there are no MWBE firms capable of completing this portion of the contract, the specialty amount of the contract may be deducted from the total contract amount to determine the MWBE Eligible Amount and the goals will be applied to the MWBE Eligible Amount. This determination is made at the discretion of EFC.

Example:
\$2,000,000 - \$500,000 = \$1,500,000
Total Contract Value - Specialty equipment/service = MWBE Eligible Amount
The MWBE goal is applied to the MWBE Eligible Amount.

A request for a specialty equipment/service deduction can be indicated by completing a Request for Waiver form and submitting it to the MBO. The request must include a copy of the page from the contract where the equipment/ service is described, an ESD search result for the manufacturer or manufacturer's representative, an email or screenshot of the manufacturer's website showing the manufacturer's representatives (if manufactured item), and documentation of the cost of each item. For Construction Contracts, the schedule of values or bid tabulation sheet should also be submitted. Additional documentation may be requested by the MBO or EFC.

II. Subcontractor's Responsibilities

- A. Subcontractors should:
1. Maintain their MWBE certifications and notify the Contractor and MBO of any change in their certification status.
 2. Notify the Contractor of any MWBE Subcontractors they hire so they may be included on the Contractor's Utilization Plan.
 3. Respond promptly to solicitation requests by completing and submitting bid information in a timely manner.
 4. Maintain business records that should include, but not be limited to, Contracts/agreements, records of receipts, correspondence, purchase orders, and canceled checks.
 5. Ensure that a required EEO Policy Statement and applicable MWBE requirements are included in each Subcontract.
 6. Notify the MBO when contract problems arise, such as non-payment for services or when the Subcontractor is not employed as described in the MWBE Utilization Plan.

III. Summary of EEO and MWBE Forms

- A. Forms to be Submitted Prior to Contract Execution
1. **EEO Policy Statement**
To be submitted by the Contractor to the Recipient's MBO prior to Contract execution. This form is attached hereto as [Attachment 1](#). See Terms & Conditions, Section 1(II).
 2. **MWBE Utilization Plan**
To be submitted by the Contractor to the MBO after the bid opening, but in no case more than ten (10) business days after the Contractor receives notice from the Recipient that the Contractor has submitted a low bid. For Contracts that are not bid, it is to be submitted prior to the Contract execution date. This form is attached hereto as [Attachment 2](#). See Terms & Conditions, Section 1(III)(B).
- B. Forms to be Submitted During the Term of the Contract
1. **Request for Partial or Total Waiver**
If applicable, to be submitted by the Contractor to the MBO at any time during the term of the Contract, but not later than prior to the submission of a request for final payment on the Contract. This form can be downloaded from <https://efc.ny.gov/mwbe-forms>. See Terms & Conditions, Section 1(III)(C).
 2. **Monthly MWBE-SDVOB Contractor Compliance Report ("Monthly MWBE-SDVOB Report")**

To be submitted by the Contractor to the MBO by the third business day following the end of each month over the term of the Contract. This form can be downloaded from <https://efc.ny.gov/mwbe-forms>. See Terms & Conditions, Section 1(III)(D).

IV. Protests/Complaints

Contractors or Subcontractors who have any concerns, issues, or complaints regarding the implementation of the SRF MWBE & EEO Program or wish to protest should do so in writing to the MBO and EFC. The MBO, in consultation with EFC, will review the circumstances described in the submission, investigate, if warranted, and determine whether action is required. If the Contractor or Subcontractor believes the issue has not been resolved to their satisfaction, they may appeal in writing to EFC for consideration.

V. Waste, Fraud and Abuse

Subcontractors, Contractors, or Recipients who know of or suspect any instances of waste, fraud, or abuse within the MWBE & EEO Program should notify the MBO and EFC immediately. Additionally, suspected fraud activity should be reported to the USEPA – Office of Inspector General Hotline at (888) 546-8740, the New York State Office of Inspector General at (800) 367-4448, or the ESD Compliance Office at (212) 803-3266.

