

SCHEDULE B – M/WBE Utilization Plan & PASSPort

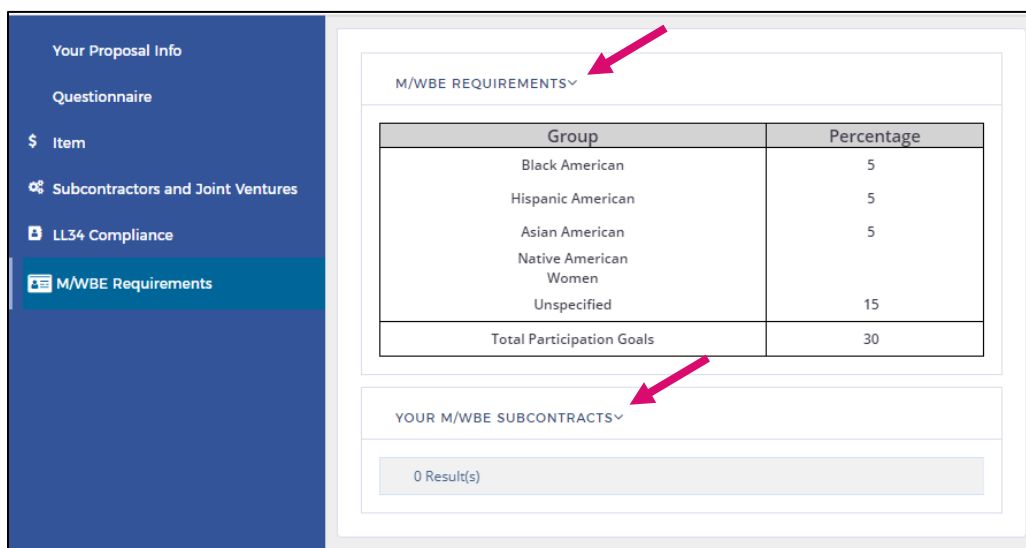
Modified July 2022

The M/WBE Requirements tab along with the information provided in the Subcontractors and Joint Ventures tab of the RFX encompasses a Prime Vendor's M/WBE Utilization Plan.

Part 1: M/WBE Participation Goals

The M/WBE Participation Goals are found in the M/WBE Requirements tab of your RFX (Solicitation) response in PASSPort. Please follow the instructions below to **review** an RFX's M/WBE Participation Goals in PASSPort. Please refer to the Local Law 1 Notice to All Prospective Contractors for additional information about the M/WBE program related to this solicitation.

1. Log in to [PASSPort](#) and click the **pencil icon** to access the RFX.
2. Click the **Manage Responses** tab of the RFX and click the **pencil icon** to access your in progress response.
3. Click the **M/WBE Requirements** tab. The M/WBE Requirements section will outline the goals for the RFX. The Your M/WBE Subcontracts section will list all subcontracting work that you've identified for certified M/WBEs. (Please see Part 2 for instructions on how to add subcontracting information in PASSPort.)



The screenshot displays the PASSPort interface for M/WBE Requirements. On the left is a navigation menu with options: Your Proposal Info, Questionnaire, Item, Subcontractors and Joint Ventures, LL34 Compliance, and M/WBE Requirements (highlighted). The main content area is divided into two sections. The top section, titled 'M/WBE REQUIREMENTS', contains a table with the following data:

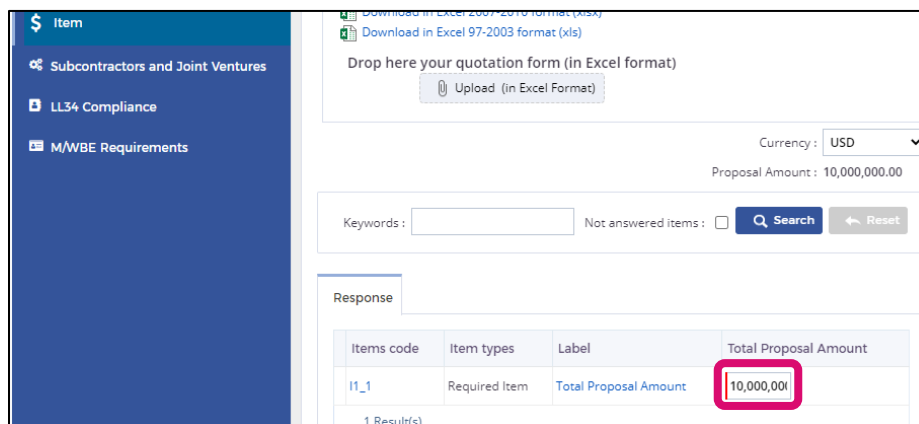
Group	Percentage
Black American	5
Hispanic American	5
Asian American	5
Native American Women	15
Unspecified	15
Total Participation Goals	30

The bottom section, titled 'YOUR M/WBE SUBCONTRACTS', shows '0 Result(s)'. Two red arrows point to the 'M/WBE REQUIREMENTS' and 'YOUR M/WBE SUBCONTRACTS' headers.

