

SUPPLEMENTAL GENERAL CONDITIONS

TO

JOC GENERAL CONDITIONS, DATED JUNE 20, 2024

Job Order Contracts

Regions 1-10

M506-M532

ARTICLE 20 – OPPORTUNITY PROGRAMS is hereby replaced with the language below.

Section 20.01 - General Provisions

A. The Dormitory Authority is required to implement the provisions of NYS Executive Law Article 15-A and Parts 140 through 145 of Title 5 of the NYCRR for all State contracts (as defined in such statute and regulations) with a value:

1. in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing; or
2. in excess of \$100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Owner, to fully comply and cooperate with the Owner in the implementation of NYS Executive Law ARTICLE 15-A, PARTICIPATION BY MINORITY GROUP MEMBERS AND

WOMEN WITH RESPECT TO STATE CONTRACTS, and the regulations promulgated thereunder. These requirements include: equal employment opportunities for minority group members and women (EEO); and contracting opportunities for NYS certified minority and women-owned business enterprises (MWBs). The Contractor's demonstration of good faith efforts pursuant to 5 NYCRR §

142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by NYS Executive Law Article 15 (the Human Rights Law) and other applicable federal, state and local laws.

C. Failure to comply with all requirements in this General Conditions Article 20 may result in a finding of non-responsiveness, non-responsibility, breach of contract or any combination of the foregoing leading to the assessment of liquidated damages pursuant to General Conditions

Section 20.06 and other remedies available to the Owner pursuant to the Contract and applicable law.

Section 20.02 – Equal Employment Opportunity (EEO)

A. The provisions of NYS Executive Law Article 15-A, and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.

B. The Contractor shall: 1. Undertake or continue, and ensure each Subcontractor shall undertake or continue, existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. Submit an EEO policy statement to the Owner within seventy-two (72) hours after the date of the Letter of Intent to award the Contract.

3. Adopt a model EEO policy statement and require each Subcontractor to adopt a model EEO policy statement if the Contractor or Subcontractor does not have an existing EEO policy statement, and if the Owner requires the Contractor or Subcontractor to adopt a model EEO policy statement.

4. Have a Contractor's EEO policy statement that shall include the following language: a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.

c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age,

disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

5. The Contractor shall include the provisions of paragraphs a. through c. of this General Conditions Section 20.02 B. 4. and Subdivision E of this General Conditions Section 20.02, which provides for relevant provisions of the Human Rights Law, in every Subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.

C. To ensure compliance with this General Conditions Section 20.02, the Contractor shall submit a staffing plan, on a form provided by Owner, to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it when directed by Owner.

D. To ensure continuous compliance with General Conditions Section 20.02:

1. The Contractor shall submit a Workforce Utilization Report and shall require each Subcontractor to submit a Workforce Utilization Report, in such form as shall be required by the Owner on a monthly basis during the term of the Contract.

2. Separate forms shall be completed by the Contractor and each Subcontractor.

3. Pursuant to Executive Order 162 (9 NYCRR 8.162) dated January 9, 2017, the Contractor and its Subcontractors are required to submit monthly *E.O. 162 Workforce Utilization Reports* via the NYSCS Workforce Audit Module, for contracts with a total contract value of Twenty-Five Thousand 00/100 Dollars (\$25,000.00) or more.

4. All *E.O. 162 Workforce Audits* are to be submitted in the NYSCS within 10 days of the end of each month by following the online reporting process set forth in section 20.02 (4). The *E.O. 162 Workforce Audits* require the Contractor and Subcontractors, among other things, to report the gross wages paid to each of their employees for the work performed by such employees in connection with the Contract.

5. For monthly reporting in connection with Executive Order 162, reports are to be submitted electronically as follows: a. Log-in (<https://ny.newnycontracts.com>) or visit the NYSCS Account Look Up (<https://ny.newnycontracts.com/frontend/usersearchpublic.asp>) and follow the on-screen directions to look up your firm's account and then access the secure System. Contact Customer Support via any of the System links if you have any questions while attempting to access your account.

b. Go to View>> My Workforce Audits.

c. View Workforce Audits by status, dates, contract, and contract type (Prime/Subcontractor).

d. The System will notify contractors to log in to review and record the workforce details for the applicable audit.

e. Complete all required reporting on a timely basis.

