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Section: 4.00 M/WBE AND FAIR HOUSING AND EQUAL OPPORTUNITY
REQUIREMENTS

Sub Section: 4.01 Introduction

This Section describes the general program requirements and policies concerning
Minority/Women-Owned Business Enterprises (M/WBE), Equal Opportunity, and Fair Housing.

It is organized under the following headings:

- 4.02 M/WBE Requirements
- 4.03 Equal Opportunity Requirements
- 4.04 Fair Housing Requirements

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Sub Section: 4.02 M/WBE Requirements

Article 15-A of the State Executive Law was promulgated to ensure that certified M/WBEs 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, HCR requires contractors to make good faith efforts to ensure that M/WBEs have opportunities for meaningful participation on projects to be undertaken and financed with funds provided by HCR.

Goals for M/WBE participation are assessed and imposed on each State-assisted contract. Participation levels are based upon the availability of certified M/WBE to perform the work in the region in which the contract is to be performed and the total dollar value of the work to be performed in relation to the dollar value of the components of the contract scope. Contractors on HCR projects are required to submit quarterly reports detailing the utilization of M/WBE in performing the contract.

Article 15-A of the Executive Law and the M/WBE Regulations requires contractors to take affirmative steps to encourage the utilization of M/WBEs. Contractors are notified by HCR of such requirements. A copy of the Directory of Certified Minority and Women Owned Businesses can be downloaded from the NYS Empire State Development web site at: <https://hcr.ny.gov/oeopd>. Technical assistance is offered by HCR's Office of Economic Opportunity and Partnership Development which may be reached via email at Econ.Opportunity@hcr.ny.gov.

4.02.01 Utilization Plan

Applicants are required to submit a Utilization Plan for the participation of State-certified M/WBEs in connection with their project. The Utilization Plan must include a list of the names and federal identification numbers of M/WBEs which the applicant intends to use in connection with the project, the dollar amount and the scope of work to be performed, the date when such work will commence, and the estimated completion date for each contract.

4.02.02 Methods for the Participation of M/WBEs

The following steps are recommended for contractors to pursue participation by M/WBEs on State-assisted contracts. Contractors are encouraged to use these steps in drafting any policy statements which will guide their efforts in meeting the applicable M/WBE goals.

- (i) actively and affirmatively solicit bids for contracts and subcontracts from certified M/WBE, including the marketing efforts to minority and women contractor associations;
- (ii) identify NYS Certified MWBEs by using ESD's online MWBE directory: <https://esd.ny.gov/doing-business-ny/mwbe>;
- (iii) ensure that plans, specifications, requests for proposals and other documents used to secure proposals for the performance of work or supply of materials will be made available in sufficient time for review by prospective M/WBEs;
- (iv) encourage, where economically and technically feasible, the formation of joint ventures, partnerships or other similar arrangements among contractors to enhance participation by M/WBE;
- (v) partner with other governmental agencies to further outreach to M/WBE firms; and,
- (vi) ensure that payments to M/WBE firms are made on a timely basis and with such frequency that undue financial hardship is avoided and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

In compliance with the requirements of Article 15-A, applicants must provide HCR with assurances that they will require contractors to take specific affirmative action steps, including, but not limited to, the above-mentioned items, in the form of the Agency's M/WBE Utilization Plan and Utilization Agreement which may be found at hcr.ny.gov/mwbe-sdvob-forms under the "M/WBE & EEO" and "M/WBE Contract Documents" sections.

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Sub Section: 4.03 Equal Employment Opportunity

Equal employment opportunity (EEO) is guaranteed by Title VII of the Federal Civil Rights Act of 1964, as amended, and the New York State Human Rights Law which prohibits discrimination in employment on the basis of race, creed, color, disability, national origin, age, sex, marital status, or arrest record. Affirmative action is generally defined as any positive action that is intended to:

- (i) correct the effects of past discrimination (whether such actions were intentional or unintentional);
- (ii) identify and seek to eliminate current discriminatory practices; and,
- (iii) seek to prevent discrimination by actively initiating and implementing policies and procedures designed to promote greater employment opportunities for protected class individuals in the work force.

Affirmative action plans are written documents outlining the specific steps to be taken by an employer to accomplish the aforementioned objectives; though they may vary in content and design, they must be consistent with Federal and State EEO laws. The following will be required of all HCR applicants (owners, builders and other major project participants):

- (i) EEO and MWBE Policy Statements: signed by the organization's president, chair or CEO;
- (ii) a description of the organization's personnel policies and practices for recruitment, hiring, promotion, separations, training and grievance procedures with assurances that such are consistent with applicable laws and affirmative action policies; and,
- (iii) a description of how the organization will communicate its affirmative action and non-discriminatory policy to contractors, subcontractors, vendors and suppliers.

