

**New York State Division of Criminal Justice Services (DCJS) Office of Program and Funding Development (OPDF)
Minority and Women Business Enterprises (MWBE) Guidelines and Procedures**

Frequently Asked MWBE Questions and Responses:

- **Question:** Do the MWBE regulations apply to all DCJS grant award contracts?
Response: MWBE regulations only pertain to contracts in *excess* of \$25,000. MWBE forms *are not* required for contracts totaling \$25,000 or below.
- **Question:** How do MWBE regulations affect our procurement rules and regulations?
Response: Grantees must follow their procurement laws and regulations at all times. **The MWBE program is not changing that.** Where a contractor/grantee has *discretion* to purchase from a MWBE, they should consider doing so. If procurement rules prohibit the selection of a MWBE vendor, then the pertinent expenditure would be excluded from the MWBE requirements.
- **Question:** What goals must be established during the MWBE process?
Response: Grantees must establish two goals during the MWBE process - a *staffing* goal and a *spending* goal. **These are two separate and distinct components of MWBE.** The goal percentages are established independently and are reflected on different forms. Staffing goals are identified on the Local Assistance MWBE Equal Opportunity Staffing Plan (DCJS-3300). Spending goals are established utilizing the Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS-3301) and Local Assistance MWBE NPS Discretionary Budget Determination Worksheet (DCJS-3309).
- **Question:** How do MWBE regulations apply to purchases from vendors identified on NYS OGS Centralized State Contracts?
Response: If NYS Certified MWBE vendors/suppliers are available on NYS OSG Centralized State Contracts, regardless of geographic region, grantees should consider procuring from the MWBE vendor, because they have the *discretion* to select an MWBE.
- **Question:** If an MWBE subcontractor/supplier charges more than a non-MWBE subcontractor/supplier, does the MWBE vendor have to be considered?
Response: There will be instances when the selection of an MWBE vendor may be cost prohibitive. If a grantee determines that the price differential of a service or commodity is cost prohibitive, and there are no other discretionary expenditures in the contract budget, the onus is on the grantee to justify their position. Declaring that a commodity or service is cost prohibitive *does not exclude* these award dollars from the Grantee NPS Discretionary Budget. The grantee still has *spending discretion* for these award dollars. MWBE spending goals will be established based on the total Grantee NPS Discretionary Budget. A grantee may choose not to spend their discretionary funds with the MWBE, perhaps justifiably so. But failure to meet established MWBE goals, even when an expenditure is identified as cost prohibitive, will require the submission of a waiver application.
- **Question:** Is it permissible to ask an MWBE subcontractor/supplier to meet the price of a non MWBE subcontractor/supplier?
Response: Grantees may request that a MWBE vendor/supplier match the price of the non MWBE vendor/supplier, in an effort to meet their MWBE spending goals.

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- **Question:** What documents are required with a DCJS grant application?
Response: The Local Assistance MWBE Equal Employment Opportunity Staffing Plan (DCJS-3300), Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS-3301), and Local Assistance MWBE NPS Discretionary Budget Determination Worksheet (DCJS-3309) must be submitted with all RFA, RFP and grant applications over \$25,000.
- **Question:** Which entities are classified as subcontractors?
Response: Any expenditure supported by a binding agreement falls under the realm of subcontractor for MWBE purposes.
- **Question:** Which documents are required of subcontractors?
Responses: At this time, grantees must submit a Local Assistance MWBE Equal Opportunity Employment Staffing Plan (DCJS-3300) for themselves and each subcontractor identified on the grant.
- **Question:** Are revised MWBE documents required with all budget modification requests?
Response: Revised MWBE documents, DCJS-3300, DCJS-3301 and DCJS-3309, must be submitted with all budget modification requests, which alter any of the contract's established MWBE staffing and/or spending goals.

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Note: Throughout this guidance document, a sample contractor/grantee, Sample Grantee, will be utilized to demonstrate the pertinent concepts/sections of the MWBE forms and procedures. The forms will be presented in sections for easier viewing and detailed clarification. To view the MWBE forms in entirety, please visit the DCJS website at <http://www.criminaljustice.ny.gov/ofpa/mwbe/mwbe-forms.htm>.

STAFFING: Staffing information is reflected on the Local Assistance MWBE Equal Opportunity Staffing Plan (DCJS-3300). Submission of the DCJS-3300 is required during the application process. **Grantees must submit a DCJS-3300 for themselves and each subcontractor identified on the contract.** Any expenditure supported by a binding agreement falls under the realm of subcontractor for MWBE purposes.

