

JSCB Resolution No. 28-2014-Appendix A



July 1, 2014

**DRAFT: PUBLIC REVIEW**

Phase II - Development and Diversification  
Plan for Workforce & Business

### Introduction

The Joint Schools Construction Board (“JSCB” or “Board”) acting as the authorized agent of the City of Syracuse and the Syracuse City School District (“SCSD”) recognizes the need to take action to ensure that minority and women-owned business enterprises and minority (“MBE”, “WBE”, “M/WBE”) and women employees are given the opportunity to participate in the performance of the contracts issued by the Board. The Board recognizes that this opportunity for the participation in our free enterprise system by persons traditionally, socially and economically disadvantaged is essential to obtain social and economic equality. In addition, the JSCB has been authorized by New York State (Chap. 58 of the laws of 2006 as amended) to develop and adopt a Diversity Plan.

Accordingly, the Board fosters and promotes the participation of such individuals and business firms in all contracts with the Board and sets forth this initiative (the “Plan”).

The Board envisions the participation goals increasing as capacity increases and plans to;

- a. Develop strategies that will create and coordinate efforts to ensure a more diverse workforce for the projects as well as ensure the participation of minority and women-owned business enterprises;
- b. Address accountability for attainment of the diversity goals -- providing a description of the forms of monitoring that will be used, and how such information will be communicated to the public and most importantly to potential participants.

The finalization and implementation of this Plan prior to any start of construction on the program will result in an effective process for increasing the purchase of goods and services from minority and women-owned businesses. It will also provide for coordination of local workforce development programs to ensure local capacity for the new job opportunities for minority and women workers that will be created through the program.

### Goals of the Syracuse Joint Schools Construction Project

- a. Renovate existing schools to create learning environments that are at the forefront of educational design and that deliver the flexible spaces, instructional technology and social support necessary to enhance student achievement equal to or exceeding the New York State Regents standards.
- b. Renovate existing schools such that the quality of facilities district-wide is equitable and such that the quality of facilities is equal to or superior to those of any other school district in the state.
- c. Develop shared facilities for educational, public safety, health, social support, and recreational purposes.
- d. Maximize the economic benefit from school construction and reconstruction to neighborhood development and economic revitalization throughout the City.
- e. Assist the Syracuse City School District, local labor, government, and not-for-profit agencies to develop, recruit and train a new diverse workforce.

- f. Encourage, assist and sustain business development of underrepresented populations (i.e. people of color and women) and maximize the use of Syracuse based labor and local professional and construction-related business enterprises through a progressive and comprehensive Workforce and Business Diversification Plan.
- g. Identify and utilize innovative financing techniques to provide sources for the local share – that portion of the cost that is not reimbursable under this project’s State Educational Department (SED) reimbursement formula – and to minimize (i) the local share of the costs of the program, (ii) debt incurred by the City for the program and (iii) net debt service and operation and maintenance costs.
- h. Find creative solutions to interim school space during project build-out in a manner that minimizes disruption to existing school operations and classroom instruction.

### **MBE & WBE Meaningful Participation**

The actual services provided by the MBE or WBE must be essential in the performance of the scope of work for the applicable contract. Utilization of a certified MBE or WBE as a conduit or pass through for participation credit is strictly prohibited. It is the discretion of the JSCB to determine whether services are essential in the performance of the scope of work and offer a determination of the appropriateness of work allowed for lower tier subcontracting in accordance with practices generally accepted in the construction industry. The services the MBE or WBE will provide must be among those explicitly identified in the profile of a firm as listed in the City of Syracuse Directory of Certified M/WBEs. Firms submitted or who participate in the project outside of these conditions and without specific prior approval by the JSCB will not be credited toward the MWBE Utilization Plan and goals for the contract.

### **Workforce Development and Diversification Principles and Rules**

One of the principal goals of this Plan is to support workforce development and diversification opportunities that can be created by the Program. This Diversity Plan acknowledges the diverse community of the City Syracuse. It also provides an opportunity to create an environment that engages and encourages the participation of this community. It also acknowledges the historical disparity experienced by M/WBE and workforce labor in gaining access to participate in projects.

Following is the statement of these principles.

- 1.) The Program envisions the use of a workforce reflective of the City’s population and diversity. Where qualified workers are not available from the local workforce, the Program will coordinate with local workforce training and development programs to develop new capacity. The multi-year duration of the Project provides the opportunity for planned development of a workforce, which meets this diversity objective.
- 2.) The capital investment represented by the Syracuse Schools Construction Program (the “Program”) requires development of a workforce reflective of the City’s population and diversity.

## Development and Diversification Plan for Workforce and Business

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- 3.) In order to achieve the development of a diverse workforce for the Program, the Program Manager and/or Prime Contractor(s) shall assist the Independent Compliance Officer (ICO) in overseeing, facilitating, developing, and/or implementing the following:
- a. A community-wide public relations campaign to provide specific information about the Program's employment opportunities, referral and training programs.
  - b. A methodology which assists contractors, suppliers, professional service firms, or any other businesses providing goods and services to the Program to effectuate the workforce diversity goals of the Program and the minimum standards to be attained when providing such goods and services to the Program. All contracts shall include remedies and sanctions for noncompliance and identify a means by which inquiries and disputes about the Program requirement may be addressed.
  - c. An independent compliance program which monitors performance of contractors, suppliers, and professional service firms.
  - d. Regular monthly reporting process to the Board setting forth the results of all employment and compliance activity and dispute resolution activities.