Part 2: M/WBE Participation Plan

The M/WBE Participation Goals are found in both the M/WBE Requirements tab and the Subcontractors and Joint Ventures tab of your RFX (Solicitation) response in PASSPort. Please follow the instructions below to review an RFX's M/WBE Participation Goals and **enter** information in PASSPort to meet these goals. Please refer to the Local Law 1 Notice to All Prospective Contractors for additional information about the M/WBE program related to this solicitation.

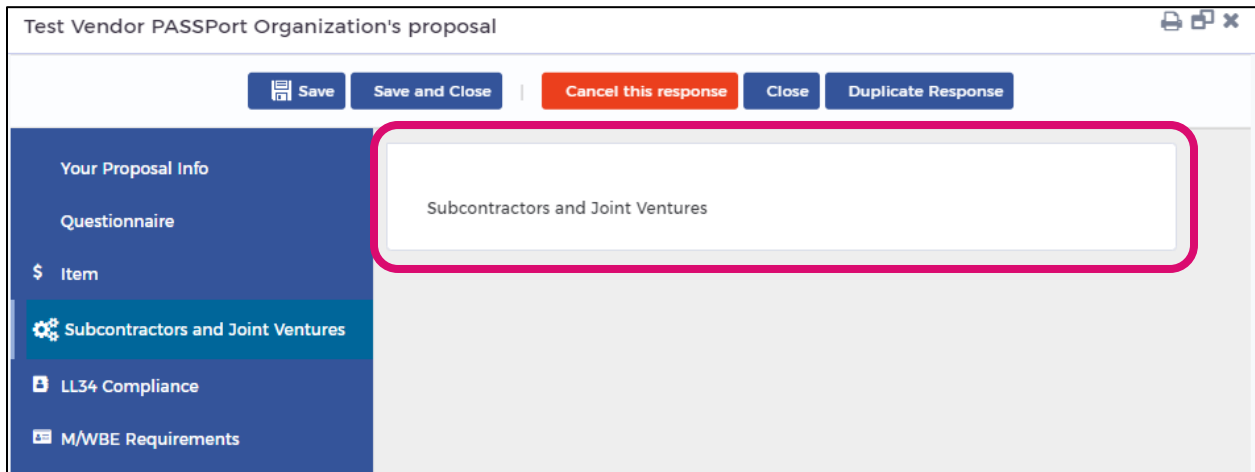
1. Log in to [PASSPort](#) and click the **pencil icon** to access the RFX.
2. Click the **Manage Responses** tab of the RFX and click the **pencil icon** to access your in progress response.
3. Complete all the required sections in the Your Proposal Info, Questionnaire, Item, LL34 Compliance (if required) and all other relevant tabs in your Response.
4. Be sure to complete the **Item** tab before the Subcontractors and Joint Ventures tab. Enter the **Proposal Amount** (or Bid Amount) and click **Save**.



