

CITY OF NEW YORK

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

First Three Quarters of Fiscal Year 2022

Compliance Report covering July 1, 2021 – March 31, 2022

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Introduction

As New York City continues the recovery from the COVID-19 pandemic, Mayor Adams has consistently highlighted the need to move forward stronger than ever before, making sure our recovery is centered on equity. In particular, the City will aggressively pursue increased M/WBE utilization in the over \$30 billion of annual public procurement, help small M/WBEs increase their capacity to win larger contracts, and take on the “disparity within the disparity”.¹

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(l) of the New York City Administrative Code. The reporting period covers activity during the first three quarters of Fiscal Year 2022 (July 1, 2021 – March 31, 2022), and 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). The City’s M/WBE program is led by Maria Torres-Springer, Deputy Mayor for Economic and Workforce Development and Citywide M/WBE Director, and is administered in partnership with the Mayor’s Office of M/WBEs (OM/WBE), SBS and MOCS.

As further expanded upon in the report, during the first three quarters of FY 2022, M/WBEs were awarded over \$613 million in prime contracts subject to the M/WBE program and over \$399 million in eligible subcontracts. The City achieved a combined prime and subcontract utilization of 21.5%. SBS held hundreds of capacity building and certification events, assisted hundreds of M/WBEs in learning to navigate City procurement, and grew the pool of certified firms.

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. The NYC Online Certification Portal (<https://sbsconnect.nyc.gov/>) allows M/WBE firms to certify and recertify online, check

¹ “Rebuild, Renew, Reinvent: A Blueprint for New York City’s Economic Recovery”. Released March 10, 2022.

<https://www1.nyc.gov/assets/home/downloads/pdf/office-of-the-mayor/2022/Mayor-Adams-Economic-Recovery-Blueprint.pdf>

the status of applications and update their business profiles to better promote themselves to buyers. **In the first three quarters of FY 2022, SBS conducted 48 certification workshops and application review sessions for 678 businesses.**

Partners help extend the reach of SBS certification outreach efforts. Businesses receive assistance in applying for certification from the community-based groups that comprise the New York City Council-funded M/WBE Leadership Associations, and the SBS network of Business Solutions Centers located throughout the five boroughs. This helps to ensure higher quality applications, making the submission and the certification review process easier and simpler. **Between July 2021 and March 2022, SBS certified 775 new M/WBEs and recertified 891 M/WBEs, bringing the total number of City-certified companies to 10,763 as of March 31, 2022.** Partners also 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 **171 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 program criteria rely on individual and specific determinations of an applicant’s disadvantage. **As of March 31, 2022, there were 30 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 \$2,617,062 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.

As of March 31, 2022, there were a total of **13 LBE certified firms**. 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 approximately \$4,640,900** 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 and how to 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 three quarters of FY 2022, **SBS held a total of 90 workshops attended by a total of 2,524 participants** to help M/WBEs build knowledge and understanding of the City's procurement rules, procurement portals, how to effectively respond to solicitations, and best practices in contract management.

Also, during the reporting period, **1,291 firms were supported through 2,017 instances of one-on-one technical assistance** for submitting the most competitive bids and proposals, navigating government procurement, and successfully performing on contracts with the City.

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 55 events, provided 987 one-on-one assistance sessions, assisted with 114 loan applications, and awarded 33 loans to M/WBEs.**

Capacity Building

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.

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 a 12-session cohort conducted over 24 weeks that provides classroom instruction, agency participation, 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, **57 firms were accepted into the FY2022 (12th) cohort.**

Bonding Services provides certified construction and trade companies with access to six-hour QuickBooks for Construction clinics, webinars and one-hour one-on-one bonding assistance sessions to assist firms with, respectively, organizing their bookkeeping and accounting practices and preparing applications for bonding, understanding surety bond application preparation concepts, in order to compete for larger City contract opportunities. During the reporting period, there were **five QuickBooks for Construction Clinics with 61 unique firms participating, 6 webinars with 56 unique firms participating, and 101 firms participated in 164 one-on-one bonding assistance sessions.**