### I. Workforce Development and Diversification Rules

- 1.) All contractors, suppliers, professional service firms or other businesses providing goods or services with a JSCB contract of \$50,000 or more shall comply with the workforce diversity rules set forth in Section II below. In the case of a contract award where compliance cannot be achieved through no fault and/or by act of omission of the contractor and/or vendor, the party required to comply with the workforce diversification rules shall present a plan to meet the goals of the Project in an alternative manner acceptable to the JSCB. In such case, the alternative plan shall be reviewed by the City's Compliance Officer (CCO) and ICO then submitted to the JSCB for approval or rejection. Within 10 workdays of submittal of the alternative plan, the ICO will review any documented evidence of good faith efforts to meet the original goals and determine whether the alternative plan does or does not meet the intent and goals of the Program and will notify the contractor or vendor of the findings.
- 2.) In order to achieve the workforce diversification goals of the Program, each contractor, supplier, professional service firm or other business providing goods or services shall strive to and use best efforts to ensure that the workforce it engages to perform work for the Program shall demonstrate, in terms of the percentage of actual hours worked under the contract and/or contract as amended, participation rates as follows:
  - a. **Minority Workforce:** 10% of project personnel hours including skilled trade's people, journeymen, apprentices, and supervisory staff.
  - b. **Female Workforce:** 10% of project personnel hours including skilled trade's people, journeymen, apprentices, and supervisory staff.
  - c. **Syracuse City School District or Graduates:** 2% of project personnel hours including skilled trades' people, journeymen, apprentices, and supervisory staff.
  - d. Each contractor, supplier, professional service provider, or other business providing goods and services shall strive to maximize the use of Syracuse-based labor, contractors, suppliers, and service providers.
  - e. **Workforce Limits:** Only 25% of project personnel hours can be counted toward the EEO goal through the utilization of clerical "back office" or support staff.

## Development and Diversification Plan for Workforce and Business

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- 3.) In order to achieve such development and diversification in its workforce, each contractor, supplier, professional service firm or other business providing goods or services shall:
  - a. Provide the ICO with a monthly workforce & census and other employment and certified payroll records necessary to verify achievement of the workforce diversity goals and demonstrate compliance with the minimum standards. [Employee \(EEO\) zip code information must be listed on monthly EEO report.](#)
  - b. Provide on-demand access and cooperation to the ICO to review records on-site and/or at work-site premises to validate workforce participation. This may include unannounced visits and on-the-spot interviews that the ICO and its inspectors may hold with workers at the job site or at off-site work premises to verify their work status and claimed job classifications.
  - c. With bid submission, present a proposed written recruiting program directed at attracting candidates to fill positions of employment in order to meet such requirements.
  - d. With bid submission, provide a statement committing to training or participation in training programs provided by third parties to train new employees in meaningful ways to succeed in their employment opportunities and to promote long-term employment within the industry or profession.
  
- 4.) In the event the prime contractor, supplier, professional service firm or other business providing goods or services fails to maintain minority/women workforce goals through the duration of the project on their contract or purchase order, the ICO can and shall exercise in a timely manner one or more of the following remedies. Summon the contractor, supplier, professional service firm or other businesses providing goods or services to appear before a JSCB selected hearing panel. The hearing shall be held within ten (10) business days of the notice of non-compliance by the ICO. After the contractor has had such a hearing the Board may elect to:
  - a. Withhold payment of any amounts due on the disputed item pending resolution of the non-compliance issue.
  - b. Assess liquidated damages in an amount equal to the dollar value that would have been realized if the minority/women workforce goals would have been met.
  - c. Withhold, suspend, cancel or terminate the contract or purchase order.
  - d. Identify such contractor as a non-responsive bidder for future contracts within the Program. (Requires approval by full Board.)
  - e. All of the mentioned penalties would be upon a prime contractor, supplier, and professional service firm or other business providing goods or services to the JSCB who failed to comply with approved utilization plan submitted with its bid for contracts.

### **Business Development and Diversification Principles and Rules**

The other major goal of this Plan is to provide for business development opportunities and participation in the Program by minority-owned and women-owned businesses. Following are the principles associated with the implementation of that part of the Plan:

### I. Business Development Principles

- 1.) The capital investment represented by the Syracuse Schools Construction Program creates a unique opportunity for participation of minority-owned and women-owned business enterprises. To ensure that contracts for goods and services are placed with qualified minority and women-owned business enterprises, the Program Manager will oversee, facilitate, develop and/or assist the ICO in implementing the following:
  - a. Identify City of Syracuse certified MBE and WBE firms available to provide goods and services to the Program and to create a reference list for all Program participants.
  - b. Identify City of Syracuse firms that could/can be certified as MBE or WBE.
  - c. Ensure that contractors and suppliers divide the goods or services to be provided into Scopes, where economically and technically feasible, to create opportunities for participation.
  - d. Coordinate activities and services with organizations such as chambers of commerce, trade groups, and community- based groups/organizations that promote MBE and WBE interests.
  - e. Create opportunities for mentoring less experienced and/or start-up M/WBE's.
  - f. Encourage the formation of joint ventures, partnerships, or other similar arrangements where feasible to provide for greater opportunity for MWBE owned firms to participate in the Program.
  - g. Develop a methodology that assists contractors, suppliers, professional service firms, or any other business providing goods or services to the Program to effectuate the business development and diversification goals of the project and the minimum standards to be attained when providing such goods and services to the project. All contracts shall include remedies and sanctions for non-compliance and identify a means by which inquiries and disputes about the project requirements may be addressed.
  
