

New York State HOME Local Program
Minority and/or Women Business Enterprises (MWBE) Policy

Background:

The NYS HOME Local Program is funded by the federal U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnership Program (HOME Program). The funds are dedicated to provide financial assistance for affordable housing directed to persons with incomes below 80% of area median income.

The HOME Program regulation at 24 CFR 92.351 (b) Minority outreach requires all HOME funded programs and projects to adopt affirmative marketing procedures and include, to the maximum extent feasible, minorities and women and entities owned by minorities and women to be provided employment and contracting opportunities funded by the HOME program.

Definition: Minority Women owned Business Enterprise (MWBE):

1. At least 51 percent owned by one or more United States citizens or permanent resident aliens who are minority group members. An enterprise in which such minority ownership is real, substantial and continuing. An enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the business enterprise.
2. An enterprise authorized to do business in this State and is independently owned and operated.
3. An enterprise owned, either directly or through a holding company, by an individual or individuals, whose ownership, control and operation are relied upon for certification, with an individual personal net worth at the time of application that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation per the consumer price index of the previous year starting in 2011.
4. An enterprise that is a small business.

Requirements if HOME funded and no State funds are invested in the program or project:

Requirements for HOME Local Program and all awardees (*known as Local Program Administrators or LPAs*) of HOME Local Program funds and contractors must adhere to the following to ensure M/WBE participation:

1. MWBE's do not have to be State certified through Empire State Development

2. LPAs must widen the pool of outreach and bid advertisements to attract more potential MWBE bidders.
3. Grantees must document all outreach activity
4. Solicitations must be marketed to local government, county and/or non-profit qualified contractor lists.
5. Solicitations must receive a minimum of three bids to award a contract.
6. Verify that the contractor has not been debarred from working with HUD.

Reporting Requirements:

LPA's must submit to the HTFC Office of Community Renewal (OCR) an annual report detailing the outreach and activities provided to include, to the maximum extent feasible, minorities and women and entities owned by minorities and women to be provided employment and contracting opportunities funded by the HOME program. For those MWBE's that participate, the LPA must annually compile data for HUD's MWBE utilization report:

- The HOME Local Program contract SHARS ID
- Contract Amount
- Type of Trade
- Contractor ID #, name and address
- The report may include both State certified and non-State certified MWBEs
- Data submitted from LPAs to OCR annually. OCR compiles data and submits annual consolidated MWBE report to HUD.

Requirements if HOME funded and State funds are invested in the program or project:

If HOME Program Funds are combined with New York State funds in a program or project, then LPAs must adhere to State requirements. Article 15-A of the State Executive Law was promulgated to ensure that only **State certified (as certified by Empire State Development Corporation)** MWBEs shall be given the opportunity for meaningful participation in the performance of State-assisted contracts and to facilitate the award of a fair share of State assisted contracts and subcontracts to such enterprises.

In accordance with Article 15-A, New York State Homes and Community Renewal (HCR) requires, for State funded program or projects, contractors to make good faith efforts to ensure that State Certified MWBEs have opportunities for meaningful participation on projects to be undertaken and financed with funds provided by HCR.

Contract Amount Threshold:

- 1) All contracts more than \$100,000 in State funds for real property renovations and construction.
- 2) All contracts more than \$25,000 for labor, services equipment, materials or any combination thereof.

State funding goals for minority and women business enterprises: that at least 15% of the contract be allocated to MBEs and 15% allocated to WBEs that have been certified by the State of New York as certified MWBEs. The NYS MWBE Certified *MWBE Directory* is located at: www.empire.state.ny.us.)

Reporting Requirements:

State funding requires the submission of a Utilization Plan that describes:

- Projected use of NYS certified MWBEs
- Utilization of MWBEs at the required dollar amounts
- Must be submitted and approved before the grant funds are disbursed

The utilization plan must be submitted to the Office of Economic Opportunity and Partnership Development (OEOPD) for review.

OEOPD verifies good faith efforts to hire MWBEs and determines the availability of waivers of MWBE requirements as applicable.

LPAs must quarterly report to OEOPD on the following:

1. Cumulative Payment Statement
2. EEO Workforce Utilization

If an LPA does not meet State MWBE requirements, sanctions for non-compliance may include withholding contract execution and/or payments.

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2. An enterprise in which such minority ownership is real, substantial and continuing.
3. An enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the business enterprise.

4. An enterprise authorized to do business in this State and is independently owned and operated.
5. An enterprise owned, either directly or through a holding company, by an individual or individuals, whose ownership, control and operation are relied upon for certification, with an individual personal net worth at the time of application that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation per the consumer price index of the previous year starting in 2011.
6. An enterprise that is a small business.

Certification:

I certify that I have read this policy and will adhere to the NYS HOME MWBE Policy requirements as stated in this document and as applicable in the NYS HOME Program. I understand that failure to report MWBE Policy compliance may result in sanctions by HUD, HCR or the HTFC.

Agreed to and executed as of this date by:

Title_____

Date_____