Minority-, Woman-, and Locally-Owned Business Enterprises (M/W/LBEs) Non-Discrimination and Affirmative Action Policy for Construction and Facilities Projects

Effective: October 1, 2009
Revision History:
August 2011
October 2012
April 1, 2013
October 08, 2019

Policy Statement
This policy outlines Columbia University’s efforts to support the University in its commitment to the well-being and competitive strength of minority-, woman-owned and locally-based businesses and provide maximum practicable opportunities in contracting for construction. With this policy the University seeks to further the maintenance of a strong and healthy free enterprise system, supports the goals of equal opportunity and diversity, and strives to increase the participation of qualified minority- and woman-owned and locally-based businesses in construction and facilities related projects.

Reasons for the Policy
It is the policy of the University to comply with all Federal, State and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination, due to race, creed, color, national origin, gender, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority- and Woman-owned Business Enterprises, Locally-based Business Enterprises (M/W/LBEs), Minority Group Members, Women and local area residents share in the economic opportunities generated by Columbia’s participation in projects or initiatives.

Primary Guidance to Which This Policy Responds
This policy seeks to comply with all Federal, State and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, gender, sexual orientation, age, disability or marital status. It supports the University’s affirmative action initiatives taken to ensure that Minority- and Woman-owned Business Enterprises, Locally based Business Enterprises (M/W/LBEs), Minority Group Members, women and local area residents share in the economic opportunities generated by Columbia’s projects or initiatives.

Responsible University Offices
Columbia University Facilities and Operations departments at Morningside & Manhattanville, and Columbia University Irving Medical Center Facilities, are responsible for the day-to-day management of the policy.

Who is Governed by This Policy
All University officers and staff who have a role in construction and facilities-related projects.

**Who Should Know This Policy**
All University officers and staff who have a role in construction and facilities-related projects.

**Exclusions and Special Situations**
Specialty Construction Services are excluded from this policy. See the Definitions section in the Appendix of this policy for further information about Specialty Construction Services.

**Waivers**
Waivers to the policy may be granted only by the signatory of the policy and/or the authorized Supplier Diversity Senior Manager on each campus.

**Policy Text**
Columbia University is fully committed to the well-being and competitive strength of minority-, woman-owned and locally-based businesses and to provide maximum practicable opportunities in contracting for construction and facilities-related projects. This policy commitment is related directly to the maintenance of a strong and healthy free enterprise system, the goals of equal opportunity and diversity, and increasing the participation of qualified minority- and woman-owned and locally-based businesses working with the University.

The University believes that the goal of assuring that a fair proportion of University construction contracts initiated by Columbia University facilities departments are awarded to Minority-owned Business Enterprises (“MBEs”), Woman-owned Business Enterprises (“WBEs”) and Locally based Business Enterprises (“LBEs”) is consistent with reasonable pricing, quality, and prevailing law. This belief is best served by the employment of Contractors who do not discriminate against minority- and woman-owned businesses in the awarding of construction subcontracts and which engage in substantive, honest and fair marketing outreach efforts to members of these traditionally disadvantaged groups of contractors.

It is the policy of the University to comply with all Federal, State and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination, to prohibit discrimination because of race, creed, color, national origin, gender, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Woman-owned Business Enterprises, Locally-based Business Enterprises (M/W/LBEs), Minority Group Members, women and local area residents share in the economic opportunities generated by Columbia’s participation in projects or initiatives.

As an Upper Manhattan-based institution, the University principally defines its “local” catchment area as those communities located in
the 17 zip codes area: 10025, 10026, 10027, 10029, 10030, 10031, 10032, 10033, 10034, 10035, 10036, 10037, 10040, 10451, 10454, 10455, and 10474.

In order to participate in contracting opportunities as an M/WBE, a firm must be able to demonstrate that it is certified. Certification by established governmental agencies and recognized private certifiers is required by the University along with proof of M/WBE current certifications granted.