- 2.) All contractors, suppliers, professional service firms or other businesses providing goods or services shall comply with the business development and diversification rules set forth in Section II below. In the case of a contract award where compliance cannot be achieved through no fault and/or by act of omission of the contractor, the party required to comply with the workforce diversification rules shall present a plan to meet the goals of the project in an alternative manner acceptable to the JSCB. In order to present an alternative plan for meeting Diversification goals, written evidence must be presented that good faith efforts were made to secure the services of under-represented workers and businesses. In such case, the Alternative plan shall be submitted to the ICO. Review of the alternative plan and a decision of acceptance or rejection will be made by the JSCB in consultation with the ICO within 20 work days of submittal. In the event a hearing is necessary, a JSCB Hearing Committee will be established by the Board. A decision will be made by the JSCB within 10 days of such a hearing.

### II. Business Development and Diversification Rules

- 1.) In order to achieve the Business Development goals of the Program, each contractor, supplier, professional service firm or other business providing goods or services with a Board contract of \$50,000 or more shall strive to and use good faith efforts to engage disadvantaged, or woman-owned business to provide for the following:
  - a. MBE: 12% of each contract or purchase order
  - b. WBE: 8% of each contract or purchase order
  - c. **Change Orders:** The above mentioned goals shall apply to any change order issued during the project.
- 2.) The value of the work procured from certified MBEs and WBEs to accomplish these goals shall be determined as follows:
  - a. The dollar value of the work contracted to MBEs and WBEs through a purchase order, less any portion of that value paid by the MBE or WBE to any non-MBE or non-WBE manufacturer or producer to provide such goods and services as a subcontractor or sub-supplier to the MBE/WBE.
  - b. The full dollar value of a sub-contract with all M/WBE firms will be counted toward the diversification goals of the project.
  - c. In the instance of a joint venture, the percentage of the joint venture's profits (or losses) that are to accrue to the MBE or WBE joint venture partner.
- 3.) In the case of a certified minority or women owned supplier that is in the business of supplying goods and materials by maintaining accounts with product manufacturers, paying for goods and materials directly, warehouses goods and materials, provide shipping and handling, and conducts its business as an industry supplier and not a broker, the full value of such contract or purchase order shall meet the project goals. Broker participation will **not be** counted on this project and **will not** count toward the Prime Contractors diversity goals.
- 4.) Each contractor, supplier, professional service firm or other business providing goods or services shall solicit bids for subcontractors and suppliers from certified MBE and WBEs including circulation of solicitations to minority contractors, suppliers, trade associations and/or employment and business advocacy groups/organizations. When evaluating bids and/or proposals received, each contractor, supplier, or professional service firm shall act in "good faith" and shall exercise good faith efforts to assist M/WBE firms to secure such work.
- 5.) To be deemed an MBE or WBE a certificate and/or letter from the city of Syracuse so designating such must be presented prior to contract award. Failure to produce an authentic certificate/letter will result in the firm not receiving an MBE or WBE designation for the project, thereby jeopardizing compliance with diversification goals.
- 6.) MBE and WBE designations are honored only for the area/component for which the designation has been provided by an authorizing agent.

## Development and Diversification Plan for Workforce and Business

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- 7.) The City of Syracuse is the authorizing agent for MBE and WBE designations. The JSCB reserves the right to revise the Diversity Plan once the goals of **12% MBE participation and 8% WBE participation** are met through City certified firms.
- 8.) Each prime contractor, supplier, professional service firm, or other business providing goods or services under a contract with the JSCB shall provide the City's Compliance Officer (CCO) & ICO with a monthly report demonstrating compliance with the Business Development and Diversification Rules. Initially, in order to obtain certification of any claims for participation, the information submitted must include a signed contract or purchase order that the contractor, supplier, or professional service firm or business has finalized with the certified MBE or WBE firm specifying the level of participation along with the up-to-date certification information on the listed firm. During the term of the contract or purchase order, the contractor, supplier, or professional services firm will need to submit periodic reports to verify the continued participation and final percentage participation of the certified firms. This verification should include monthly payment records, any change orders with the certified contractor and any other supporting data required by the City's Compliance Officer & ICO to verify the claimed level of participation by the certified firms.
- 9.) In the event the prime contractor, supplier, and professional service firm or other business providing goods or service fails to submit the information listed in Paragraph 5 to verify participation or achieve the stated MBE and WBE goals through the duration of the contract or purchase order the City's Compliance Officer & ICO may exercise one or more of the following remedies. Summon the contractor, supplier or professional service firm or other business providing goods or services to appear before a JSCB selected hearing panel designated by the Board. The hearing shall be held within ten (10) business days of the notice of non-compliance by the ICO. After the contractor has had such a hearing the Board may elect to;
  - a. Withhold payment of amounts due pending resolution.
  - b. Assess liquidated damages in an amount equal to the contract dollar value that has not been successfully contracted to meet the MBE or WBE goals.
  - c. Withhold, suspend, cancel or terminate the contract or purchase order.
  - d. Identify such firm as a non-responsive bidder for future contract bids on the Program.
  - e. All of the above mentioned penalties would be upon a prime contractor, supplier, and professional service firm or other business providing goods or services to the JSCB who failed to comply with approved utilization plan submitted with its bid for contracts.

