

CITY OF NEW YORK

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PROGRAM

First Quarter of Fiscal Year 2019

Compliance Report covering July 1, 2018 – September 30, 2018

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Introduction

This report describes the City's efforts to ensure minority and women-owned businesses have greater access to public contracting opportunities. The reporting period covers program accomplishments for the first quarter of Fiscal Year 2019 (July 1, 2018 – September 30, 2018). As per the New York City Administrative Code §6-129(l)1, the report is jointly submitted by the Director of the Mayor's Office of Contract Services (MOCS), as City Chief Procurement Officer, and by the Commissioner of the Department of Small Business Services (SBS).

This report summarizes program activity, prime contract, and subcontract utilization data for City-certified Minority and Women-Owned Business Enterprises (M/WBEs) and Emerging Business Enterprises (EBEs), as well as additional data specified in Section 6-129 of the New York City Administrative Code. The report covers prime contracts that were registered and subcontracts approved in the first quarter of FY 2019, including procurements that were solicited before LL 1 became effective and are subject to LL 129.¹ The City's M/WBE program is led by the Mayor's Office of M/WBEs and is administered in partnership with SBS and MOCS.

In addition to the requirement that the City find vendors responsible, State law also requires that most contracts be awarded to the lowest responsive bidder or the best proposer. SBS has worked aggressively to expand opportunities for minority and women-owned firms by connecting them to a comprehensive range of programs that provide procurement technical assistance and capacity building support, as well as other resources to help them navigate and compete in the public procurement marketplace. During the first quarter of FY 2019, M/WBEs were awarded over \$169 million in prime contracts subject to the M/WBE program and nearly \$61 million in eligible subcontracts. The City achieved a combined prime and subcontract utilization of 14%.

Expanding the Base of Certified Firms

SBS continues to increase the participation of M/WBE firms in City contracting by expanding its base of certified businesses. During the certification process, a company's ownership and management structure is thoroughly reviewed to ensure the applicant performs the key functions of the business. Minority and women-owned firms who choose not to certify with the City are neither tracked nor measured in the City's

¹ LL 1 amended the law that created the City's M/WBE program, LL 129 of 2005. The new law took effect on July 1, 2013.

performance reporting. The NYC Online Certification Portal (www.nyc.gov/certifyonline) allows M/WBE firms to certify and recertify online, check the status of applications, and update their business profiles to better promote themselves to buyers. In addition to the regular certification workshops, during the reporting period, SBS continued to hold one-on-one certification application review sessions. These sessions help ensure that firms submitted complete and quality application packages, reduced back and forth and delays, and increased the chances of obtaining certification. In the first quarter of FY 2019, SBS conducted 11 certification workshops and application review sessions for 119 businesses.

Various community partners help extend the reach of SBS certification outreach efforts. Businesses receive assistance in applying for certification from these organizations, including the New York City Council-funded community-based groups that comprise the M/WBE Leadership Association, and the SBS network of Business Solutions Centers located throughout the five boroughs. This helps to ensure a higher quality application, making the submission and the certification review process easier and simpler. Between July and September 2018, SBS certified 438 new M/WBEs and recertified 151 M/WBEs, bringing the total number of City-certified companies to 7,199 as of September 30, 2018. Our community partners help support the business growth of M/WBEs with marketing workshops, networking events, and business development services. During the reporting period, SBS collaborated with local development corporations, trade associations, industry membership organizations, and local chambers of commerce on 54 events to spread the word about the benefits of certification and the range of capacity-building services available citywide to help businesses grow.

Emerging Business Enterprise Program

Local Law 12 of 2006 created the Emerging Business Enterprise (“EBE”) program directed at expanding procurement opportunities to disadvantaged businesses. Although similar outreach approaches and capacity-building initiatives were and continue to be undertaken by SBS to successfully implement the M/WBE and EBE programs (SBS often targets potential M/WBE and EBE groups simultaneously), the outcomes of such measures are quite different. Similar to the federal DBE program, eligibility for EBE certification under the City’s program requires that applicants satisfy a two-prong test of economic disadvantage and social disadvantage. Where social disadvantage is presumed for M/WBEs and further evaluation of social or economic disadvantage criteria is not required for those individuals, the City’s EBE

program criteria relies on individual and specific determinations of an applicant's disadvantage. As of September 30, 2018, there were 8 certified EBE companies.