Acceptable M/WBE certifications

The M/WBE certifications accepted for firms working on Columbia University projects include:

- New York Empire State Development Corporation (ESD)
- New York City Department of Small Business Services (SBS)
- New York School Construction Authority (SCA)
- NY Metropolitan Transit Authority (MTA)
- Dormitory Authority of the State of New York (DASNY)
- Port Authority of New York/New Jersey (PANYNJ)
- Woman’s Business Enterprise National Council (WBENC) (woman-owned certification only)
- New York & New Jersey Minority Supplier Development Council (NYNJMSDC) (minority-owned certification only)
- The State of New Jersey, Department of the Treasury, Division of Revenue Connecticut, Office of Supplier Diversity, Division of the State Procurement
- Selected certifying agencies in other states as determined by a Columbia University waiver

An outline of the M/W/LBE Goals and Objectives, Non-Discrimination and Affirmative Action provisions and the reporting mechanisms that are required in Columbia University construction and facilities-related projects contracts follows:

Goals and Objectives

Contractors entering into construction and facilities-related projects contracts with the University must meet these established goals and objectives:

A. For Minority-, Woman-Owned and Locally-based Business Enterprise participation

a) The Contracting Party is required to provide maximum practicable opportunities to achieve an overall M/W/LBE participation of 35% of the total dollar value of the Contract, with a preference to maximize local participation.

b) The M/W/LBE participation in the performance of the work is expressed as a percentage of the contract price.

c) The total dollar value of the work performed by M/W/LBEs will be determined as: (i) the dollar value of the work subcontracted to M/W/LBEs; (ii) where the contractor is a joint venture, association, partnership or other similar entity including one or
more M/W/LBEs, the contract price multiplied by the percentage of the entity’s profits/losses which are to accrue to the M/W/LBE(s) under the Contractor’s agreement; or (iii) where the M/W/LBE is the Contractor, the contract price.

d) The contractor shall include, or cause to be included, the provisions of clauses (a) through (c) in every Contract that it enters into in order to fulfill its obligations under the contract, in such a manner that such provisions will be binding upon each and every Contracting party with respect to any Contract.

B. For Minority, Woman and Local Workforce Participation

a) Contractor in excess of $1 million is required to provide maximum practicable opportunities to achieve overall participation of 40% minority, woman and local workforce in the work performed pursuant to Contracts entered into in connection with projects with a preference to maximize local participation.

b) The M/W/L workforce participation requirements are expressed as a percentage equal to the person hours of training and employment of minority, woman or local workers, as the case may be, used by any Contractor, divided by the total person hours of training and employment of all workers (including supervisory personnel).

c) Contractor shall not participate in the transfer of minority, woman or local employees or trainees from employer-to-employer or from project-to-project for the sole purpose of meeting the contractor’s obligations herein.

d) Contractor shall identify and employ qualified minority, woman and local supervisory personnel and journey persons.

e) The non-working hours of trainees or apprentices may not be considered in meeting the requirements goals for M/W/L workforce participation contained herein unless: (i) such trainees or apprentices are employed by contractor during the training period; (ii) the contractor has made a commitment to employ the trainees or apprentices at the completion of their training, subject to the availability of employment opportunities; and (iii) the trainees are trained pursuant to an approved training program.

f) The Contractor shall include, or cause to be included, the provisions of clauses (a) through (e) in every Contract that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contractor with respect to any Contract.

C. Construction Utilization Plan - Minority, Woman and Local Workers

For Contracts with an estimated value in excess of $100,000, where the work involves more than one trade, the Contractor must prepare an M/W/LBE plan identifying how it intends to comply with the M/W/LBE goals. Subcontracting, partnering and joint venture methods will be scrutinized to ensure that the M/W/LBE is functioning as a true contributor to the business arrangement with its Construction Manager, General Contractor, consultant, trade contractors, suppliers and vendors and provides a commercially useful function.

Where the Contractor is an M/W/LBE, for contracts in excess of $100,000, it must submit a utilization plan identifying how it intends to comply with the goals to the extent contract work is not self-performed.
D. Contractor Equal Opportunity Policy Statements

All Contractors who are awarded construction contracts are required to comply with the University’s non-discrimination and affirmative action policy and must agree to provide to Columbia University an equal employment opportunity policy statement that:

a) describes the Contractor’s non-discrimination policies and practices  
b) describes how the Contractor will undertake or continue existing programs of affirmative action  
c) documents the Contractor’s conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce on Contracts.

In addition, upon request, Contractors shall request that each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor’s obligations herein.

E. Contractor Reporting Requirements

Contractors entering into construction contracts will be required to meet specific reporting and administrative requirements and will permit access to books, records, and accounts, with respect to the Contract, by the University or where applicable, the Construction Manager, to ascertain compliance with the University’s non-discrimination and affirmative action policy. Further information on these reporting and administrative requirements is available from the Columbia University Facilities and Operations, Construction Business Initiatives.