### APPENDIX A:

#### SUPPLEMENTAL INFORMATION, TERMS AND CONDITIONS

##### A. COMPLIANCE MONITORING

###### I. Procedure

1. Contract awardees will be notified in the award letter that MWBE (**Form A**), EEO (**Form E**) utilization plans, **Scope Verification form** and an EEO Policy Statement are due within 10 working days of the date of the award letter.
2. MWBE and EEO utilization plans, Scope Verification Forms and EEO Policy Statement will be submitted to the ICO & City's Compliance Officer ("CCO") for initial review.
3. The Prime Contractor will forward M/WBE and EEO utilization plans, Scope Verification forms and EBE Policy Statement to the City's Compliance Officer for approval.
4. Approved M/WBE and EEO utilization plans and EBE Policy Statements will be forwarded to the City's Compliance Officer prior to contract execution.
5. Once a contract is executed, the prime contractor will submit Form C, along with copies all written subcontracts, invoices and purchase orders and corresponding proofs of payments to the CCO & ICO for review by the 15th of each month for the duration of its contract.
6. The Program Manager and Prime Contractor will forward Form C, copies of invoices and purchase orders and corresponding proofs of payment to the Independent Compliance Officer for approval.
7. The ICO will produce & submit monthly reports to the Board regarding the JSCB Diversity Plan of all open contracts.
8. Once all work has been completed on a contract and prior to close out, the prime contractor will submit Form B's to the CCO & ICO stating the total amount actually paid to the MWBE or DBE along with corresponding proof of payment. A separate Form B is needed for each MWBE participating in the contract. Each Form B must be signed by both the prime contractor and the MWBE firm.
9. The Independent Compliance Officer shall review all Form B's for completeness and accuracy and forward to the CCO for approval.
10. The City Engineer will be notified of all approved Form B's prior to release of retainage. Actual compliance statistics will be included in the Monthly Compliance Report to the Board.

### B. DEFINITIONS

For the purpose of this Program, the following words, terms, phrases and abbreviations shall have the following meanings:

1. "Bidder" shall mean any contractor, vendor or other person, partnership, corporation or other business entity that submits a bid to the JSCB Program Manager or a Prime Contractor relative to the Syracuse Schools Reconstruction Program.
2. "Broker" shall mean a concern that adds no material value to an item being supplied to a procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities.
3. "Certification" shall mean the qualifying process that ensures Prime & Program Managers that a particular business is an Eligible Business Enterprise (EBE) which performs a commercially useful function.
4. "Commercially Useful Function" shall mean the execution by an EBE that contracts with the JSCB, or subcontracts with another business enterprise that contracts with the JSCB, of a distinct element of the work of the contract by actually performing, managing, and supervising the work involved. A business enterprise that serves as a conduit for another business shall not be deemed to perform a commercially useful function. In determining whether an EBE prime or subcontractor is performing a commercially useful function, factors, including but not limited to the following, will be considered:
  - a. The nature and amount of work subcontracted;
  - b. Whether the EBE has the skill and expertise to perform work for which it has been certified, as heretofore defined;
  - c. Whether the EBE actually performs, manages and supervises the work;
  - d. Whether the EBE intends to purchase commodities and/or services from a non-EBE and simply resell same to the general or prime bidder for the purpose of allowing those commodities and/or services to be counted toward assessment of a benchmark or fulfillment of a goal;
  - e. Standard industry practices relating to the use of the second tier subcontractors. Consistent with standard industry practices, an EBE subcontractor may enter into second tier subcontracts. If an EBE subcontractor subcontracts a significantly greater portion of the work of its subcontract to a non-EBE inconsistent with standard industry practices, the EBE subcontractor shall be presumed not to be performing a commercially useful function.
5. "Compliance" shall mean the condition existing when a bidder has met the requirements of this Program.
6. "Conduit" shall mean a business that purchases goods or services that are not normally purchased or sold as a part of its daily business from another business for the sole purpose of resale to the Board or a contractor doing business with the board.

## Development and Diversification Plan for Workforce and Business

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7. "Contract" shall mean any binding legal obligation of the JSCB created to acquire some good and/or service from one or more contractors (bidders), which is paid for or which is to be paid for, in whole or in part, with monetary appropriations of the Board. In this context, the terms contracting, purchasing, and procurement are synonymous and refer to the process or processes under which the Board undertakes such acquisitions.
8. "Eligible Business Enterprise" (EBE) shall mean an M/WBE firm as defined herein.
9. "Goal" shall mean the race and gender conscious measures in specified procurement subcategories.
10. "Good Faith Efforts" shall mean those active and aggressive actions established under this Program for a bidder undertaken to reflect the benchmark ranges or meet goals.
11. "Independent" shall mean that with respect to the ownership, control and activity of an EBE, the business shall operate separate and apart from the ownership, control or undue influence of another business owned and controlled by one or more non-EBEs.
12. "Joint Venture" shall mean an association of two or more independent persons, partnerships, corporations (or any combination of them) formed, consistent with the laws of the State of New York, to perform one or more specific contracts limited in scope and duration; and for which purpose, the entities combined their property, capital, effort, skills, knowledge and other assets.
13. "Minority" shall mean African American(s) (a person(s) having origins in any of the indigenous sub-Saharan racial groups of Africa), Native Americans, Hispanic Americans, and Asian Americans and any other racial group(s) for which there is a legally sufficient statistical disparity indicated, and an underutilization attributable to the effects of past or present discrimination in the local industry.
14. "Minority Business Enterprise" (MBE) shall mean, for the purpose of this Program, an independent concern which is at least 51% owned, operated and controlled by a minority who is a citizen of the United States, or a permanent resident of the United States and provides a commercially useful function, as defined herein.
15. "M/WBE" shall mean, severally or collectively, a Minority Business Enterprise (MBE) and/or a Women Business Enterprise (WBE).
16. "Non-Compliance" shall mean the condition existing when a bidder has failed to meet the requirements of this Program.
17. "Independent Compliance Officer" (ICO) shall mean the ICO who is responsible for administration of this Plan.
18. "Owned" shall mean that the minority, female, disadvantaged owner(s) possess an ownership interest of at least fifty-one percent (51%) of the business, for purposes of determining whether a business is a Minority Business Enterprise, Disadvantaged or Women Business Enterprise.