The illustration below shows fields 1-7 on the DCJS-3300. Fields 1-3 are self explanatory. Grantees must report on their work force in field 4. Entities have two options. They may choose to report on the work force to be utilized solely for the pertinent contract or their total work force. In this example, Sample Grantee has chosen to report solely on the work force to be utilized on this contract. **This is the preferred method**, but it may not always be feasible. For instance, equipment and overtime contracts are typically agency wide and do not have specific staff dedicated to the award. In these scenarios, a grantee would report on its entire work force. Grantees have latitude to determine what comprises their total work force. For example, they may choose to report on an entire municipality or only on one department within their jurisdiction.

In field 7 on the DCJS-3300, grantees must identify their EEO staffing goals for employing minorities and women. These percentages may be taken from an organization’s own Equal Employment Opportunity Plan (EEO). If individualized EEOs do not include MBE and WBE staffing goal percentages, which should be based on population demographics, grantees may utilize the civilian labor work force available on the NYS Department of Labor’s website at <http://www.labor.ny.gov/stats/lseeo.shtm>.

LOCAL ASSISTANCE MWBE EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN (DCJS-3300)

IMPORTANT: A LOCAL ASSISTANCE MWBE EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN MUST BE SUBMITTED WITH BID OR PROPOSAL. A REVISED DCJS-3300 MUST BE SUBMITTED WITH ALL APPLICABLE BUDGET MODIFICATION REQUESTS. A DCJS-3300 IS REQUIRED FOR ALL APPLICANTS AND EACH SUBCONTRACTOR IDENTIFIED IN THE CONTRACT, BID OR PROPOSAL.			
1. Bidder/Applicant Name:	Sample Grantee	2. Solicitation/Contract Number:	C123456
		3. DUNS Number:	123456789
Bidder/Applicant Address:	1 Example Street, Albany, NY 12201	4. Report includes Contractor’s/Subcontractor’s:	
		<input checked="" type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force	
5.	<input checked="" type="checkbox"/> Bidder/Applicant <input type="checkbox"/> Subcontractor	6. Subcontractor’s name:	
7. EEO Goal (Applicant or Subcontractor):	MBE (Minority)	20.20	% WBE (Women) 49.80 %

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Fields 8-13 on the DCJS-3300 are utilized to report on the work force identified in field 4. Again, a grantee may choose to report on the work force solely dedicated to this award or on its entire work force. This portion of the form, depicted below, is an embedded Excel worksheet within the body of the Word document. If a user double clicks on the table, it can be utilized as a fillable Excel form. Fields 12 and 13 will automatically calculate when using this feature. The most recent Equal Employment Occupational job categories, identified by the U.S. Equal Employment Opportunity Commission, may be viewed at <http://www.eeoc.gov/employers/eo1survey/upload/jobclassguide.pdf>.

EEO-Job Category	8. Total Work Force	9. Work Force by Gender		10. Work Force by Race/Ethnic Identification										11. Work Force by Disabled/Veteran Identification				
		Total Male (M)	Total Female (F)	American Indian or Alaska Native (M) (F)	Asian (M) (F)	Black or African American (M) (F)	Hispanic or Latino (M) (F)	Native Hawaiian or Other Pacific Islander (M) (F)	Two or More Races (M) (F)	White (M) (F)	Disabled (M) (F)	Veteran (M) (F)						
Craft Workers																		
Laborers																		
Office/Clerical																		
Officials/Administrators																		
Professionals	6	4	2	1		1	2			1				1			1	
Sales Workers																		
Service Workers																		
Technicians	4	2	2		1				1			1			1			1
Temporary/Apprentices																		
12. Subtotals:	10	6	4	1		1	1	2		1	1		1		1	1		1
13. Totals:	10	10		10										2				

Note: The work force totals of fields 8, 9, and 10 should identify an equal number of personnel. If there is no information available for field 11, it may be left blank. Employees should only be listed in one race/ethnic identification category.

Grantees/applicants must certify the DCJS-3300 in fields 14 and 15. The check box in field 15 serves as the grantee certification, in lieu of a signature. **The DCJS-3300 must be submitted as a Word document.**

14. CERTIFIED BY:	Sally Sample	EMAIL ADDRESS:	Sally.Sample@samplegrantee.com	PHONE:	(518) 457-1234	
15.	<input checked="" type="checkbox"/>	I certify, that to the best of my knowledge, the information provided herein is complete and accurate.			DATE:	August 13, 2013

The bottom section of the DCJS-3300 is for DCJS use only.