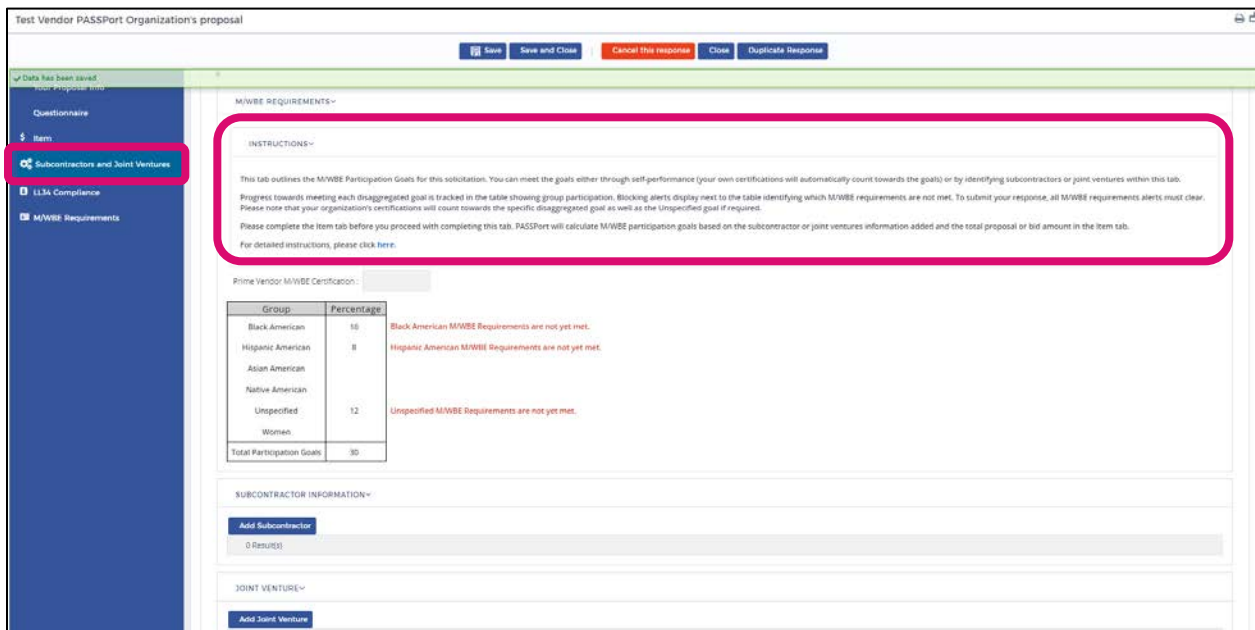
The screenshot displays the 'Item' tab in the PASSPort system. On the left, a navigation menu includes 'Item', 'Subcontractors and Joint Ventures', 'LL34 Compliance', and 'M/WBE Requirements'. The main content area shows a 'Response' section with a table. The table has columns for 'Items code', 'Item types', 'Label', and 'Total Proposal Amount'. A single row is visible with 'I1_1' as the item code, 'Required Item' as the type, and 'Total Proposal Amount' as the label. The value '10,000,000' is entered in the 'Total Proposal Amount' column and is highlighted with a red box. Above the table, there are search filters and a 'Proposal Amount' of 10,000,000.00 is displayed.

Items code	Item types	Label	Total Proposal Amount
I1_1	Required Item	Total Proposal Amount	10,000,000

- To identify your M/WBE subcontractors and joint ventures, click the **Subcontractors and Joint Ventures** tab and click the white box with the Subcontractors and Joint Venture text.



- Read the instructions in the M/WBE Requirements section of this tab.



- Your own organization's M/WBE certifications count towards the Total Participation Goals and automatically display in the field directly below the Instructions labeled as **Prime Vendor M/WBE Certification**. Any M/WBE participation goals that remain unmet are highlighted with red text alerts displaying to the right of the M/WBE Participation Goals table.

In this example, the Prime Vendor does not have any M/WBE Certifications displaying (the field is blank) and thus still needs to meet the requirements as indicated.

Test Vendor PASSPort Organization's proposal

Save Save and Close Cancel this response Close

Data has been saved
Your Proposal info

Questionnaire

Item

Subcontractors and Joint Ventures

LL34 Compliance

M/WBE Requirements

M/WBE REQUIREMENTS

INSTRUCTIONS

This tab outlines the M/WBE Participation Goals for this solicitation. You can meet the goals either through self-performance (your own company) or through subcontractors and joint ventures. Progress towards meeting each disaggregated goal is tracked in the table showing group participation. Blocking alerts display next to the goals that are not yet met. Please note that your organization's certifications will count towards the specific disaggregated goal as well as the Unspecified goal if red text is not present. Please complete the Item tab before you proceed with completing this tab. PASSPort will calculate M/WBE participation goals based on the information provided. For detailed instructions, please click [here](#).

Prime Vendor M/WBE Certification :

Group	Percentage	
Black American	10	Black American M/WBE Requirements are not yet met.
Hispanic American	8	Hispanic American M/WBE Requirements are not yet met.
Asian American		
Native American		
Unspecified	12	Unspecified M/WBE Requirements are not yet met.
Women		
Total Participation Goals	30	

- Any participation goal(s) your organization cannot meet through its own certification(s), must be met by identifying subcontractors and/or joint ventures with the required certifications in the **Subcontractor Information** and **Joint Venture** sections of the Subcontractors and Joint Ventures tab.

Prime Vendor M/WBE Certification :

Group	Percentage	
Black American	10	Black American M/WBE Requirements are not yet met.
Hispanic American	8	Hispanic American M/WBE Requirements are not yet met.
Asian American		
Native American		
Unspecified	12	Unspecified M/WBE Requirements are not yet met.
Women		
Total Participation Goals	30	

SUBCONTRACTOR INFORMATION

Add Subcontractor

0 Results

JOINT VENTURE

Add Joint Venture

- To add a subcontractor, click the **Add Subcontractor** button.

10. In the Add Subcontract window, complete all the fields in both the **Subcontract Information** and **Vendor Information** sections.

