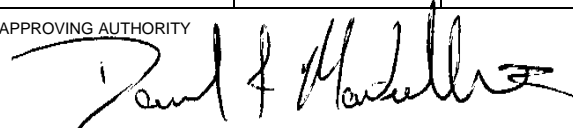
 Corrections and Community Supervision DIRECTIVE	TITLE Minority & Women Owned Business Enterprise		NO. 2604
			DATE 3/7/2017
SUPERSEDES DIR #2604 Dtd. 8/7/2015	DISTRIBUTION A	PAGES PAGE 1 OF 14	DATE LAST REVISED
REFERENCES (Include but are not limited to) See Section II	APPROVING AUTHORITY 		

I. PURPOSE: The purpose of this directive is to establish procedures that will assist the Department of Corrections and Community Supervision (DOCCS) staff in their efforts to purchase commodities and services from responsible New York State minority and women-owned firms. This directive also provides procedures for reporting Minority and Women-Owned Business Enterprise (M/WBE) activities. This directive is applicable to all Contracting Units under the jurisdiction of DOCCS, including Central Office, Division of Correctional Industries, all facilities, and regional/area offices.

II. REFERENCES

- 9NYCRR Section 541.4
- Civil Practice Laws and Rules Article 78
- Directive #2914, “Contract Procurement Procedures”
- Directive #2916, “Purchasing Supplies and Equipment”
- Executive Law Article 15A: Section 313, Section 316
- NYS Finance Law Article XI
- NYS Office of General Services (OGS) Procurement Guidelines
- State Printing and Public Documents Law

III. POLICY: It is the policy of DOCCS to actively encourage the greatest possible participation of minority and women-owned businesses in all opportunities for procurement undertaken by DOCCS and to make every effort to meet the goals established pursuant to Article 15-A of the Executive Law.

Article 15-A of the Executive Law established the Division of Minority and Women’s Business Development (DM/WBD). This legislation confirmed the commitment of the Governor to provide equal opportunity to all who seek to do business with New York State and to remedy the historical discrimination that has resulted in underutilization of enterprises owned and controlled by minorities and women. This law mandates the DM/WBD to direct and monitor New York State’s activities relating to the utilization of M/WBEs on State contracts. This law also requires that operational guidelines be established to assist M/WBEs to obtain a fair share of contracts for the procurement of goods and services awarded by the State. The procurement guidelines, procedures, and goals established under Article 15-A, and the New York State Office of General Services (OGS) “Procurement Guidelines” remain in place.

As per the Rules and Regulations promulgated pursuant to Article 15-A, DOCCS is required to submit a quarterly M/WBE utilization report to DM/WBD. Therefore, M/WBE quarterly reporting procedures/processes by Central Office, Industries, all facilities, and regional/area offices under the jurisdiction of DOCCS must comport with Article 15-A.

Goals: In accordance with Article 15-A, it shall be the policy of DOCCS to implement an M/WBE program that has established goals. Such goals shall be a minimum of 15 percent of discretionary purchasing for minority-owned business and a minimum of 15 percent of discretionary purchasing for women-owned business, for a combined annual total of 30 percent or more of discretionary purchases going toward minority and/or women-owned businesses. These goals shall be based upon the total dollar value of consultant services contracts and procurement for goods and services awarded by this Department in accordance with State Finance Law and New York State OGS Procurement Guidelines.

IV. DEFINITIONS

- A. Minority-Owned Business Enterprise (MBE): Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
1. At least 51 percent owned by one or more minority group members;
 2. An enterprise in which such minority ownership is real, substantial, and continuing;
 3. An enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
 4. An enterprise authorized to do business in the State of New York and is independently owned and operated; and
 5. Currently MBE certified by Empire State Development.
- B. Minority Group Member: Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
1. Black persons having origins in any of the Black African racial groups;
 2. Hispanic or Latino persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;
 3. Native American or Alaskan native persons having origins in any of the original peoples of North America;
 4. Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
- C. Women-Owned Business Enterprise (WBE): Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
1. At least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;
 2. An enterprise in which the ownership interest of such women is real, substantial, and continuing;
 3. An enterprise in which such women ownership has and exercises authority to control independently the day-to-day business decisions of the enterprise;
 4. An enterprise authorized to do business in the State of New York and is independently owned and operated: and
 5. Currently WBE certified by Empire State Development.
- D. Subcontract: Shall mean a contract between a Primary Contractor to an original contract and a third party; particularly, one who provides all or a specified part of the work, materials or services required in the original contract.

