

# **CITY OF NEW YORK**

## **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PROGRAM**

### **First Quarter of Fiscal Year 2023**

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**Compliance Report covering July 1, 2022 – September 30, 2022**

**Lisa Flores  
City Chief Procurement Officer  
Mayor's Office of Contract Services  
255 Greenwich St., 9th Floor  
New York, New York 10007**

**Kevin D. Kim  
Commissioner  
NYC Department of Small Business Services  
1 Liberty Plaza, 11th Floor  
New York, New York 10006**

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## Introduction

As New York City continues recovering from the COVID-19 pandemic, Mayor Adams has consistently highlighted the need to move forward stronger than ever before, ensuring our recovery is centered on equity. In particular, the City will aggressively pursue increased M/WBE utilization in the over \$30 billion of annual public procurement, to “help small M/WBEs increase their capacity to win larger contracts and take on the ‘disparity within the disparity.’”<sup>1</sup>

This report summarizes program activity, prime contract, and subcontract utilization data for City-certified Minority and Women-Owned Business Enterprises (M/WBEs) and Emerging Business Enterprises (EBEs), as well as additional data specified in Section 6-129(l) of the New York City Administrative Code. The reporting period covers activity during the first quarter of the Fiscal Year 2022 (July 1, 2022 – September 2022) and is jointly submitted by the Director of the Mayor’s Office of Contract Services (MOCS), as City Chief Procurement Officer, and by the Commissioner of the Department of Small Business Services (SBS). The City’s M/WBE program is led by Maria Torres-Springer, Deputy Mayor for Economic and Workforce Development and Citywide M/WBE Director, and is administered in partnership with the Mayor’s Office of M/WBEs (OM/WBE), SBS and MOCS.

As further expanded upon in the report, during the first quarter of FY 2023, M/WBEs were awarded over \$220 million in prime contracts subject to the M/WBE program and over \$89 million in eligible subcontracts. The City achieved a combined prime and subcontract utilization of 25.65%.

## Expanding the Base of Certified Firms

SBS continues to increase the participation of M/WBE firms in City contracting by expanding its base of certified businesses. During the certification process, a company’s ownership and management structure is thoroughly reviewed to ensure the applicant performs the key functions of the business. The NYC Online Certification Portal (<https://sbsconnect.nyc.gov/>) allows M/WBE firms to certify and recertify online, check the status of applications and update their business profiles to better promote themselves to buyers. In the first quarter of FY 2023, SBS conducted 12 certification workshops and application review sessions for 193 businesses.

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<sup>1</sup> “Rebuild, Renew, Reinvent: A Blueprint for New York City’s Economic Recovery”. Released March 10, 2022.

<https://www1.nyc.gov/assets/home/downloads/pdf/office-of-the-mayor/2022/Mayor-Adams-Economic-Recovery-Blueprint.pdf>

Partners help extend the reach of SBS certification outreach efforts. Businesses receive assistance in applying for certification from the community-based groups that comprise the New York City Council-funded M/WBE Leadership Associations, and the SBS network of Business Solutions Centers located throughout the five boroughs. This helps to ensure higher quality applications, making the submission and the certification review process easier and simpler. Between July 2022 and September 2022, SBS certified 238 new M/WBEs and recertified 272 M/WBEs, bringing the total number of City-certified companies to 10,838 as of September 30, 2022. Partners also help support the business growth of M/WBEs with marketing workshops, networking events, and business development services. During the reporting period, SBS collaborated with local development corporations, trade associations, industry membership organizations, and local chambers of commerce on 63 events to spread the word about the benefits of certification and the range of capacity-building services available citywide to help businesses grow.