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SPENDING: Two forms are utilized to determine a grantee’s MBE and WBE spending goals, the Local Assistance MWBE NPS Discretionary Budget Determination Worksheet (DCJS-3309) and a Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS-3301).

The DCJS-3309 is a companion document to the DCJS-3301 and should be completed first to identify the Grantee Discretionary NPS Amount. Once this figure is determined, it must be transferred to the DCJS-3301 and the MBE and WBE spending goals are established.

Fields A-D on the DCJS-3309, depicted below, are award specific contract identifiers and are self explanatory.

Local Assistance MWBE NPS Discretionary Budget Determination Worksheet (DCJS-3309)

IMPORTANT: BUDGET ITEMS IDENTIFIED AND APPROVED AS EXCLUSIONS ARE EXCLUDED FOR THIS SOLICITATION OR CONTRACT ONLY. CONTRACTUAL OBLIGATIONS WITH SUBCONTRACTORS/SUPPLIERS MUST BE RENEGOTIATED AFTER AGREEMENT EXPIRATION TO EXPLORE FUTURE MWBE GRANT PARTICIPATION OPPORTUNITIES.			
A. Bidder/Applicant Name	Sample Grantee	C. Project ID No.	AP12-3456-D00
B. Solicitation/Contract No.	C123456	D. Contract Amount	\$500,000

The Budget Summarization portion of the DCJS-3309 identifies a Discretionary Budget, by subtracting exemptions and exclusions from the award budget. **Exemptions** are expenditures which are routinely excluded from MWBE participation based on MWBE regulations. **Exclusions** are more subjective and are not automatically precluded from MWBE regulations. **In the event budget items are excluded from the Discretionary Budget total, the exclusions apply solely to the MWBE goals of the current award.**

The table below delineates the accepted exemptions and gives examples of acceptable exclusions.

Exemptions	Exclusions
Personnel	No MWBEs Available*
Fringe	Other*
Indirect Costs (Approved Federal Rate)	Pre-existing Contractual Obligation*
Mail/Postage	Single Source Procurement*
Rent (applies to occupancy rental)	
Sole Source Procurement*	
Telephone/Utilities	
Travel (Travel agent utilization is not exempt.)	

***IMPORTANT: These exemptions and exclusions need prior DCJS approval and/or additional justification.**

Expenditures may be excluded as pre-existing contractual obligations in limited circumstances. Contractual obligations with subcontractors/suppliers should be re-evaluated after agreement expiration. Grantees should consider MWBE participation prior to entering into new agreements with subcontractors/suppliers.

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Fields E-K on the DCJS-3309 determine and justify the Grantee Discretionary NPS Amount. The MWBE *spending* goals are established against the total of column I, Discretionary Budget.

Budget Summarization						
E. Budget Category	F. Grant Funds	G. Exempt Amount	H. Excluded Amount	I. Discretionary Budget*	J. Exemption/ Exclusion Category	K. Additional Comments/Justification
Personnel (Exempt):						
1. Cumulative Personnel	\$250,000	\$250,000		\$0	Personnel	
Fringe (Exempt):						
1. Cumulative Fringe Benefits	\$50,000	\$50,000		\$0	Fringe Benefits	
Consultants:						
1.						
2.						
				\$0		
				\$0		
3.				\$0		
4.				\$0		
5.				\$0		
Supplies:						
1. Office Supplies	\$25,000			\$25,000		
2.				\$0		
3.				\$0		
4.				\$0		
5.				\$0		
Travel & Subsistence:						
1.				\$0		
2.				\$0		
3.				\$0		
Rental of Facilities:						
1.				\$0		
2.				\$0		
All Other Expenses:						
1. Forensic Drug Tests	\$25,000		\$25,000	\$0	Other	Specialized program supplies
2. Utilities	\$25,000	\$25,000		\$0	Telephone/Utilities	
3. Indirect Costs	\$60,000	\$60,000		\$0	Indirect Costs	Federally approved rate
4. Copier Maintenance	\$40,000		\$40,000	\$0	Pre-existing Contractual Obligation	Agreement: 3/1/2013-1/1/2015
5. Printing	\$25,000			\$25,000		
Totals:	\$500,000	\$385,000	\$65,000	\$50,000	\$500,000	

Column J is populated utilizing a drop down box, which lists the exemption/exclusion identifiers.

Columns G & J will automatically populate ONLY for the personnel & fringe categories.

Column E should mirror the contract budget. Personnel and fringe are cumulative figures.

If an expenditure is *excluded* as a pre-existing contractual obligation, the contract dates must be entered into column K. The agreement origination date should begin *BEFORE* the contract start date, in most instances.