- E. Preferred Source: Products or services provided by the Division of Correctional Industries, Industries for the Blind, Industries for the Disabled, and the Office of Mental Health.
- F. Joint Venture: An association of two or more businesses which is formed to carry out a particular business activity for profit in which they may combine property, capital, efforts, skills, or knowledge. The association is limited in scope and duration; consequently, a joint venture can never be certified.
- G. Discretionary Purchase: Agency purchases of commodities or services that cannot be supplied by a preferred source, OGS Centralized Commodity Contracts or OGS Centralized Services, and Technology Contracts. Purchases below an established dollar level that are authorized by law to be made without a formal competitive process (See Section XIV, Procurement Guidelines and Procedures).
- H. Certification Process: The State of New York has implemented a uniform, statewide Certification Program for Minority and Women Business Enterprises under the auspices of the Empire State Development Corporation (ESD), Division of Minority and Women's Business Development. Once the classifications of M/WBE firms are determined, they will be recognized by all State agencies and most authorities as bonafide minority or women business enterprises.

M/WBEs that are interested in becoming certified should apply online at: <https://ny.newnycontracts.com/> or download the application and mail it to: Empire State Development, M/WBE, 633 Third Avenue, 33rd Floor, New York, NY 10017.

- I. M/WBE Directory: The official source directory of certified minority and women-owned business enterprises (M/WBE) published by the Empire State Development Corporation.

NOTE: Every Contracting Unit should have access to the M/WBE Directory which is readily available on line at: <https://ny.newnycontracts.com/>.
- J. Contracting Unit: Any person or unit with procurement responsibilities.
- K. Contractor: Any individual, business or other legal entity bidding on or awarded a contract with a State agency to furnish commodities or services for an agreed-upon price.
- L. HUB Coordinator: The designated person is at a level of Institution Steward or equivalent, and is responsible for coordinating and monitoring M/WBE activities of all Contracting Units within their specific HUB.
- M. Good Faith Efforts: The documented due-diligence and sustained efforts made with the deliberate intention to produce desired contractual obligations and/or required goals.
- N. Contract Procurement Unit (CPU): The DOCCS Central Office contract unit which coordinates/monitors the Department's MWBE efforts.

V. EQUAL EMPLOYMENT OPPORTUNITIES (EEO)

- A. The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, sex, national origin, age, disability, or marital status and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rate of pay or other forms for compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- B. At the request of the Contracting Unit, the Contractor shall request each employment agency, labor union or authorized representative, or workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of this contract, to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, sex, national origin, age, disability, or marital status and that such union or representative will cooperate in the implementation of the Contractor's obligation hereunder.
- C. The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor in the performance of this contract, that all qualified applicants will be afforded equal employment opportunity without discrimination based on race, creed, color, sex, national origin, age, disability, or marital status.
- D. The Contractor will include the above provisions of Article 15A in every Subcontract or purchase order in such a manner that such provisions will be binding upon each Subcontractor or Contractor as to its work in connection with this contract. **This is to be reflected with the inclusion of Appendix A, "STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS," to all State contracts. To obtain the current version of Appendix A go to: <http://www.ogs.ny.gov/purchase/BidTemplate/AppendixA.docx>**
- E. The provisions for these equal employment clauses shall not be applicable to Contractors or Subcontractors in the performance of work or the provision of services or other activity that is unrelated, separate, or distinct from the State contract as expressed by its terms.
- F. The requirements of these equal employment clauses shall not apply to any employment outside the State of New York or application for employment outside the State of New York or solicitations or advertisements thereof, or any existing programs of affirmative action regarding employment outside the State of New York and the effect of contract provisions required by Article 15A.
- G. The Contracting Unit shall consider compliance by a Contractor or Subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The Contracting Unit shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such law and if such duplication or conflict exists, the Contracting Unit shall waive the applicability of this section to the extent of such duplication or conflict.