### **Emerging Business Enterprise Program**

Local Law 12 of 2006 created the Emerging Business Enterprise (“EBE”) program, directed at expanding procurement opportunities to disadvantaged businesses. Although similar outreach approaches and capacity-building initiatives were and continue to be undertaken by SBS to successfully implement the M/WBE and EBE programs (SBS often targets potential M/WBE and EBE groups simultaneously), the outcomes of such measures are quite different. Similar to the federal DBE program, eligibility for EBE certification under the City’s program requires that applicants satisfy a two-prong test of economic disadvantage and social disadvantage. Where social disadvantage is presumed for M/WBEs and further evaluation of social or economic disadvantage criteria is not required for those individuals, the City’s program criteria rely on individual and specific determinations of an applicant’s disadvantage. As of September 30, 2022, there were 30 certified EBE companies. Unlike the M/WBE program, limited participation in the EBE program has made it difficult for City agencies to set goals on contracts. During the reporting period, an EBE was awarded approximately \$201,263 in all types of prime contracts and subcontracts. SBS continues to strive towards increasing participation in the EBE program through a wide range of outreach efforts regularly conducted with businesses and community partners. Once increased participation in the EBE program is achieved, City agencies will have sufficient availability of certified EBE firms needed to set feasible contract goals.

## **Locally-based Enterprise Program**

Although the Locally Based Enterprises (LBE) program is not referenced in Administrative Code §6-129, LBE is a certification category administered by SBS, and the applicability of the LBE program in City procurement is impacted by the M/WBE program. As set forth in Administrative Code §6-108.1, the LBE program is designed to promote the growth of small construction firms through greater access to contracting opportunities with the City. Generally, the program requires agencies to utilize LBEs as a prime or subcontractor on specific construction contracts. However, the number of contracts subject to the LBE program has substantially decreased in recent years due to other goal-setting programs established by the City, State and federal governments. Under the LBE program rules, contracts are excluded from the program if they are federally or State funded and subject to their requisite goal programs. Federally funded construction projects are generally subject to the Disadvantaged Business Enterprise program, and State funded contracts are subject to other goals requirements as well, including Article 15-A of the New York State Executive Law. As many City construction contracts are federally and State funded and subject to subcontracting goals under those programs, they are not covered by the LBE program. With the creation of the City's M/WBE program, M/WBE subcontracting goals are applied to City funded construction contracts in lieu of LBE goals. Accordingly, this further limits the applicability of the LBE requirements.

As of September 30, 2022, there were a total of 12 LBE certified firms. Many of our LBEs are also certified as M/WBEs and can be considered for subcontracting opportunities on City construction projects with M/WBE goals. During the reporting period, no LBE was awarded a contract.

## **Selling to Government**

SBS offers selling to government services that help M/WBEs navigate the City's procurement system. Services are provided through a combination of workshops and one-on-one assistance. To be an effective bidder on City contracts, M/WBEs must understand the City's procurement rules and how to respond to solicitations. M/WBEs must also maintain the most up-to-date information on their profile in the SBS Online Directory of Certified Businesses ([www.nyc.gov/buycertified](http://www.nyc.gov/buycertified)) and other City procurement systems. In the first quarter of FY 2023, SBS held a total of 33 workshops attended by a total of 1,165 participants to help M/WBEs build knowledge and understanding of the City's procurement rules, procurement portals, how to effectively respond to solicitations, and best practices in contract management.

Also, during the reporting period, 428 firms were supported through 530 instances of one-on-one technical

assistance for submitting the most competitive bids and proposals, navigating government procurement, and successfully performing on contracts with the City.

On September 22nd and 23rd, SBS hosted the two-day 2022 Citywide M/WBE Procurement Fair comprising of an in-person event at the Barclays Center (9/22) and a virtual event (9/23) convening over 900 attendees. Mayor Eric Adams delivered the keynote address announcing that the City surpassed its 10-year OneNYC goal to award \$25 billion in contracts to Minority- and Women-Owned Business Enterprises by FY2025 – three years ahead of schedule. Clara Wu Tsai, founder of the Brooklyn Social Justice Fund, SBS Commissioner Kevin Kim and Lisa Flores, Director of the Mayor’s Office of Contract Services, presented remarks on ways the City is helping M/WBEs to succeed. In addition to the hundreds of M/WBEs in attendance, more than 75 City and State agencies and authorities, Prime Contractors and Business Support Providers participated as exhibitors in the event. The Fair offered eight Opportunity Rooms where participants learned about current and upcoming contracting opportunities, onsite technical assistance for existing firms, a spotlight Cannabis Conversation focusing on M/WBEs in NY’s Cannabis Industry. M/WBEs networked directly with procurement and program staff responsible for specific areas of work.