Note, the **Subcontractor Dollar Amount** value entered will be calculated against the total Proposal Amount in the Item tab to determine the percentage towards your M/WBE Goal Participation for this RFx.

In this example, \$1 million is allocated to the **Subcontractor Dollar Amount** which is 10% of the Proposal Amount (in the Item tab) and can count towards a Participation Goal if the subcontractor is M/WBE Certified in one of the specified goals.

The screenshot shows the 'Add Subcontract' window with two main sections highlighted by red boxes. The 'SUBCONTRACT INFORMATION' section includes fields for 'Subcontractor Dollar Amount' (set to 1,000,000), 'Purpose' (HVAC), 'Estimated Start Date' (08/01/2022), 'Estimated End Date' (08/31/2022), and 'M/WBE Certification'. The 'VENDOR INFORMATION' section includes a checkbox for 'Subcontractor not filed in PASSPort or not yet identified', a dropdown for 'Select PASSPort Vendor' (currently showing 'Subcontractor Vendor'), and fields for 'EIN' and 'Subcontractor Name'. A red arrow points to the 'Subcontractor Dollar Amount' field.

11. To identify a specific M/WBE certified PASSPort Vendor, type the subcontracting vendor name in the **Select PASSPort Vendor** field or click the ellipsis to search for and select the vendor. Click **Save**.

This close-up screenshot focuses on the 'VENDOR INFORMATION' section. It shows the checkbox for 'Subcontractor not filed in PASSPort or not yet identified' and the 'Select PASSPort Vendor' dropdown menu, which is currently displaying 'Subcontractor Vendor' and has an ellipsis button to its right. Below this are fields for 'EIN' and 'Subcontractor Name'.

12. Choose the relevant **M/WBE Certification** from the drop-down in the Subcontract Information section of the Add Subcontract screen. Click **Save** and then click **Close** to return to the Subcontractors and Joint Ventures tab.

The screenshot shows the 'Add Subcontract' form with the following details:

- Proposal ID: Proposal # 1
- Buttons: Save, Close
- Section: SUBCONTRACT INFORMATION
 - Subcontractor Dollar Amount: 1,000,000.
 - Purpose: HVAC
 - Estimated Start Date: 08/01/2022
 - Estimated End Date: 08/31/2022
 - M/WBE Certification: [Dropdown menu highlighted with a red box]
- Section: VENDOR INFORMATION
 - To change the PASSPort V
 - Subcontract

13. If the **Subcontractor is not Filed in PASSPort or not yet identified** (to be determined), click the corresponding checkbox in the Add Subcontract pop-up window. Be sure to complete all relevant fields in each section and click **Save**. The example below reflects scenarios 1 or 2.

Scenarios to click this checkbox:

- 1: If the subcontractor has a PASSPort account, but their PASSPort Vendor Status is not Filed.
- 2: If the subcontractor does not have a PASSPort account.
- 3: A specific subcontractor was not yet identified by your organization, and this serves as a placeholder to meet a specific participation goal.

The screenshot shows the 'Add Subcontract' form with the following details:

- Proposal ID: Proposal # 1
- Buttons: Save, Close
- Section: SUBCONTRACT INFORMATION
 - Subcontractor Dollar Amount: 1000000
 - Purpose: HVAC
 - Estimated Start Date: 10/01/2022
 - Estimated End Date: 10/30/2022
 - M/WBE Certification:
- Section: VENDOR INFORMATION
 - Subcontractor not filed in PASSPort or not yet identified: (highlighted with a red box)
 - EIN: 123456789
 - Subcontractor Name: HVAC City
 - Subcontractor Address: 12 Greenwich Ave
 - Subcontractor Phone: 212-123-4567

14. Choose the applicable **M/WBE Certification** from the drop-down to meet the corresponding Participation Goal for the subcontractor. Click **Save** and then **Close** to return to the Subcontractors and Joint Ventures tab.