- H. The Contracting Unit reserves the right to require the Contractor to submit an “EEO Staffing Plan,” [EEO100](#), “M/WBE EEO Policy Statement,” [EEOPS](#), and may require the Contractor or Subcontractor to submit compliance reports relating to the Contractor’s or Subcontractor’s operation and implementation of any EEO plan currently in effect on the date the contract is executed.

VI. STANDARD CONDITIONS FOR ALL CONSTRUCTION, CONSULTANT, SERVICE, AND PURCHASE CONTRACTS

- A. **Goals:** The Contracting Unit must require the Prime Contractor to agree that they shall make “Good Faith Efforts” to subcontract a minimum of 15 percent minority-owned business enterprise (MBE) and a minimum of 15 percent women-owned business enterprise (WBE) for a total of 30 percent of the total dollar value of the contract. The goal shall be contained in conformance with the “CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE,” EEOCR, as outlined in Article 15-A of the Executive Law. **This is to be reflected with the inclusion of EEOCR (see Section XV for EEOCR forms) to all State contracts.**
- Failure to obtain these percentages or demonstrate a “Good Faith Effort” may lead to withholding of payment(s) or contract termination.

VII. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE UTILIZATION PLANS AND PROGRAM WAIVER

- A. DOCCS has established certain statewide goals which it seeks to achieve in implementing the M/WBE program. To promote participation of M/WBEs, Contracting Units must check all available M/WBE source documents to determine if any applicable Contractors offer the commodity or service being purchased. The Contracting Unit will ensure that each individual contract shall have the State minimum goals for M/WBE participation at the time of execution.
- B. If the procurement is an RFP and will result in one or more contracts totaling \$250,000 or more, the Contracting Unit must include a provision in the RFP indicating that diversity practices will be scored. Sample provision language can be found on page 2 of the “Diversity Practices Primer” ([DPP](#)). Per the DP Primer, Contractors shall submit a “Diversity Practices Questionnaire” ([DPQ](#)), which will be scored as part of the technical proposal. Contracting Units will use the “DP Scoring Matrix” ([DPSM](#)) to evaluate and score the “Diversity Practices Questionnaire” data submitted by the Contractor. Please refer to the DP Primer for additional information as some exclusions may apply.
- C. If bids are required, the Contractor shall submit an “M/WBE EEO Policy Statement,” [EEOPS](#), of their own or on a form provided by the Contracting Unit. After award of bid, but prior to issue of contract, the Contractor shall submit an “M/WBE Utilization Plan,” [MWBE100](#), and “EEO Staffing Plan,” [EEO100](#). The Contracting Unit will confirm submission of “M/WBE EEO Policy Statement,” [EEOPS](#), review the “M/WBE Utilization Plan,” [MWBE100](#), by using the M/WBE Directory to verify that Subcontractors reported are M/WBE certified, and that the EEO Staffing Plan documents the composition of the workforce to be utilized in the performance of the contract. Although the “M/WBE Utilization Plan,” [MWBE100](#), can be provided to DOCCS via a non-electronic method; it is preferred that the Contractor submit this form online through the New York State Contract System (“NYSCS”), which can be accessed at: <https://ny.newnycontracts.com>.

After completion of the review, the Contracting Unit will issue a written “**Notice of Acceptance or Deficiency**,” [MWBENAD](#) to the Contractor within 20 days of receipt.