SBS also works with the New York City Council through the M/WBE Leadership Associations to provide certified firms with more capacity-building services, including help applying for loans and surety bonds, preparing bids and proposals, and marketing to both the public and private sector. During the reporting period, member organizations sponsored 17 events, provided 157 one-on-one assistance sessions, assisted with 44 loan applications, and awarded 19 loans to M/WBEs.

## **Capacity Building**

In addition to the requirement that the City find vendors responsible, State law also requires that most contracts be awarded to the lowest responsive bidder or the best proposer. SBS has worked aggressively to expand opportunities for minority and women-owned firms by connecting them to a comprehensive range of programs that provide procurement technical assistance and capacity building support, as well as other resources to help them navigate and compete in the public procurement marketplace.

SBS administers a set of capacity-building programs and services for M/WBEs and small businesses that are

designed to help firms better bid on, win, and perform on City contracts.

**Bond Readiness** provides certified construction and trade companies with financial management skills to help them secure or increase surety bonds necessary to compete on City contracts. The program offers a 12-session cohort conducted over 24 weeks that provides classroom instruction, agency participation, training and one-on-one assistance, as well as introductions to a network of surety agents. Firms are encouraged to bid on City contract opportunities where appropriate, while applying for pre-approval for bonding during the program. During the reporting period, 41 firms were accepted into the FY2023 (13th) cohort.

**Bonding Services** provides certified construction and trade companies with access to six-hour QuickBooks for Construction clinics, webinars and one-hour one-on-one bonding assistance sessions to assist firms with, respectively, organizing their bookkeeping and accounting practices and preparing applications for bonding, understanding surety bond application preparation concepts, in order to compete for larger City contract opportunities. During the reporting period, there were two QuickBooks for Construction Clinics with 22 unique firms participating, three webinars with 28 unique firms participating, and 48 firms participated in 83 one-on-one bonding assistance sessions.

**M/WBE Contract Legal Services** is a new offering, designed to provide certified firms with education and legal consultation clinics, so that they can become informed consumers of legal services; enter into commercial contracts with an understanding of terms, conditions, obligations, and rights; to equip them with the tools and strategies to negotiate or re-negotiate commercial contracts that reflect their best interests and minimize their risk; and understand their obligations, rights, and recourse under existing commercial contracts. During the reporting period, 48 unique firms attended two webinars and 55 unique firms participated in three legal consultation clinics.

The **M/WBE Mentors Program**, launched in January 2021, is designed to create spaces for peer mentorship and networking amongst NYC-certified M/WBEs. Through curated, industry-focused events, owners representing a variety of industries and backgrounds serve as mentors to less experienced MWBEs. By mining their own experiences for advice, these mentors provide the insight their peers need to chart their own path of growth through government contracting. During the reporting period, the Program hosted one event with 72 participants.

New York City Economic Development Corporation and SBS launched the Contract Financing Loan Fund in FY 2017. The Loan Fund enhances the ability of business owners to access the capital they need to win, take on and perform successfully on NYC contracts, and reduces the cost of capital to a 3% annual interest rate. During the reporting period, 8 loans of \$1,257,000 were awarded through the Loan Fund to certified M/WBEs.

## **Program Compliance**

To ensure that all agency staff responsible for purchasing activities are knowledgeable about the M/WBE program and their agency's goals, SBS, MOCS and OM/WBE conduct agency training sessions online. During the first quarter of FY 2023, 54 procurement professionals from 21 agencies attended two training sessions. The topics included implementation of M/WBE policy of the New York City Administrative Code, strategies and best practices used to identify M/WBEs for contract opportunities, M/WBE goal setting, and enhancing M/WBE procedures in all contract areas.