## Development and Diversification Plan for Workforce and Business

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19. "Promise of Non-Discrimination" shall mean, collectively, one or more voluntary contractual affirmative promises and other promises of forbearance made by a bidder relating to the bidder's conduct occurring prior to submission of a bid as well as after award of a contract: (1) to adopt the policies of the Board relating to the participation of EBEs in the procurement process; (2) to undertake certain affirmative good faith effort measures to ensure the maximum practicable participation by EBEs; and (3) not to otherwise engage in discriminatory conduct against EBEs inconsistent with said policies.
20. "Review" shall mean a hearing upon complaint filed by the ICO to determine whether a bidder has satisfactorily implemented good faith efforts to include EBEs in the procurement process and if so, the bidder shall be deemed to be responsive.
21. "Significant Business Presence" shall mean that an EBE has an established place of business in the [Onondaga County](#) area at which one or more of its employees are regularly based and that such place of business has a substantial role in the EBE's performance of a commercially useful function as herein defined. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.
22. "Women Business Enterprise" (WBE) shall mean, for the purpose of this Program, an independent concern that is at least 51% owned, operated and controlled by female member(s) who are citizens of the United States or permanent residents of the United States and provides a commercially useful function, as defined herein.

### C. PROGRAM SCOPE AND APPLICABILITY

The following categories are initially established to identify the nature and types of goods and services the JSCB is contracting for.

**Category A - Construction:** Includes all contracting relating to buildings, facilities and other erected structures on school projects in the Program.

**Category B - Services:** Encompasses the procurement of advertising, printing, non-construction repairs, janitorial services, training seminars and workshops, computer and information systems, security, shipping and mailing, microfiche and microfilm, courier, storage, travel, and consulting.

**Category C - Commodities:** Includes the purchase of all goods, equipment, food, office and other supplies, art, furniture and other tangible personal property not associated with under the provision of a service identified in Categories A and B.

**Category D - Employment Compliance:** This program segment [ensures](#) that minority and female employment goals are met and maintained through the life of each project.

**Category E - Professional Services:** This program segment covers: (1) professional design contracts requiring the services of licensed architects, engineers, planners and surveyors; (2) regulated professional contracts requiring the services of individuals and firms whose practices are regulated by the State of New York; (3) general consultant contracts such as program and construction management services, affirmative action services and general business services; and (4) general service contracts such as janitorial, snow removal and printing.

**Independent Compliance Officer:** The JSCB will hire and will retain an Independent Compliance Officer, herein referred to as ICO to administer and enforce the Program Diversity Plan. The ICO will be responsible for the performance of the following duties and obligations for purposes of implementing and achieving the policies and objectives of the Program:

- a. To administer and enforce JSCB policy;
- b. To promulgate rules, regulations and procedures consistent with this Program and publish and make public said rules, regulations and procedures for M/WBE Participation;
- c. To verify EBEs are appropriately certified in accordance with the provisions set forth by a recognized certification JSCB;
- d. To initiate and maintain outreach programs for all EBEs;
- e. To develop, maintain and make available a database of certified EBEs;
- f. To make a recommendation regarding reasonable and market based MBE/WBE goals and to annually assess such goals;
- g. To pursue applicable M/WBE goals, as provided for in this Program;
- h. To attend pre-bid, pre-award, post-bid and bid-award meetings;
- i. To receive and investigate written complaints as provided in the written complaint and post bid review sections of this program;
- j. To notify all parties of the right to review any decision of the ICO;
- k. To provide recommendations to the Board, CCO, Program Manager and other pertinent personnel to effectuate the policies and objectives of this Diversity Plan;
- l. To prepare and submit monthly, quarterly and annual reports;
- m. To perform other tasks necessary to fulfill the above duties and to carry out the intent of the JSCB.

### D. RIGHT TO INVESTIGATE

**Investigate Non-Compliance Practices:** The Independent Compliance Officer shall be authorized to determine compliance by contractors with goals established in JSCB contracts. Such a determination of compliance or non-compliance may be based on whether the contractor is complying with goals set forth in an [approved](#) utilization plan; or the determination is consistent with the procedures or action described in the JSCB goal plan; or the information made available to the JSCB through monitoring, onsite inspections, progress meeting, review of payrolls or other JSCB action to provide evidence of compliance. **(NYCRR 143.5)**

### E. MONITORING, EVALUATION AND REPORTING

**ICO Authorization to Monitor:** The ICO shall be authorized to collect from all contractors doing business with the JSCB information as to business ownership, supplier information, subcontractor information, and other data that reflects the race, gender, and ethnic origin of bidders, vendors, contractors and subcontractors.