E. The Contractor shall comply with the provisions of the NYS Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and each Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the NYS Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Section 20.03 – Opportunities for Minority and Women-Owned Business Enterprises (MWBE)

A. The Owner has established goals for the participation in this Contract of New York State Empire State Development (ESD) Certified Minority-Owned Business enterprises (“MBE”) and NYS Certified Women-Owned Business Enterprises (“WBE” and collectively with MBEs, “MWBE”). The goals (collectively, MWBE Contract Goals) are set forth in the Information for Bidders Section 8.0 – Opportunity Programs Requirements. Owner’s progress towards MWBE Contract Goals for the project will be calculated as the percentage of the verified expenditures to MBE and WBE firms reported by the Contractor divided by the total expenditures on the entire Master Job Order Contract paid by Owner including change orders, amendments, and any additional authorized expenditures. The Owner will audit the Contractor’s progress towards achieving the MWBE Contract Goals through the New York State Contract System (NYSCS).

B. The Contractor represents and warrants that, as a condition for award of the Contract, the Contractor will submit a Statewide Utilization Management Plan (“SUMP”) via the NYSCS which lists proposed subcontractors and suppliers including an identification of the NYS certified MWBE subcontractors and suppliers the Contractor intends to use to perform the Work of the Contract and to achieve the MWBE Contract Goals established in the Contract Documents. All non-certified subcontractors and material suppliers must also be listed on the Utilization Plan.

Upon the award of Job Orders under the Master Contract, Contractor must update the Utilization Plan by adding contractors individually to each Job Order profile created the NYSCS. Updates are initiated by Contractor through the New York State Contract system to reflect all subcontractors and material suppliers, NYS Certified and Non-certified firms, performing work on a particular Job Order. Owner approval of the subcontractors on the initial Utilization Plan and subsequent updates are only for the purpose of the Utilization Plan.

In addition, or alternatively, Contractor may have submitted a request for a waiver. Prior to award of the Contract, the Owner approved Contractor's plan to achieve the MWBE Contract Goals established in the Contract Documents (MWBE Utilization Plan) to the extent the Owner did not approve Contractor's request for a waiver of part or all of the MWBE Contract Goals.

C. Contractor agrees to adhere to the Utilization Plan in the performance of the Contract. Contractor shall not change the Utilization Plan without the prior written approval of the Owner. Contractor further agrees that failure to adhere to the Utilization Plan shall constitute a material breach of the Contract and upon such breach, the Owner shall be entitled to any remedy provided in the Contract or by law, including but not limited to, a finding that the Contractor is non-responsible.

D. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1 may be applied towards the achievement of the applicable MWBE Contract Goal. The portion of a subcontract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be sixty percent (60%) of the total value of the subcontract. The portion of a subcontract with an MWBE serving as a Broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage charged by the MWBE. The Owner will audit the Contractor's efforts to achieve the MWBE Contract Goals through the NYSCS.

Section 20.04 - Good Faith Efforts

- A. At any time during the life of the Contract, Owner may request Good Faith Effort documentation as part of compliance monitoring. If the Contractor fails to adequately document good faith efforts, it may result in a finding of non-compliance.
- B. The Contractor shall document good faith efforts pursuant to 5 NYCRR § 142.5 to provide meaningful participation by MWBEs as Subcontractors for each Job Order assigned (which includes material suppliers, other vendors, and others; see definition of Subcontractor in General Conditions Article 1 - Definitions) in the performance of the Contract, to comply with the requirements of the Contract and to enable the Owner to determine compliance with the provisions of this General Conditions Article 20. Guidelines for documentation of good faith efforts are at [Good Faith Efforts Guidelines 0.pdf](https://www.dasny.org/sites/default/files/inline-files/Good_Faith_Efforts_Guidelines_0.pdf) (https://www.dasny.org/sites/default/files/inline-files/Good_Faith_Efforts_Guidelines_0.pdf)

Should Contractor be required to Self-Perform a Job Order, Good Faith Effort documentation must be submitted supporting that either no MWBE/SDVOB firms were available to subcontract or that no subcontracting opportunities existed for the specific Job Order.