1. Notice of Acceptance: An M/WBE Notice of Acceptance will be accompanied by the following M/WBE forms to be submitted by the Contractor to the Contracting Unit on a quarterly basis upon award of the contract:
 - a. “**EEO Workforce Utilization Report**,” [EEO1](#), documents the composition of the ACTUAL workforce utilized in the performance of this contract broken down by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The report shall be submitted by the Contractors to the Contracting Unit on a monthly basis for construction contracts, and on a quarterly basis for commodity and services contracts.
 - b. “**M/WBE Quarterly Compliance and Subcontractor Payment Report**,” [MWBE101](#), lists all NYS Certified Minority and Women-Owned Business Enterprises used to perform the State contract and the actual dollar amounts paid to the NYS Certified Minority and Women-Owned Businesses. The information supplied on this form must be checked for accuracy by accessing the M/WBE Directory and verifying that companies reported are certified.

Please Note: After a contract is awarded, the quarterly reports are due no later than the 15th day after the end of each quarter.

2. Notice of Deficiency:
 - a. Shall include the shortfall amount and/or shortfall percentage in the MBE and WBE utilization that is contractually required.
 - b. Shall include the name of any M/WBE which is not acceptable for the purpose of complying with the goal requirements;
 - c. Elements of the contract scope of work which the Contracting Unit has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the contract by M/WBE’s; and
 - d. Other information which the Contracting Unit determines to be relevant to the Utilization Plan (For example: No MBE/WBE goals; No EEO Staffing Plan or Policy Statement; etc.).
 - e. The Contractor shall respond to the Contracting Unit’s Notice of Deficiency with a written remedy for correcting deficiencies and/or provide a “Good Faith Effort” Statement within seven (7) business days of receipt of deficiency.
 - f. If the Contracting Unit determines that a Contractor has made “Good Faith Efforts” but is unable to comply with M/WBE goals because of the lack of availability of WBEs or MBEs in their respective region, the Contractor will be directed by the Contracting Unit to submit in writing, a request for partial or total waiver of M/WBE participation goals. The “M/WBE Request for Waiver,” [MWBE102](#), will be provided by the Contracting Unit.

- g. The Contracting Unit will review and respond to the waiver request for approval or denial within ten (10) business days. The Contracting Unit may deny a request for waiver. However, if the Contracting Unit determines that the waiver request should be approved; the “M/WBE Request for Waiver,” [MWBE102](#), along with all supporting documentation, should be forwarded to the Contract Procurement Unit (CPU) for review and final approval. CPU’s decision will be sent to the Contracting Unit within five (5) business days. After receipt of CPU’s decision, the Contracting Unit will notify the Contractor within five (5) business days regarding the Department’s decision.
- h. A Contractor may submit a request for partial or total waiver of M/WBE goals at any time during their contract period, but before requesting final payment. **NOTE:** Failure to submit the “M/WBE Quarterly Compliance and Subcontractor Payment Report,” [MWBE101](#), and/or other reports or information as requested by DOCCS in a timely manner, may result in payments under the contract being delayed until such reports or other information have been received.

VIII. CONTRACTOR’S FAILURE TO COMPLY WITH TERMS OF THE AGREEMENT

- A. If the Contractor does not submit a request for waiver, or if the Contracting Unit determines that the “Good Faith Efforts” of the Contractor have been inadequate to justify the granting of the request for waiver, the Contracting Unit should notify the Contractor that proceedings on this contract will be reviewed by the CPU who may recommend to the Contracting Unit that it terminate the contract, or if the contract has not been executed, that the Contracting Unit withdraw from contract negotiations. CPU will forward a recommendation to the Contracting Unit within five (5) business days of a Notice of Failure to Comply. The Contracting Unit will forward a Notice of Termination or Withdrawal, to the Contractor no later than five (5) business days after CPU’s recommendation.
- B. Upon having given Notice of Termination or Withdrawal, the Contracting Unit may proceed with the next ranked bidder: (i) 12 days after sending a written Notice of Deficiency, and having not received a request for an administrative hearing from the Contractor, (ii) after the mailing of a notice of disqualification, specifying the grounds for such disqualification, or (iii) after receiving a written notification of a resolution from the Director of the Division of Support Operations, or a decision of the DM/WBD’s Hearing Officer. The State agency shall serve a copy of its complaint upon the Contractor by personal service or certified mail, return receipt requested.
- C. A Contractor who has received a written notice of Termination or Withdrawal may request an Administrative Hearing by filing a complaint, within five (5) business days of receipt of such a notice, with the Director pursuant to Section 316 of the Executive Law. The Contractor shall serve a copy of its complaint upon the Director of the Division of Support Operations by personal service or certified mail, return receipt requested.