**City Compliance Officer (CCO) Information:** MWBE Compliance Officer, Dept. Neighborhood & Business Development, City Hall Commons, 201 E. Washington Street, Room 600, Syracuse N.Y. 13202. Questions & Comments can be emailed to JSCB@syr.gov.net

**Duty to Monitor Contracting:** The ICO shall continuously monitor the participation of EBEs in the procurement of goods and services for the JSCB. Such monitoring shall include, but is not necessarily limited to, a statistical analysis of each commodity, construction trade and professional services, financial services, employment compliance monitoring that is the subject of the JSCB's purchasing process and a determination as to whether in any such classification there is utilization of minorities and women in a manner that is proportioned to their availability range. While this monitoring function may be performed on an ongoing, as needed basis after the completion of construction, the ICO will provide monthly, quarterly and annual written reports to the JSCB during preconstruction and construction phase and post-construction phase.

**Reporting:** The ICO will gather statistical data and report to the JSCB a summary of the purchases and contracts placed with EBEs for the period and the relative percentage to the total of purchases and contracts for that period. All reports submitted shall specify the percentage of EBEs that are minority and/or women-owned businesses as defined herein, with each minority category reported separately. Payments made to non-certified minority and women-owned businesses and other M/WBEs shall be included as a separate set of figures for purposes of tabulating the total contract dollars going to minority and women-owned businesses.

The reports will emphasize quantity and quality of EBE involvement by dollar volume. Reporting will serve the dual purpose of giving credit where due and highlighting areas needing additional effort. Monthly reports to the JSCB shall include information relevant to efforts based on ethnicity and gender.

### F. EBE ELIGIBILITY

**General Eligibility:** Generally, any business enterprise certified as an M/WBE as earlier defined under this Program, collectively referred to as EBEs, and as determined by a recognized certifying JSCB, is eligible to participate in the Program. All EBEs meeting the certification requirements of the recognized certifying JSCB shall be eligible to participate in all other features of the program. Current contact information about the certifying JSCB shall be maintained by the CCO and provided to all interested persons upon request.

### G. PROVISIONS RELATING TO MBE/WBE

**Establishment of Annual Participation Goals:** Based on the historical underutilization of MBE/WBEs, there is a compelling interest within the City of Syracuse & Onondaga County to establish goals. In fulfillment of the policy to promote equal business opportunity with the JSCB. The JSCB will establish M/WBE goals for all subcategories.

### **Contractors and Subcontractors Must Meet Participation Goals:**

It is agreed that all prime contractors and subcontractors, who have been awarded contracts for work covered by this Agreement shall be bound to meet all established goals. They shall evidence their acceptance of this provision in the Letter of Intent to Perform. This Agreement is made a part of the contract and incorporated by reference into contract document.

**Project Goals:** In addition to the annual overall program goals and category goals, the goals for each project will be established and reported.

**Notice of Bid Opportunities:** The ICO and all bidders shall give notice of bid opportunities for each contract to all known available M/WBEs with capabilities consistent with the requirements of the specific contract.

**Consideration of Goals in Bid Evaluation:** Where the JSCB establishes goals, the inclusion of underutilized M/WBEs shall become an additional factor considered in the evaluation of bids submitted by contractors, in addition to, but not limited to all other generally accepted considerations.

**Assessment of Goals:** All total contract dollars awarded to minorities women-owned businesses, whether payments are made to non-certified MBEs and WBEs, or certified M/WBEs, shall count toward the calculation of whether minority women participation reflects the goal in a designated category. For the purposes of state reporting only those dollars paid to certified M/WBE will be counted.

## H. COUNTING OF MBE/WBE PARTICIPATION

**Types of participation** that may be counted towards the goal:

- (1.) The total dollar value of the contract may be counted toward the specified goal. This includes reasonable fees charged for professional services, legal counsel and financial consultants.
- (2.) The actual portion of the M/WBEs participation in a joint venture is counted toward the goal.

## I. COUNTING EBE PARTICIPATION

### **Counting EBE Participation toward Meeting Goals:**

In the event that goals are established, all bidders, including EBE bidders, shall make good faith efforts to attain goals through all tiers of participation (all subcontractor work).

1. **Supplier Participation:** Where a prime contractor utilizes suppliers to satisfy the goal(s) in whole or in part, the EBE suppliers must perform a commercially useful function. Participation may be approved upon review of the following factors:
  - a. the nature and amount of supplies to be furnished;
  - b. whether the EBE is a manufacturer, wholesaler or distributor of the supplies and has the capabilities to deliver the goods in accordance with its certification;
  - c. whether the EBE actually performs, manages and supervises the work to furnish the supplies;
  - d. whether the EBE intends to purchase supplies from a non-EBE and simply resell same to

the general or prime bidder for the purpose of allowing those supplies to be counted towards fulfillment of the goal(s);

- e. Fifty percent (50%) of the contract amount for suppliers and vendors shall count towards the goal on construction contracts.

### J. REQUIREMENTS OF CONTRACTORS

**Contractor's Utilization Plan:** At the time of bid tender each bidder shall be required to submit to the ICO a completed Contractor Utilization Plan. This City form will satisfy the requirement of that utilization plans are submitted. The ICO shall review the plan and issue a written notice of acceptance or deficiency. Any deficiency must be cured within seven days.