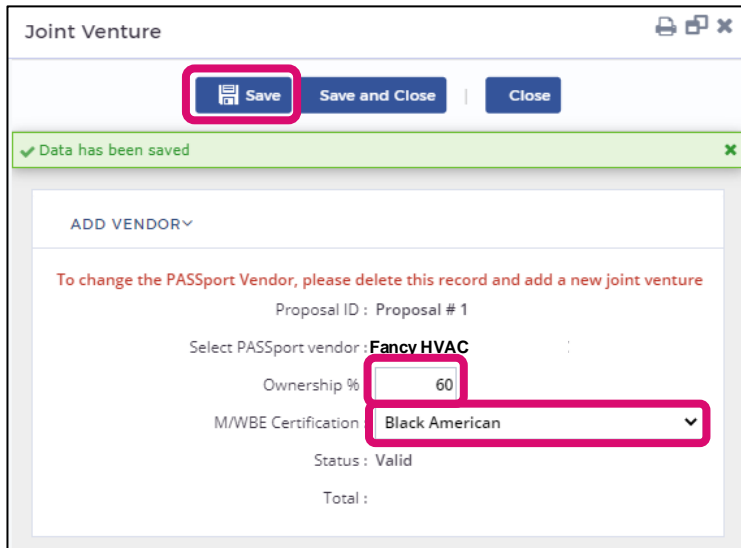
The screenshot shows the 'Add Subcontract' form. At the top, there are 'Save' and 'Close' buttons, both highlighted with red boxes. Below them is a green notification bar that says 'Data has been saved'. The form is divided into two main sections: 'SUBCONTRACT INFORMATION' and 'VENDOR INFORMATION'. In the 'SUBCONTRACT INFORMATION' section, the 'M/WBE Certification' dropdown menu is open, showing a list of options: Asian American, Black American, Hispanic American, Native American, and Women. The 'Save' button is also highlighted with a red box. The 'VENDOR INFORMATION' section contains fields for EIN, Subcontractor Name, Subcontractor Address, and Subcontractor Phone, along with a checkbox for 'Subcontractor not filed in PASSPort or not yet identified'.

15. If you are submitting on behalf of a joint venture, click **Add Joint Venture** in the Subcontractors and Joint Ventures tab.

16. To identify a specific M/WBE certified PASSPort Vendor, type the vendor name of the joint venture partner entity in the **Select PASSPort Vendor** field or click the **ellipsis** to search for and select the vendor. Click **Save**.

The screenshot shows the 'Joint Venture' form. At the top, there are 'Save', 'Save and Close', and 'Close' buttons. The 'Save' button is highlighted with a red box. Below the buttons is the 'ADD VENDOR' section. The 'Select PASSport vendor' field is highlighted with a red box, showing an ellipsis icon. The form also includes fields for 'Ownership %', 'M/WBE Certification', 'Status', and 'Total'.

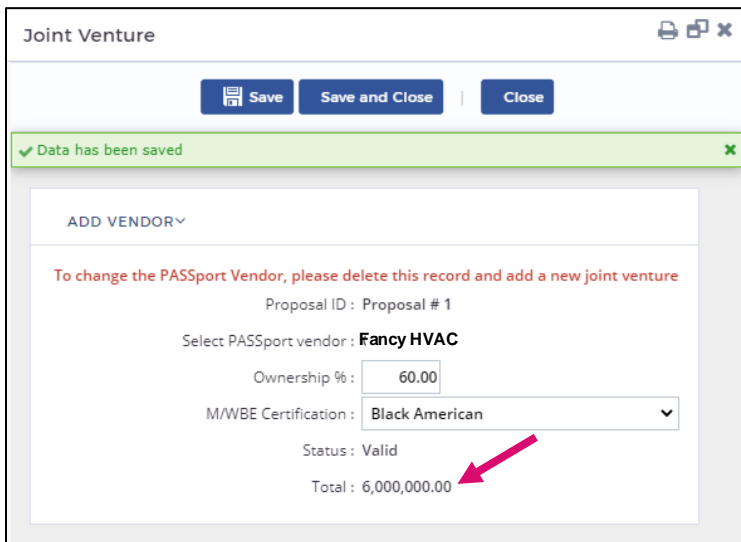
17. Complete the **remaining fields** in the Add Vendor section of the Joint Venture pop-up and click **Save**.



The screenshot shows a 'Joint Venture' pop-up window. At the top, there are three buttons: 'Save', 'Save and Close', and 'Close'. The 'Save' button is highlighted with a red box. Below the buttons is a green notification bar that says 'Data has been saved'. The main content area is titled 'ADD VENDOR' and contains the following information: 'To change the PASSport Vendor, please delete this record and add a new joint venture', 'Proposal ID : Proposal # 1', 'Select PASSport vendor : Fancy HVAC', 'Ownership % : 60', 'M/WBE Certification : Black American', 'Status : Valid', and 'Total :'. The 'Ownership %' field and the 'M/WBE Certification' dropdown menu are also highlighted with red boxes.

18. PASSPort automatically populates the **Total** amount covered by the joint venture based on the Ownership % entered compared to the Proposal Amount (see Item tab).


In this example, the joint venture partner entity selected has 60% ownership which calculates here to equal \$6 million in total of the full \$10 million Proposal Amount.



The screenshot shows the same 'Joint Venture' pop-up window as in the previous image. The 'Ownership %' field now shows '60.00' and the 'Total' field shows '6,000,000.00'. A red arrow points to the 'Total' field. The 'Save' button is no longer highlighted.