Mail to:

Department of Corrections and Community Supervision
The Division of Support Operations / Contract Procurement Unit
The Harriman State Campus
1220 Washington Avenue
Albany, N.Y. 12226-2050

IX. ADMINISTRATIVE HEARING ON DISQUALIFICATION

- A. If CPU disqualifies the bid or proposal of the contract on the grounds that the Contractor has failed to remedy the deficiencies in its "M/WBE Utilization Plan," [MWBE100](#), or to document "Good Faith Efforts" to remedy such deficiencies, the Contractor shall be entitled to an Administrative Hearing, on the record, before a Hearing Officer appointed by DOCCS or the State, to review the determination of disqualification of the Contractor. The Contractor shall request such hearing in writing no later than five (5) business days after receipt of Notice of Termination or Withdrawal. The determination of the Hearing Officer shall not interfere with the CPU's disposition of the contract.
- B. The Hearing Officer's determination shall be a final administrative determination of CPU and shall be reviewable by a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is commenced within 30 days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Section 313 of the Executive Law.
- C. Such review shall be commenced in the Supreme Court Appellate Division, Third Department, and shall be preferred over all other civil causes except election causes, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the Court of Appeals of the State of New York shall be subject to the same preference.

X. CONTRACTORS AND AGENCY COMPLAINTS AND ARBITRATION

- A. If the Contractor submits a request for waiver of M/WBE goal requirements and the Contracting Unit denies the request or fails to respond in any way within ten (10) calendar days of receipt, the Contractor may file a complaint with the Empire State Development Corporation and the Director of the Division of Minority and Women's Business Development according to the provisions of Section 316 of Article 15-A of the Executive Law. The complaint must be filed within ten (10) calendar days of the Contracting Unit's receipt of the request for waiver, or within ten (10) calendar days of a notification that the request has been denied.
- B. If the Contractor fails to respond to a notice of deficiency, or if DOCCS denies a request for waiver of M/WBE goal requirements, DOCCS may file a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Section 316 of Article 15-A of the Executive Law.
- C. A complaint should set forth the facts and circumstances giving rise to the complaint, together with a demand for relief.
- D. The party filing a complaint, whether the Contractor or the DOCCS Contracting Unit, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.

- E. Upon receipt of a complaint, the Director of the Division of Minority and Women's Business Development shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If, within 30 days of receipt of the complaint, the Director of the Division of Minority and Women's Business Development is unable to resolve the complaint to the satisfaction of DOCCS and the Contractor, the complaint shall be referred to the American Arbitration Association for resolution pursuant to Section 316 of Article 15-A of the Executive Law.
- F. Upon conclusion of the arbitration proceedings, the Arbitrator will submit to the Director of the Division of Minority and Women's Business Development, his or her award regarding the alleged violation of the contract or the refusal of DOCCS to grant a waiver request by the Contractor. The award of the Arbitrator with respect to an alleged violation of the contract or the refusal of the State agency to grant a waiver, shall be final and may be vacated or modified only as provided by Article 78 of the Civil Practice Laws and Rules.
- G. Upon conclusion of the arbitration proceedings and the rendition of an award, the Arbitrator will also recommend to the Director of the Division of Minority and Women's Business Development a remedy, including, if appropriate, the impositions of sanctions, fines, or penalties, provided, however, that no fines or penalties shall be recommended with respect to the refusal of DOCCS to grant a waiver request by a Contractor. The Director of the Division of Minority and Women's Business Development will either (i) adopt the recommendation of the Arbitrator; (ii) determine that no sanctions, fines, or penalties should be imposed; or (iii) modify the recommendation of the Arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction or increase the amount of any recommended fine or penalty.
- H. The Director of the Division of Minority and Women's Business Development, within ten (10) days of receipt of the Arbitrator's award and recommendations, will issue a determination of such matter and shall cause a copy of such determination to be served upon the parties by personal service or by certified mail, return receipt requested. The determination of the Director of the Division of Minority and Women's Business Development as to the imposition of any fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
- I. The sanctions which may be imposed by DOCCS pursuant to a determination by the Director of the Division of Minority and Women's Business Development consist of the following:
 - 1. Reduction of the amount obligated for expenditure pursuant to the contract;
 - 2. Suspension or termination of the contract;
 - 3. Retention of payments until compliance with goal requirements is obtained, provided that DOCCS issues, within 15 days of the date of receipt of the Contractor's invoice upon which payment is being retained, a written notice of the reasons for retaining payments;
 - 4. Bid forfeiture; and
 - 5. Any other penalties of which a Contractor received notice prior to award of the contract, or which are authorized by law.

