

MEMORANDUM OF UNDERSTANDING

between

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

and

**NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, DIVISION OF
MINORITY AND WOMEN'S BUSINESS DEVELOPMENT**

This **MEMORANDUM OF UNDERSTANDING** (hereinafter referred to as an "MOU"), effective as of March 8, 2012, is made by and between the **CITY OF NEW YORK** acting through its **DEPARTMENT OF SMALL BUSINESS SERVICES ("SBS")** with offices located at 110 William Street, 7th Floor, New York, New York 10038 and the **NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT ("DMWBD")** with offices located at 633 Third Avenue, 33rd Floor, New York, New York 10017 (collectively, the "Parties").

WITNESSETH:

WHEREAS, SBS, pursuant to Title 66, Chapter 11, subchapter B of the Rules of the City of New York, is authorized to certify Minority- and Women-Owned Business Enterprises ("M/WBEs") for participation in the New York City procurement process; and

WHEREAS, DMWBD, pursuant to Section 314 of Article 15-A of New York State ("State") Executive Law, administers the M/WBE State certification program which is designed to assist the growth and development of businesses owned and controlled by women and minorities; and

WHEREAS, SBS and DMWBD are mutually recognized partners that currently operate M/WBE programs which are similarly designed to assist in the growth and development of businesses owned and controlled by women and minorities as well as to provide technical assistance and contracting opportunities to certified M/WBEs; and

WHEREAS, the Parties share a desire to expand both the pool of qualified M/WBEs and to promote the participation of those businesses owned and controlled by women and minorities involved in procurement opportunities with the City and the State; and

WHEREAS, SBS and DMWBD acknowledge that the purpose of this MOU is to promote and encourage the participation of M/WBEs in the economic mainstream through the following two (2) collaborative efforts: (1) Continue the "Expedited M/WBE Certification Review Process" established by SBS and DMWBD for the timely review of certain M/WBE Certification Applications; and (2) Establish a new process for the simultaneous submission of M/WBE Certification Applications to either SBS or DMWBD. Both of the above-referenced processes are set forth below in this MOU; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE 1. TERM

This MOU shall have a term of three (3) years commencing on the date first written above ("Term"), unless sooner terminated or extended pursuant to Article 7 of this MOU.

ARTICLE 2. SCOPE OF GEOGRAPHIC MARKET COVERED BY MOU

- A. This MOU shall only apply to the following counties within New York State and the State of New Jersey ("Certifying Market Area"):
1. **New York State.** The certifying market area covered by this MOU shall be limited to the following counties in New York State: Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk and Westchester.
 2. **New Jersey.** The certifying market area covered by this MOU shall be limited to the following counties in the State of New Jersey: Bergen, Hudson and Passaic.

ARTICLE 3. M/WBE EXPEDITED CERTIFICATION REVIEW PROCESS

A. SBS M/WBE Expedited Certification Review Process

1. SBS shall conduct an expedited review of applications for M/WBE certification of firms certified by DMWBD upon receipt of the following from Applicant:
 - a. Properly Completed SBS "M/WBE 1,2,3 Certification Application";
 - b. Properly Completed SBS Certification Affidavit;
 - c. Copy of DMWBD's Letter of Certification; and
 - d. Copy of DMWBD M/WBE Certification Application (excluding attachments).
2. Once an Applicant has submitted the requested documents to SBS, SBS will verify that the Applicant is listed as a certified M/WBE using the "DMWBD Online Directory of Certified M/WBEs." Following a review of all documentation submitted by Applicant in connection with this M/WBE Expedited Certification Review Process, SBS will notify Applicant of its determination with respect to M/WBE Certification with the City.
3. All Applications submitted to SBS pursuant to the M/WBE Expedited Certification Review are subject to all applicable Federal, State and Local Laws, including SBS' own rules and procedures.
4. The M/WBE Certification for all Applicants certified by SBS pursuant to the M/WBE Expedited Certification Review Process expires upon the expiration of the firm's DMWBD certification or three (3) years following the date of the commencement of its SBS M/WBE Certification, whichever is sooner.
5. Applicants that fail to meet any of the requirements set forth in this Section (A) of Article 3 for certification pursuant to the M/WBE Expedited Certification Review must complete and submit SBS' Standard M/WBE Certification Application for review of eligibility by SBS if they still would like to pursue M/WBE Certification with the City.