19. Once participation goals are met and all alerts are addressed, the alerts will disappear from the tab.

Group	Percentage
Black American	10
Hispanic American	8
Asian American	
Native American	
Unspecified	12
Women	
Total Participation Goals	30



For vendors with **multiple M/WBE certifications**, please note that only one certification can be entered at a time. To add an additional certification, please repeat the Add Subcontractor or Add Joint Venture steps to meet additional participation goals.

If any information entered requires updating in an added Subcontractor or Joint Venture record, delete the record by clicking the **trash icon** and add it again with the updated information.

Part 3: Submitting a Request for Waiver of M/WBE Participation Requirement

Please review the instructions to submit a request for waiver of the M/WBE participation requirement. A copy of the blank form (3 pages) can be found at the end of this document with the linked [Vendor Contract History Excel template](#) on the first page of the form.

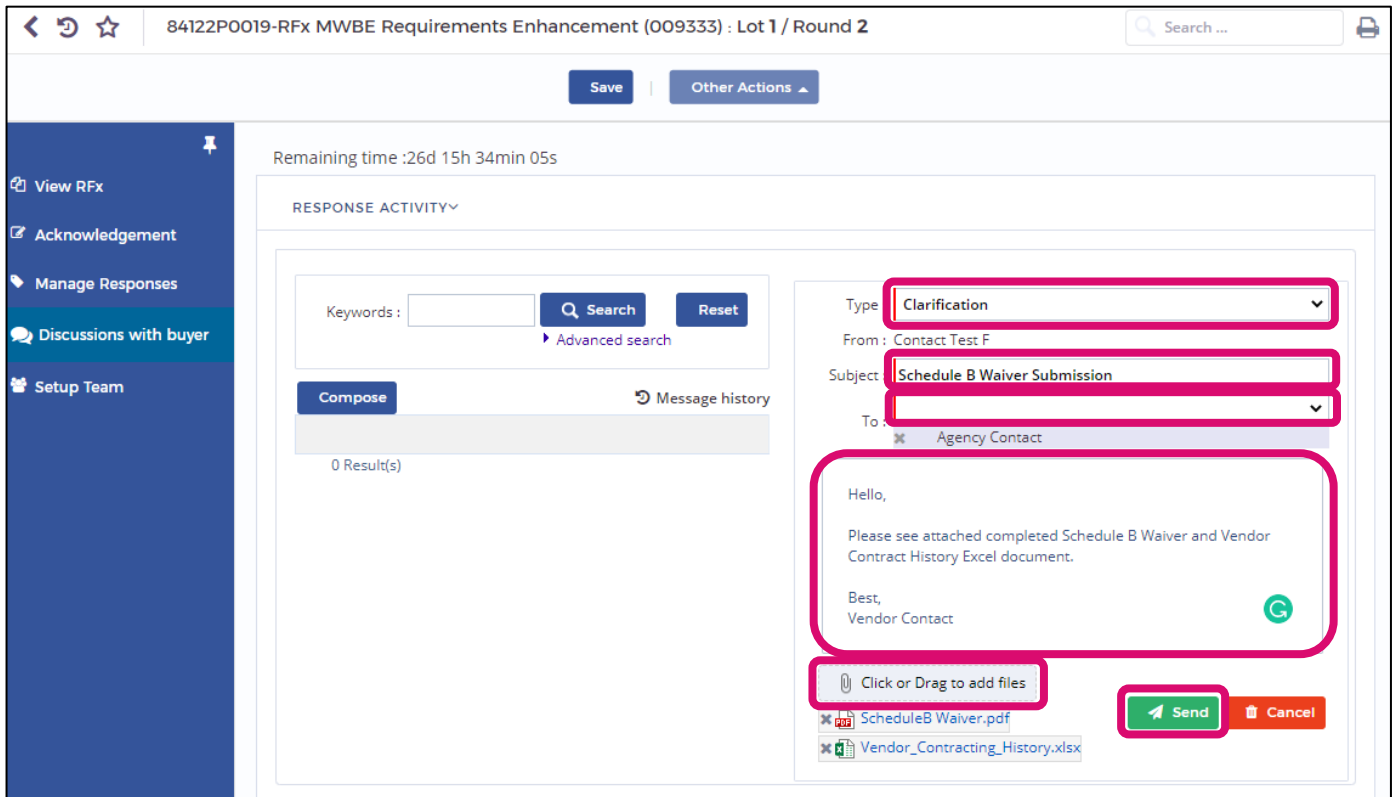
Follow these steps to submit a Waiver Request to the Agency:

1. Log in to [PASSPort](#) and click the **pencil icon** to access the RFx.
2. From the View RFx tab, download the Schedule B form and complete Part 3.
3. Navigate to the **Discussion with Buyer** tab and click the Compose button to start a draft message to the Agency.

