

CITY OF NEW YORK

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

First Quarter of Fiscal Year 2021

Compliance Report covering July 1, 2020 – September 30, 2020

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Introduction

This report describes the City's efforts to ensure minority and women-owned businesses have greater access to public contracting opportunities. The reporting period covers program accomplishments for the first quarter of Fiscal Year 2021 (July 1, 2020 – September 30, 2020). As per the New York City Administrative Code §6-129(l)1, the report is jointly submitted by the Director of the Mayor's Office of Contract Services (MOCS), as City Chief Procurement Officer, and by the Commissioner of the Department of Small Business Services (SBS).

This report summarizes program activity, prime contract, and subcontract utilization data for City-certified Minority and Women-Owned Business Enterprises (M/WBEs) and Emerging Business Enterprises (EBEs), as well as additional data specified in Section 6-129 of the New York City Administrative Code. The report covers prime contracts that were registered, and subcontracts approved in the first quarter of FY 2021, including procurements that were solicited before LL 1 became effective and are subject to LL 129.¹ The City's M/WBE program is led by J. Phillip Thompson, Deputy Mayor for Strategic Initiatives and Citywide M/WBE Director, and administered in partnership with the Mayor's Office of M/WBEs, SBS and MOCS.

In addition to the requirement that the City find vendors responsible, State law also requires that most contracts be awarded to the lowest responsive bidder or the best proposer. SBS has worked aggressively to expand opportunities for minority and women-owned firms by connecting them to a comprehensive range of programs that provide procurement technical assistance and capacity building support, as well as other resources to help them navigate and compete in the public procurement marketplace. During the first quarter of FY 2021, M/WBEs were awarded over \$129 million in prime contracts subject to the M/WBE program and nearly \$31 million in eligible subcontracts. The City achieved a combined prime and subcontract utilization of 23%.

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

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

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 the status of applications and update their business profiles to better promote themselves to buyers. In addition to the regular certification workshops, during the reporting period, SBS continued to hold one-on-one certification assistance sessions. These sessions helped ensure that firms submitted complete and quality application packages, reduced back and forth and delays, and increased the chances of obtaining certification. In the first quarter of FY 2021, SBS conducted 13 certification workshops and application review sessions for 401 businesses.

Various community partners help extend the reach of SBS certification outreach efforts. Businesses receive assistance in applying for certification from these organizations, including the New York City Council-funded community-based groups that comprise the M/WBE Leadership Association, and the SBS network of Business Solutions Centers located throughout the five boroughs. This helps to ensure a higher quality application, making the submission and the certification review process easier and simpler. Between July and September 2020, SBS certified 396 new M/WBEs and recertified 288 M/WBEs, bringing the total number of City-certified companies to 10,169 as of September 30, 2020. Community partners help support the business growth of M/WBEs with marketing workshops, networking events, and business development services. During the reporting period, SBS collaborated with local development corporations, trade associations, industry membership organizations, and local chambers of commerce on 26 events to spread the word about the benefits of certification and the range of capacity-building services available citywide to help businesses grow.

Emerging Business Enterprise Program

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

program criteria relies on individual and specific determinations of an applicant's disadvantage. As of September 30, 2020, there were 22 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 \$122,750 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 September 30, 2020, there were a total number of 18 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 \$1,937,581 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, an M/WBE 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 quarter of FY 2021, SBS held a total of 9 workshops attended by a total of 439 participants to help M/WBEs build knowledge and understanding of the City's procurement rules, City's procurement portals, how to effectively respond to solicitations, and best practices in contract management.

Also, during the reporting period, 563 firms were supported through 832 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 18 events, provided 231 one-on-one assistance sessions, assisted with 36 loan applications, and awarded 29 loans to M/WBEs.

Capacity Building

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

Bond Readiness provides certified construction and trade companies with financial management skills to help them secure or increase surety bonds necessary to compete on City contracts. The program offers 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, 31 firms were accepted into the program.