Quarterly compliance meetings with agency commissioners and M/WBEs officers are held to discuss utilization and agency initiatives to increase M/WBE performance. In the reporting period, the former Director of the City's M/WBE program, Deputy Mayor Maria Torres-Springer, Deputy Mayor for Economic and Workforce Development and Citywide M/WBE Director held the first quarterly compliance meeting. The first quarterly meeting was held on September 22, 2022, and was attended by 219 attendees representing 42 agencies.

## **Qualified Joint Venture Agreements**

There were no contracts subject to the M/WBE program awarded to a qualified joint venture during the reporting period.



## **Prime Contract M/WBE Utilization**

Table 1 below summarizes prime contracts awarded by City agencies during the first quarter of FY 2023. M/WBEs were awarded over \$220 million in prime contracts amounting to 20% of all such awards during this reporting period. The prime contracts in this table include industries and awards made using methods subject to the M/WBE program.

Table 1 - FY 2023 Q1 - Prime Contracts Utilization by Industry					
Industry and Size Group	Total M/WBE			Total	
	Count	Value	%	Count	Value
<b>Construction Services</b>	<b>3,075</b>	<b>\$61,274,944</b>	<b>17%</b>	<b>3,700</b>	<b>\$366,001,920</b>
Micro Purchase	3,044	\$3,850,129	75%	3,642	\$5,151,683
Small Purchase	9	\$736,732	88%	10	\$836,732
>\$100K, <=\$1M	9	\$5,282,841	82%	12	\$6,416,070
>\$1M, <=\$5M	10	\$26,784,015	45%	23	\$59,261,246
>\$5M, <=\$25M	3	\$24,621,227	21%	10	\$119,583,183
>\$25M	0	\$0	0%	3	\$174,753,005
<b>Goods</b>	<b>1,343</b>	<b>\$23,726,705</b>	<b>57%</b>	<b>3,127</b>	<b>\$41,653,600</b>
Micro Purchase	1,223	\$9,428,469	46%	2,954	\$20,488,014
Small Purchase	90	\$5,823,719	68%	132	\$8,549,942
>\$100K, <=\$1M	30	\$8,474,517	67%	41	\$12,615,644
>\$1M, <=\$5M	0	\$0	0%	0	\$0
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
<b>Professional Services</b>	<b>308</b>	<b>\$96,356,791</b>	<b>23%</b>	<b>759</b>	<b>\$426,633,611</b>
Micro Purchase	192	\$1,920,775	40%	572	\$4,862,541
Small Purchase	50	\$3,210,792	74%	68	\$4,345,984
>\$100K, <=\$1M	55	\$16,460,399	80%	67	\$20,564,661
>\$1M, <=\$5M	7	\$19,599,687	19%	38	\$105,462,850
>\$5M, <=\$25M	3	\$26,595,138	27%	11	\$100,253,813
>\$25M	1	\$28,570,000	15%	3	\$191,143,761
<b>Standardized Services</b>	<b>208</b>	<b>\$38,934,312</b>	<b>15%</b>	<b>940</b>	<b>\$256,693,169</b>
Micro Purchase	156	\$1,390,417	31%	836	\$4,531,175
Small Purchase	27	\$1,988,005	55%	49	\$3,607,883
>\$100K, <=\$1M	18	\$7,515,365	66%	27	\$11,430,109
>\$1M, <=\$5M	5	\$13,601,917	35%	16	\$39,335,459
>\$5M, <=\$25M	2	\$14,438,608	11%	11	\$131,788,543
>\$25M	0	\$0	0%	1	\$66,000,000
<b>Total</b>	<b>4,934</b>	<b>\$220,292,752</b>	<b>20%</b>	<b>8,526</b>	<b>\$1,090,982,298</b>

Agencies are not required to apply participation requirements to certain types of contracts. (See, NYC Administrative Code § 6-129(q) (1)-(7).) Table 1 above and the subsequent discussion of M/WBE performance include those contracts that have been counted towards the City's M/WBE program.