Unlike the M/WBE program, limited participation in the EBE program has made it difficult for City agencies to set goals on contracts. During the reporting period, EBEs were awarded a total of \$1,158,926 in all types of prime contracts and subcontracts.

SBS continues to strive towards increasing participation in the EBE program through a wide range of outreach efforts regularly conducted with businesses and community partners. Once increased participation in the EBE program is achieved, City agencies will have sufficient availability of certified EBE firms needed to set feasible contract goals.

Locally-based Enterprise Program

Although the Locally Based Enterprises (LBE) program is not referenced in Administrative Code §6-129, LBE is a certification category administered by SBS, and the applicability of the LBE program in City procurement is impacted by the M/WBE program. As set forth in Administrative Code §6-108.1, the LBE program is designed to promote the growth of small construction firms through greater access to contracting opportunities with the City. Generally, the program requires agencies to utilize LBEs as a prime or subcontractor on specific construction contracts. However, the number of contracts subject to the LBE program has substantially decreased in recent years due to other goal-setting programs established by the City, State and federal governments. Under the LBE program rules, contracts are excluded from the program if they are federally or State funded and subject to their requisite goal programs. Federally funded construction projects are generally subject to the Disadvantaged Business Enterprise program, and State funded contracts are subject to other goals requirements as well, including Article 15-A of the New York State Executive Law. As many City construction contracts are federally and State funded and subject to subcontracting goals under those programs, they are not covered by the LBE program. With the creation of the City's M/WBE program, M/WBE subcontracting goals are applied to City funded construction contracts in lieu of LBE goals. Accordingly, this further limits the applicability of the LBE requirements.

During the reporting period, SBS certified one firm as LBEs, bringing the total number of LBE certified firms to 29 as of September 30, 2018. Many of our LBEs are also certified as M/WBEs and can be considered for

subcontracting opportunities on City construction projects with M/WBE goals. During the reporting period, LBEs were awarded \$376,030 in all types of prime contracts and subcontracts.

Selling to Government

SBS offers selling to government services that help M/WBEs navigate the City's procurement system. Services are provided through a combination of workshops and one-on-one assistance. To be an effective bidder on City contracts, M/WBEs must understand the City's procurement rules, the types of contracts, contract sizes, and how to interpret and respond to solicitations. M/WBEs must also maintain the most up-to-date information on their profile in the SBS Online Directory of Certified Businesses (www.nyc.gov/buycertified) and other City procurement systems. In the first quarter of FY 2019, SBS worked with 709 companies to help them understand the City's procurement rules, introduce them to NYC government contracting, explain the benefits of certification, and update their contact information and business profiles.

Also, during the reporting period, 166 companies attended SBS' regularly scheduled workshop "Selling to Government", a monthly workshop open to the public that provides firms with the foundational basics of government contracting.

Through SBS' Technical Assistance Program, firms receive one-on-one assistance on submitting the most competitive bids and proposals for City contracting opportunities. In the reporting period, SBS held 345 one-on-one sessions. Additionally, in the first quarter of FY 2019, 218 companies attended SBS' Technical Assistance workshops that provided targeted training to different industries on government contracting techniques.

SBS also works with the New York City Council through the M/WBE Leadership Association to provide certified firms with more capacity-building services, including help applying for loans and surety bonds, preparing bids and proposals, and marketing to both the public and private sector. During the reporting period, member organizations sponsored 27 events, provided 219 one-on-one assistance sessions, assisted with 44 loan applications, and awarded 32 loans to M/WBEs.

Capacity Building

SBS administers a set of capacity-building programs and services for M/WBEs and small businesses that are designed to help firms better bid on, win, and perform on City contracts.

Bond Readiness provides certified construction and trade companies with financial management skills to help them secure or increase surety bonds necessary to compete on City contracts. The program offers two 8-week cohorts (Fall and Spring) that provide classroom, training and one-on-one assistance, as well as introductions to a network of surety agents. Firms are encouraged to bid on City contract opportunities where appropriate, while applying for pre-approval for bonding during the program. During the reporting period, 31 unique firms were accepted into the Fall 2018 cohort.