B. DMWBD M/WBE Expedited Certification Review Process

1. DMWBD shall conduct an expedited review of qualified applications for M/WBE certification of firms certified by SBS upon receipt of the following from Applicant:
 - a. Properly Completed "M/WBE Certification Affidavit and M/WBE Fast Track Application";
 - b. Properly Completed "Personal Net Worth Affidavit" for each minority and/or woman owner of the firm;

- c. Copy of SBS' Letter of M/WBE Certification; and
 - d. Copy of Completed SBS Standard M/WBE Certification Application (excluding attachments).
2. Once an Applicant has submitted the requested documents to DMWBD, DMWBD will verify that the Applicant is listed as a certified M/WBE using the "SBS Online Directory of Certified M/WBEs." Subsequent to online verification, a DMWBD representative will contact the Applicant to schedule a site visit of the Applicant's business and/or conduct a phone interview with the majority owner of the Applicant's business. Following a review of all documentation submitted by Applicant in connection with the M/WBE Expedited Certification Review Process as well as the successful completion of the above-referenced site visit and/or phone interview, DMWBD will notify Applicant of its determination with respect to M/WBE Certification with the State. DMWBD reserves the right to request further documentation as part of the review process to determine program eligibility.
 3. All Applications submitted to DMWBD pursuant to the M/WBE Expedited Certification Review are subject to all applicable Federal, State and Local Laws, including DMWBD's own rules and procedures.
 4. The M/WBE Certification for all Applicants certified by DMWBD pursuant to the M/WBE Expedited Certification Review expires upon the expiration of the business enterprise's "Fast Track" SBS Certification or three (3) years following the date of the commencement of its DMWBD M/WBE Certification, whichever is sooner, at which time the firm may recertify with DMWBD pursuant to DMWBD own rules and procedures.
 5. Applicants that fail to meet any of the requirements set forth in this Section (B) of Article 3 for M/WBE Certification pursuant to the M/WBE Expedited Certification Review Process must complete and submit the Standard New York State M/WBE Certification Application to DMWBD for review of eligibility if they still would like to pursue M/WBE Certification with the State.

ARTICLE 4. SIMULTANEOUS SUBMISSION OF M/WBE CERTIFICATION APPLICATIONS TO SBS AND DMWBD

A. SBS Process for M/WBE Applications Submitted to City with DMWBD Addendum Attached

1. If an Applicant is certified by SBS as an M/WBE and has completed the DMWBD M/WBE Certification Application Addendum ("Addendum for M/WBE Certification with DMWBD"), SBS shall forward a copy of the completed SBS Standard M/WBE Certification Application as well as a copy of the Addendum for M/WBE Certification with DMWBD to DMWBD for review of Applicant's certification eligibility. DMWBD reserves the right to request further documentation as part of the review process to determine program eligibility.
 - a. If DMWBD determines that the Addendum for M/WBE Certification with DMWBD satisfies the requirements for M/WBE certification pursuant to NYS Executive Law, Article 15-A and Title 5 of the New York Code of Rules and Regulations, Parts 140 through 145, it shall notify the Applicant that its application for M/WBE certification has been approved.
 - b. If DMWBD determines that the Addendum for M/WBE Certification with DMWBD fails to satisfy the requirements for M/WBE certification pursuant to NYS Executive Law, Article 15-A and Title 5 of the New York Code of Rules

and Regulations, Parts 140 through 145, it shall notify the Applicant that its application for M/WBE certification has been denied.

2. If an Applicant completes and submits both the SBS Standard M/WBE Certification and the Addendum for M/WBE Certification with DMWBD, but based on a review of the Applicant's eligibility requirements SBS denies M/WBE Certification with the City, SBS shall notify the Applicant that its application for M/WBE Certification has been denied. DMWBD shall receive a copy of said notification of denial. In addition, SBS agrees to include the following language in the notification of denial sent to Applicants: *Failure to certify with SBS may or may not preclude a business entity from eligibility for M/WBE Certification with DMWBD. An Applicant may choose to submit a properly completed DMWBD Standard M/WBE Certification Application to DMWBD. Please note that as a result of this determination to deny your application for M/WBE Certification with the City, SBS **will not forward** your completed Addendum for M/WBE Certification with DMWBD, enclosed with this notice, to DMWBD for review.*