**Promise of Non-Discrimination:** At the time of bid tender each bidder shall be required to submit to the ICO a duly-executed and attested Promise of Non-Discrimination, enforceable by law, which shall contain the following provisions. The bidder voluntarily agrees:

1. To adopt the policies of the JSCB relating to equal opportunity in contracting on projects and contracts funded, whole or in part, with monetary appropriations of the JSCB;
2. To undertake certain good faith efforts as set forth herein to attain the maximum practicable participation of EBEs on said projects and contracts;
3. Not to otherwise engage in discriminatory conduct against EBEs.
4. That the Promise of Non-Discrimination shall be continuing in nature and shall remain in full force and effect without interruption;
5. That the Promise of Non-Discrimination is made a part of the contract and incorporated by reference into. The failure of the bidder to uphold the promises of non-discrimination shall constitute a material breach of contract. The JSCB may declare the contract in default and may exercise any and all applicable rights and remedies, including but not limited to, cancellation of the contract, termination of the contract, rejection of bids for future JSCB contracts, and withholding and/or forfeiture of compensation due and owing on a contract.

### K. GOOD FAITH EFFORTS

**Mandatory Good Faith Efforts:** Every bidder shall submit with the bid evidence of good faith efforts required by this Program in the form of a checklist. Good Faith Efforts shall be mandatory for all bidders in construction, commodities and professional services and shall at a minimum conduct the following:

1. Delivery of written notice to the following:
  - a. all of the available certified EBEs whose names, addresses, and telephone numbers are provided by the ICO to all bidders for each potential subcontracting or supply category in the Contract;  
AND
  - b. all EBEs which requested information on the Contract. Requirements 1a & 1b waived at the

discretion of the ICO.

2. The written notice must contain:
  - a. Adequate information about the plans, specifications, and relevant terms and conditions of the Contract and about the work to be subcontracted to or the goods to be obtained from subcontractors and suppliers;
  - b. A contact person knowledgeable of the project documents within the bidder's office to answer questions;
  - c. Information as to the bidder's bonding requirements, the procedure for obtaining any needed bond, and the name and telephone number of one or more acceptable surety companies to contact;
  - d. The last date and time for receipt by bidder of EBE bids or price quotations.
3. Attendance at any special pre-bid meeting called to inform EBEs of subcontracting or supply opportunities.
4. Division of the contract, in accordance with normal industry practice, into small, economically feasible segments that could be performed by an EBE. Under no circumstances, however, shall a bidder be required to segment work solely for the purpose of utilizing EBE participants as subcontractors where such segmentation is not in accordance with common and accepted industry practices relating to the utilization of other firms as subcontractors.
5. Providing an explanation for rejection to any EBE whose bid or price quotation is rejected, unless another EBE is accepted for the same work, as follows:
  - a. Where price competitiveness is not the reason for rejection, a written rejection notice including the reason for rejection will be sent to the rejected EBE;
6. Providing a written explanation for rejection of any EBE to the ICO, unless another EBE is accepted for the same work, including the name of the non-EBE firm proposed to be awarded the subcontract or supply agreement. Providing to the ICO records of all EBEs' price quotations and the successful non-EBEs' price quotations, where appropriate. Where price competitiveness is not the reason for rejection, a written rejection notice including the reason for rejection will be sent to the rejected EBE;
7. Providing a non-discriminatory work site. Bidder shall ensure and maintain a work environment free of harassment, intimidation and coercion at all construction sites, offices and other facilities at which the bidder's employees are assigned to work. The contractor shall specifically ensure that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the bidder's obligation to maintain a non-discriminatory work environment.
8. Reporting improper conduct and all known violations of this program.

**Additional Good Faith Efforts:** In addition to, but not in lieu of the above mandatory minimum good faith efforts required under this Program, a bidder at its option may also make a showing of good faith by providing evidence that it performed the following tasks to encourage and obtain the maximum practicable participation of EBEs:

1. Soliciting specific individual EBEs whose availability as potential sources of goods or services can be reasonably ascertained. This measure includes the sending of letters or making other personal contacts with specific certified EBEs including those with whom the bidder has contracted with in the past as well as other EBEs with whom the bidder may be unfamiliar, but whose identities can be ascertained from a Directory of Certified EBEs maintained by the ICO.
2. Sending letters or making other personal contacts with other minority and women business enterprise programs as well as private minority trade associations and programs known to publicize contracting and procurement opportunities for the benefit of their respective participants and/or members. Such contacts shall be relevant to the JSCB bid under consideration and the type of minority and/or women-owned business needed; and shall provide the same information required by a contractor or vendor to effectuate direct contacts with EBEs.
3. Advertising in publications of general circulation in the Syracuse area, trade publications that are otherwise focused or marketed to a minority and/or woman business enterprise. The business must be owned and operated by them not less than twenty (20) days prior to the date bids are due. The publication or media shall be one which reasonably covers the metropolitan area. The advertisement shall identify and describe the specific subcontracting or other opportunity in reasonable detail, and shall state the M/WBE and/or EBE Goal(s) applying thereto.
4. Conducting follow-up of initial solicitations of interest by contacting EBEs to determine, with certainty, whether these firms are interested.
5. Providing reasonable assistance to an otherwise qualified EBE in need of communication with the Prime contractor.
6. Providing equal opportunity to EBEs when replacing non-performing EBEs. If an EBE subcontractor or supplier fails to perform successfully, the bidder must provide other EBEs an equal opportunity to replace the non-performing subcontractor or supplier; and shall exercise the same good faith affirmative action efforts to secure the replacement.

**Evaluation of Good Faith Efforts:** In order to assure that bidders comply with the JSCB's EBE Policy, successful bidders must demonstrate good faith efforts. In evaluating good faith efforts, the ICO will determine whether the apparent low bidder has made reasonable efforts to obtain EBE participation. The ICO may evaluate not only the different kinds of efforts made by a bidder, but also the quantity and intensity of those efforts.

