



## EEO Workforce Utilization Data Collection and Reporting

### Frequently Asked Questions (FAQs)

1. Does the EEO-101 - Construction form replace the BDC19 reports?

**Answer:** Yes

2. Do the EEO-101- Consultant and EEO-101- Commodities & Services forms replace the OGS EEO 101 report form?

**Answer:** Yes

3. Does EEO reporting apply to only new OGS contracts or to both new and current/in progress contracts?

**Answer:** Effective March 10, 2016 EEO reporting is required for all OGS contracts. Reports must be submitted monthly for Construction contracts and quarterly for all other OGS contracts.

4. Is there a minimum subcontract amount that triggers the responsibility for subcontractors to report, or are all subcontractors required to report, regardless of the size of their subcontract?

**Answer:** There is no minimum dollar value. OGS requests that Contractors require all subcontractors to report on their own workforce independent of Contractor's workforce.

5. I have subcontractor on my contract, where and how should they report their workforce?

**Answer:** Subcontractors are required to report separately using the applicable EEO-101- form. The EEO-101 reports and instructions are located at: <https://ogs.ny.gov/MWBE/Forms>

6. My contract is complete, just waiting for final payment, do I need to submit the EEO-101 form?

**Answer:** If worked was performed on the contract in or after February 2015, you need to report EEO workforce utilization.

7. Q. Is my company exempt from the New York State Equal Employment Opportunity workforce utilization reporting requirements if it has less than 100 employees?

**Answer:** No. New York State Executive Law § 312(5) and the associated regulations found at 5 NYCRR Part 143 permit the Office of General Services to require contractors of any size, to provide equal employment opportunity data, including gender and ethnicity information relative to employees working on State contracts.

8. Will these new EEO reports be kept private by the State, or will they be made public?

**Answer:** OGS has no current plans to make the reports publicly available on a website, however, there is nothing prohibiting us from doing so if deemed appropriate in the future. The reports would be disclosed in response to a Freedom of Information request.

9. How will the report data be stored by the state?

**Answer:** The Office of General Services will store the data on internal agency computers in Excel format. We will electronically transmit copies of the reports to Empire State Development on a quarterly basis via a secure portal.

10. Are these reports subject to FOIA requests?

**Answer:** Yes

11. We have an emergency contract, do I need to report EEO workforce utilization?

**Answer:** Yes, contractors must report EEO utilization, no matter what type of contract.

12. We are not an MWBE contractor, does EEO reporting still apply to us?

**Answer:** Yes, EEO reporting applies to all Contractors and subcontractors on OGS contracts.)

13. Should I send the completed form to the Engineer in Charge or Contract Manager?

**Answer:** No. All completed EEO 101 forms need to be emailed to the appropriate email box appropriate to your contract type:

- i. For Construction: [EEO\\_Construction@ogs.ny.gov](mailto:EEO_Construction@ogs.ny.gov)
- ii. For Consultants: [EEO\\_AEConsultants@ogs.ny.gov](mailto:EEO_AEConsultants@ogs.ny.gov)
- iii. For Commodities and Services: [EEO\\_CentCon@ogs.ny.gov](mailto:EEO_CentCon@ogs.ny.gov)

14. Are subcontractors required to submit directly to OGS at the applicable email box or should they submit the reports to the prime contractor who will then submit it to OGS?

**Answer:** Subcontractors are also required to submit workforce utilization reports directly to OGS. It is the responsibility of the prime contractors to make sure that their subcontractors complete and submit these reports.

15. How does an employer know the ethnicity of an employee when it comes to Hispanic/Latino or Native American/Alaskan Native? Are we legally able to ask? Is there a form we can legally use to obtain this information?

**Answer:** We follow the U. S. Equal Employment Opportunity Commission's basic principles for ethnic and racial self-identification for purposes of the EEO data collection. These are to (1) Offer employees the opportunity to self- identify and; (2) Provide a statement about the voluntary nature of this inquiry for employees. For example, language such as the following may be used (employers may adapt this language):

"The employer is subject to certain governmental reporting requirements relative to the race and ethnicity of the workforce utilized on the State contract. In order to comply with this contractual obligation, we invite employees to voluntarily self-identify their race or ethnicity. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information obtained will be kept confidential and may only be used in accordance with the provisions of applicable laws, executive orders, and regulations, including those that

require the information to be summarized and reported to the federal government or New York State agencies. When reported, data will not identify any specific individual."

16. Is there a penalty for not completing the form?

**Answer:** Failure to submit the EEO workforce utilization reports will be evaluated in the same manner as other contract reporting requirements.

17. If I have a question, who should I contact?

**Answer:** All questions regarding EEO workforce utilization should be addressed to the OGS Office of Minority- and Women-Owned Business Enterprises at 518-486-9284 or [MWBE@ogs.ny.gov](mailto:MWBE@ogs.ny.gov)