- J. The determination of DOCCS or to proceed with a complaint pursuant to IX-A, above, shall not preclude DOCCS in its discretion, from pursuing any other remedies which it may have pursuant to law and the contract.

XI. MISCELLANEOUS

- A. Goal percentages established in this contract are subject to the requirements of Article 15-A of the Executive Law and regulations adopted pursuant thereto.
- B. The parties agree as a condition of the contract to be bound by the provisions of Section 316 of the Executive Law.
- C. The Contractor shall submit, and shall require Subcontractors to submit, compliance reports on forms and at intervals to be established by the DOCCS.

Reports not submitted at such times as shall be required by DOCCS may be cause for the delay of scheduled payments to the Contractor.

XII. CONTRACT PROCUREMENT UNIT M/WBE RESPONSIBILITIES

- A. The Supervisor of CPU shall be responsible for implementing the Minority and Women-Owned Business Enterprise Program of the Department and for reviewing and reporting on the Department's activities and progress in establishing an effective M/WBE program. CPU will act primarily as a compliance authority for all Contracting Unit M/WBE activities.
- B. CPU, in collaboration with the Deputy Commissioner for Administrative Services, shall designate a HUB Coordinator representing each HUB as the liaison between CPU and all other facilities within the HUB. The designated HUB Coordinator will be an Institution Steward or the equivalent. They will be responsible for monitoring and coordinating all other Contracting Unit's M/WBE participation/activities within the HUB. The designated HUB Coordinator will also be responsible for sharing information generated to/from CPU and to/from all other Contracting Units within the HUB.
- C. CPU is available to provide technical assistance and training to Central Office, Industries, facility personnel responsible for the M/WBE program requirements, and regional/area office personnel.
- D. CPU shall continue its involvement in public outreach efforts to community organizations representing M/WBEs. Whenever possible, CPU and facilities will arrange meetings and host M/WBE workshops/seminars for the purpose of sharing information about the Department's M/WBE program, goals, and objectives.

XIII. INSTITUTION STEWARD AND/OR EQUIVALENT RESPONSIBILITIES

- A. The Institution Steward or equivalent is charged with the task of ensuring M/WBEs are provided equal opportunity to bid on all discretionary purchases of goods and services contracts in accordance with provisions specified in Executive Law Article, 15-A.
- B. The Institution Steward or equivalent shall enforce specific procedural guidelines for the purchasing agents within the Contracting Unit relative to solicitation and utilization of M/WBEs in the procurement process.
- C. They shall also monitor the efforts of their respective Contracting Units in identifying M/WBEs to be contacted as services or goods are needed.

- D. In addition, the Institution Steward or equivalent shall continue to encourage collaboration and open communication between Contracting Unit's purchasing staff and M/WBE representatives to obtain catalogues, price lists, and additional descriptive materials so as to enhance opportunities to utilize goods and services offered by these firms.

