



EEO Workforce Audit Collection and Reporting

Frequently Asked Questions (FAQs)

1. Does the Workforce Audit in the NYS Contract System replace the EEO-101 - Construction form?

Answer: Yes

2. Does the Workforce Audit in the NYS Contract System replace the EEO-101- Consultant and EEO-101- Commodities & Services forms?

Answer: Yes

3. Does EEO/Workforce Audit 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 Workforce Audit Module in the NYS Contract System. All contractors will see incomplete Work Audits on their Dashboard after they log in. Additional instructions can be located in the Help and Support section of the NYS Contract System under Video Library.

6. My contract is complete, just waiting for final payment, do I need to submit the Workforce Audits?

Answer: If work was performed on the contract on or after February 2015, you need to report EEO workforce utilization. If work is complete, please reach out to the Office of Business Diversity for assistance.

7. 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 Workforce Audits 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 Workforce Audit data will be stored within the Workforce Audit Module in the NYS Contract System. Once the Workforce Audit is completed, ESD will have immediate access to the data.

10. Are these reports subject to FOIA requests?

Answer: Yes

11. We have an emergency contract; do I need to complete the Workforce Audits?

Answer: Yes, contractors must complete Workforce Audits, no matter what type of contract.

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

Answer: Yes, EEO reporting/Workforce Audits 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 Workforce Audits will be automatically submitted to OGS once you certify and release the report.

14. Are subcontractors required to submit directly to OGS 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 Audits directly to OGS within the Workforce Utilization module. 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 complete the Workforce Audits 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 the Workforce Audits should be addressed to the OGS Office of Business Diversity at 518-486-9284 or MWBE@ogs.ny.gov

18. There is not a Classification Category that fits the job I am trying to enter. What do I do?

Answer: We recommend you pick the option that fits best. It is impossible for ESD to create categories for every job that our contractors employ. If you do not feel comfortable doing this, you should submit a support ticket SPECIFICALLY stating that you need someone from ESD to address your question.

19. We believe we received this in error and do not have a reporting requirement, (ie. Supplier status, no contract with the prime) how do we fix this?

Answer: Please contact the Office of Business Diversity to confirm this status. Once confirmed, we will turn off your audits

20. We are listed on the contract, but our work does not start for several months. Do we still need to complete the Workforce Audit?

Answer: Yes, you must complete the Workforce Audit. Until your work begins, you should mark the audit as "No Work". Be sure to certify and release the audit.

21. We received an unresponsive subcontractor notification, but some of the subcontractors listed are not working on the contract. OR – Some of my subcontractors are not listed in the NYS Contract System but they are required to submit a report.

Answer:

Construction Contracts: First, you must check your BDC 329 to be sure the subcontractors listed are active. You must remove subcontractors that are no longer working on the contract. Once this is complete and changes are accepted by vendor responsibility, please contact the Office of Business Diversity so we can make the necessary changes in the NYS Contract System

Consultant and Commodities & Services Contracts: Please contact the Office of Business Diversity to make changes and ensure that your contract record is accurate.

22. We made an error in completing our Workforce Audit. How can I fix this?

Answer: Please reach out to the Office of Business Diversity and we will return the audit so you can correct your errors.