M/WBE Contract Legal Services is a new offering, designed to provide certified firms with education and legal consultation clinics, so that they can become informed consumers of legal services; enter into commercial contracts with an understanding of terms, conditions, obligations, and rights; to equip them with the tools and strategies to negotiate or re-negotiate commercial contracts that reflect their best interests and minimize their risk; and understand their obligations, rights, and recourse under existing commercial contracts. During the reporting period, **the first MWBE Contract Legal Services webinar was conducted with 39 unique firms participating.**

The **M/WBE Mentors Program**, launched in January 2021, is designed to create spaces for peer mentorship and networking amongst NYC-certified M/WBEs. Through curated, industry-focused events, owners representing a variety of industries and backgrounds serve as mentors to less experienced MWBEs. By mining their own experiences for advice, these mentors provide the insight their peers need to chart their own path of growth through government contracting. During the reporting period, the **Program hosted four events with 298 participants.**

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, **22 loans of \$7,010,000 were awarded through the Loan Fund to certified M/WBEs.**

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, MOCS and OM/WBE conduct agency training sessions at the Citywide Training Center and specific trainings at agency offices. During the first three quarters of FY 2022, **333 procurement professionals from 32 agencies attended nine training sessions.** The topics included implementation of M/WBE policy of the New York City Administrative Code, strategies and best practices used to identify M/WBEs for contract opportunities, Online Directory training, and enhancing M/WBE procedures in all contract areas.

Quarterly compliance meetings with agency commissioners and M/WBEs officers are held to discuss utilization and agency initiatives to increase M/WBE performance. In the reporting period, the former Director of the City's M/WBE program, Deputy Mayor for Strategic Policy Initiatives J. Phillip Thompson and former M/WBE Senior Advisor and the former Director of the Mayor's Office of M/WBEs Magalie Austin held the first two quarterly compliance meetings. The first quarterly meeting was held on September 14, 2021 and was attended by 132 attendees representing 45 agencies. The second quarterly meeting was held on December 22, 2021 and was attended by 116 attendees representing 44 agencies. Deputy Mayor Maria Torres-Springer, Deputy Mayor for Economic and Workforce Development and Citywide M/WBE Director, held the third quarterly compliance meeting on March 31, 2022 and was attended by 163 attendees representing 48 agencies.

Qualified Joint Venture Agreements

There were two contracts subject to the M/WBE program awarded to a qualified joint venture during the reporting period.

Industry	Total Contract Value	# of contracts	Ethnicity	Value to MWBE	%
Construction Services	\$15,000,000	1	WBE - Caucasian Woman	\$7,350,000	49%
Professional Services	\$200,000	1	WBE - Caucasian Woman	\$94,000	47%

Prime Contract M/WBE Utilization

Table 1 below summarizes prime contracts awarded by City agencies during the first three quarters of FY 2022. M/WBEs were awarded over **\$613 million in prime contracts amounting to 14% of all such awards during this reporting period**. The prime contracts in this table include industries and awards made using methods subject to the M/WBE program.