If an expenditure is *excluded* as other, a description and/or additional justification should be added in column K.

Columns G, H, & J must be entered manually for all budget categories, except personnel & fringe.

IMPORTANT: The total of Column I must be transferred to fields 7 and 16 on the DCJS-3301.

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The bottom portion of the DCJS-3309, viewable below, is utilized for the grantee's certification and DCJS approval.

Certification			
L. Certified By	Sally Sample	I certify that to the best of my knowledge, the information provided herein is complete and accurate. <input checked="" type="checkbox"/>	
M. Date	August 14, 2013	N. Phone No.	(518) 457-1234
		O. E-mail Address	Sally.Sample@samplegrantee.com
FOR DCJS USE ONLY			
OPDF Contract Manager:	Randy Representative	Review Date:	August 20, 2013
Reviewer Comments:	Grantee was informed that copies of agreements may be requested at a later date and are subject to audit.		
		Approved <input checked="" type="checkbox"/>	Denied <input type="checkbox"/>
		Additional Information Requested <input type="checkbox"/>	
*NOTE: THE TOTAL OF COLUMN I SHOULD BE TRANSFERRED TO FIELDS 7 AND 16 ON THE DCJS-3301 LOCAL ASSISTANCE MWBE SUBCONTRACTOR/SUPPLIER UTILIZATION PROPOSAL FORM.			

Note: The second tab of the DCJS-3309 contains an additional page, which captures the information and is a continuation of the original page of the form. This page may be utilized in the event a grantee's budget exceeds the capacity of page one. The completion instructions for the DCJS-3309 are located on the third tab of the worksheet. **The DCJS-3309 must be submitted as an Excel document.**

Once a grantee's discretionary budget has been determined, the Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS-3301) should be completed. The top portion of the form, seen below, is for specific contract identifiers which are self-explanatory, excluding field 7. **The total of DCJS-3309 column I, Discretionary Budget, should be entered into field 7.**

LOCAL ASSISTANCE MWBE SUBCONTRACTOR/SUPPLIER UTILIZATION PROPOSAL FORM (DCJS-3301)

IMPORTANT: A LOCAL ASSISTANCE MWBE SUBCONTRACTOR/SUPPLIER UTILIZATION PROPOSAL FORM MUST BE SUBMITTED WITH BID OR PROPOSAL. IN ADDITION TO THE INITIAL SUBMITTAL OF THIS FORM, A DCJS-3301 MUST BE SUBMITTED FOR EACH SUBSEQUENT CONTRACT/RENEWAL PERIOD AND WITH ALL APPLICABLE BUDGET MODIFICATION REQUESTS, PROVIDING DETAIL OF NEW OR REASSESSED GOALS.			
Grantee (Contractor) Information:			
1. Name:	Sample Grantee	Address:	1 Albany Street, Albany, NY 12201
Contact Person/Title:	Sally Sample/President	Telephone Number:	(518) 457-1234
2. Contract Number:	C123456	Project Number:	AP12-3456-D00
		3. DUNS Number:	123456789
4. Project/RFP Title:	Aid to Prosecution	5. Project Location (Municipality/County/Region):	Albany
6. Contract Amount:	\$500,000	7. Grantee Discretionary NPS Amount:	\$50,000
		8. Contract Award Period:	4/1/2013-3/31/2014
9. Description of Goods/Services/Supplies Provided:	Aid to Prosecution		

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MBE and WBE *spending* goals are based on the Grantee Discretionary NPS Amount in field 7. Grantees must utilize this figure, and the budget categories it was derived from, to determine how much of these award dollars must be spent with MBE and/or WBE vendors and/or suppliers. In our Sample Grantee example, the Grantee Discretionary NPS Amount is \$50,000; of which \$25,000 is delegated to office supplies and \$25,000 is delegated to printing expenses. The grantee has determined that it has the *discretion* to spend \$50,000, with whomever they choose.

When a grantee has *spending discretion*, they should consider spending all, or some portion, of these dollars with a MBE and/or a WBE subcontractor or supplier. MBE and WBE vendors can be found on NYS OGS Centralized State Contracts and on the Empire State Development Corporation's MWBE Directory at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>.

