

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2019**

No. 176

Introduced by Council Members Cornegy, Kallos, Lander, Miller and Rivera (by request of the Mayor).

A LOCAL LAW

To amend the administrative code of the city of New York in relation to minority and women-owned business enterprises

Be it enacted by the Council as follows:

Section 1. Paragraph 10 of subdivision e of section 6-129 of the administrative code of the city of New York, as amended by local law number 1 for the year 2013, and paragraph 14 of such subdivision, as amended by local law number 113 for the year 2016, are amended to read as follows:

(10) Each fiscal year the division, in consultation with the city chief procurement officer *and the director*, shall audit at least 5% of all open contracts for which contractor utilization plans have been established in accordance with subdivision i of this section and 5% of all contracts awarded to MBEs, WBEs, and EBEs to assess compliance with this section. All solicitations for contracts for which contractor utilization plans are to be established shall include notice of potential audit.

(14) The division, in consultation with the city chief procurement officer, shall conduct, coordinate and facilitate mandatory trainings for agency chief contracting officers and agency M/WBE officers to assist such officers in pursuing the objectives of this section. Each agency chief contracting officer shall undergo such training on or before the ninetieth day after he or she

becomes an agency chief contracting officer, and every [two years] *year* thereafter. Each agency M/WBE officer shall undergo such training on or before the ninetieth day after he or she becomes an agency M/WBE officer pursuant to subdivision (f) of this section, and every [two years] *year* thereafter. [Agency chief contracting officers and M/WBE officers that have already undergone such training within the two years prior to the effective date of the local law that added this paragraph will be determined to be in compliance with the initial training required pursuant to this paragraph.] The city chief procurement officer will report to the speaker of the council on an annual basis, and shall post on the City's website, information regarding each agency's compliance with this paragraph.

§ 2. Paragraph 4 of subdivision f of section 6-129 of the administrative code of the city of New York, as renumbered by local law number 1 for the year 2013, paragraph 10 of such subdivision, as renumbered and amended by local law number 1 for the year 2013, and paragraph 11 of such subdivision, as added by local law number 1 for the year 2013, are amended to read as follows:

(4) ensuring that agency bid solicitations and requests for proposals, *and opportunities to be added to prequalified lists*, are sent to MBEs, WBEs, and EBEs in a timely manner, consistent with this section and rules of the procurement policy board;

(10) providing to the city chief procurement officer information for the reports required in subdivision l of this section and providing any other plans and/or reports required pursuant to this section or requested by the director and/or the city chief procurement officer; [and]

(11) participating in meetings required pursuant to subdivision m of this section;

§ 3. Subdivision f of section 6-129 of the administrative code of the city of New York is amended by adding new paragraphs 12, 13 and 14 to read as follows:

(12) facilitating training of agency staff;

(13) developing and maintaining agency standard operating protocols for the M/WBE program; and

(14) promptly disseminating information, tools, and resources that support the agency's meeting of the requirements of this section.

§ 4. Paragraphs 1, 3, 5 and 6 of subdivision i of section 6-129 of the administrative code of the city of New York, as amended by local law 1 for the year 2013, and paragraph 2 of such subdivision, as added by local law number 129 for the year 2005, are amended to read as follows:

(1) Prior to issuing the solicitation of bids or proposals for individual contracts *that present opportunities for participation by certified firms*, agencies shall establish participation goals for MBEs, WBEs and/or EBEs. Such goals may be greater than, less than or the same as the relevant citywide goal or goals established pursuant to subdivision d of this section. Taking into account the factors listed in this subdivision, an agency may establish a goal for a procurement that may be achieved by a combination of prime contract and subcontract dollars, *and/or* a combination of construction and services performed *by a contractor or subcontractor* pursuant to the contract, and/or a combination of MBEs, WBEs and/or EBEs. [Alternatively, an] *An* agency may establish specific goals for particular types of *goods or services to be provided by the prime contractor or subcontractors*, and/or goals for particular types of certified firms. In determining the participation goals for a particular contract, an agency shall consider the following factors:

(a) the scope of work;

(b) the availability of MBEs, WBEs and EBEs able to perform the particular tasks required in the contract;

(c) the extent to which the type and scale of work involved in the contract present prime contracting and subcontracting opportunities for amounts within the capacity of MBEs, WBEs and EBEs;

(d) the agency's progress to date toward meeting its annual participation goals through race-neutral, gender-neutral and other means, and the agency's expectations as to the effect such methods will have on participation of MBEs, WBEs and EBEs in the agency's future contracts; and

(e) any other factors the contracting agency deems relevant.