XIV. PROCUREMENT GUIDELINES AND PROCEDURES

- A. General: It is the responsibility of all Department employees who have purchasing responsibilities or purchasing authority to solicit M/WBEs for all DOCCSs contracts to assist such businesses to increase their involvement with the State of New York. These same employees will supply all requested information, assistance, and reports in matters concerning the Department budget, expenditures, plans, forms, and programs concerning M/WBE development to CPU.

The said employees shall convey opportunities to MBE/WBE firms in full support of the Department's policy and the OGS Procurement Guidelines. These guidelines specify that a single quotation from a responsible Contractor of items not available from a preferred source, or on centralized contract, in amounts of up to \$200,000 for purchases made under of the State Finance Law, may be utilized to expand MBE/WBE opportunities.

All Contracting Units must maintain Contractor files for specialized items unique to the Department and maintain a current file of active M/WBEs.

All Contracting Units must compile information and prepare periodic reports as required by control agencies, administrative staff, Budget Unit, and CPU.

- B. Sources: The following procedures are based on the New York State Office of General Services "Procurement Guidelines," pursuant to Article XI of the State Finance Law and Section 1-9 of the State Printing and Public Documents Law.

C. Purchases of \$0 to \$14,999

1. Check all available small business and M/WBE source documents to determine if any applicable Contractors offer the commodity or service being purchased.
2. Purchase directly from an M/WBE Contractor if the Contractor meets the following criteria:
 - a. Provides a quality product or service;
 - b. Offers the product or service at a reasonable price (See Section XIV-G, Reasonable Pricing); and
 - c. Have reasonable delivery terms.

D. Purchases of \$15,000 and over: Purchases of commodities or services of more than \$15,000 can be purchased under either of the following methods:

1. Formal competitive bidding for purchases of \$50,000 and over: This method does not provide an opportunity to select an M/WBE Contractor which is not the lowest responsible bidder. However, agencies should utilize the M/WBE Directory to expand bid opportunities to minority and women owned businesses.
2. Discretionary purchasing between \$15,000 and \$200,000 allows agencies to promote the participation of M/WBEs. This method may not require competitive bidding. To use this method, you must:

- a. Identify a responsible (certified) minority or women-owned business enterprise;
- b. Request the selected M/WBE to offer a price for supplying this requirement; and
- c. Determine that the price offered is reasonable and prepare a statement indicating the basis for this determination (See Section XIII-G, Reasonable Pricing).

All purchases \$50,000 and over must be advertised in the Contract Reporter. Although not required, advertising purchases between \$15,000 and \$49,999 is recommended as best practice to ensure competitive pricing. Additionally, any purchase over \$50,000 must have Office of State Comptroller (OSC) approval.

- E. Contracts over \$25,000: Pursuant to the M/WBE policy of the Department, goals have been established to ensure Contractors exercise “Good Faith Efforts” to utilize minority/women-owned business enterprises on all their purchases/contracts.

Every service, construction, consultant, or purchase contract involving a Department expenditure of \$25,000 or more shall include the “Contractor Requirements for, EEO and EEO and M/WBE,” [EEOCR](#) and shall set forth the requirements of each Contractor to submit an M/WBE Utilization Plan and outline efforts made to obtain Departmental goals.

Furthermore, the above-noted [EEOCR](#) requires the Contractor to supply information on Subcontractors and submit certain other compliance reports required by the Department of Economic Development and the Division of Minority and Women’s Business Development.

- F. Change Orders and Amendments: Whenever a change order or contract amendment will increase the value of a service contract which was previously under \$100,000 to \$100,000 or more, or any service which was previously under \$25,000 to \$25,000 or more, the provisions of Article 15-A of the Executive Law will apply, and the appropriate paragraphs and contract provisions will be included in the change order or amendment.
- G. Reasonable Pricing: OGS, with the concurrence of OSC, has issued the following guidelines for determining reasonableness of price. These guidelines are also used as a basis for the verification and approval process.