NYC Construction Mentorship provides certified construction, trade and related professional services firms with education, training, and technical assistance to help them build capacity, better understand the City solicitation process, and strengthen business operations with the goal of bidding on City contracting opportunities. Beginning in FY 2018, the program began offering a new condensed format in order to offer two 16-week cohorts per fiscal year. Each firm receives classroom instruction and unlimited one-on-one mentoring, a business assessment, and an individualized three-year growth plan for their business. Firms are encouraged to bid on City contract opportunities where appropriate and are provided additional guidance by MOCS and introductions to City agency personnel. During the reporting period, 43 unique firms were accepted into the Fall 2018 cohort.

NYC Goods & Services Mentorship, launched in FY 2017, now offers two 16-week cohorts per fiscal year, providing certified non-construction goods and services firms with education, training and mentoring to strengthen their businesses with a focus on bidding on City contracting opportunities. Each participating firm receives classroom instruction, unlimited one-on-one mentorship and technical assistance from subject matter experts, a business needs assessment, and an individualized three-year growth plan for their business. City agency reps meet participating firms and introduce them to their procurement practices and contracting opportunities. Firms are encouraged to bid on City solicitations where applicable and are guided by MOCS and other agency staff on best practices. During the reporting period, 40 unique firms were accepted into the Fall 2018 cohort.

Next Level Services, launched in FY 2018, is designed to provide graduates of SBS' and other mentorship programs and more mature stage certified firms looking to sell to NYC, with education, training and guidance through workshops, webinars, and one-on-one counseling sessions. Services are offered in three categories: Construction, Bonding and Financial Management, and Goods & Services. The topics and services are designed to address the business challenges of firms who are at least three years in operation, generating revenues of at least \$300,000, and who have commercial and some public-sector project experience, and help them to successfully compete for City contract opportunities. During the reporting period, 24 Next Level Services one-on-one sessions were conducted engaging 17 individuals representing 16 unique firms.

The **Corporate Alliance Program (CAP)** helps connect firms with contracting opportunities in the private sector in collaboration with 16 corporate partners. Becoming a supplier to a large corporation is a major step forward for any small business, providing not only income but credibility, stability, and business relationships that come with experience. With its CAP partners, SBS offers a workshop series that addresses key issues small businesses face when trying to break into the corporate supply chain. During the reporting period, CAP held one workshop as part of the "Navigating the Corporate Supply Chain" workshops series that provided 33 attending unique firms with connections to corporate partners and potential corporate contracting opportunities. Additionally, 9 unique firms were enrolled in the 4th cohort of the CAP/NYCEO M/WBE Mentorship Program for Goods and Services.

Strategic Steps for Growth is an eight-month executive education program designed for M/WBEs, offered in partnership with the NYU Stern School of Business' W.R. Berkley Innovation Lab and NYU Division of Operations. The program provides participants with a new professional network, including business experts, university professors, and other business owners, and offers guidance for every aspect of business operations as well as a focus on capacity building for City and government contract opportunities for the enrolled M/WBEs and on private-sector opportunities for the enrolled media and entertainment firms. Participants learn the strategic skills needed to run a growing company and create a custom, three-year growth plan for their businesses.

New York City Economic Development Corporation and SBS launched the **Contract Financing Loan Fund** in FY 2017. The Loan Fund enhances the ability of business owners to access the capital they need to win, take on and perform successfully on NYC contracts, and reduces the cost of capital to a 3% annual interest rate. During the reporting period, \$1,944,700.51 had been awarded through the Loan Fund.

Program Compliance

To ensure that all agency staff responsible for purchasing activities are knowledgeable about the M/WBE program and their agency's goals, SBS and MOCS conduct agency training sessions at the Citywide Training Center and specific trainings at agency offices. During the first quarter of FY 2019, 113 procurement professionals from 29 agencies attended three training sessions. The topics included Local Law 1 implementation, strategies and best practices used to identify M/WBEs for contract opportunities, Online Directory training, and enhancing M/WBE procedures in all contract areas.