(2) A contracting agency shall not be required to establish participation goals [for]

[(i)](a) for procurements described in subdivision q of this section; [or]

[(ii)](b) when the agency has already attained the relevant goal in its annual utilization plan, or expects that it will attain such goal without the use of such participation goals; *or*

[(iii)](c) for a procurement to be made in a year for which the director determines that the city has already attained the relevant goal for the industry as set forth in subdivision d of this section.

(3) (a) For each contract in which a contracting agency has established participation goals, such agency shall state in the solicitation for such contract that bidders and/or proposers shall be required to agree as a material term of the contract that the contractor shall meet the participation goals unless such goals are waived or modified by the agency in accordance with this section.

(b) A contractor that is an MBE, WBE or EBE shall be permitted to count its own participation toward fulfillment of the relevant participation goal, provided that the value of such a

contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors.

(c) A contractor that is a qualified joint venture shall be permitted to count a percentage of its own participation toward fulfillment of the relevant participation goal. The value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the 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, WBE or EBE is entitled pursuant to the joint venture agreement. Notwithstanding any provision of this paragraph to the contrary, a contractor's achievement of participation goals shall be determined as described in paragraph two of subdivision j of this section.

(d) Where the agency chief contracting officer determines that it is practicable in light of the nature of goods or services being procured and the expected duration of the contract, a contracting agency shall require bidders or proposers to identify in their bids or proposals the MBEs, WBEs or EBEs they intend to use in connection with the performance of the contract, including their names, addresses and telephone numbers, and require that any substitutions may only be made with the approval of the contracting agency, which shall only be given when the contractor has proposed to use a firm that would satisfy the goals established for the procurement to the same extent as the firm previously identified, unless the contracting agency determines that the contractor has met the standards for establishing reasonable, good faith efforts as provided in paragraph 12 of subdivision i.

(5) For each contract for which participation goals are established, the contractor shall be required to submit with its bid or proposal a contractor utilization plan indicating:

(a) whether the contractor is an MBE, WBE, EBE, or a qualified joint venture;

(b) the percentage of work it intends to award to direct subcontractors; [and]

(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, WBEs and/or EBEs, and the time frames in which such work is scheduled to begin and end; *and*

(d) if required by the contracting agency pursuant to subparagraph d of paragraph 3 of this subdivision, the identity of the MBEs, WBEs or EBEs the contractor intends to use in connection with the contractor's performance of the contract, including their names, addresses and telephone numbers.

When the contractor utilization plan indicates that the bidder or proposer does not intend to meet the participation goals, the bid or proposal shall not be deemed responsive unless the agency has granted a pre-award request for change pursuant to paragraph 11 of this subdivision.

(6) (a) For each contract for which a contractor utilization plan has been submitted, the contracting agency shall require that within thirty days of the issuance of notice to proceed, and at least [once] *twice* per year thereafter, the contractor submit a list of persons to which it intends to award subcontracts within the next twelve months. In the event that a contracting agency disapproves a contractor's selection of a subcontractor or subcontractors, the contracting agency shall allow such contractor a reasonable time to propose alternate subcontractors.

(b) The contracting agency may also require the contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors.

