

New York State Teachers' Retirement System

Participation of New York State Business Enterprises Including Minority and Women-Owned Business Enterprises

I. Policy Statement

It is the policy of NYSTRS to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. (Source: Appendix A – Standard Clauses for New York State Contracts)

II. Purposes and Objectives

The purposes of this Policy are to:

1. Promote equal opportunity and access to contracting and procurement opportunities with NYSTRS;
2. Monitor and assess the utilization of MWBE businesses in NYSTRS contract and procurement activities;
3. Monitor and assess the compliance by contractors with the MWBE policy on NYSTRS contracts;
4. Identify MWBE businesses, through the “NYLovesMWBE website,” for inclusion in contract and procurement opportunities;
5. Promote NYSTRS contracting and procurement opportunities through advertisement; and
6. Recommend revisions and changes to policies or procedures that may be an impediment or barrier to equal opportunity participation for MWBE businesses in NYSTRS contracting and procurement activities.

The objectives of NYSTRS under this Policy are to:

1. Continue a practice of nondiscrimination in the award and administration of NYSTRS contract and procurement opportunities;
2. Minimize barriers to the participation of MWBEs in NYSTRS contracts and procurement opportunities; and
3. Increase the number of MWBE firms solicited and the volume of their business with NYSTRS subject to NYSTRS fiduciary duties and other requirements prescribed by law.

New York State Teachers' Retirement System

Participation of New York State Business Enterprises Including Minority and Women-Owned Business Enterprises

III. Implementation of the Policy

The Managing Director of Operations, or his/her designee, shall implement and administer this Policy Statement in accordance with NYSTRS established administrative Purchasing Policy and Procedure.

Several methods include, but are not limited to:

1. Posting this Policy Statement and NYSTRS Purchasing Policy and Procedure on NYSTRS website;
2. Listing NYSTRS on the web page for the Division of Minority and Women-Owned Business Development under Agency Contract Opportunities and Other Resources and Links;
3. Posting solicitations in the NYS Contract Reporter, which is a primary media for state contracting and procurement opportunities for NYS businesses, including minority and women-owned businesses;
4. Categorizing MWBE firms by products and services through use of the "NYLovesMWBE" website to further identify and solicit said firms to increase relative participation levels in NYSTRS contract and procurement opportunities;
5. Allowing all vendors to register for solicitations and bid opportunities;
6. Conducting (where practicable) pre-bid conferences regarding NYSTRS contract and procurement opportunities; and
7. Improving procurement information systems to capture necessary information to assist with monitoring solicitations of and awards to MWBEs.

IV. Definitions

"Certified business" shall mean a business verified as a minority or women-owned business enterprise pursuant to the statewide certification program established by Executive Law Article 15-A section three hundred fourteen thereof. Nothing herein shall require a bona fide minority or women-owned business to be certified as a condition precedent to being considered for NYSTRS contracts under this policy.

"Minority or Women owned business enterprise (MWBE)" shall mean a business enterprise that is:

1. At least fifty-one percent owned and controlled by the minority members and/or women;
2. The minority and/or women ownership interest, is real, substantial and continuing;
3. The minority and/or women ownership has and exercises the authority to independently control the day-to-day business decisions; and
4. Independently owned, operated and authorized to do business in New York State.

New York State Teachers' Retirement System

Participation of New York State Business Enterprises Including Minority and Women-Owned Business Enterprises

"Minority group member" shall mean a United States citizen or permanent resident alien who has and can demonstrate membership in one of the following groups:

1. Black persons having origins in any of the Black African racial groups;
2. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American
3. Decent of either Indian or Hispanic origin, regardless of race;
4. Native American or Alaskan native persons having origins in any of the original peoples of North America; and
5. Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

The foregoing definitions are subject to change based upon amendments to these definitions pursuant to applicable rule, regulation or law.

V. Enhancement Services

Under this Policy, NYSTRS shall:

1. Provide and make available and/or disseminate information regarding contract and/or procurement opportunities with NYSTRS via the NYS Contract Reporter and/or other methods, as deemed necessary;
2. Review and approve all NYSTRS invitations to bid, requests for proposals, specifications and plans, prior to formal advertising or solicitation, to ensure they promote MWBE participation;
3. Verify that the MWBE has been certified by NYS;
4. Provide technical assistance to NYSTRS departments relating to the implementation of this Policy;
5. Conduct pre-bid/pre-proposal conferences (where practicable) to review with prospective bidders solicitation requirements and to respond to questions and/or concerns. In lieu of a bidder's conference, provide for each solicitation a formal inquiry/question period for vendors to pose written questions or request clarifications regarding the solicitation and other bid documents which NYSTRS formally responds to all bidders receiving the solicitation;
6. Direct purchases of goods and services toward MWBE resellers on state centralized contracts, especially in non-competitive instances and where we will not be receiving vendor discounts;
7. Review the evaluation of bids prior to the award to verify compliance with this Policy;
8. Provide loss debriefs , upon request, to a bid participant, including MWBE firms, on specific bid submissions and provide feedback related to improvement opportunities in meeting the requirements of NYSTRS solicitations;

New York State Teachers' Retirement System

Participation of New York State Business Enterprises Including Minority and Women-Owned Business Enterprises

9. Identify and evaluate on an on-going basis potential barriers that may limit MWBE participation in NYSTRS contracting and procurement opportunities and develop possible solutions to minimize or eliminate the impact of these barriers on MWBE participation: e.g., worker's compensation, insurance and bonding requirements;
10. Collect and maintain accurate and up-to-date data and records demonstrating MWBE efforts and accomplishments under this Policy, and generate reports to executives, as needed or upon request, which document the same, the progress of this Policy, and any suggestions to improve it; and
11. Participate in MWBE seminars and/or workshops to promote the opportunities at NYSTRS.