SECTION 2 GUIDANCE FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (“SDVOB”) PARTICIPATION OPPORTUNITIES

I. SDVOB Participation Opportunities

A. Contract Goals

The SDVOB participation goal for a contract will be based on the goal in place at the time of the execution date of each respective contract, unless otherwise specified. 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 <https://sdves.ogs.ny.gov/business-search> to discuss additional methods of maximizing participation by SDVOBs on the Contract.

B. Good Faith Efforts

The Contractor must make good faith efforts to develop an adequate SDVOB Utilization Plan and must continue such good faith efforts in order to meet applicable SDVOB participation goal. The Contractor shall maintain documentation of good faith efforts to solicit participation of SDVOB firms for State financial assistance projects. If a Contractor is unable to meet the contract SDVOB participation goal, and submits a Request for Waiver, documentation of such good faith efforts must accompany the request. See Terms & Conditions, Section 2(IV).

When MWBE and SDVOB goals both apply to a contract, good faith efforts should be sought simultaneously so that both types of certified firms have an equal opportunity to participate on the contract.

The Contractor should also continue good faith efforts to seek opportunities for SDVOB participation during the life of the contract even if proposed goals have been achieved.

Examples of documentation of good faith efforts are set forth below:

- Information on the scope of work related to the contract, such as a copy of the schedule of values from the bid submission, and specific steps taken to reasonably structure the scope of work to break out tasks or equipment needs for the purpose of providing opportunities for subcontracting with or obtaining supplies or services from SDVOBs.
- A list of vendors from the directory of Certified SDVOBs on Office of General Services (OGS) website that provide the services or equipment necessary for the

contract. Contact the MBO for assistance in performing a proper search including identifying a sufficient number of solicitations to show that good faith effort was made.

- Copies of timely solicitations and documentation (e.g., emails) that the Contractor offered relevant plans, specifications, or other related materials to SDVOB firms in OGS's Certified SDVOB directory to participate in the work, with the responses.
- A log prepared by the Contractor in a sortable spreadsheet documenting the Contractor's solicitation of SDVOBs for participation as Subcontractors or Suppliers pursuant to a contract. The log should consist of the list of SDVOB firms solicited, their contact information, the type of work they were solicited to perform (or equipment to provide), how the solicitation was made (fax, phone, email) and the contact information, the contact's name and the outcome. If a bid was received, the bid price should also be included in the log.

See sample log on www.efc.ny.gov/mwbe-forms

If no response was received to an initial solicitation, at least one follow-up solicitation should be made in a different format than the first (e.g., email followed by phone call). Any bids received from non-SDVOB firms for the same areas SDVOBs were solicited should also be tracked on the log.

- Copies of any advertisements of sufficient duration to effectively seek participation of certified SDVOBs timely published in appropriate general circulation, trade publications, together with listing and dates of publication of such advertisements. EFC recommends the use of the NYS Contract Reporter that is free to all Contractors - <https://www.nyscr.ny.gov/>. A log should be kept of the responses to the ads, similar to the log for SDVOB firm solicitation and should include the non-SDVOB firms that responded and the bid prices. Any negotiations should be documented in the log.
- Documents demonstrating that insufficient SDVOBs are reasonably available to perform the work.
- A written demonstration that the Contractor offered to make up any inability to meet the project SDVOB participation goal in other contracts and/or agreements performed by the Contractor on another State financial assistance project.
- The date of pre-bid, pre-award, or other public meetings scheduled by the Recipient, if any, and the contact information of any SDVOBs who attended and are capable of performing work on the project.
- Any other information or documentation that demonstrates the Contractor conducted good faith efforts to provide opportunities for SDVOB participation in their work. For instance, Prime Contractors and MBOs should develop a list of SDVOB firms that have expressed interest in working on State financial assistance projects.

EFC and/or the MBO reserves the right to request additional information and/or documentation to support the adequacy of the SDVOB Utilization Plan.