Under Section 312 of Article 15-A of the New York State Executive Law, contractors under State contract must state in all solicitations or advertisements for employees that equal employment opportunity will be afforded to all qualified applicants. In addition, contractors

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must include in every subcontract the provisions of Article 15-A § 312.1 except as relates to employment outside of New York State.

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Sub Section: 4.04 Fair Housing Requirements

4.04.01 Fair Housing Laws

Funded applicants are required to comply with all applicable federal, state and local fair housing and non-discrimination laws, including but not limited to the following:

- The federal Fair Housing Act;
- New York State Human Rights Law;
- Section 602 of the New York State Private Housing Finance Law;
- Section 504 of the Federal Rehabilitation Act of 1973;
- The Americans with Disabilities Act; and,
- The Violence Against Women Act and implementing federal and state policies and regulations.

In accordance with these laws, discrimination based on any of the following factors is prohibited in the conditions or privileges accorded with the sale, rental, or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith.

- Race, Color or Ethnicity
- Religion or Creed
- Sex
- Gender
- Gender Identity or Expression
- Sexual Orientation
- Any prior arrests or criminal accusations that have been resolved in the applicant's favor, youthful offender adjudications, pending arrests with adjournments in contemplation of dismissal or a variety of sealed convictions listed in section 296(16) of the New York State Human Rights Law
- Disability
- National Origin
- Military Status
- Lawful Source of Income
- Age
- Marital Status
- Familial Status (e.g. whether they have children in the household)
- Adverse factors resulting from being a victim of domestic violence, dating violence, sexual assault, or stalking

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This list is not exhaustive of all factors and categories that are protected under law for a particular project. For example, in New York City, additional protected characteristics include citizenship status and partnership status.

In addition, to the extent that any approved tenant selection policies are based on an applicant or tenant being a veteran or having served in the armed forces, the tenant selection policy shall include those who served in the armed forces of the United States for a period of at least six months (or any shorter period due to injury incurred in such service) and (i) have been thereafter discharged or released from service, or (ii) are the spouse or surviving spouse of someone in (i).

Applicants and owners must incorporate the provisions of these laws into the development of marketing plans, tenant selection plans, admission standards and policies, and waiting lists for housing units to be constructed or rehabilitated with State funds.

4.04.02 Affirmative Fair Housing Marketing Plans

Applicants and owners of projects must comply with HCR fair housing policies and procedures, including, but not limited to those set forth in the Affirmative Fair Housing Marketing Plan Guide for Managing Agents, Owners and Developers, as may be updated from time to time. The Guide can be found at the following link: hcr.ny.gov/marketing-plans-policies.

All HCR-financed projects must submit and obtain approval from HCR's Fair and Equitable Housing Office (FEHO) of (1) a Project Summary and Certification form (the "Short Form") which must be approved by HCR prior to construction finance closing, and (2) an Affirmative Fair Housing Marketing Plan (the "Long Form"), which must be approved before any marketing and leasing activities can begin. Limited waivers for these requirements may be granted by FEHO but only in limited circumstances and on a case-by-case basis (e.g. 4 units or less). As part of this approval process, FEHO reviews, among other things, any preferences in tenant selection, marketing plans to reach those least likely to apply, tenant selection policies and lotteries, and reasonable accommodation procedures.

Forms and Timelines for New Construction

Affirmative Marketing Plan Guidelines and forms may be found at: hcr.ny.gov/marketing-plans-policies#affirmative-fair-housing-marketing-plan. Projects are under a continuing duty to check this site and use the most updated forms and guidance available on the site.

Project Summary and Certification Form (the “Short Form”)

A Short Form must be approved by FEHO prior to closing of construction financing. The completed form must be submitted at least 60 days prior to closing. All preferences must be listed in this Short Form for approval by FEHO. Also see Section 7.05.01 General Tenant Selection Process for requirements regarding screening and suitability for tenancy.