As required by §6-129 of the Administrative Code, M/WBE performance data (see Appendices – Tables A - F)<sup>2</sup> is summarized separately for each of the following categories: MBE, WBE, minority women (certified as both MBE and WBE), and total M/WBE. MBEs include all minority-owned businesses, regardless of gender. WBEs include all women-owned businesses regardless of ethnicity.

In those areas of procurement where agencies have greater discretion to target procurements to M/WBEs (i.e., micro purchases and small purchases), M/WBE utilization remains strong. In the first quarter of FY 2023, M/WBEs were awarded over \$17 million worth of micro purchases, or 47% of the dollar value of all such awards. Additionally, for small purchases the M/WBE utilization rate was 68% of the dollar value of all such awards (over \$11 million awarded).

A total of 8,526 prime contracts were awarded during the first quarter of FY 2023. M/WBE utilization on prime contracts during the reporting period is detailed below. Highlights include M/WBEs being awarded:

- 74% of the value of contract awards valued between \$100,000 and at or below \$1 million (over \$37 million)
- 29% of the value of contract awards valued between \$1 million and at or below \$5 million (approximately \$60 million)
- 19% of the value of contract awards valued between \$5 million and at or below \$25 million (approximately \$66 million)
- 7% of the value of contract awards valued above \$25 million (approximately \$29 million)

Agency-by-agency and certification category details corresponding to Table 1 above are included in the Appendices to this report (Tables A - B).

Most prime contracts reflected in the data (except the professional services contracts, for example) are required by New York State law to be procured via competitive sealed bid. Under General Municipal Law (GML) § 103, agencies must, for the majority of the contracts covered by the program, accept the lowest

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<sup>2</sup> Appendices - Tables A – I can be found on the MOCS website at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

responsible bid and may not give a bidder preference because of its M/WBE status. City agencies' efforts to achieve their M/WBE participation goals through prime contract awards are thus limited to such means as increased outreach and training aimed at encouraging M/WBEs to bid successfully on various procurements. Even for procurements not covered by GML § 103, such as professional services contracts, GML § 104-b precludes agencies from pursuing social policy goals unrelated to the procurement of goods and services, including M/WBE status.

#### Prime Contracts with M/WBE Participation Goals

Under the M/WBE program, larger prime contracts with anticipated subcontracting are subject to participation goals and must be reported on pursuant to §6-129(l)(b)(i). During the reporting period, agencies awarded 91 new prime contracts subject to M/WBE participation requirements with 12% of the value of those awards made to certified M/WBE firms.

#### **Subcontract M/WBE Utilization**

M/WBE utilization with respect to approved subcontracts during the reporting period is demonstrated in Table 2 below. As shown, of the 378 approved subcontracts subject to the program, 201 were awarded to M/WBE firms. The approved subcontracts awarded to M/WBEs amounted to over \$89 million and represent 76% of the value of all qualifying subcontracts. For more details, see Appendices – Tables E - F.