Note: Be sure to Acknowledge the RFx prior to completing step 9.

4. Click the **Type** drop-down and select **Clarification**.
5. Type a subject in the **Subject** field such as "Schedule B Waiver Submission".
6. Select Agency Contact from the **To** field drop-down.
7. Type your message in the **text area**.
8. Attach the completed Schedule B – Part 3 form and the completed Vendor Contract History Excel document by clicking the **Click or Drag to add files** button.

9. Click the **Send** button to submit your message and its attachments to the Agency Contact.
10. The Agency will review the waiver and the result of the Agency's waiver determination will be reflected in PASSPort in both the M/WBE Requirements tab and the Subcontractor and Joint Ventures tab of your RFX response. For additional information, refer to **the Local Law 1 Notice to All Prospective Contractors.**



Request for Waiver of M/WBE Participation Requirement

Contract Overview

Tax ID# _____ FMS Vendor ID# _____
 Business Name _____ Contact Name _____
 Email _____ Telephone _____
 Contracting Agency _____
 PASSPort PIN# _____ Bid/Proposal Due Date _____

Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)

- Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- Vendor subcontracts some of this type of work but at a lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. Identify your subcontracting plan in the vendor certification section below.
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal requested here. Explain under separate cover.

Vendor Contract History

Using the [linked Excel template](#), list all contracts (for City and Non-City work) performed within the last 3 years and provide the requested information for each contract.

From the list of all contracts, provide reference information below for the 5 most relevant contracts in size, scale and scope (performed for New York City or any other entity) to the bid or proposal for which you are submitting this waiver request. Provide the requested information for each subcontract awarded during the life of the listed reference contract.

Please make sure to highlight the 5 reference contracts provided below among the comprehensive list of all your contract awards within the attached Excel template.

Reference 1

Agency/Organization _____ Contract # _____
 Reference Contact _____ Telephone _____ Email _____
 Contract Start Date _____ Contract End Date _____ Total Contract Value \$ _____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor? Prime Contractor Subcontractor
 Was the Prime Contract subject to any Goals? City M/WBE Goals State Goals Federal Goals No Applicable Goals
 Did the Prime Contractor meet Goal requirements? Yes No N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
Percentage of total contract value subcontracted to other vendors		_____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.
 _____ \$ _____

M/WBE Participation Goals for Services

Defined by AGENCY in bid/solicitation documents
 Percent of the total contract value to be subcontracted to M/WBE vendors for services and/or credited to an M/WBE Qualified Joint Venture.

Unspecified _____ %
 Black American _____ %
 Hispanic American _____ %
 Native American _____ %
 Asian American _____ %
 Women _____ %

Total Participation Goals _____ %

Proposed by VENDOR seeking waiver
 Percent of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted to M/WBE businesses for services. Or if M/WBE Qualified Joint Venture, percent of total contract value anticipated to be credited to M/WBE vendor(s).

Unspecified _____ %
 Black American _____ %
 Hispanic American _____ %
 Native American _____ %
 Asian American _____ %
 Women _____ %

Total Participation Goals _____ %

Reference 2

Agency/Organization _____ Contract # _____

Reference Contact _____ Telephone _____ Email _____

Contract Start Date _____ Contract End Date _____ Total Contract Value \$ _____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor?

Prime Contractor

Subcontractor

Was the Prime Contract subject to any Goals?

City M/WBE Goals

State Goals

Federal Goals

No Applicable Goals

Did the Prime Contractor meet Goal requirements?

Yes

No

N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

_____ \$ _____

Reference 3

Agency/Organization _____ Contract # _____

Reference Contact _____ Telephone _____ Email _____

Contract Start Date _____ Contract End Date _____ Total Contract Value \$ _____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor?

Prime Contractor

Subcontractor

Was the Prime Contract subject to any Goals?

City M/WBE Goals

State Goals

Federal Goals

No Applicable Goals

Did the Prime Contractor meet Goal requirements?

Yes

No

N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

_____ \$ _____

Reference 4

Agency/Organization _____ Contract # _____
Reference Contact _____ Telephone _____ Email _____
Contract Start Date _____ Contract End Date _____ Total Contract Value \$ _____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor? Prime Contractor Subcontractor
Was the Prime Contract subject to any Goals? City M/WBE Goals State Goals Federal Goals No Applicable Goals
Did the Prime Contractor meet Goal requirements? Yes No N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____
Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.
\$ _____

Reference 5

Agency/Organization _____ Contract # _____
Reference Contact _____ Telephone _____ Email _____
Contract Start Date _____ Contract End Date _____ Total Contract Value \$ _____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor? Prime Contractor Subcontractor
Was the Prime Contract subject to any Goals? City M/WBE Goals State Goals Federal Goals No Applicable Goals
Did the Prime Contractor meet Goal requirements? Yes No N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____
Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.
\$ _____

Vendor Certification

Identify/list all the work areas you intend on subcontracting on the current anticipated contract for which you are submitting this waiver request.