In determining whether a Contractor has provided maximum practicable opportunities to achieve their firm’s M/W/LBE utilization goal, the University will consider the actions and activities described under the definition of “Good Faith Efforts” found in the appendix of this policy. The criteria to be used for applicable contract dollars paid to M/W/LBEs can be obtained from Columbia University Facilities and Operations, Construction Business Initiatives.

F. Requirements for Projects in Excess of $1 million

For projects with an estimated value in excess of $1 million, Contractors shall submit:

b) on a monthly basis, daily work force reports and payroll records with a certified Statement of Compliance and/or a manual payroll form.
Further information on specific reporting requirements for projects with an estimated value in excess of $1 million is available in the Exhibit E, attached to the Columbia University construction contract.

G. Non-Compliance and Sanctions
In the event a Contractor violates any of the Non-Discrimination and/or Affirmative Action provisions included in the construction contract, the University may require sanctions and remedies for non-compliance. Details on the University’s sanctions and remedies for non-compliance will be made available to Contractors prior to entering into a construction contract.

Cross References to Related Policies
Participation by Small Business, Minority Owned Firms, and Women's Business Enterprises

Contacts

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Web Address:
Morningside & Manhattanville Facilities:
https://cufo.columbia.edu/

Columbia University Irving Medical Center Facilities:
https://www.cumc.columbia.edu/facilities-management/
Appendix

Definitions

Affirmative Action
Shall mean the actions to be undertaken by the contractor in connection with any project to ensure non-discrimination and Minority-, Woman-owned and Locally-based Business Enterprise and Minority, Woman and Local workforce participation, as set forth in Sections II and herein, and developed by Columbia University.

Contract
Shall mean a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a contracting party, providing for a total expenditure in excess of $100,000, where the work is to be performed by more than one trade, for labor, services, supplies, equipment, materials, or any combination of the foregoing, unless Columbia University has granted a waiver based on a determination that the Contract involves specialty construction services (services of a unique and special nature for which there exists a limited number of qualified business entities employing a work force capable of performing such services, “Specialty Construction Services”).

Contractor
Shall mean a general contractor, construction manager, or subcontractor as applicable, or a supplier who has a signed agreement with Columbia University or its agent represented.

Contracting Party
Shall mean any contractor, consultant, sub-consultant or vendor supplying goods or services, pursuant to a Contract in excess of $100,000, unless the University has granted a waiver for Specialty Construction Services.

Construction
Shall be restricted to mean construction-related and facilities-related project spending.

Good Faith Efforts – Minority, Woman and Locally owned Business Enterprise Participation
Contractor shall utilize their good faith efforts to achieve the required M/W/LBE participation goals and objectives. The role of M/W/LBE firms is not restricted to that of a subcontractor/sub-consultant, and where applicable, M/W/LBE firms should be considered for roles as prime contractors. For Contracts with an estimated value in excess of $100,000 where the work involves more than one trade, such good faith efforts shall include at least the following:

a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;

b) Actively and affirmatively soliciting bids from qualified M/W/LBEs, including upon request circulation of solicitations to minority, women's and local trade associations. Contractor shall maintain records detailing the efforts made to
provide for meaningful M/W/LBE participation in the work. Such record keeping must include the names and addresses of all M/W/LBEs contacted and, if an M/W/LBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;

c) Making plans and specifications for prospective work available to M/W/LBEs in sufficient time for review;

d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential M/W/LBE participation on the Contract;

e) Taking its own actions for extensive outreach, and utilizing the resources of Columbia University and where applicable the Construction Manager, to identify certified M/W/LBE firms on a trade-by-trade and tier-by-tier basis for the purpose of soliciting bids and subcontracts;

f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities, where appropriate, to ensure that the Contractor will meet its obligations herein.

g) Producing evidence that all M/W/L subcontractors have current and hold valid certifications;

h) Submitting documentation prior to the award of a subcontract substantiating Contractor’s commitments in the utilization plan;

i) Conducting meetings with subcontractors to review compliance with the utilization plan and monthly reports; and

j) Remitting payment in a timely fashion.