Bonding Services provides certified construction and trade companies with access to six-hour QuickBooks for Construction clinics 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, in order to compete for larger City contract opportunities. During the reporting period, 30 unique firms participated in the QuickBooks Clinic series, and 13 firms participated in 24 one-on-one bonding assistance sessions.

The **M/WBE Mentors Program**, scheduled to officially launch in January 2021, will create spaces for peer mentorship and networking amongst NYC-certified M/WBEs. Through an event series, founders representing a variety of industries and backgrounds will serve as Mentors to less experienced MWBEs. By mining their own experiences for advice, these mentors will provide the insight their peers need to succeed to chart their own path of growth through government contracting. During the reporting period, the Program hosted 2 pilot events in August and September, which 120 and 102 unique firms attended, respectively.

Strategic Steps for Growth is an eight-month executive education program designed for M/WBEs, offered in partnership with the NYU Stern School of Business' W.R. Berkley Innovation Lab and NYU Division of Operations. The program provides participants with a new professional network, including business experts, university professors, and other business owners, and offers guidance for every aspects of business operations as well as a focus on capacity building for City and government contract opportunities for the enrolled M/WBEs. Participants learn the strategic skills needed to run a growing company and create a custom, three-year growth plan for their businesses. In July of the reporting period, thirteen M/WBE firms graduated as part of the 2019-2020 cohort.

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, five loans of \$787,000 were awarded through the Loan Fund.

Program Compliance

To ensure that all agency staff responsible for purchasing activities are knowledgeable about the M/WBE program and their agency's goals, SBS and MOCS conduct agency training sessions at the Citywide Training Center and specific trainings at agency offices. During the first quarter of FY 2021, 79 procurement professionals from 22 agencies attended two training sessions. The topics included Local Law 1 implementation, strategies and best practices used to identify M/WBEs for contract opportunities, Online Directory training, and enhancing M/WBE procedures in all contract areas.

In the reporting period, the Director of the City's M/WBE program, Deputy Mayor for Strategic Policy Initiatives J. Phillip Thompson and M/WBE Senior Advisor and Director of the Mayor's Office of M/WBE Magalie Austin held the first quarterly compliance meeting with agency commissioners and M/WBE officers to discuss utilization and agency initiatives to increase M/WBE performance. The first quarterly meeting was held on September 17, 2020 and was attended by 146 attendees representing 40 agencies.

Qualified Joint Venture Agreements

There were no contracts subject to the M/WBE program awarded to a qualified joint venture during the reporting period.

Efforts to Reduce or Eliminate Barriers to Competition

Since the implementation of the M/WBE program, the City continues to undertake a number of efforts to reduce barriers for M/WBEs and small businesses that are competing for contracts and currently doing business with the City. As mentioned above, SBS is operating a bond readiness program to help firms secure

surety bonds for larger City construction projects. SBS launched the Bond Collateral Assistance Fund, funded with \$10 million, to help small businesses and M/WBEs secure surety bonds to perform on City Contracts. Two collateral assistance awards were made for a total of \$800,000.

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

Prime Contract M/WBE Utilization

Table 1 below summarizes prime contracts awarded by City agencies during the first quarter of FY 2021. M/WBEs were awarded over \$129 million in prime contracts amounting to 20% of all such awards during this reporting period. The prime contracts in this table include industries and awards pursuant to methods subject to the M/WBE program.

Table 1 - FY 2021 Q1 - Prime Contracts Utilization by Industry

Industry/Size Group	M/WBE			Total	
	Count	Contract Value	%	Count	Contract Value
Construction Services	1,388	\$66,628,102	20%	2,097	\$326,858,718
Micro Purchase ²	1,376	\$1,045,818	53%	2,070	\$1,969,814
Small Purchase ³	3	\$182,904	100%	3	\$182,904
>\$100K, <=\$1M	3	\$1,848,955	47%	7	\$3,938,089
>\$1M, <=\$5M	0	\$0	0%	3	\$13,882,600
>\$5M, <=\$25M	6	\$63,550,425	44%	13	\$143,819,269
>\$25M	0	\$0	0%	1	\$163,066,043
Goods	465	\$9,195,920	61%	1,061	\$15,073,072
Micro Purchase	380	\$3,174,032	45%	944	\$7,067,188
Small Purchase	77	\$4,300,420	68%	109	\$6,284,416
>\$100K, <=\$1M	8	\$1,721,468	100%	8	\$1,721,468
Professional Services	40	\$19,971,712	23%	99	\$88,469,940
Micro Purchase	12	\$114,002	27%	41	\$420,097
Small Purchase	10	\$717,909	77%	14	\$929,789
>\$100K, <=\$1M	10	\$2,924,517	52%	17	\$5,605,838
>\$1M, <=\$5M	8	\$16,215,284	35%	22	\$46,983,235
>\$5M, <=\$25M	0	\$0	0%	5	\$34,530,981
>\$25M	0	\$0	0%	0	\$0
Standardized Services	684	\$33,339,834	15%	2,480	\$225,646,316
Micro Purchase	611	\$4,541,697	30%	2,342	\$15,059,350
Small Purchase	58	\$3,542,154	64%	90	\$5,505,708
>\$100K, <=\$1M	11	\$3,357,735	30%	27	\$11,030,733
>\$1M, <=\$5M	2	\$4,800,000	23%	10	\$20,723,056
>\$5M, <=\$25M	2	\$17,098,248	15%	9	\$111,834,922
>\$25M	0	\$0	0%	2	\$61,492,546
Total	2,577	\$129,135,568	20%	5,737	\$656,048,046
Micro Purchase	2,379	\$8,875,549	36%	5,397	\$24,516,448
Small Purchase	148	\$8,743,387	68%	216	\$12,902,818
>\$100K, <=\$1M	32	\$9,852,675	44%	59	\$22,296,129
>\$1M, <=\$5M	10	\$21,015,284	26%	35	\$81,588,891
>\$5M, <=\$25M	8	\$80,648,673	28%	27	\$290,185,172
>\$25M	0	\$0	0%	3	\$224,558,589

² Micropurchase is a purchase with a value of \$20,000 or less for goods and most services or \$35,000 or less for construction services.

³ Small purchase is a purchase with a value between the micropurchase limits up to \$100,000. Purchases for goods and most services over \$20,000 up to \$500,000 made utilizing the M/WBE Noncompetitive Small Purchase Method, codified under Section 3-08 of the PPB Rules in November 2018, are also reflected within this table.

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

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

In those areas of procurement where agencies have greater discretion to target procurements to M/WBEs (i.e., micro purchases and small purchases), M/WBE utilization remains strong. In the first quarter of FY 2021, M/WBEs were awarded nearly \$9 million worth of micro purchases, or 36% of the dollar value of all such awards. Additionally, for small purchases the M/WBE utilization rate was 68% of the dollar value of all such awards (approximately \$9 million awarded).

A total of 2,577 prime contracts were awarded during the first quarter of FY 2021. M/WBE utilization on prime contracts during the reporting period is detailed below. Highlights include M/WBEs being awarded:

- 44% of the value of contract awards valued between \$100,000 and at or below \$1 million (nearly \$10 million);
- 26% of the value of contract awards valued between \$1 million and at or below \$5 million (over \$21 million); and
- 28% of the value of contract awards valued between \$5 million and at or below \$25 million (nearly \$81 million).
- 0% of the value of contracts awards valued over \$25 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

⁴ 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. Thus, the citywide goals for prime contract awards must be viewed as aspirational, and agencies' performance may only be evaluated in terms of their efforts to make progress toward achieving the goals in light of the limited tools available to them for that purpose.

Prime Contracts with M/WBE Participation Goals

Under the M/WBE program, larger prime contracts with anticipated subcontracting are subject to participation goals and must be reported on pursuant to §6-129(l)(b)(i). During the reporting period, agencies awarded 47 new prime contracts subject to M/WBE participation requirements with 23% 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 232 approved subcontracts subject to the program, 128 were awarded to M/WBE firms. The approved subcontracts awarded to M/WBEs amounted to approximately \$31 million and represent 60% of the value of all qualifying subcontracts. For more details, see Appendices – Tables E - F.

Table 2 - FY 2021 Q1 - Subcontracts Utilization by Industry

Industry/Size Group	M/WBE			Total	
	Count	Value	%	Count	Value
Construction	82	\$22,952,063	59%	152	\$38,757,879
Micro Purchase	18	\$199,668	46%	41	\$438,592
Small Purchase	28	\$1,634,880	52%	55	\$3,142,552
>\$100K, <=\$1M	32	\$10,721,074	59%	50	\$18,048,720
>\$1M, <=\$5M	4	\$10,396,441	88%	5	\$11,798,016
>\$5M, <=\$25M	0	\$0	0%	1	\$5,330,000
>\$25M	0	\$0	0%	0	\$0
Professional Services	35	\$5,706,637	56%	62	\$10,261,203
Micro Purchase	12	\$77,920	60%	18	\$130,420
Small Purchase	11	\$544,700	40%	25	\$1,361,336
>\$100K, <=\$1M	11	\$4,019,017	52%	18	\$7,704,447
>\$1M, <=\$5M	1	\$1,065,000	100%	1	\$1,065,000
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
Standard Services	11	\$2,122,249	92%	18	\$2,317,249
Micro Purchase	0	\$0	0%	4	\$45,000
Small Purchase	8	\$446,545	75%	11	\$596,545
>\$100K, <=\$1M	2	\$475,704	100%	2	\$475,704
>\$1M, <=\$5M	1	\$1,200,000	100%	1	\$1,200,000
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
Total	128	\$30,780,948	60%	232	\$51,336,331

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 11 requests for waivers of the M/WBE participation requirements. Of those requests, 1 was denied, while 5 were approved as full waivers and 5 were approved as partial waivers, see Appendices – Table G. Since waivers may be granted only to vendors that demonstrate both the capacity to perform the prime contract without subcontracting and a prior contracting history of doing similar work without subcontracting, some of the waivers that were granted involved repeated requests from the same firms, as they sought multiple bidding opportunities. Thus, the 10 full and partial waivers were granted to a total of 8 individual firms. Waivers are determined during the pre-bid stage of the procurement.

During the reporting period, no contracts were registered where a winning vendor obtained either a full or partial waiver of the total participation goal. For more details, see Appendices – Table H.

Large-Scale Procurement Approvals

Prior to soliciting procurements with an anticipated value of over \$10 million, City agencies are required to seek MOCS approval to determine whether it is practicable to divide the proposed contract into smaller contracts and whether doing so would enhance competition among M/WBEs. During the reporting period, there were 11 registered contracts for which MOCS conducted large-scale procurement reviews. A full list is shown in Appendices Table I. The value of the 11 approved contracts shown in Appendices Table I is approximately \$240 million.

Approximately 27% of the value of the large-scale approvals in the first quarter of FY 2021 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 was a single finding of noncompliance during the reporting period. This involved a Department of Design and Construction (“DDC”) contract for the construction of pedestrian ramps. Due to design issues, DDC removed two out of the three worksites from the scope of the project during the performance of the contract. While the prime contractor was able to utilize M/WBE subcontractors for two of the three scopes originally outlined in their MWBE utilization plan, the removal of worksites led to the loss of the MWBE

subcontractor outlined for the third scope. As an alternative, the prime contractor attempted to find an M/WBE subcontractor to perform additional scopes of work but failed to receive any proposals from the M/WBE vendors solicited. Given that the vendor's inability to meet the goal was largely caused by DDC's removal of the worksites from the scope of the contract, DDC did not pursue enforcement actions against the vendor. However, due to the vendor's failure to seek assistance from DDC to help mitigate the issue when they determined they would be unable to meet the overall M/WBE goal on the contract, DDC issued a formal letter of noncompliance to the vendor.

There were no formal complaints or modification determinations made during the reporting period.