In the reporting period, the Director of the City's M/WBE program, Deputy Mayor for Strategic Policy Initiatives J. Phillip Thompson and M/WBE Senior Advisor and Director of Mayor's Office of M/WBE Jonnel Doris held the first quarterly compliance meeting with agency commissioners and M/WBE officers to discuss utilization and agency initiatives to increase M/WBE performance. The meeting was held on September 14, 2018 and was attended by 74 attendees representing 37 agencies.

Qualified Joint Venture Agreements

There were no contracts subject to the M/WBE program awarded to a qualified joint venture in the first quarter of FY 2019.

Efforts to Reduce or Eliminate Barriers to Competition

Since the implementation of the M/WBE program, the City continues to undertake a number of efforts to reduce barriers for M/WBEs and small businesses that are competing for contracts and currently doing business with the City. As mentioned above, SBS is operating a bond readiness program to help firms secure surety bonds for larger City construction projects. SBS launched the Bond Collateral Assistance Fund, funded with \$10 million, to help small businesses and M/WBEs secure surety bonds to perform on City Contracts. Since program launch, two collateral assistance awards have been made for a total of \$800,000.

To make it easier to do business with the City, agencies are required to post all solicitation materials through the City Record Online, allowing vendors to identify opportunities and download relevant materials from one online location. SBS also continues to assist companies with expediting their payment requests from prime contractors and City agencies.

Prime Contract M/WBE Utilization

Table 1 below summarizes prime contracts awarded by City agencies during the first quarter of FY 2019. M/WBEs were awarded over \$169 million in prime contracts amounting to 11% of all such awards during this reporting period. The prime contracts in this table include industries and awards pursuant to methods subject to the M/WBE program.

Table 1 - FY 2019 Q1 - Prime Contracts Utilization by Industry ²					
Industry/Size Group	M/WBE			Total	
	Count	Contract Value	%	Count	Contract Value
Construction Services³	1141	\$96,736,864	11%	1981	\$901,142,128
Micro Purchase	1107	\$1,229,529	56%	1872	\$2,208,169
Small Purchase	4	\$357,935	72%	6	\$499,935
>\$100K, <=\$1M	9	\$5,542,951	39%	21	\$14,075,181
>\$1M, <=\$5M	16	\$35,436,750	31%	45	\$114,542,960
>\$5M, <=\$25M	5	\$54,169,699	18%	28	\$303,678,628
>\$25M	0	\$0	0%	9	\$466,137,254
Goods	969	\$10,865,642	51%	2166	\$21,260,945
Micro Purchase	875	\$5,469,130	40%	2027	\$13,575,033
Small Purchase	94	\$5,396,513	70%	139	\$7,685,912
Professional Services	87	\$31,084,649	8%	289	\$413,382,325
Micro Purchase	49	\$528,479	27%	199	\$1,942,242
Small Purchase	25	\$1,532,995	68%	34	\$2,251,242
>\$100K, <=\$1M	10	\$2,577,814	28%	23	\$9,078,692
>\$1M, <=\$5M	2	\$6,897,565	21%	12	\$33,466,863
>\$5M, <=\$25M	1	\$19,547,797	10%	17	\$188,616,536
>\$25M	0	\$0	0%	4	\$178,026,750
Standardized Services	682	\$30,390,460	18%	2609	\$173,367,242
Micro Purchase	624	\$4,531,690	33%	2470	\$13,739,442
Small Purchase	44	\$3,043,725	54%	80	\$5,656,917
>\$100K, <=\$1M	12	\$2,324,045	22%	32	\$10,748,924
>\$1M, <=\$5M	1	\$1,574,000	3%	22	\$57,642,557
>\$5M, <=\$25M	1	\$18,917,000	33%	4	\$57,879,402
>\$25M	0	\$0	0%	1	\$27,700,000
Total	2879	\$169,077,616	11%	7045	\$1,509,152,640
Micro Purchase	2655	\$11,758,828	37%	6568	\$31,464,887
Small Purchase	167	\$10,331,167	64%	259	\$16,094,006

² Purchases >\$20,000 up to \$150,000 made utilizing the new M/WBE Purchase Method which was operationalized as an Innovative Procurement Method pursuant to Section 3-12 of the PPB Rules in March 2018 are also reflected within this table.