Table 1 - FY 2022 Q1-Q3 - Prime Contracts Utilization by Industry					
Industry and Size Group	Total M/WBE			Total	
	Count	Value	%	Count	Value
Construction Services	7,675	\$170,374,265	7%	10,424	\$2,397,968,427
Micro Purchase	7,583	\$7,947,072	68%	10,218	\$11,711,451
Small Purchase	28	\$1,750,373	80%	35	\$2,186,211
>\$100K, <=\$1M	20	\$9,646,791	53%	31	\$18,314,074
>\$1M, <=\$5M	37	\$87,622,112	38%	90	\$233,074,854
>\$5M, <=\$25M	7	\$63,407,918	17%	41	\$379,061,090
>\$25M	0	\$0	0%	9	\$1,753,620,747
Goods	3,702	\$63,212,478	56%	7,648	\$112,288,661
Micro Purchase	3,300	\$25,626,528	52%	7,042	\$49,348,706
Small Purchase	340	\$21,929,336	66%	512	\$33,175,955
>\$100K, <=\$1M	62	\$15,656,614	53%	94	\$29,764,001
>\$1M, <=\$5M	0	\$0	0%	0	\$0
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
Professional Services	781	\$330,075,919	30%	1,817	\$1,085,942,302
Micro Purchase	446	\$4,051,849	37%	1,310	\$11,063,064
Small Purchase	186	\$12,434,719	81%	228	\$15,287,167
>\$100K, <=\$1M	111	\$34,382,337	58%	154	\$59,054,700
>\$1M, <=\$5M	12	\$36,963,771	26%	48	\$142,118,680
>\$5M, <=\$25M	26	\$242,243,242	30%	75	\$798,150,485
>\$25M	0	\$0	0%	2	\$60,268,206
Standardized Services	395	\$49,809,679	6%	1,326	\$804,665,335
Micro Purchase	302	\$2,401,617	36%	1,127	\$6,716,880
Small Purchase	58	\$4,360,656	56%	108	\$7,848,582
>\$100K, <=\$1M	25	\$7,318,193	44%	41	\$16,797,974
>\$1M, <=\$5M	9	\$23,109,266	26%	35	\$88,990,839
>\$5M, <=\$25M	1	\$12,619,947	11%	11	\$115,905,573
>\$25M	0	\$0	0%	4	\$568,405,486
Total	12,553	\$613,472,340	14%	21,215	\$4,400,864,726

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, M/WBE performance data (see Appendices – Tables A - F)² 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 ethnicity.

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 three quarters of FY 2022, M/WBEs were awarded over \$40 million worth of micro purchases, or 51% of the dollar value of all such awards. Additionally, for small purchases the M/WBE utilization rate was 69% of the dollar value of all such awards (over \$40 million awarded).

A total of 21,215 prime contracts were awarded during the first three quarters of FY 2022. M/WBE utilization on prime contracts during the reporting period is detailed below. Highlights include M/WBEs being awarded:

- 54% of the value of contract awards valued between \$100,000 and at or below \$1 million (just over \$67 million)
- 32% of the value of contract awards valued between \$1 million and at or below \$5 million (approximately \$148 million)
- 25% of the value of contract awards valued between \$5 million and at or below \$25 million (approximately \$318 million)

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

² Appendices - Tables A – I can be found on the MOCS website at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

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.

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 225 new prime contracts subject to M/WBE participation requirements with 8% 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 **1,345 approved subcontracts subject to the program, 798 were awarded to M/WBE firms**. The approved subcontracts awarded to M/WBEs amounted to **approximately \$399 million and represent 51% of the value of all qualifying subcontracts**. For more details, see Appendices – Tables E - F.

Table 2 - FY 2022 Q1-Q3 - Subcontracts Utilization by Industry					
Industry/Size Group	M/WBE			Total	
	Count	Value	%	Count	Value
Construction Services	492	\$294,571,981	46%	861	\$643,145,418
Micro Purchase	72	\$721,982	39%	179	\$1,863,487
Small Purchase	169	\$9,522,887	57%	295	\$16,711,163
>\$100K, <=\$1M	207	\$67,936,412	69%	307	\$98,908,293
>\$1M, <=\$5M	33	\$73,920,020	60%	57	\$123,588,980
>\$5M, <=\$25M	11	\$142,470,680	64%	18	\$221,413,666
>\$25M	0	\$0	0%	5	\$180,659,830
Goods	1	\$1,000,000	100%	1	\$1,000,000
Micro Purchase	0	\$0	0%	0	\$0
Small Purchase	0	\$0	0%	0	\$0
>\$100K, <=\$1M	1	\$1,000,000	100%	1	\$1,000,000
>\$1M, <=\$5M	0	\$0	0%	0	\$0
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
Professional Services	211	\$53,720,355	78%	345	\$69,090,549
Micro Purchase	55	\$555,928	50%	113	\$1,104,124
Small Purchase	71	\$4,169,343	60%	119	\$6,908,548
>\$100K, <=\$1M	74	\$27,936,372	78%	100	\$35,765,567
>\$1M, <=\$5M	11	\$21,058,712	83%	13	\$25,312,310
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
Standardized Services	94	\$50,006,634	75%	138	\$66,909,435
Micro Purchase	36	\$432,977	76%	54	\$571,077
Small Purchase	31	\$1,455,989	78%	43	\$1,875,690
>\$100K, <=\$1M	24	\$8,817,667	87%	29	\$10,162,667
>\$1M, <=\$5M	2	\$3,300,000	18%	11	\$18,300,000
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	1	\$36,000,000	100%	1	\$36,000,000
Total	798	\$399,298,970	51%	1,345	\$780,145,402