B. DMWBD Process for M/WBE Applications Submitted to NYS with SBS Addendum Attached

1. If an Applicant is certified by DMWBD as an M/WBE and has completed the SBS M/WBE Certification Application Addendum ("Addendum for M/WBE Certification with SBS"), DMWBD shall forward a copy of the completed DMWBD Standard M/WBE Certification Application (excluding attachments) as well as a copy of the Addendum for M/WBE Certification with SBS to SBS for review of Applicant's certification eligibility.
 - a. If SBS determines that the Addendum for M/WBE Certification with SBS satisfies the requirements for M/WBE certification pursuant to Title 66, Chapter 11, subchapter B of the Rules of the City of New York, it shall notify the Applicant that its application for M/WBE Certification has been approved.
 - b. If SBS determines that the Addendum for M/WBE Certification with SBS does *not* satisfy the requirements for M/WBE certification pursuant to Title 66, Chapter 11, subchapter B of the Rules of the City of New York, it shall notify the Applicant that its application for M/WBE certification has been denied.
2. If an Applicant completes and submits both the DMWBD Standard M/WBE Certification and the Addendum for M/WBE Certification with SBS, but based on a review of the Applicant's eligibility requirements, DMWBD denies the business enterprise M/WBE Certification with the State, DMWBD shall notify the Applicant that its application for M/WBE Certification has been denied. SBS shall receive a copy of said notification of denial. In addition, DMWBD agrees to include the following language in the notification of denial sent to Applicants: *Failure to certify with DMWBD may or may not preclude a business entity from eligibility for M/WBE Certification with SBS. An Applicant may choose to submit a properly completed SBS Standard M/WBE Certification Application to SBS. Please note that as a result of this determination to deny your application for M/WBE Certification with the State, DMWBD **will not forward** your completed Addendum for M/WBE Certification with SBS, enclosed with this notice, to SBS for review.*

ARTICLE 5. REPORTING AND INFORMATION SHARING

- A. SBS agrees to provide DMWBD with each signed original Addendum for M/WBE Certification with DMWBD previously forwarded to DMWBD for M/WBE Certification Eligibility Review pursuant to Article 4 of this MOU on a quarterly basis. Similarly, DMWBD agrees to provide

SBS with each signed original Addendum for M/WBE Certification with SBS previously forwarded to SBS for certification pursuant to Article 4 of this MOU on a quarterly basis.

B. SBS M/WBE Certification Quarterly Reporting Requirements

1. SBS agrees to provide DMWBD, on a quarterly basis, with the following information pertaining to the total number of *Standard M/WBE Certification Applications* received by SBS with a completed *Addendum for M/WBE Certification with DMWBD* attached:
 - a. Total Number of Applicants certified as an M/WBE with SBS (and completed *Addendum for M/WBE Certification with DMWBD* forwarded to DMWBD for review).
 - b. Total Number of Applicants **denied** certification as an M/WBE with SBS (where completed *Addendum for M/WBE Certification with DMWBD* was **not** forwarded to DMWBD for review), including a list of each Applicant denied M/WBE Certification by SBS.
2. SBS agrees to provide DMWBD, on a quarterly basis, with the following information pertaining to the total number of Addenda for M/WBE Certification with SBS forwarded to SBS by DMWBD for review.
 - a. Total Number of Applicants SBS certified as M/WBEs based on the *Addendum for M/WBE Certification with SBS* forwarded to SBS by DMWBD along with a copy of the completed *DMWBD Standard M/WBE Certification Application* submitted to the State by Applicant, including a list of each Applicant certified as an M/WBE by SBS.
 - b. Total Number of Applicants SBS **denied** M/WBE certification based on the *Addendum for M/WBE Certification with SBS* forwarded to SBS by DMWBD, including a list of each Applicant denied M/WBE certification by SBS.

C. DMWBD M/WBE Certification Quarterly Reporting Requirements

1. DMWBD agrees to provide SBS, on a quarterly basis, with the following information pertaining to the total number of *Standard M/WBE Certification Applications* received by DMWBD with a completed *Addendum for M/WBE Certification with SBS* attached:
 - a. Total Number of Applicants certified as an M/WBE with DMWBD (and completed *Addendum for M/WBE Certification with SBS* forwarded to SBS for review).
 - b. Total Number of Applicants **denied** certification as an M/WBE with DMWBD (where completed *Addendum for M/WBE Certification with SBS* was **not** forwarded to SBS for review), including a list of each Applicant denied M/WBE Certification by DMWBD.
2. DMWBD agrees to provide SBS, on a quarterly basis, with the following information pertaining to the total number of Addenda for M/WBE Certification with DMWBD forwarded to DMWBD by SBS for review.
3. Total Number of Applicants SBS certified as M/WBEs based on the *Addendum for M/WBE Certification with SBS* forwarded to SBS by DMWBD along with a copy of the completed *DMWBD Standard M/WBE Certification Application* submitted to the State by Applicant, including a list of each Applicant certified as an M/WBE by SBS.
4. Total Number of Applicants SBS **denied** M/WBE certification based on the *Addendum for M/WBE Certification with SBS* forwarded to SBS by DMWBD, including a list of each Applicant denied M/WBE certification by SBS.

