

## Frequently Asked Questions (FAQs)

### 1. What does MWBE stand for?

A: Minority- and/or Women-owned Business Enterprise. MWBE is generally used to refer to a business entity that has been certified as a Minority- and/or Women-owned Business Enterprise by NYS Empire State Development's (ESD) Division of Minority and Women's Business Development (DMWBD).

### 2. What is Article 15-A of Executive Law?

A: Article 15-A of the New York State Executive Law was enacted in 1988 and created a Division of Minority and Women's Business Development (DMWBD) within the New York State Empire State Development Corporation (ESD). The DMWBD has the right and responsibility to issue regulations and oversee State agency and authority contracting responsibilities in regard to Equal Employment Opportunities and Minority and Women-owned Business participation. The purpose of Article 15-A is to ensure and promote fair and equal employment and minority- and women-owned business participation in State contracts through the establishment of goals for minority- and women-owned business participation.

### 3. What is the difference between a Disadvantaged Business Enterprise (DBE) and an MWBE?

A: DBE certification is controlled by the federal government and created pursuant to federal regulations found at 49 CFR Part 26 (<http://ecfr.gpoaccess.gov>).

MBE and WBE certification is controlled by ESD and created pursuant to Article 15-A of the New York State Executive Law (<http://public.leginfo.state.ny.us>). To be eligible for MBE or WBE certification, a business enterprise must be at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are minority group members or women; the ownership interest of such minorities or women must be real, substantial and continuing; such minority or women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; the enterprise must be authorized to do business in this state and be independently owned and operated; the individual(s) whose ownership, control and operation are relied upon for certification, may not have a personal net worth that exceeds \$3.5M as adjusted annually and the enterprise must be a small business as defined by Executive Law 310(20).

### 4. What minority groups are recognized under Article 15-A?

A: The following minority groups are recognized for MBE certification:

- Black persons having origins in any of the Black African racial groups;

- Hispanic persons of Mexican, Puerto Rican, Dominican Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- Asian and Pacific Islander persons having origins in any of the Far East countries, Southeast Asia, the Indian subcontinent or the Pacific Islands; or
- Native American or Alaskan Native persons having origins in any of the original peoples of North America.

**5. Why is the process to become certified so tedious and time consuming?**

A: Please contact the DMWBD for questions regarding the certification process. OGS is not the certifying entity for the State of New York and has no control or involvement in the certification process.

**6. What is the MWBE Utilization Plan?**

A: This is the document that must be submitted by a contractor to a State agency or authority and identifies the **NYS Certified** MWBEs the contractor intends to use in the performance of a proposed State contract. The Utilization Plan identifies the name, address and telephone number of each MWBE the contractor intends to purchase supplies from or engage as a subcontractor to satisfy the MWBE contract goals.

**7. How can I find an MBE and/or a WBE?**

A: The NYS MWBE Directory can be accessed using the following link:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=5193>  
 The MWBE Directory is searchable by business name, business description, commodity code, contact person, location, work districts/regions, certification type (MBE or WBE), and other reference points such as industry, business size, and location.

**8. How and when can I apply for a waiver from compliance with the MWBE goals identified in a solicitation or contract?**

A: Prior to submission of a request for a partial or total waiver, please contact the OGS Office for Minority- and Women-Owned Businesses and Community Relations at [MWBE@ogs.ny.gov](mailto:MWBE@ogs.ny.gov) or (518) 486-9284 for guidance. OGS may be able to assist you in finding MWBEs to meet the MWBE goals identified in the solicitation or contract. If, after working with OGS and making good faith efforts to meet the goal requirements of a solicitation/contract, you may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation.

**9. What constitutes a good faith effort to utilize a MWBE?**

A: The following are some examples of information that can be submitted to show good faith efforts were made to utilize MWBEs:

(1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which you solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.

(2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for the contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

(3) Descriptions of the contract documents/plans/specifications made available to certified MWBEs by you when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

(4) A description of the negotiations between you and certified MWBEs for the purposes of complying with the MWBE goals of the contract.

(5) Dates of any pre-bid, pre-award or other meetings scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the contract and attended by you.

(6) Any other information deemed relevant to the request.

**10. Do all Office of General Services (OGS) contracts have goals for MWBE participation?**

A: OGS reviews all contracts with an anticipated value in excess of \$25,000 for labor, services, including but not limited to legal, financial and other professional services, supplies, equipment, materials, or any combination of the foregoing, and (2) in excess of \$100,000 for acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, and determines if there are adequate numbers of MWBEs available, willing, and able to provide subcontracting and supply services on the contract. If there are adequate numbers, a MWBE participation goal is set for the contract.

OGS has established an agency-wide goal of 30% MWBE participation and reserves the right to establish MWBE participation goals for contracts having a value below the amounts identified above.