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 72 requests for waivers of the M/WBE participation requirements** at the pre-bid or pre-proposal stage. Of those requests, **22 were denied, while 5 were approved as full waivers and 45 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.

During the reporting period, six contracts were registered where a winning vendor obtained either a full or partial waiver of the total participation goal. Thus, of the 72 requests received, and 50 full or partial waiver requests granted, only six contracts ultimately had an M/WBE subcontractor participation goal impacted by a waiver request. 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 **29 registered contracts for which MOCS conducted large-scale procurement reviews**. A full list is shown in Appendices Table I. The value of the 29 approved contracts shown in Appendices Table I is over \$695 million.

Approximately 46% of the value of the large-scale approvals in the first three quarters of FY 2022 was for either single indivisible projects or projects with 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 **two findings of noncompliance and two modifications** determined during the reporting period.

The first noncompliance matter involved a Department of Parks and Recreation (“DPR”) contract for the reconstruction of a playground. While the prime contractor was able to utilize M/WBE subcontractors for all scopes of work they identified in their initial utilization plan, they were unable to meet the original goal due to the reduction of tree work and fencing which had originally been anticipated toward the end of the project. After the agency’s substantial completion inspection DPR determined that a sizable portion of tree work and fencing was not necessary. Since the overall work was substantially completed, there were no additional opportunities for the contractor to make up the shortfall in the M/WBE participation goal. Given that the contractor’s inability to meet the goal was caused by DPR’s scope reductions, DPR did not pursue enforcement actions against the vendor but issued a formal letter of noncompliance.

The second noncompliance matter involved a Department of Design and Construction (“DDC”) contract for the installation of distribution water mains and appurtenances. While the vendor agreed to meet the original 10% goal by subcontracting several scopes of work to M/WBE firms, they ultimately only utilized M/WBEs for one scope, falling short of the actual goal. Upon review DDC determined that the original 10% goal may have been miscalculated and was likely overestimated. Due to the overestimation of the original goal, DDC determined that the 10% was unachievable and issued a letter of noncompliance in lieu of pursuing an enforcement action.

The first modification determination involved a DoITT contract for events production services, managed by the Mayor’s Office of Media and Entertainment (MOME). The prime contractor agreed to meet a 30% M/WBE participation goal, subcontracting various services needed for live performance events. Due to the onset of COVID statewide restrictions that mandated the closure or scaling back of performance sizes meant that the vendor was unable to produce the planned large events and had to pivot to smaller scale events to comply with COVID restrictions. Despite this, the vendor made additional efforts to include minority- and women-led not-for-profit organizations where feasible, encouraged an eligible firm to become City-certified

and employed a diverse group of temporary workers for its portion of the City Cleanup Corps initiative. Based on the vendor's good faith efforts to find additional M/WBE subcontractors, MOCS approved the modification request.

The second modification determination involved a contract managed by DDC on behalf of the DEP for the construction of Right-of-Way Green Infrastructure in Brooklyn. The prime contractor initially agreed to meet the 24% goal by subcontracting multiple scopes including landscaping and trucking/disposal to M/WBEs. Prior to the start of the project, changes to the scope required significantly less landscaping that impacted the contractor's original plan to meet the goal. However, the contractor continued to make good faith efforts and identified M/WBE subcontractors for additional scopes in order to make up the shortfall. While the value of the additional scopes did not make up the deficit in meeting the overall goal, MOCS acknowledged the vendor's good faith efforts and granted them a modified goal.

There were no formal complaints made during the reporting period.