§ 5. Clause (iii) of subparagraph a of paragraph 12 of subdivision i of section 6-129 of the administrative code of the city of New York, as amended by local law 1 for the year 2013, is amended to read as follows:

(iii) The contractor sent written notices, by certified mail, [or] facsimile, *electronic mail or other electronic format*, in a timely manner, to advise MBEs, WBEs or EBEs that their interest in the contract was solicited;

§ 6. Subparagraphs c and d of paragraph 1 of subdivision j of section 6-129 of the administrative code of the city of New York, as added by local law number 1 for the year 2013, and subparagraph h of such paragraph 1, as relettered by local law 1 for the year 2013, are amended, and a new subparagraph h-1 is added to such paragraph, to follow subparagraph h, to read as follows:

(c) In the case of contracts of the types identified pursuant to subparagraph (l) of this paragraph, the total dollar amount that a prime contractor of an agency has paid or is obligated to pay a direct subcontractor that is an MBE, WBE, or EBE, reduced by the dollar amount the direct subcontractor has paid or is obligated to pay its indirect subcontractors upon completion of work, shall be credited toward the relevant goal. Where such a contractor has paid or is obligated to pay a direct [contractor] *subcontractor* that is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs.

(d) In the case of contracts of the types identified pursuant to subparagraph (l) of this paragraph, the total dollar amount that a direct subcontractor of the prime contractor has paid or is obligated to pay to an indirect subcontractor that is an MBE, WBE or EBE shall be credited toward the relevant goal. Where such a contractor has paid or is obligated to pay an indirect [contractor]

subcontractor that is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs.

(h) No credit shall be given for the participation in a contract by any [company]*firm* that has not been certified as an MBE, WBE or EBE in accordance with section 1304 of the charter.

(h-1) Notwithstanding any provision of this section to the contrary, credit shall be given for work by a contractor or subcontractor that is certified as a minority or women-owned business enterprise pursuant to the executive law where such credit is required by section 311 of the charter or other provision of law, including but not limited to the New York City Rikers Island Jail Complex Replacement Act, part KKK of chapter 59 of the laws of 2018, and the New York City BQE Design-Build Act, part QQQ of chapter 59 of the laws of 2018.

§ 7. Subparagraph c of paragraph 2 of subdivision j of section 6-129 of the administrative code of the city of New York, as relettered and amended by local law number 1 for the year 2013, is amended and a new subparagraph c-1 is added to follow subparagraph c of such section, to read as follows:

(c) No credit shall be given to the contractor for the participation of a [company]*firm* that is not certified in accordance with section 1304 of the charter before the date that the [subcontractor]*firm* completes the work under the subcontract.

(c-1) Notwithstanding any provision of this section to the contrary, credit shall be given for work by a contractor or subcontractor that is certified as a minority or women-owned business enterprise pursuant to the executive law where such credit is required by section 311 of the charter or other provision of law, including but not limited to the New York City Rikers Island Jail

Complex Replacement Act, part KKK of chapter 59 of the laws of 2018, and the New York City BQE Design-Build Act, part QQQ of chapter 59 of the laws of 2018.

§ 8. Paragraph 8 of subdivision o of section 6-129 of the administrative code of the city of New York, as added by local law number 129 for the year 2015, is amended to read as follows:

(8) A contractor's record in implementing its contractor utilization plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a contractor utilization plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in [VENDEX] *the computerized data system maintained pursuant to subdivision b of section 6-116.2, or any successor to such system, as caution data.*

§ 9. Paragraphs 7 and 8 of subdivision q of section 6-129 of the administrative code of the city of New York, as amended by local law number 1 for the year 2013, are amended and a new paragraph 9 is added to read as follows:

(7) contracts for human services; [and]

(8) contracts awarded to not-for-profit organizations; *and*

(9) portions of a contract that the director determines should be exempt because, after an extensive search conducted by the contracting agency, it appears that there are not MBE, WBE or EBE firms available to perform the work. Upon making such a determination the director may specify portions of the contract representing opportunities for participation by subcontractors that are not exempt. The division shall promulgate rules setting forth the criteria that agencies shall consider in making such requests for exemption.

§ 10. This local law takes effect immediately, except that subdivision 9 of this local law takes effect on the effective date of the rules adopted by the department of small business services to implement the requirements of subdivision 9 of this local law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on September 12, 2019 and returned unsigned by the Mayor on October 15, 2019.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 176 of 2019, Council Int. No. 1452-A of 2019) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.