C. Review of the SDVOB Utilization Plan

The MBO will evaluate a completed SDVOB Utilization Plan. If the MBO finds the Utilization Plan sufficient, including necessary supporting documentation, it will be forwarded to EFC for review. If the MBO finds the Utilization Plan insufficient, the MBO will work with the Contractor to address deficiencies before submitting to EFC for review. A written notice of acceptance or deficiency will be issued by EFC within 20 business days of receipt of the completed Utilization Plan. Upon receipt of a notice of deficiency from either the MBO or EFC, the Contractor shall respond with a written remedy to such notice within seven (7) business days of receipt.

D. Eligibility for SDVOB Participation Credit

1. To receive SDVOB participation credit, Contractors or Subcontractors performing work that have been identified in an approved SDVOB Utilization Plan must be certified as an SDVOB by the OGS Division of Service-Disabled Veterans' Business Development.
2. Prime Contractors may include second or lower tier Subcontractors (Subcontractors hired by Subcontractors) on their SDVOB Utilization Plan.
3. Commercially Useful Function

Credit for SDVOB participation shall be granted only for SDVOB firms performing a commercially useful business function according to custom and practice in the industry. An SDVOB does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

- a. "Commercially useful functions" normally include:
 - i. Providing technical assistance to a purchaser prior to a purchase, during installation, and after the supplies or equipment are placed in service;
 - ii. Manufacturing or being the first tier below the manufacturer of supplies or equipment;
 - iii. Providing functions other than merely accepting and referring requests for supplies or equipment to another party for direct shipment to a Contractor; or,
 - iv. Being responsible for ordering, negotiating price, and determining quality and quantity of materials and supplies.
4. A Contractor or subcontractor who is certified as both an SDVOB and MWBE may receive participation credit under both programs for its work on a contract or subcontract.

E. Requests for Waiver

1. If the Contractor's application of good faith efforts does not result in the utilization of SDVOB firms to achieve the aforementioned goals or a specialty equipment/service waiver is requested, the Contractor may request a full or partial waiver of SDVOB participation goals by completing a Request for Waiver form, attaching appropriate documentation of good faith efforts, and submitting same to the MBO. When the MBO deems the documentation acceptable, the MBO will submit the documentation to EFC for final review. See also Terms & Conditions, Section 2(IV).
2. The MBO and EFC will review each waiver request based on the good faith effort criteria presented above and the documentation submitted with the waiver request. EFC will not issue any automatic waivers from SDVOB responsibilities.
3. In cases where EFC accepts a full or partial waiver of SDVOB participation goals, the waiver request will be posted to EFC's website.
4. The Contractor may request a specialty equipment/service exclusion from the MBO in cases where:
 - a. equipment is made by only one non-SDVOB manufacturer;
 - b. the technical specifications call for equipment that is not available through an SDVOB Supplier;
 - c. the equipment is constructed on site by specially trained non-SDVOB labor;
 - d. the service is not available through an SDVOB (such as work done by National Grid);
 - e. the service is proprietary in nature (such as use of certain computer software necessary for control systems); or,
 - f. the service cannot be subcontracted (such as litigation services).

If the contract includes specialty equipment or services, and documentation is submitted demonstrating that there are no SDVOB firms capable of completing this portion of the contract, the specialty amount of the contract may be deducted from the total contract amount to determine the SDVOB Eligible Amount and the goals will be applied to the SDVOB Eligible Amount. This determination is made at the discretion of EFC.

Example:

\$2,000,000 - \$500,000 = \$1,500,000
Total Contract Value - Specialty equipment/service = SDVOB Eligible Amount
The SDVOB goal is applied to the SDVOB Eligible Amount.

A request for a specialty equipment/service deduction can be indicated by completing a Request for Waiver form and submitting it to the MBO. The request must include a copy of the page from the contract where the equipment/service is described and the cost of each item. For Construction Contracts, the [schedule of values](#) or [bid tabulation sheet](#) should also be submitted. Additional documentation may be requested by the MBO or EFC.