Section 20.05 - Waivers

A. If the Contractor, after making good faith efforts satisfactory to the Owner, is unable to achieve the MWBE Contract Goals on the overall Contract, the Contractor may submit a written request for a waiver via email, or a non-electronic method provided by the Owner. The request for a waiver must be supported by evidence of the good faith efforts by the Contractor to achieve the maximum feasible MWBE participation toward the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Owner shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt. If the Owner, upon review of the SUMP, the MWBE Utilization Plan, the NYSCS and any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regard to such non-compliance, the Owner may issue a notice of deficiency to the Contractor. The Contractor shall respond to the notice to deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

Section 21.02 – Contract with Goals

A. If the Information for Bidders established an overall goal for SDVOB participation in this Contract and Contractor submitted a Utilization Plan that was accepted by the Dormitory Authority, Contractor shall follow the accepted Utilization Plan. Contractor, by award of the Contract, certified that Contractor shall follow the submitted and accepted Utilization Plan and updates for the performance of SDVOBs on the Contract.

B. Contractor may update the accepted SDVOB Utilization Plan with consent of the Dormitory Authority and according to the procedure set forth for MWBE Utilization Plans above. Any modifications or changes to the accepted Utilization Plan after award of the Contract to the Contractor shall be reported to the Dormitory Authority on **an updated** Utilization Plan. As part of a **updated** Utilization Plan, the Contractor may request a partial or total waiver of the goal for SDVOB participation, but such request must be made prior to submission of the Application for Payment for the final payment on the Contract. Contractor shall make and shall document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract. The **updated** SDVOB Utilization Plan is not effective unless and until it is accepted by the Dormitory Authority. If the **updated** SDVOB Utilization Plan is not accepted by the Dormitory Authority, the Dormitory Authority shall issue a notice of deficiency, and the Contractor shall proceed as set forth in paragraph D of this General Conditions Section

C. Contractor shall report to the Dormitory Authority Monthly SDVOB Contractor Compliance during the Contract documenting the preceding month's progress towards implementing the accepted SDVOB Utilization Plan and achieving the SDVOB goals for the Contract. This

information shall be submitted to the Dormitory Authority in the manner and at the times directed by the Dormitory Authority.

D. If the Dormitory Authority, upon review of the SDVOB Utilization Plan and the Monthly SDVOB Contractor Compliance reports determines that the Contractor is failing or refusing to comply with the Contract SDVOB goals and no waiver has been issued with respect to such non-compliance, the Dormitory Authority may issue a notice of deficiency to the Contractor. The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the Contract SDVOB goals.

E. Contractor shall make and shall document its good faith efforts to utilize SDVOBs in the performance of the Contract. Evidence of required good faith efforts includes but is not limited to:

1. Copies of solicitations to SDVOBs and any responses thereto;
2. Explanation of the specific reason(s) each SDVOB responding to a Contractor's solicitation was not selected;
3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Dormitory Authority with certified SDVOBs which the Dormitory Authority determined were capable of fulfilling the SDVOB goals in the Contract.
4. Information describing the specific steps undertaken to reasonably structure the scope of subcontracts and material orders for the purpose of subcontracting with, or obtaining materials from, SDVOBs;
5. Other information relevant to the waiver request.

F. Contractor's failure to use SDVOBs in accordance with the accepted Utilization Plan or any accepted updated Utilization Plan shall be a material breach of the Contract and upon such breach, the Dormitory Authority shall be entitled to any remedy provided in the Contract, by law or regulation or at law or in equity, including but not limited to a finding the Contractor is non-responsible. If the Dormitory Authority finds the Contractor willfully and intentionally fails to comply with the Contract SDVOB goals, the Contractor shall pay damages to the Dormitory Authority as set forth in 9 NYCRR § 252.2(s).

End of Supplemental General Conditions