



### Instructions for Submitting the Consultant's Utilization Plan (Form BDC 327)

1. Consultants are required to submit the Consultant's Utilization Plan on Form BDC 327 (hereinafter referred to as the "Plan") to the NYS Office of General Services (OGS) with the letter of interest. Complete ALL items on the form with the exception of the sections marked "For OGS Use Only." Please list *certified* MBE/WBE subconsultants and suppliers. Only MBE/WBE firms certified by Empire State Development's Division of Minority and Women's Business Development can be used to meet MWBE good faith efforts participation goals on this contract. The use of non-certified firms that have submitted applications for certification but are not approved prior to completion of this contract are not acceptable for goal attainments. Consultants agree that OGS may withhold payment pending receipt of the required documentation.
2. By submission of this Plan, the Consultant commits to good faith efforts in the utilization of subconsultants and suppliers who perform commercially useful functions as required by the MBE/WBE goals contained in the contract. Consultants must document good faith efforts to provide meaningful participation by MWBEs as subconsultants or suppliers in the performance of the contract and ensure that the MWBEs utilized under the contract perform commercially useful functions. For guidance on how OGS will determine a consultant's "good faith efforts," refer to 5 NYCRR §142.8. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com> For additional information regarding this directory and the certification process, please call The Empire State Development Corporation at (212) 803-2414 (Downstate) or (518) 292-5250 (Upstate). Additionally, you may contact the OGS OBD Designated Contacts at (518) 486-9284 which will, upon request, provide you with a listing of certified MBE/WBE firms in the Counties and under the Trades requested.
3. Where OGS determines that Consultant is not in compliance with the requirements of the Contract and Consultant refuses to comply with such requirements, or if Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals, Consultant shall be obligated to pay to the OGS liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.
4. OGS will review the submitted Utilization Plan and advise Consultant of OGS' acceptance or deficiency within twenty (20) days of its receipt. Consultant shall respond to the notice of deficiency within nine (9) calendar days of receipt by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify Consultant and direct Consultant to submit, within seven (7) calendar days, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal. The approved Utilization Plan will be posted on the OGS website within ten (10) days of Contract Award.
5. Any changes to the Plan must be approved by OGS.
6. Consultants are required to report monthly MWBE compliance to OGS during the term of the contract for the preceding month's activity, documenting the progress made towards achievement of the MWBE goals of the Contract. Utilize the New York State Contract System located at <https://ny.newnycontracts.com> to report MWBE payments on a monthly basis. If Consultant is unable to report MWBE compliance via the NYSCS, Consultant must submit Consultant's Cumulative Monthly Payment Statement on Form BDC 58.1 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to:

NYS Office of General Services  
Design and Construction  
Office of Business Diversity  
GNARESP, Corning Tower, 29th Floor  
Albany, NY 12242