**Good Faith Efforts - Minority Group Member, Woman and Local Workforce Participation**

Contractors shall utilize their good faith efforts to provide for meaningful Minority Group Member, Woman and Local workforce participation. For projects with an estimated value in excess of $1 million, good faith efforts shall include at a minimum the following in connection with the work:

a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at the premises. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain such a working environment, with specific attention to Minority Group Member, Woman and Local individuals working at the premises;

b) State in all solicitations or advertisement for employees that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, gender, sexual orientation, age disability or marital status;

c) Send to each labor union or representative of workers with which a collective bargaining agreement or understanding is in place, a notice advising the said labor union or workers representative of commitments under this Section, and post copies of the notice in conspicuous places available to employees and applicants for employment;

d) Establish and maintain a current list of Minority Group Member, Woman and Local recruitment sources and community organizations, and provide written notification
to them when employment opportunities are available. Maintain a record of the organizations’ responses;

e) Maintain a current file of the name, address and telephone number of each Minority Group Member, Woman and Local applicant and any referrals from a union, recruitment source, the University or community organization, and of the action taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back by the union or, if referred, was not employed, this shall be documented in writing in the file with the reasons therefore; along with whatever additional actions the Contractor may have taken;

f) Assist and support the University in implementing pre-apprenticeship training programs such as the Edward J. Malloy Construction Skills Program, Helmets to Hard Hats, and Nontraditional Employment for Woman, and/or Pathways to Apprenticeship

g) Disseminate the Contractor’s equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in meeting its Equal Employment Opportunity obligations, by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, and other similar items, by specific review of the policy with all management personnel and with all Minority Group Member, Woman and Local employees at least once a year, and by posting the company Equal Employment Opportunity policy on bulletin boards accessible to all employees at each location where work is performed under this Contract;

h) Disseminate the contractor’s Equal Employment Opportunity policy externally by including it in any advertising in the news media, specifically including Minority Group Member, Woman and Local news media, and providing written notification to and discussing the Equal Employment Opportunity policy with any Contractor with whom the Contractor does or anticipates doing business; and,

i) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.

j) Submit documentation prior to the award of a subcontract substantiating Contractor’s commitments to workforce participation goals.

k) Conduct meetings with subcontractors to review compliance with the workforce participation goals and monthly reports.

**Local Workforce Group Member**

Shall mean a United States citizen or permanent resident alien who is and can demonstrate that they maintain a primary residence in one of the following United States Postal Service Zip Code areas:

10025, 10026, 10027, 10029, 10030, 10031, 10032, 10033, 10034, 10035, 10037, 10039, 10040, 10451, 10455, 10454, and 10474.

**Local Business Enterprise (“LBE”)**

As a Harlem-based institution, the University principally defines its “local” catchment area as Upper Manhattan, or all points north of 96th Street, river to river. The zip codes of Upper Manhattan are: 10025, 10026, 10027, 10029, 10030,
10031, 10032, 10033, 10034, 10035, 10037, 10039 and 10040. In the Bronx, this area is defined by the following zip codes: 10451, 10454, 10455 and 10474. A business enterprise, including a sole proprietorship, partnership or corporation is deemed to be local if they maintain a primary business address, or has a significant administrative business presence, in one of these zip codes.

**Maximum Practicable Opportunity (MPO)**
Shall mean that a contractor or subcontractor must offer real opportunities to the maximum extent possible to M/W/LBEs to participate as subcontractors. If maximum opportunities are extended, then subcontracts to these concerns usually result. MPO means that a contractor should extend maximum opportunities to M/W/LBEs to bid on subcontracts, and, if appropriate, to award subcontracts to them. Meeting a numerical goal does not, by itself, mean that a contractor or subcontractor has provided MPO. Likewise, not meeting a goal does not necessarily mean that a contractor or subcontractor has not provided MPO.

**Minority Business Enterprise ("MBE")**
Shall mean a business enterprise authorized to do business in the State of New York and certified pursuant to section IV as a minority-owned business enterprise.

**Minority Group Member**
Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

**Specialty Construction Services**
Shall mean services related to slurry wall and related excavation and foundation; curtain wall; laboratory fixtures and equipment and other fixtures and equipment for academic research; central energy plant and related mechanicals and equipment.

**Woman-owned Business Enterprise ("WBE")**
Shall mean a business enterprise authorized to do business in the State of New York and is certified as a woman-owned business enterprise pursuant to section IV.