³ The micro purchase limit for construction services contracts was increased to range from \$1 to \$35,000 on March 1, 2016. Likewise, small purchase construction services contracts were increased to range from \$35,001 to \$100,000. The micro purchase range for standard and professional services and goods contracts remained unchanged at \$1 to \$20,000, and their respective small purchase ranges also remained at \$20,001 to \$100,000.

>\$100K, <=\$1M	31	\$10,444,810	31%	76	\$33,902,798
>\$1M, <=\$5M	19	\$43,908,315	21%	79	\$205,652,380
>\$5M, <=\$25M	7	\$92,634,496	17%	49	\$550,174,566
>\$25M	0	\$0	0%	14	\$671,864,004

Agencies are not required to apply participation requirements to certain types of contracts. See, NYC Administrative Code § 6-129(q) (1)-(7). Table 1 above and the subsequent discussion of M/WBE performance include those contracts that have been counted towards the City’s M/WBE program.

As required by §6-129 of the Administrative Code, the M/WBE performance data (see Appendices – Tables A - F)⁴ is summarized separately for each of the following categories: MBE, WBE, minority women (certified as both MBE and WBE), and total M/WBE. MBEs include all minority-owned businesses, regardless of gender. WBEs include all women-owned businesses regardless of race.

In those areas of procurement where agencies have greater discretion to target procurements to M/WBEs (i.e., micro purchases and small purchases), M/WBE utilization remains strong. In the first quarter of FY 2019, M/WBEs were awarded nearly \$11.8 million worth of micro purchases, or 37% of the dollar value of all such awards. Additionally, for small purchases the M/WBE utilization rate was 64% of the dollar value of all such awards (over \$10.3 million awarded).

A total of 7,045 prime contracts were awarded during the first quarter of FY 2019. M/WBE utilization on prime contracts during the reporting period is detailed below. Highlights include M/WBEs being awarded:

- 31% of the value of contract awards valued between \$100,000 and at or below \$1 million (over \$10.4 million);
- 21% of the value of contract awards valued between \$1 million and at or below \$5 million (over \$43.9 million); and
- 17% of the value of contract awards valued between \$5 million and at or below \$25 million (over \$92.6 million).
- 0% of the value of contracts awards valued over \$25 million.

⁴ Appendices A – I can be found on the MOCS website at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

Agency-by-agency and certification category details corresponding to Table 1 above are included in the Appendices to this report (Tables A - B).

Most prime contracts reflected in the data (except the professional services contracts, for example) are required by New York State law to be procured via competitive sealed bid. Under General Municipal Law (GML) § 103, agencies must, for the majority of the contracts covered by the program, accept the lowest responsible bid and may not give a bidder preference because of its M/WBE status. City agencies' efforts to achieve their M/WBE participation goals through prime contract awards are thus limited to such means as increased outreach and training aimed at encouraging M/WBEs to bid successfully on various procurements. Even for procurements not covered by GML § 103, such as professional services contracts, GML § 104-b precludes agencies from pursuing social policy goals unrelated to the procurement of goods and services, including M/WBE status. Thus, the citywide goals for prime contract awards must be viewed as aspirational, and agencies' performance may only be evaluated in terms of their efforts to make progress toward achieving the goals in light of the limited tools available to them for that purpose.

Prime Contracts with M/WBE Participation Goals

Under the M/WBE program, larger prime contracts with anticipated subcontracting are subject to participation goals and must be reported on pursuant to §6-129(l)(b)(i). During the reporting period, agencies awarded 135 new prime contracts subject to M/WBE participation requirements with 9 percent of the value of those awards made to certified M/WBE firms.

Subcontract M/WBE Utilization

M/WBE utilization with respect to approved subcontracts during the reporting period is demonstrated in Table 2 below. As shown, of the 483 approved subcontracts related to contracts subject to the program, 253 were awarded to M/WBE firms. The approved subcontracts awarded to M/WBEs amounted to nearly \$61 million and represent 60% of the value of all qualifying subcontracts. For more details, see Appendices – Tables E - F.