Table 2 - FY 2023 Q13 - Subcontracts Utilization by Industry					
Industry/Size Group	M/WBE			Total	
	Count	Value	%	Count	Value
<b>Construction Services</b>	<b>118</b>	<b>\$73,555,128</b>	<b>77%</b>	<b>238</b>	<b>\$95,669,470</b>
Micro Purchase	28	\$441,880	40%	72	\$1,113,476
Small Purchase	25	\$1,693,992	45%	56	\$3,741,593
>\$100K, <=\$1M	56	\$21,243,843	63%	96	\$33,518,444
>\$1M, <=\$5M	6	\$14,374,416	67%	11	\$21,494,960
>\$5M, <=\$25M	3	\$35,800,997	100%	3	\$35,800,997
>\$25M	0	\$0	0%	0	\$0
<b>Goods</b>	<b>0</b>	<b>\$0</b>	<b>0%</b>	<b>0</b>	<b>\$0</b>
Micro Purchase	0	\$0	0%	0	\$0
Small Purchase	0	\$0	0%	0	\$0
>\$100K, <=\$1M	0	\$0	0%	0	\$0
>\$1M, <=\$5M	0	\$0	0%	0	\$0
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
<b>Professional Services</b>	<b>68</b>	<b>\$12,083,103</b>	<b>70%</b>	<b>115</b>	<b>\$17,192,695</b>
Micro Purchase	18	\$174,183	59%	35	\$296,896
Small Purchase	24	\$1,245,769	57%	41	\$2,172,189
>\$100K, <=\$1M	24	\$8,406,233	74%	36	\$11,421,692
>\$1M, <=\$5M	2	\$2,256,918	68%	3	\$3,301,918
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
<b>Standardized Services</b>	<b>15</b>	<b>\$3,932,053</b>	<b>71%</b>	<b>25</b>	<b>\$5,513,886</b>
Micro Purchase	2	\$29,000	38%	7	\$75,513
Small Purchase	9	\$455,053	78%	11	\$580,373
>\$100K, <=\$1M	2	\$884,400	39%	5	\$2,294,400
>\$1M, <=\$5M	2	\$2,563,600	100%	2	\$2,563,600
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
<b>Total</b>	<b>201</b>	<b>\$89,570,284</b>	<b>76%</b>	<b>378</b>	<b>\$118,376,051</b>

## Waivers

A vendor that plans to submit a bid or proposal in response to a solicitation for a contract that is subject to M/WBE participation goals may seek to request a reduction in the goals by filing a waiver request with the contracting agency during the pre-bid or pre-proposal stage. The agency and MOCS then evaluate the extent to which the vendor's business model and subcontracting history is consistent with this request. In order to

qualify for a waiver, a vendor must show both the capacity to execute the contract with less subcontracting than projected and legitimate business reasons to do so. A vendor that receives a full waiver has demonstrated that they would be able to fully self-perform the contract without using subcontractors if awarded the contract. A vendor that obtains a partial waiver has demonstrated that they will subcontract at a lower amount than the participation goal established by the agency.

During the reporting period, vendors sought a total of 32 requests for waivers of the M/WBE participation requirements at the pre-bid or pre-proposal stage. Of those requests, 12 were denied, while 1 were approved as full waivers and 19 were approved as partial waivers, see Appendices – Table G. Since waivers may be granted only to vendors that demonstrate both the capacity to perform the prime contract without subcontracting and a prior contracting history of doing similar work without subcontracting, some of the waivers that were granted involved repeated requests from the same firms, as they sought multiple bidding opportunities.

During the reporting period, five contracts were registered where a winning vendor obtained either a full or partial waiver of the total participation goal. Thus, of the 32 requests received, and 13 full or partial waiver requests granted, only five contracts ultimately had an M/WBE subcontractor participation goal impacted by a waiver request. For more details, see Appendices – Table G and H.

### **Large-Scale Procurement Approvals**

Prior to soliciting procurements with an anticipated value of over \$10 million, City agencies are required to seek MOCS approval to determine whether it is practicable to divide the proposed contract into smaller contracts and whether doing so would enhance competition among M/WBEs. During the reporting period, there were 7 registered contracts for which MOCS conducted large-scale procurement reviews. A full list is shown in Appendices Table I. The value of the 7 approved contracts shown in Appendices Table I is over \$284 million.

Approximately 77% of the value of the large-scale approvals in the first quarter of FY 2023 was for either single indivisible projects or projects with multiple sites. These approvals were for projects in which separate and smaller contracts would not enhance M/WBE opportunities. For more details, see Appendices – Table I.

## **Complaints, Modifications and Noncompliance**

There were no findings of noncompliance and no modifications determined during the reporting period.

There were no formal complaints made during the reporting period.