Affirmative Fair Housing Marketing Plan (AFHMP) (“the Long Form”)

The Affirmative Fair Housing Marketing Plan form must be submitted to HCR no later than 240 days (8 months) prior to anticipated date of occupancy. FEHO attorneys and staff will review the submission and all required attachments and provide comments. Once all comments have been addressed, FEHO will issue a conditional approval of the Long Form. Within 30 days of the conditional approval of the Long Form, the Project Rent-Up conference must be scheduled which will include a review of the lottery requirements. Also at this time, the final advertisement must be submitted with the final application and lottery dates for HCR approval. FEHO will issue the final approval of the Long Form once the Project Rent-Up Conference has occurred and the final advertisement is approved. Once FEHO has issued the final approval of the Long Form, the marketing and application period can commence. The marketing and application period can run concurrently and must be at least 60 days prior to application deadline. Marketing and outreach efforts must include those that are approved in the AFHMP. The final HCR-approved advertisement announcing the lottery must be posted on HCR’s website (hcr.ny.gov/lotteries) at least 60 days prior to the tenant application due date. The project must also be posted on NYHousingSearch.gov, a FREE service provided by New York State to advertise and search for affordable and accessible housing. The service is also available through a toll-free, bilingual call center at **1-877-428-8844**. Representatives are available to assist with listings and searches.

In addition, projects must allow 10 business days after the application deadline before running the lottery.

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Please note that the "Fair/Equal Housing Opportunity" and the "Accessibility" logos must be displayed on all affordable housing advertisements. These logos can be found at:

hud.gov/library/bookshelf/11/hudgraphics and <https://accessibleicon.org/#use>.

AFHMP Requirements for Existing Projects

Once the projects are developed, Owners and their agents must submit for FEHO approval an updated Affirmative Fair Housing Marketing Plan if they are remarketing or repopulating a waitlist and a prior-approved plan is more than 5 years old, or when they are securing new HCR financing. If projects are remarketing or securing new HCR financing and their AFHMP was approved less than 5 years ago, they can complete a Fair Housing Recertification Form that can be provided by the HCR representative. Other instances where a Fair Housing Recertification must be completed and approved by FEHO are: Change in ownership/management, change in community or occupancy preferences, change in age restrictions, change in special needs units, change in number of affordable units and change in special needs units. Consult your HCR representative for a Fair Housing Recertification for each of these instances.

Preferences in Tenant Selection

All preferences in tenant selection must be approved by FEHO. Any proposed preferences, including those for which projects received points under HCR's Qualified Allocation Plan for Low-Income Housing Tax Credits, or preferences for those involved in artistic or literacy activities, must be included in Affirmative Fair Housing Marketing Plan submissions, the Short Form and the Long Form for approval. Projects will be required to provide demographic information for the preference category to ensure that the preference does not disparately impact groups protected by fair housing laws. Projects proposing an established relationship with a public housing authority must execute a PHA Linkage Agreement (<https://hcr.ny.gov/marketing-plans-policies#affirmative-fair-housing-marketing-plan>).

Tenant selection and occupancy preferences, even when not intentionally discriminatory, may in practice deny equal housing opportunity or perpetuate segregation without justification and thus be prohibited by the Fair Housing Act and the New York State Human Rights Law. HCR's approval of any AFHMP containing any tenant selection or occupancy preferences does not constitute legal advice or its imprimatur of legality of the preference.

Accessible Units

For projects that received points at application for proposing fully accessible and adapted move in ready units, Owners must provide a written agreement with one or more organizations experienced in serving the needs of persons with mobility, hearing and visual impairments. In this written agreement the service organization should confirm that there is a need for fully adapted units in their service area and must agree to refer potential tenants with mobility, hearing and/or visual impairments to the project. Owners may not exclusively reserve fully adapted units for any one organization.

The project owner will, in accordance with Fair Housing regulations and the projects approved Affirmative Fair Housing Marketing Plan, market fully adapted units to all organizations serving people with mobility, hearing and vision impairments in the projects primary market area and give persons with mobility, hearing and vision impairments preference in tenant selection for fully adapted units. To rent fully adapted units to persons who do not have impairments, an owner will need to document to HCR's satisfaction that units have been extensively marketed to service organizations and independent living centers and there are currently no potential tenants with mobility, hearing or vision impairments needing a unit. Project owners with agencies and/or group agreements for persons with special needs must adhere to their Affirmative Fair Housing Marketing Plan.

Senior Waivers

Any restrictions based on age must be in accordance with the N.Y. Exec. Law § 296-2a(e) and the federal Fair Housing Act, 42 U.S.C. 3601 et seq. Marketing plans for elderly projects should also indicate how elderly projects will be structured, either as a "55 or over" project, where at least 80% of occupied units are occupied by at least one person who is 55 years of age or older; OR as a "62 or older" project, where all occupants of the project are persons 62 years of age or older. (See Section 5.15 for further details). In HTFC projects which are jointly financed with the US Department of Agriculture Rural Housing Services, an elderly project is required to be occupied by persons 62 years of age or older, or by persons with disabilities of any age. In either case, applicants must obtain an exemption for the New York Division of Human Rights in order to develop housing that has age restrictions as part of its tenant selection policy.