I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith. I further affirm that the work that I did not list as work that will be subcontracted on this contract for which I am submitting this waiver request is work that I have performed on past contracts and will not subcontract if awarded this contract.

Signature _____ Date _____

Print Name _____ Title _____

Partial Waiver Approved with Revised Participation Goals
Unspecified _____ %
Black American _____ %
Hispanic American _____ %
Native American _____ %
Asian American _____ %
Women _____ %
Total Revised Goals _____ %

Approvals (for Agency completion only)

ACCO Signature _____ Date _____

CCPO Signature _____ Date _____

Waiver Determination

Full Waiver Approved

Waiver Denied

NOTICE TO ALL PROSPECTIVE CONTRACTORS
PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS
ENTERPRISES IN CITY PROCUREMENT

ARTICLE I. M/WBE PROGRAM

Section 6-129 of the Administrative Code of the City of New York (“Section 6-129”) establishes the program for participation in City procurement (“M/WBE Program”) by minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services (“DSBS”) promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the “M/WBE Utilization Plan”) and are detailed below. Contracts solicited through the Procurement and Sourcing Solutions Portal (PASSPort) will contain a Schedule B in the format outlined in the Schedule B – M/WBE Utilization Plan & PASSPort rider. The provisions of this notice will apply to contracts subject to the M/WBE Program established by Section 6-129 regardless of solicitation source.

The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

References to MBEs or WBEs shall also include such businesses certified pursuant to the executive law where credit is required by section 311 of the New York City Charter or other provision of law.

Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

PART A

**PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD
AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS**

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, (“**Participation Goals**”), as applicable, are set forth on Schedule B, Part 1 to this Contract (see Page 1, Line 1 Total Participation Goals) or will be set forth on Schedule B, Part 1 to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with DSBS as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor’s participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor’s participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part 2 (see Pages 1-2) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by

MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor's required certification and affirmations. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered ("Master Services Agreement") and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part 2 (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed non-responsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part 2 (see Pages 1-2) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor's required certification and affirmations. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART 2). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART 3). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE

VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of city-certified MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6451, or by visiting or writing DSBS at One Liberty Plaza, New York, New York, 10006, 11th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to,: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where

applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE Utilization Plan**, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE Utilization Plan** in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE Utilization Plan** has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of **the Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the Participation Goals in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its M/WBE Utilization Plan.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part 3 of Schedule B **and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency Contact Person listed in Schedule B, Part 1. Full or partial waiver requests that are received later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due may be rejected as untimely.** Bidders, proposers, or contractors, as applicable, who have submitted timely requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of

subcontracting in its **M/WBE** Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE** Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of **M/WBE** Utilization Plan. (a) A Contractor may request a modification of its **M/WBE** Utilization Plan after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's **M/WBE** Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;

(iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the **M/WBE** Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

(v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

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(vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

(vii) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;

(viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If the Contractor was required to identify in its bid or proposal the MBEs and/or WBEs they intended to use in connection with the performance of the Contract or Task Order, substitutions to the identified firms may only be made with the approval of the Agency, which shall only be given when the Contractor has proposed to use a firm that would satisfy the **Participation Goals** to the same extent as the firm previously identified, unless the Agency determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts. In making such determination, the Agency shall require evidence of the efforts listed in Section 11(a) above, as applicable, along with any other relevant factors.

13. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE Utilization Plan** and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its **M/WBE Utilization Plan**, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

15. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B

MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of a **M/WBE** Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See §6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the **M/WBE** Utilization Plan.
2. Pursuant to DSBS rules, construction contracts that include a requirement for a **M/WBE** Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.
3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.
4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).
5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required **Participation Goals**.

ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.
2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any **M/WBE** Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.
3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements

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Section 6-129, including, but not limited to, any **M/WBE** Utilization Plan, Agency may determine that one of the following actions should be taken:

- (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) making a finding that the Contractor is in default of the Contract;
- (d) terminating the Contract;
- (e) declaring the Contractor to be in breach of Contract;
- (f) withholding payment or reimbursement;
- (g) determining not to renew the Contract;
- (h) assessing actual and consequential damages;
- (i) assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- (j) exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- (k) taking any other appropriate remedy.

4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6-129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

6. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE and/or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.