II. Subcontractor's Responsibilities

- A. Subcontractors should:
1. Maintain their SDVOB certification and notify the Contractor and MBO of any change in their certification status.
 2. Notify the Contractor of any SDVOB Subcontractors they hire so they may be included on the Contractor's Utilization Plan.
 3. Respond promptly to solicitation requests by completing and submitting bid information in a timely manner.
 4. Maintain business records that should include, but not be limited to, contracts/agreements, records of receipts, correspondence, purchase orders, and canceled checks.
 5. Notify the MBO when contract problems arise, such as non-payment for services or when the Subcontractor is not employed as described in the SDVOB Utilization Plan.

III. Summary of SDVOB Forms

A. Forms to be Submitted Prior to Contract Execution

1. SDVOB Utilization Plan

To be submitted by the Contractor to the MBO after the bid opening, but in no case more than ten (10) business days after the Contractor receives notice from the Recipient that the Contractor has submitted a low bid. For Contracts that are not bid, it is to be submitted prior to the Contract execution date. This form is attached hereto as [Attachment 3](#). See Terms & Conditions, Section 2(III).

B. Forms to be Submitted During the Term of the Contract

1. Request for Partial or Total Waiver

If applicable, to be submitted by the Contractor to the MBO at any time during the term of the Contract, but prior to the submission of a request for final payment on the Contract. This form can be downloaded from <https://efc.ny.gov/service-disabled-veteran-owned-business>. See Terms & Conditions, Section 2(IV).

2. Monthly SDVOB Contractor Compliance Report ("Monthly MWBE-SDVOB Report")

To be submitted by the Contractor to the MBO by the third business day following the end of each month over the term of the Contract. This form can be downloaded from <https://efc.ny.gov/service-disabled-veteran-owned-business>. See Terms & Conditions, Section 2(V).

IV. Protests/Complaints

Contractors or Subcontractors who have any concerns, issues, or complaints regarding the implementation of any EFC State financial assistance SDVOB Program, or wish to protest should do so in writing to the MBO and EFC. The MBO, in consultation with EFC, will review the circumstances described in the submission, investigate, if warranted, and determine whether action is required. If the Contractor or Subcontractor believes the issue has not been resolved to their satisfaction, they may appeal in writing to EFC for consideration.

V. Waste, Fraud and Abuse

Subcontractors, Contractors, or Recipients who know of or suspect any instances of waste, fraud, or abuse within the SDVOB Program should notify the MBO and EFC immediately. Additionally, suspected fraud activity should be reported to the New York State Office of Inspector General at (800) 367-4448.

SECTION 3 GUIDANCE FOR REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

A list of contractors and subcontractors deemed ineligible to submit a bid on or be awarded a public contract or subcontract, pursuant to Article 8 of the State Labor Law, is available on the New York State Department of Labor's website at <http://labor.ny.gov/workerprotection/publicwork/PDFs/debarred.pdf>
A list of contractors deemed ineligible to submit a bid is maintained by Empire State Development's Division of Minority and Women's Business Development.

SECTION 4 GUIDANCE FOR APPLICABLE LABOR STANDARDS

Contractors and Subcontractors working under a public works contract are subject to labor standards under State Labor Law, including but not limited to prevailing wage requirements, and may be subject to additional labor requirements under applicable local laws. When preparing the bid for a State Financial Assistance project, the Contractor, and any Subcontractors, must use the higher of the applicable prevailing State or local wage rates paid to each trade.

SECTION 5 GUIDANCE FOR CONSTRUCTION SIGNS

The requirements of this section apply to all EFC projects. Additional permanent signage is required for projects receiving funding from the NYS Bond Act.

If Contractor is expected to provide an EFC Construction Sign, a specification will be included in the enclosed contract documents.