The bidder may submit additional documentation to the ICO for consideration in the evaluation of the bidder's good faith efforts.

**Required Documentation:** To demonstrate compliance with the good faith requirements of this Program, bidders shall keep detailed records of all correspondence and responses thereto, logs of all telephone calls made and received regarding the project or contract, copies of advertisements in publications and other media, and other relevant papers as required by this program for a minimum period of three (3) years.

**Award of Contract:** The JSCB in accordance with the applicable law retains the right to determine the action to be taken on the contract. The JSCB reserves the right to reject bids and perform project re-bids for the purpose of attaining EBE goals, in accordance with applicable law.

**Contractors' Post-Award Reporting and Maintenance of Records:** Successful bidders awarded contracts incorporating EBE participation **must submit reports by the 15th of each month of the project as requested by the ICO.** These reports shall summarize the number and dollar amounts of payments made during the terms of the contract to EBEs. This report shall count payments to M/WBE separately. This report shall be submitted to the ICO on the 15th day of each calendar month during the Project completion.

### L. WRITTEN COMPLAINT AND POST-BID REVIEW

Any bidder allegedly aggrieved by the provisions of this Program may seek review of any written complaint to the CCO and Program Manager.

**Consideration of Bids:** The ICO shall evaluate the apparent low bidder's good faith efforts for compliance. Upon a determination of compliance by the apparent low bidder, the ICO shall forward the apparent low bidder's bid to the Program Manager as the recommended low bid. If there is an issue of non-compliance within the meaning of this Program, or for any other written complaint alleging any violations or non-compliance with this Program, the ICO shall notify the affected party in writing and by registered mail (hereinafter "Notice of Non-Compliance Review") setting forth with particularity the reasons for the review and scheduling a Post-Bid Review Conference.

1. **Post-Bid Review Conference:** A Post-Bid Review Conference shall be held with the ICO, the apparent low bidder, and if applicable, the Project Manager.
2. **Declaration of Non-Responsiveness:** Following the Post-Bid Review conference the ICO and program manager may make a recommendation to the Board that an apparent low bidder's bid be rejected as non-responsive for failing to demonstrate Good Faith Efforts or any other provisions of this Program, as determined by the ICO.

### M. SANCTIONS AND PENALTIES FOR NON-COMPLIANCE

**JSCB to Impose Sanctions/Penalties:** The JSCB, in consultation with the ICO, shall have the authority and power to enforce the provisions of this Program. Failure by a bidder to comply with the requirements shall subject the non-complying party to administrative sanctions, after the opportunity to attend a hearing before a panel selected by the JSCB Board for that purpose. In addition, a violation of this Program shall constitute a material breach of contract enforceable by law or in equity as will all other contract provisions, including the imposition of penalties. The following sanctions and penalties are established for the enforcement of this Program:

1. Declaration of Non-Responsiveness: In addition to standard factors in bid evaluation, the JSCB may declare a bid non-responsive where it is determined that a bidder: Has not filed with the JSCB a duly executed "**Contractor's Utilization Plan**" or "**Promise of Non-Discrimination**"; or has failed to implement Good Faith Efforts.
2. Cancellation of Contract: The JSCB may declare a contract as null and void where, after such contract has been awarded, if an investigation determines that the bidder's EBE documents contain false, fictitious, or fraudulent information.
3. Rejection of Future Bids: The JSCB may reject any or all future bids of a bidder until such time as the bidder shall have demonstrated that it is or shall come into compliance.
4. Withholding Payment, Limited Suspension and Debarment: For falsifications, misrepresentations, or engaging in subterfuge to obtain a contract, the JSCB may remove a bidder from its list of pre-qualified or otherwise eligible firms entitled to do business with the JSCB for a period not to exceed one (1) year or withhold payment after notice and opportunity for due process hearing before a panel selected by the JSCB Board for that purpose.
5. Permanent Debarment: For repeated violations, the JSCB may remove a bidder from its list of pre-qualified or otherwise eligible firms entitled to do business with the JSCB, in accordance with applicable law.

### N. SANCTIONS GUIDELINES

**Guidelines for Imposition of Sanctions**: The sole authority for imposition of sanctions shall lie with the JSCB, in accordance with applicable law.

1. General: No suspension shall be imposed by the JSCB except upon evidence of specific conduct on the part of an EBE or other contractor that is inconsistent with or in direct contravention of the applicable provisions of this Program. Furthermore, the imposition and enforcement of sanctions shall be consistent with applicable state and federal law. In addition sanctions may only be imposed after the EBE contractor or bidder has had the opportunity of a hearing before a panel selected by the JSCB Board for that purpose.
2. Severity of Sanctions: In determining the length of any suspension, the JSCB shall consider the following factors:
  - a. Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the contractor or EBE of the duties imposed on them by this Program;
  - b. The number of specific incidences of failure by the contractor or EBE to comply;
  - c. Whether the contractor or EBE has been previously suspended;
  - d. Whether the contractor or EBE has failed or refused to provide the JSCB or the ICO with any

- information required by this Program;
- e. Whether the contractor or EBE has materially misrepresented any applicable facts in any filing or communication to the JSCB or the ICO; and
  - f. Whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.
3. Length of Suspension: Suspensions may be for any length of time not to exceed two (2) years. Suspensions in excess of one year shall be reserved for cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in contravention of applicable requirements, cases where the contractor or EBE has been previously suspended, or other similarly egregious conduct.