**11. If my company currently does not use MWBEs, does this requirement apply to us?**

A: When an MWBE Participation Goal has been placed on a solicitation/contract, it applies to all bidders/contractors.

**12. Can multiple contract holders use the same MWBE to satisfy goals for the same contract?**

A: Yes, so long as the work performed for each contract holder is reported separately.

**13. On statewide contracts, do MWBE goals apply to purchases by non-State entities?**

A: MWBE participation goals set by OGS only apply to funds expended by State entities.

**14. If my firm is a certified MBE firm and awarded a State contract, do I still need to utilize a WBE firm, or does my certified status meet all MWBE goal participation requirements?**

A: An MBE contractor must still meet the WBE requirement, and vice versa. A dual-certified MWBE's participation in a State contract may be counted towards either a MBE goal or a WBE goal, but may not be counted towards both and the designation chosen (either MBE or WBE) must remain for the life of the contract.

**15. What forms do I need to complete to prove I met the MWBE participation goals?**

A: Contractors must submit the Monthly MWBE Contractor Compliance Report each month during the term of the contract for the preceding month's activity, documenting progress made towards achievement of the contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>.

**16. Can a prime contract holder who is a certified MBE and/or WBE be used by another prime contract holder on the same contract to satisfy MWBE goals?**

A: A prime contractor who is an MBE or WBE may be used as a subcontractor for another prime contractor on the same State contract to satisfy goals, as long as the MBE or WBE has sufficient resources to perform the work and as long as the particular contract does not preclude a prime contractor from being used as a subcontractor in this manner.

**17. If my company is awarded a contract will I have any reporting requirements regarding MWBE compliance?**

A: Yes, there are reporting requirements for all contracts that have MWBE participation goals. Contractors must submit the Monthly MWBE Contractor Compliance Report each month during the term of the contract for the preceding month's activity, documenting progress made towards achievement of the contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>.

**18. Do I still have to submit a Monthly MWBE Contractor Compliance Report if we didn't have any MWBE utilization this month?**

A: Yes, the MWBE Contractor Compliance Report must be submitted every month. If there is no MWBE utilization in a given month, the report must be submitted reflecting a \$0 value.

**19. Can I get an exemption (a waiver or reduction) from the MBE/WBE requirements?**

A: Exemptions, waivers or reductions in the MWBE participation goals may be granted in certain limited situations. Each situation is assessed independently by the OGS Office for Minority- and Women-Owned Businesses and Community Relations and you must contact this office at MWBE@ogs.ny.gov or (518) 486-9284 for guidance prior to making a request for an exemption, waiver or reduction. Only after working with OGS and making good faith efforts to meet the goal requirements of a solicitation/contract, should you submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation.

**Note:** All waiver requests are reviewed on a case-by-case basis. Submission of a request for a waiver does *not* mean that a waiver will be granted.

**20. My company wasn't required to do MWBE paperwork when the original contract was awarded a few years ago so why do we have to do it for an amendment/renewal/ extension?**

A: If OGS did not amend/renew or extend an existing contract, but still needed the Commodities or Services, it would solicit for a new contract and if the value of such contract exceeded the thresholds identified in Q & A 10 above, MWBE participation goals would have been included. Therefore, OGS adds MWBE participation goals to contract amendments, renewals and extensions where the value of such additional term exceeds \$25,000.

**21. How do I contact OGS regarding MWBE questions?**

A: In all solicitations with MWBE participation goals, there will be a designated MWBE contact(s) for whom you can contact directly for all MWBE related questions. You may also contact the MWBE Office by calling (518) 486-9284 or via email at mwbe@ogs.ny.gov

**22. Do MWBE firms have to be certified?**

A: Only firms certified by ESD DMWBD can be utilized to meet MWBE participation goals on State contracts. Firms owned by minorities and women can provide supplies to or subcontract with contractors, however the monies paid to such firms cannot be counted by the contractor as meeting the MWBE goals on the contract.

**23. What happens if a bidder does not submit a Utilization Plan when the solicitation identified MWBE participation goals?**

A: The bidder may be deemed non-responsive by OGS and will not be awarded a contract.

**24. What happens if a bidder's submitted Utilization Plan is not approved by OGS?**

A: The bidder may be deemed non-responsive by OGS and will not be awarded a contract.

**25. What happens if a contractor is unable to meet the MWBE participation goals during the term of the contract?**

A: The contractor must contact the OGS MWBE office for assistance. OGS will assess the contractor's good faith efforts to utilize MWBEs during the contract and may grant a waiver of the goal requirement if the contractor's good faith efforts were unsuccessful. If OGS does not grant the contractor a waiver, OGS may determine the contractor breached the contract and collect liquidated damages, as set forth in 5 NYCRR § 142.13.