In fields 10-15 on the DCJS-3301, viewable on page nine, grantees must identify their known MWBE subcontractors/suppliers and establish MBE and WBE goal amounts and percentages. Grantees may find it beneficial to explore participation opportunities with MWBEs during the application stage for each DCJS contract or solicitation. There may be instances when a grantee is unable to identify specific subcontractors/suppliers. **It is permissible to identify subcontractors/suppliers as To Be Determined (TBD), although MBE and WBE goals must be established.**

IMPORTANT: When identifying subcontractors/suppliers as TBD, MWBE goals may be speculative. Therefore, there is a greater possibility that grantees may not achieve their established MWBE goals. **If established MWBE contract goals cannot be met, a Local Assistance MWBE Request for Waiver Application (DCJS-3302) must be submitted.** MWBE waiver applications must document the *good faith efforts* utilized by the grantee to provide meaningful participation opportunities to MWBE subcontractors/suppliers. **Grantees must fully understand that good faith efforts are specifically defined by MWBE regulations.** The following list delineates the good faith efforts *which will be required, at a minimum*, during the waiver application process:

1. Copies of solicitations of certified minority- and women-owned business enterprises and any responses thereto;
2. If responses to the contractor's solicitations were received, but a certified minority- or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;
3. Copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
4. Copies of any solicitations of certified minority- and/or women-owned business enterprises listed in the directory of certified businesses;
5. The dates of attendance at any pre-bid, pre-award or other meetings, if any, scheduled by the New York State Division of Criminal Justice Services (DCJS), with certified minority- and women-owned business enterprises which DCJS determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals; and
6. 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 minority- and women-owned business enterprises.

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Fields 10-15 on the DCJS-3301, depicted below, are a fillable Excel worksheet. To utilize this feature, the preparer must double click in the body of the table, allowing fields 17 and 18 to automatically calculate. **The total of DCJS-3309 column I, Discretionary Budget, must be entered into field 16.** For the Sample Grantee example, two vendors were located on ESD's MWBE directory, a MBE office supply vendor and a WBE printing company.

Sample Grantee has determined that it will be able to spend \$17,000 with a MBE and \$20,000 with a WBE. The table automatically calculated their MWBE spending goals. A 34% MBE goal and a 40% WBE goal has been identified.

10. MWBE Subcontractor/Supplier Name and Address	11. NYS ESD Vendor ID Number	12. Description of Services & Supplies	13. MBE Goal Amount	14. WBE Goal Amount	15. Date of Subcontract
Sample Office Products Inc. 1 Office Square Clifton Park, NY 12065	12345678	Office Supply Vendor	\$17,000		NA
Example Printing Group 1 Paper Boulevard Troy, New York 12180	67891011	Printing Company		\$20,000	NA
16. Discretionary NPS Amount:	\$50,000	17. Total MWBE Goals:	\$17,000	\$20,000	
18. Total MWBE Percentages:			34%	40%	

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In field 19 on the DCJS-3301, depicted right, grantees must certify the status of the subcontractors/suppliers identified in field 10. Grantees should utilize the checkboxes to identify vendors as MBE or WBEs. A supplier may **not** be identified as both a MBE and a WBE for our purposes, although they may be certified as both with NYS ESD. A MBE or WBE may be utilized if their NYS MWBE Certification is pending with NYS ESD. If a supplier's NYS MWBE Certification is pending, a copy of the notice of application receipt issued by the NYS ESD must accompany this form.

Note: The column to the right of field 19 is for DCJS use only.

19. MWBE Status and Certification		VERIFIED BY DCJS
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/>
<input type="checkbox"/> NYS Certified	<input type="checkbox"/> Certification Pending	
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/>
<input type="checkbox"/> NYS Certified	<input type="checkbox"/> Certification Pending	
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/>
<input type="checkbox"/> NYS Certified	<input type="checkbox"/> Certification Pending	
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/>
<input type="checkbox"/> NYS Certified	<input type="checkbox"/> Certification Pending	

In fields 20 and 21, the grantee must certify, date and mark the proposal to utilize MWBEs check box.

20. Contractor Certification : <input type="text" value="Sally Sample"/>		<input checked="" type="checkbox"/> My firm proposes to use the MWBEs listed above.
21. <input checked="" type="checkbox"/> I certify that to the best of my knowledge, the information provided herein is complete and accurate.		Date: <input type="text" value="August 14, 2013"/>
FOR DCJS USE ONLY		
MWBE Firms: <input checked="" type="checkbox"/> NYS Certified <input type="checkbox"/> Certification Pending <input type="checkbox"/> Unknown	Reviewer Comments: <input type="text"/>	
OPDF Contract Manager: <input type="text" value="Randy Representative"/>	Review Date: <input type="text" value="August 20, 2013"/>	

Note: The bottom portion of the DCJS-3301 is for DCJS use only.