ARTICLE 6. ADDITIONAL PROVISIONS PERTAINING TO M/WBE CERTIFICATION

- A. The Parties agreement not to sell any list of the other Party's certified firms that it receives to third parties, except as required by law or court order.

- B. The Parties shall promote each other's objectives and the M/WBE Certification review processes set forth in this MOU at M/WBE outreach events and conferences, as appropriate, within the Certifying Market Area.
- C. This MOU shall apply to firms that are newly certified by either SBS or DMWBD after the effective date of this MOU.
- D. The Parties shall disclose to each other any decision to revoke a firm's certification where a firm has been certified by both Parties through either of the processes set forth in this MOU.
- E. The Parties shall disclose to each other any decision to deny certification to a firm seeking certification through either of the processes set forth in this MOU. The parties expressly recognize that since SBS and DMWBD have similar but separate programs, receipt by an Applicant of a denial letter from either SBS or DMWBD does not preclude the Applicant from applying for certification from the other party.
- F. The parties shall disclose to each other any changes to the statutes, regulations, forms or procedures governing, authorizing and/or regulating their respective M/WBE Programs and the processes set forth in this MOU.
- G. SBS and DMWBD shall develop and promote an ongoing relationship between their respective staffs in order to improve and maintain effective communication between the agencies.
- H. SBS and DMWBD shall collaborate on developing and improving the M/WBE Certification process and assist business enterprises in completing the M/WBE Certification process.

ARTICLE 7. RENEWAL, TERMINATION AND MODIFICATION

- A. **Renewal.** This MOU may be renewed for one (1) additional three-year period upon the mutual written consent of both SBS and DMWBD.
- B. **Termination.** This MOU may be terminated by SBS or DMWBD at any time upon written notification to the other party.
- C. **Modification.** This MOU may only be amended by the written consent of both SBS and DMWBD.

ARTICLE 8. MISCELLANEOUS

- A. All notices required by this MOU shall be delivered by messenger or overnight delivery service to the following:

To SBS:

NYC Department of Small Business Services
 110 William Street, 7th Floor
 New York, New York 10038
 Attn: Assistance Commissioner for Division of Financial and Economic Opportunity

To DMWBD:

NYS Department of Economic Development
 Division of Minority and Women's Business Development
 633 Third Avenue, 33rd Floor
 New York, New York 10017
 Attn: Executive Director

- B. If any provision contained in this MOU is held to be unenforceable by a court of law or equity, this MOU will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this MOU unenforceable.
- C. The services provided under this MOU shall be performed in accordance with all applicable provisions of Federal, State, and Local Laws.
- D. This MOU contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the parties, nor to vary any of its terms.
- E. Neither Party will be deemed to be in violation of this MOU if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the MOU after the intervening cause ceases.
- F. Neither Party will assign, transfer or delegate any rights, obligations or duties under this MOU without the prior written consent of the other party. Such prior written approval will not be unreasonably withheld, delayed, or conditioned.
- G. Nothing in this MOU shall prevent DMWBD from implementing or utilizing new monitoring and compliance software. DWMBD reserves the right to revisit, modify or terminate this MOU, as necessary, in order to implement or utilize the monitoring and compliance software for DWMBD's M/WBE Program.
- H. The Parties hereto represent and warrant that the person executing this MOU on behalf of each party has full power and authority to enter into this MOU and that the parties are authorized by law to perform the services set forth in the MOU.


IN WITNESS WHEREOF, this MOU shall be effective as of the date first above written.

By:

NEW YORK STATE DEPARTMENT OF
ECONOMIC DEVELOPMENT, DIVISION
OF MINORITY AND WOMEN'S BUSINESS
DEVELOPMENT

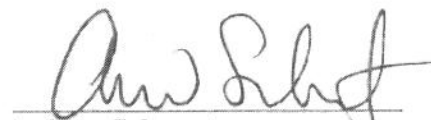


Dean Bennett
Executive Director


JAN. 17th, 2012 

By:

NEW YORK CITY DEPARTMENT OF
SMALL BUSINESS SERVICES



Andrew Schwartz,
First Deputy Commissioner

March 8, 2012 

ACKNOWLEDGMENTS

State of New York)
) SS.:
County of New York)

On this ___ day of _____, 20___, before me personally came _____,
to me known, and known to me to be the _____ of the **New York City
Department of Small Business Services**, who executed the foregoing agreement and who acknowledged
to me the execution thereof for the purposes therein mentioned.

Notary Public

State of)
) SS.:
County of)

On this ___ day of _____, 20___, before me personally came _____,
to me known, and known to me to be the _____
of _____, who executed the foregoing agreement and who acknowledged
to me the execution thereof for the purposes therein mentioned.

Notary Public