VI. Policy Compliance

NYSTRS requires general contractors and other prime businesses that bid on and participate in NYSTRS contracts to be diligent in pursuing the involvement of MWBEs as subcontractors, sub-consultants and sub-suppliers and to follow both the letter and spirit of this Policy. It is the responsibility of the bidder to comply with this Policy.

Once a bid has been accepted and a contract awarded, the successful bidder/contractor is also responsible for achieving the participation as established by NYSTRS and reflected in its Bid submission and for maintaining such participation for the duration of the project. It is the responsibility of the contractor to comply with this Policy.

VII. Sanctions

The failure of a bidder to adequately document its compliance with this Policy and to subcontract with MWBE firms or to purchase material supplies from MWBEs, where the same are available for lowest cost or best value, shall be considered non-compliant with this Policy. A firm that does not satisfy the procedural requirements of this Policy may not be eligible to bid on or be awarded a contract. A firm that establishes a pattern of not meeting the procedural requirements of this Policy may be disqualified in subsequent best value contracting solicitations. Any MWBE that proves not to be qualified, ready, able and willing to perform NYSTRS contracts for commodities, services, or construction, may also be disqualified in subsequent contracting solicitations. NYSTRS reserves the right to debar or suspend any contractor as a sanction pursuant to applicable rules, regulations or laws.

VIII. Purchasing Policy

NYSTRS Purchasing Policy and Procedure outlines the steps to be taken by the requesting department staff to acquire materials and services for NYSTRS use. The application of such policy shall apply to all acquisitions of commodities, services or technology entered into by NYSTRS with the exception of those contracts specifically authorized and approved by the Retirement Board.

IX. Records and Monitoring

The Procurement Unit shall compile and maintain data on MWBE participation, including data concerning prime and sub- contracts awarded to MWBEs. MWBE procurement statistics shall measure overall total dollar amount of awards to MWBEs and total dollar amount of awards to all vendors.

New York State Teachers' Retirement System

Participation of New York State Business Enterprises Including Minority and Women-Owned Business Enterprises

Further consideration may be given to grouping statistics based upon types of services (e.g., Information Services, Investment Information Services, Accounting, etc.) and commodities.

The Director of Operations, or his/her designee, is responsible for the administration of this Policy and the effective utilization of NYS business enterprises, including MWBEs, in NYSTRS contracting and procurement opportunities and will be responsible for evaluating program compliance on a continuing basis.

Contractors will be required to submit periodic reports of subcontracting on NYSTRS projects and the participation of MWBEs in such form and manner and at such time as NYSTRS may prescribe in the contract, and to report all suspected instances of companies fraudulently claiming MWBE status in order to unjustly benefit from this Policy.

X. Dispute Resolution

NYSTRS expects all parties involved in the procurement process, including NYSTRS personnel and vendors/contractors, to act in good faith in all aspects of process. If any vendor or contractor has a concern or complaint related to the application of this Policy, whether by NYSTRS personnel or a contractor, that party is expected to seek cooperative voluntary resolution. If the effected parties are unable to resolve their dispute, the offended party shall report their concerns to the user department for the project; if the complaint involves the performance of an MWBE prime or sub-contractor, the user department shall immediately notify the Procurement Unit for appropriate action.

The Procurement Unit will initiate an investigation of the complaint. Except in indisputable cases, the parties will be encouraged to mediate their dispute; the Procurement Unit under the direction of the Finance Manager may facilitate mediation or recommend mediators. If the mediation is successful, the agreement reached will be reduced to writing, signed by the participating parties and made a part of the contract or subcontract and a part of the project file; failure to comply with the agreed outcome of the mediation may result in contract termination, debarment or other punitive action by NYSTRS.

If mediation fails to resolve the dispute, or if the parties refuse to mediate, either party may within ten business days appeal to the Managing Director of Operations for resolution of disputes that involve MWBEs. The Managing Director of Operations shall hear the dispute and render a decision. Should either party not agree with the decision of the Managing Director of Operations, the matter may within ten business days from the decision of the Managing Director of Operations, be appealed to NYSTRS Executive Director. The decision of the NYSTRS Executive Director is final.

XI. Severability

If any provision of this Policy or the application thereof to any person or circumstance is held invalid for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of other provisions of the Policy nor its application to other persons or circumstances nor any other component of NYSTRS procurement. The Policy is hereby declared to be severable.