“In general, the reasonableness of price may be determined by using one or more of the following actions: Comparing the price offered against product catalogs, published price lists, retail market surveys; consulting historical records of previous purchases for the same or similar items, consulting with other public and/or private purchasing officials; using professional experience and judgment, etc.”

Some examples of appropriate statements in determining reasonable pricing are:

1. “Comparison with latest price catalog(s) shows this pricing to be lower than manufacturer’s suggested selling price;”
2. “A survey of the local retail market indicates this pricing is within the same price range;”
3. “Review of previous purchases made on similar items shows this pricing to be at the same discount level;”

4. "A telephone inquiry to a local government agency indicated it is paying a similar price for the same product;" and
5. "Based on years of purchasing experience, the price offered by this M/WBE Contractor is judged to be reasonable and acceptable."

H. Miscellaneous

1. Any firm that claims to be a minority or women-owned business, but is not included in the Empire State Development Corporation M/WBE Directory, should be encouraged to contact ESD to obtain the appropriate certification.
2. An M/WBE firm that does not respond to a bid/quotation request should continue to be included on the Contracting Unit's list of prospective Contractors until no response is received on three separate and consecutive occasions. At which time, that Contractor should be contacted in writing by the Contracting Unit to verify their withdrawal from active participation.
3. Appropriate documentation should be maintained to be used to compile quarterly activity reports for the HUB Coordinator, as well as to substantiate the Contracting Unit's efforts to achieve established participation goals.
4. DOCCS is committed to an aggressive M/WBE procurement program pursuant to the requirements of Executive Law Article 15-A. Increased utilization of discretionary thresholds is one of the many methods available to help accomplish the objectives of this program. In order to achieve increased participation of the numerous M/WBE businesses located in New York State, maximum utilization of these thresholds must be made by all purchasing staff.

I. Reporting Procedures

1. Pursuant to 9 NYCRR Section 541.4, State and contracting agencies shall submit a quarterly compliance report in a format and manner provided by the Division of Minority and Women's Business Development, including information regarding all Contracting Units, MBE/WBE activities.
2. To enable the Department to meet the reporting requirements of the State's MBE/WBE Program and to analyze and strengthen our own program, each facility must submit reports of its MBE/WBE activity.

The Institutional Steward (or the functional equivalent) in Contracting Units is responsible for the timely and accurate submission of all appropriate reports and forms.

3. In addition to DM/WBD reporting, reports from each Contracting Unit will be submitted to their respective HUB Coordinator by the fifth (5th) day of January, April, July, and October of each year. The HUB Coordinator will review and submit a summarized report of quarterly HUB activity and compliance to CPU.
4. Participation in this program and completion of the quarterly report is not optional. Facility administrators must take immediate steps to ensure that their Contracting Unit is in compliance.
5. Instructions for completing facility utilization forms are included with each form.

XV. LIST OF FORMS / DOCUMENTS REFERENCED IN THIS DIRECTIVE

Document Abbreviated Name	Document	Primary Section Referenced
DP Primer	Diversity Practices Primer	Section VI-B
DPQ	Diversity Practices Questionnaire	Section VI-B
DPSM	Diversity Practices Scoring Matrix	Section VI-B
EEO1	EEO Workforce Utilization Report	Section VI-C-1-a
EEO100	EEO Staffing Plan	Section IV-H
EEOCRC	Contractor Requirements for Contracts	Section VI-A
EEOCRS	Contractor Requirements for Solicitations	Section VI-A
EEOPS	M/WBE EEO Policy Statement	Section IV-H
MWBE100	M/WBE Utilization Plan	Section VI-C
MWBE101	M/WBE Quarterly Compliance and Subcontractor Payment Report	Section VI-C-1-b
MWBE102	M/WBE Request for Waiver	Section VI-B-2-f
MWBENAD	Notice of Acceptance or Deficiency	Section VI-C

Editable versions of the above named forms can be obtained from the Contract Procurement Unit by e-mail at doccscontracts@doccs.ny.gov or by phone at (518) 436-7886 ext.3135.