SECTION 6 SUMMARY OF CONTRACTOR REQUIREMENTS FOR STATE FINANCIAL ASSISTANCE PROJECTS

Forms can be found as attachments to this document or online at www.efc.ny.gov
Forms should be submitted electronically via email or through EFC's [dropbox](#)

To be submitted with the bid:

- [EEO Policy Statement](#)

Guidance Section

[Section 1](#)

To be submitted prior to or upon Contract award or execution:

- Executed Subcontracts, agreements, and purchase orders
- [EEO Policy Statement](#) (when the contract is not bid)
- [MWBE Utilization Plan](#) and/or [Waiver Request](#)
- [SDVOB Utilization Plan](#) and/or [Waiver Request](#)

[Section 1](#)

[Section 1](#)

[Section 2](#)

Tasks for Construction start:

- Ensure that all Subcontracts contain correct Required EFC Terms & Conditions
- Ensure Construction Sign is Posted
- Pay the higher of applicable prevailing state or local wages including benefits

[Section 5](#)

[Section 3](#)

Ongoing documentation & tasks:

- Submit Monthly MWBE-SDVOB Reports to MBO
- Maintain proof of payments for MWBE Subcontractors
- Maintain proof of payments for SDVOB Subcontractors

Sections [1&2](#)

[Section 1](#)

[Section 2](#)

Attachments (Required Forms)

Attachment 1 – EEO Policy Statement



Environmental Facilities Corporation | Department of Health

EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT
NEW YORK STATE FINANCIAL ASSISTANCE PROGRAMS

SRF Project No.: _____
Recipient: _____
Project Description: _____

I, _____, am the authorized representative of _____.
Name of Representative Name of Contractor/Service Provider
I hereby certify that _____ will abide by the equal employment
Name of Contractor/Service Provider
opportunity (EEO) policy statement provisions outlined below.

- (i) The Contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, 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 will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Contracts relating to Water Grant projects.
- (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract relating to this Water Grant project, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital 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, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- (iv) The Contractor shall comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with 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.
- (v) The Contractor will include the provisions of subdivisions (i) through (iv) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

X

Contractor/Service Provider Representative

Attachment 2 – MWBE Utilization Plan



Environmental Facilities Corporation | Department of Health

**NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2 and 3. Submit the completed (electronic signature box checked and dated) form to the Recipient's Minority Business Officer (MBO) no later than the date of contract execution. Incomplete forms will be found deficient. If more than 10 subcontractors are used, additional pages for Section 3 can be found on EFC's website.

If the prime contract is being performed by the parties to a Joint Venture, Teaming Agreement, or Mentor-Protégé Agreement that includes a certified MWBE, please contact EFC for assistance.

MWBE firms must be certified by the NYS Empire State Development Corporation (ESD) in order to be counted towards satisfaction of MWBE participation goals. The utilization of certified MWBEs for non-commercially useful functions may not be counted towards utilization of certified MWBEs in the Utilization Plan. Please note whether a firm is serving as a broker or supplier on the contract. A broker is denoted by NAICS code 425120 and is designated as a broker in [ESD's MWBE Directory](#). A supplier is denoted by a NAICS code beginning with 423 or 424, or a NIGP code that does not begin with the number 9 and is designated as a supplier in ESD's MWBE Directory. If a firm is serving as a broker, please additionally provide the percentage of the broker's commission on the contract.

See the [Mandatory Terms and Conditions](#) or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. Email the completed (electronic signature box checked and dated) to your EFC Program Compliance Specialist.

The subject heading of the email to the EFC Program Compliance Specialist should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and email the MBO an acceptance or denial.

**NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

SECTION 1: MUNICIPAL INFORMATION			
Recipient/Municipality:		County:	
Project No.:	Program ID:	Contract ID:	Registration No. (NYC only):
Minority Business Officer:		Email:	Phone #:
Address of MBO:			
Electronic Signature of MBO: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			Date:

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION			
Firm Name:		Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services	
Prime Firm is Certified as: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> N/A <input type="checkbox"/> Other: If yes, please include Prime information in Section 3. If dual certified, you must select either MBE <u>or</u> WBE.			
Address:		Phone #:	Fed. Employer ID #:
Description of Work:		Email:	
Award Date:	Start Date:	Completion Date:	MWBE GOAL Total
Total Contract Amount: \$		PROPOSED MWBE Participation	
MWBE Eligible Contract Amount: \$ (MWBE Goals are applied to this amount and includes all change orders, amendments, & specialty waivers)		Total: % \$	Total: % \$

**NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

SECTION 3: MWBE SUBCONTRACTOR INFORMATION			
This Submittal is: <input type="checkbox"/> The First/Original Utilization Plan <input type="checkbox"/> Revised Utilization Plan #:			
NYS Certified M/WBE Subcontractor Info		Contract Amount:	For EFC Use:
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			

**NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

SECTION 3: M/WBE SUBCONTRACTOR INFORMATION continued			
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ___ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ___ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ___ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ___ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			
SIGNATURE			
Electronic Signature of Contractor: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all MWBE subcontractors will perform a commercially useful function.			Date:
Name (Please Type):			

Attachment 3 – SDVOB Utilization Plan



Environmental Facilities Corporation | Department of Health

**NYS Environmental Facilities Corporation
Service-Disabled Veteran-Owned Business (SDVOB) Utilization Plan**

Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2 and 3. Submit the completed (electronic signature box checked and dated) form in Microsoft Word format to the Recipient's designated Minority Business Officer (MBO) no later than the date of contract execution. Incomplete forms will be found deficient. If more than 10 subcontractors are used, additional pages for Section 3 can be found on EFC's website.

If the prime contract is being performed by the parties to a Joint Venture, Teaming Agreement, or Mentor-Protégé Agreement that includes a certified SDVOB, please contact EFC for assistance.

The utilization of certified SDVOBs for non-commercially useful functions may not be counted towards utilization of certified SDVOBs in the Utilization Plan. SDVOB firms must be certified by NYS Office of General Services to be counted towards satisfaction of SDVOB participation goals.

See the State Financial Assistance Mandatory Terms and Conditions or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. Email the completed (electronic signature box checked and dated) form in Microsoft Word format to your EFC Program Compliance Specialist.

The subject heading of the e-mail to the EFC Program Compliance Specialist should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and email the MBO an acceptance or denial.

**NYS Environmental Facilities Corporation
Service-Disabled Veteran-Owned Business (SDVOB) Utilization Plan**

SECTION 1: MUNICIPAL INFORMATION			
Recipient/Municipality:		County:	
Project No.:	Program ID:	Contract ID:	Registration No. (NYC only):
Minority Business Officer:		Email:	Phone #:
Address of MBO:			
Electronic Signature of MBO: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			Date:

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION			
Firm Name:		Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services	
Prime Firm is Certified as: <input type="checkbox"/> SDVOB If certified, please include Prime information in Section 3.			
Address:		Phone #:	Fed. Employer ID #:
Description of Work:		Email:	
Award Date:	Start Date:	Completion Date:	
Total Contract Amount: \$		SDVOB GOAL Total	PROPOSED SDVOB Participation
SDVOB Eligible Contract Amount: \$ (Goals are applied to this amount and includes all change orders, amendments, & waivers)		Total: 6% \$	Total: % \$

**NYS Environmental Facilities Corporation
Service-Disabled Veteran-Owned Business (SDVOB) Utilization Plan**

SECTION 3: SDVOB SUBCONTRACTOR INFORMATION			
This Submittal is:		<input type="checkbox"/> The First/Original Utilization Plan <input type="checkbox"/> Revised Utilization Plan #:	
NYS Certified SDVOB Subcontractor Info		Participation:	For EFC Use:
		SDVOB (\$)	
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		

**NYS Environmental Facilities Corporation
Service-Disabled Veteran-Owned Business (SDVOB) Utilization Plan**

SECTION 3: SDVOB SUBCONTRACTOR INFORMATION continued			
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		

SIGNATURE	
Electronic Signature of Contractor: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all SDVOB subcontractors will perform a commercially useful function. Name (Please Type):	Date: