

**CENTRAL NEW YORK
REGIONAL TRANSPORTATION AUTHORITY**

**MINORITY AND WOMEN OWNED
BUSINESS ENTERPRISE PROGRAM**

TABLE OF CONTENTS

| | |
|---|----|
| I. INTRODUCTION | 1 |
| II. DEFINITIONS | 1 |
| III. OBJECTIVES AND POLICY STATEMENT | 1 |
| IV. NONDISCRIMINATION | 3 |
| V. PROGRAM UPDATES | 3 |
| VI. QUOTAS | 3 |
| VII. MWBE LIAISON OFFICER | 3 |
| VIII. MWBE FINANCIAL INSTITUTIONS | 4 |
| IX. MWBE DIRECTORY | 4 |
| X. REQUIRED CONTRACT CLAUSES | 5 |
| XI. MONITORING AND ENFORCEMENT MECHANISMS | 5 |
| XII. OVERALL GOALS | 6 |
| XIII. CONTRACT GOALS | 8 |
| XIV. GOOD FAITH EFFORTS | 9 |
| XV. COUNTING MWBE PARTICIPATION | 11 |
| XVI. CERTIFICATION | 12 |
| XVII. REMOVAL OF A MWBE'S CERTIFICATION | 12 |
| XVIII CERTIFICATION APPEALS | 12 |
| XIX. RECERTIFICATIONS | 12 |
| XX. INFORMATION COLLECTION AND REPORTING | 13 |

| | |
|--|----|
| XXI. INTIMATATION AND RETALIATION | 13 |
| APPENDIX 1 | 14 |
| POLICY STATEMENT ON CONTRACTS WITH DISADVANTAGED BUSINESS ENTERPRISES | |

I. INTRODUCTION

The Central New York Regional Transportation Authority (“CNYRTA”) is authorized by N.Y. Public Authorities Law §1325 et seq. The transportation district and present service area of CNYRTA consists of Onondaga, Cayuga, Oswego and Oneida counties. Three other counties (Cortland, Jefferson, Madison) may join the district by vote of their county legislatures.

CNYRTA provides its services through operating subsidiary corporations which include:

- < CNY Centro, Inc.
- < Centro of Cayuga
- < Centro of Oswego
- < Centro of Oneida
- < Call-A-Bus Paratransit Services
- < Centro Parking
- < ITC, Inc.

CNYRTA reserves the right to amend this Program from time to time in its discretion, or as required to comply with changes in applicable statutes, regulations or guidelines.

II. DEFINITIONS

The terms used in this program have the meanings defined in Parts 140-144 of the Regulations of the Commissioner of the Department of Economic Development.

CNYRTA means the Central New York Regional Transportation Authority and/or the applicable operating subsidiary corporation(s).

We or us means the Central New York Regional Transportation Authority and/or the applicable operating subsidiary corporation(s), unless the context requires otherwise.

III. OBJECTIVES AND POLICY STATEMENT

The Central New York Regional Transit Authority (“CNYRTA”) has established a Minority Women Owned Business Enterprise (“MWBE”) program in accordance with Article 15-A of NYS Executive Law. It is the policy of CNYRTA to ensure that MWBEs, as defined in Article 15-A, have an equal opportunity to receive and participate in NYS DOT-assisted contracts. It is also our policy -

- To ensure nondiscrimination in the award and administration of contracts;
- To create a level playing field on which MWBEs can compete fairly for DOT assisted contracts;

- To ensure that only firms that fully meet Article 15-A eligibility standards are permitted to participate as MWBEs.
- To help remove barriers to the participation of MWBEs; and
- To assist the development of firms that can compete successfully in the market place outside the MWBE program.

The Vice President of Finance has been delegated as the MWBE Liaison Officer. The MWBE Liaison Officer is responsible for implementing all aspects of the MWBE program. Implementation of the program is accorded the same priority as compliance with all other legal obligations incurred by CNYRTA in its financial assistance agreements with the NYS Department of Transportation.

CNYRTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin.

In administering its MWBE program, CNYRTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the MWBE program with respect to individuals of a particular race, color, sex, or national origin.

CNYRTA has disseminated this policy statement to the Board of Directors and all of the components of our organization. We have distributed this statement to MWBE and non-MWBE business communities that perform work for us.

See copy of policy statement attached as Appendix "1".

IV. NONDISCRIMINATION

CNYRTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin.

In administering its MWBE program, CNYRTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the MWBE program with respect to individuals of a particular race, color, sex, or national origin.

V. MWBE PROGRAM UPDATES

We will continue to carry out this program until all funds from NYS financial assistance have been expended. We will provide to NYS updates representing significant changes in the program.

VI. QUOTAS

We do not use quotas in any way in the administration of this MWBE program.

VII. MWBE LIAISON OFFICER

We have designated the following individual as MWBE Liaison Officer (“MWBE O”):

Christine LoCurto
VP of Finance
Central New York Regional Transportation Authority
200 Cortland Avenue
P.O. Box 820
Syracuse, NY 13205-0820
(315) 442-3355

The MWBE O is responsible for implementing all aspects of the MWBE program and ensuring CNYRTA complies with all aspects of the program. MWBE O has direct, independent access to the Executive Director of CNYRTA concerning MWBE O program matters. The MWBE O is responsible for developing, implementing and monitoring the MWBE program, in coordination with other appropriate officials. Duties and responsibilities include the following.

Gathers and reports statistical data and other information as required.

Reviews third party contracts and purchase requisitions for compliance with this program.

Works with all departments to set overall annual goals.

Ensures that bid notices and requests for proposals are available to MWBEs in a timely manner.

Identifies contracts and procurements so that MWBE goals are included in solicitations and monitors results.

Analyzes CNYRTA's progress toward goal attainment and identifies ways to improve progress.

Participates in pre-bid meetings.

Advises the Executive Director and Board of Directors on MWBE matters and achievement.

Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.

Provides MWBEs with information and assistance in preparing bids, obtaining bonding and insurance.

Plans and participates in MWBE training seminars.

Provides outreach to MWBEs and community organizations to advise them of opportunities.

Maintains CNYRTA's updated directory on certified MWBEs.

VIII. MWBE FINANCIAL INSTITUTIONS

It is the policy of CNYRTA to investigate the full extent of services offered by financial institutions owned and controlled in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors to make use of these institutions.

At present, CNYRTA is unaware of any such institutions in its community. CNYRTA has reviewed the list of certified MWBE owned banks before reaching this conclusion. CNYRTA encourages the use of the services of financial institutions owned and controlled by disadvantaged persons, when such institutions are available.

IX. MWBE DIRECTORY

CNYRTA utilizes the NYS MWBE directory that identifies all certified NYS MWBEs.

X. REQUIRED CONTRACT CLAUSES

Contract Assurance

We will ensure that the following clause is placed in every contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Prompt Payment

We will include the following clause in each prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from CNYRTA. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the contractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of CNYRTA. This clause applies to both MWBE and non-MWBE subcontractors.

If a contractor fails to comply with the prompt payment clause, it may be subject to remedies including withholding of further payments from CNYRTA and/or termination of the contract.

XI. MONITORING AND ENFORCEMENT MECHANISMS

We will bring to the attention of NYS Empire State Development Organization any false, fraudulent, or dishonest conduct in connection with the program, so that steps can be taken. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

In the events of non-compliance with the MWBE regulation by a participant in our procurement, it may be subject to remedies including withholding of further payments from CNYRTA and/or termination of the contract.

We will implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law).

We will verify that the work committed to MWBEs at contract award is actually performed by the MWBEs. CNYRTA will maintain a running tally of actual MWBE attainments (e.g., payments actually made to MWBE firms) and ensure that MWBE participation is credited toward overall or contract goals only when payments are actually made to MWBE firms.

CNYRTA requires its prime contractors to make good faith efforts to replace a MWBE subcontractor that is unable to perform successfully with another MWBE. CNYRTA approves all substitutions of subcontractors, in order to ensure that the substitute firms are eligible MWBEs.

Any MWBE subcontracting programs or documentation required by CNYRTA shall be submitted to CNYRTA by the apparent successful bidder/ proposer. Failure to submit such materials shall make the bidder/proposer ineligible for award.

CNYRTA shall advise each subrecipient, contractor, or subcontractor that failure to carry out the requirements set forth in the required contract provisions shall constitute a breach of contract and may result in termination of the agreement or contract by CNYRTA or such remedy as CNYRTA deems appropriate.

Requests for proposals issued by CNYRTA include notification to all proposing contractors that MWBEs will be given the full opportunity to submit proposals and that CNYRTA will not discriminate on the grounds of sex, race, color, or national origin, in consideration for an award. The instructions to proposed contractors state that all proposing contractors must be in compliance with the requirements with regard to the participation of MWBEs.

CNYRTA will maintain records and reports which are necessary to monitor compliance.

XII. OVERALL GOALS

Method

The following is a summary of the method used to calculate the goal:

We use MWBE directories and Census Bureau data to calculate the relative availability of MWBEs (“base figure”) for “Step 1” of the process. The base figure is a percentage figure

calculated by dividing a number representing available MWBEs by a number representing all available firms. We determine the number of ready, willing and able MWBEs in our market from our MWBE directory. Using the Census Bureau's County Business Pattern (CBP) database, we determine the number of all ready, willing and able businesses available in our market that perform work in the same SIC codes. We divide the number of MWBEs by the number of all businesses to derive a base figure for the relative availability of MWBEs in our market.

The data sources used to derive the numerator and denominator in the calculation are the number of MWBEs in the directory and the number of firms in the appropriate SIC codes found in the Census Bureau's CBP database.

“Step 2” of the process is intended to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the MWBE participation the recipient would expect in the absence of discrimination. In Step 2, we take into consideration the current capacity of MWBEs to perform work in our NYS contracting program, as measured by the volume of work MWBEs have performed in recent years. If applicable, we also consider any available disparity study and/or information about barriers to entry or competitiveness of MWBEs in our programs.

CNYRTA reserves the right to select a different methodology.

Method as Applied to Overall Goal

The calculation of the goal is subject to revision to take into account any necessary verification and correction of the data, any comments received, etc.

Step 1 – Develop a Base Figure

The number of MWBEs in the area that perform work in the same two-digit SIC codes, based on the MWBE directory.

The number of available businesses in the area that perform work in the same two-digit SIC codes, based on the CBP database.

The number of MWBEs divided by the number of all businesses results in a base figure for the relative availability of MWBEs in our market.

Step 2 – Adjust Base Figure

Once the base figure is calculated the following evidence is examined to determine if the base figure should be adjusted:

Current capacity of MWBEs to perform the work

Any applicable disparity studies or other information about barriers to entry or competitiveness of MWBEs in our programs.

Input from interested parties

Historical median if past participation in contracting opportunities are similar to past years

CNYRTA will submit its overall goal to NYS Empire Development on or about January 15th of each year. Revisions to the overall goal, and project goals, may be submitted at other times.

XIII. CONTRACT GOALS

Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of MWBEs to perform the particular type of work). Contract goals will provide for participation by all certified MWBEs and will not be subdivided into group-specific goals.

To ensure that our MWBE program continues to be narrowly tailored to overcome the effects of discrimination, we will adjust our use of contract goals as follows:

(1) If our approved projection estimates that we can meet our entire overall goal for a given year, we will implement our program without setting contract goals during that year.

(2) If, during the course of any year in which we are using contract goals, we determine that we will exceed our overall goal, we will reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If we determine that we will fall short of our overall goal, then we will make appropriate modifications in our use of race-neutral and/or race-conscious measures to allow attainment of the overall goal.

(3) If we obtain MWBE participation that exceeds our overall goal in two consecutive years through the use of contract goals, we will reduce our use of contract goals proportionately in the following year.

XIV. GOOD FAITH EFFORTS

Information to be submitted

CNYRTA treats bidder/offers' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information with their bids or proposals:

- EEO policy statement
- Utilization plan for achieving contract level goals
- Staffing plan

Demonstration of good faith efforts

The obligation of the bidder/offers is to make good faith efforts. The bidder/offers can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts include:

- Providing copies of solicitations of certified MWBEs and any response thereto
- Documentation of reason why MWBEs were not selected if determined responsive.
- Copies of advertisements for participation by certified MWBEs timely published
- Dates of attendance of any pre-bid, pre-award or other meetings
- Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from certified MWBEs.

Appropriate personnel, such as the MWBELO, Director of Financial Compliance, Purchasing Manager and/or the Buyers, are responsible for determining whether a bidder/offers who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

We will ensure that all information is complete and accurate and adequately documents the bidder/offers' good faith efforts before we commit to the performance of the contract by the bidder/offers.

Administrative reconsideration

Within five (5) business days of being informed by CNYRTA that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration by the Executive Director or his/her designee. Bidders/offerors should make this request in writing to the following reconsideration official:

Frank Kobliski
Executive Director
Central New York Regional Transportation Authority
200 Cortland Avenue
P.O. Box 820
Syracuse, NY 13205-0820
(315) 442-3333

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a MWBE is replaced on a contract

A prime contractor may not terminate for convenience a MWBE subcontractor (or an approved substitute MWBE firm), and then perform the work of the terminated subcontractor with its own forces or those of an affiliate, without our prior written consent.

We will require a contractor to make good faith efforts to replace a MWBE that is terminated or has otherwise failed to complete its work on a contract with another certified MWBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the MWBE Liaison Officer immediately of the MWBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute MWBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding, to the extent permitted by the contract.

XV. COUNTING MWBE PARTICIPATION

We will count MWBE participation toward overall and contract goals as follows:

(a) When a MWBE participates in a contract, we count only the value of the work actually performed by the MWBE toward MWBE goals.

(1) Count the entire amount of that portion of a construction contract that is performed by the MWBE's own forces. Include the cost of supplies and materials obtained by the MWBE for the work of the contract, including supplies purchased or equipment leased by the MWBE (except supplies and equipment the MWBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a MWBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, toward MWBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(a) Count expenditures to a MWBE contractor toward MWBE goals only if the MWBE is performing a commercially useful function on that contract.

(3) A MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MWBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a MWBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the MWBE credit claimed for its performance of the work, and other relevant factors.

(4) A MWBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MWBE participation. In determining whether a MWBE is such an extra participant, you must examine similar transactions, particularly those in which MWBEs do not participate.

(5) With respect to materials or supplies purchased from a MWBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward MWBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward MWBE goals, however.

(a) If a firm is not currently certified as a MWBE at the time of the execution of the contract, do not count the firm's participation toward any MWBE goals

(b) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(c) Do not count the participation of a MWBE subcontractor toward the prime contractor's MWBE achievements or your overall goal until the amount being counted toward the goal has been paid to the MWBE.

XVI. CERTIFICATIONS

Certifications are obtained through the NYS Empire State Development Division of MWBD. Applications may be sent to:

ESD Division of MWBD
30 South Pearl Street
Albany, NY 12245

XVII. REMOVAL OF A MWBE'S CERTIFICATION

CNYRTA will not remove MWBE certification; however in the event that an ineligibility complaint is received by the CNYRTA we will inform the Division for further investigation to determine removal of certification.

XVIII. CERTIFICATION APPEALS

Any firm or complainant may appeal a decision in a certification matter to Empire State Development Division of MWBD. Such appeals may be sent to:

ESD Division of MWBD
30 South Pearl Street
Albany, NY 12245

If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the final decision, containing information and arguments concerning why the decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

We will promptly implement any certification appeal decisions affecting the eligibility of MWBEs for contracts.

XIX. RECERTIFICATIONS

Recertifications will be conducted by the Certifying Agencies.

XX. INFORMATION COLLECTION AND REPORTING

Monitoring Payments to MWBEs

We will require prime contractors to maintain records and documents of payments to MWBEs. We will also require the prime contractors to submit quarterly workforce utilization reports and payments made to MWBEs reports.

We will keep a running tally of actual payments to MWBE firms for work committed to them at the time of contract award. We will perform interim audits of contract payments to MWBEs. The audit will review payments to MWBE subcontractors to ensure that the actual amount paid to MWBE subcontractors equals or exceeds the dollar amounts stated in the schedule of MWBE participation.

Confidentiality

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law (e.g., the N.Y. Freedom of Information Law). Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

The identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

XXI. INTIMIDATION AND RETALIATION

All contractors and other participants in this MWBE Program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. If you violate this prohibition, you are in noncompliance with the program.

APPENDIX 1
POLICY STATEMENT ON CONTRACTS WITH

The Central New York Regional Transit Authority (“CNYRTA”) has established a Minority Women Owned Business Enterprise (“MWBE”) program in accordance with Article 15-A of NYS Executive Law. It is the policy of CNYRTA to ensure that MWBEs, as defined in Article 15-A, have an equal opportunity to receive and participate in NYS DOT-assisted contracts. It is also our policy -

- To ensure nondiscrimination in the award and administration of contracts;
- To create a level playing field on which MWBEs can compete fairly for DOT assisted contracts;
- To ensure that only firms that fully meet Article 15-A eligibility standards are permitted to participate as MWBEs.
- To help remove barriers to the participation of MWBEs; and
- To assist the development of firms that can compete successfully in the market place outside the MWBE program.

The Vice President of Finance has been delegated as the MWBE Liaison Officer. The MWBE Liaison Officer is responsible for implementing all aspects of the MWBE program. Implementation of the program is accorded the same priority as compliance with all other legal obligations incurred by CNYRTA in its financial assistance agreements with the NYS Department of Transportation.

CNYRTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin.

In administering its MWBE program, CNYRTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the MWBE program with respect to individuals of a particular race, color, sex, or national origin.

Dated:

Frank Kobliski
Executive Director