Table 2 - FY 2019 Q1 - Subcontracts Utilization by Industry

Industry/Size Group	M/WBE			Total	
	Count	Value	%	Count	Value
Construction	142	\$38,416,868	68%	279	\$56,742,800
Micropurchase	36	\$409,882	47%	88	\$873,027
Small Purchase	54	\$2,914,187	53%	108	\$5,452,108
>\$100K, <=\$1M	44	\$13,452,492	59%	71	\$22,798,921
>\$1M, <=\$5M	7	\$13,756,180	70%	11	\$19,734,616
>\$5M, <=\$25M	1	\$7,884,128	100%	1	\$7,884,128
Professional Services	85	\$20,035,575	52%	152	\$38,762,518
Micropurchase	18	\$116,351	37%	42	\$314,191
Small Purchase	31	\$1,556,878	45%	60	\$3,431,305
>\$100K, <=\$1M	30	\$7,562,848	65%	42	\$11,709,976
>\$1M, <=\$5M	6	\$10,799,498	76%	7	\$14,299,498
>\$5M, <=\$25M	0	\$0	0%	1	\$9,007,548
Standard Services	26	\$2,518,989	36%	52	\$6,903,201
Micropurchase	8	\$40,365	22%	23	\$179,425
Small Purchase	13	\$722,980	67%	19	\$1,079,332
>\$100K, <=\$1M	5	\$1,755,644	54%	9	\$3,261,644
>\$1M, <=\$5M	0	\$0	0%	1	\$2,382,800
Total	253	\$60,971,432	60%	483	\$102,408,518

Waivers

A vendor that plans to submit a bid or proposal in response to a solicitation for a contract that is subject to M/WBE participation goals may seek to request a reduction in the goals by filing a waiver request with the contracting agency during the pre-bid or pre-proposal stage. The agency and MOCS then evaluate the extent to which the vendor's business model and subcontracting history is consistent with this request. In order to qualify for a waiver, a vendor must show both the capacity to execute the contract with less subcontracting than projected and legitimate business reasons to do so. A vendor that receives a full waiver has demonstrated that they would be able to fully self-perform the contract without using subcontractors if awarded the contract. A vendor that obtains a partial waiver has demonstrated that they will subcontract at a lower amount than the participation goal established by the agency.

During the reporting period, vendors sought a total of 35 requests for waivers of the M/WBE participation requirements. Of those requests, 4 were denied, while 11 were approved as full waivers and 20 were

approved as partial waivers, see Appendices – Table G. Since waivers may be granted only to vendors that demonstrate both the capacity to perform the prime contract without subcontracting and a prior contracting history of doing similar work without subcontracting, some of the waivers that were granted involved repeated requests from the same firms, as they sought multiple bidding opportunities. Thus, the 31 full and partial waivers were granted to a total of 26 individual firms. Waivers are determined during the pre-bid stage of the procurement. Thus, most of the vendors that received waivers did not ultimately win the contracts for which they were competing.

During the reporting period, a total of 5 contracts were registered where a winning vendor obtained either a full or partial waiver of the total participation goal. For more details, see Appendices – Table H.

Large-Scale Procurement Approvals

Prior to soliciting procurements with an anticipated value of over \$10 million, City agencies are required to seek MOCS approval to determine whether it is practicable to divide the proposed contract into smaller contracts and whether doing so would enhance competition among M/WBEs. During the reporting period, there were 23 registered contracts for which MOCS conducted large-scale procurement reviews. A full list is shown in Appendices Table I. The value of the 23 approved contracts shown in Appendices Table I is approximately \$403.4 million.

Nearly 85% of the value of the large-scale approvals in the first quarter of FY 2019 was either single indivisible projects or multiple sites. These approvals were for projects in which separate and smaller contracts would not enhance M/WBE opportunities. For more details, see Appendices – Table I.

Complaints, Modifications and Noncompliance

There were no complaints, modifications or findings of noncompliance during the reporting period.