

# New York State Teachers' Retirement System

## Participation of New York State Business Enterprises

(Including Certified Minority and Women-Owned (MWBE) and Certified Service-Disabled Veteran-Owned (SDVOBE) Business Enterprises)

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### **I. Policy Statement**

It is the policy of NYSTRS to maximize opportunities for the participation of New York State business enterprises, including certified minority and women-owned and certified service-disabled veteran-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 and SDVOBE businesses in NYSTRS contract and procurement activities;
3. Monitor and assess the compliance by contractors with the MWBE and SDVOBE policy on NYSTRS contracts;
4. Identify MWBE businesses, through the Division of Minority and Women's Business Development (DMWBD) website, and SDVOBE businesses, certified by the Division of Service-Disabled Veterans' Business Development in OGS (OGS), respectively, 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 and SDVOBE 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 and SDVOBEs in NYSTRS contracts and procurement opportunities; and
3. Increase the number of MWBE and SDVOBE firms solicited and the volume of their business with NYSTRS subject to NYSTRS fiduciary duties and other requirements prescribed by law.

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### 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. 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 and service-disabled veteran-owned businesses;
3. Categorizing MWBE firms by products and services through use of the DMWBD website and SDVOBE firms certified by OGS to further identify and solicit said firms to increase relative participation levels in NYSTRS contract and procurement opportunities;
4. Allowing all vendors to register for solicitations and bid opportunities;
5. Conducting (where practicable) pre-bid conferences regarding NYSTRS contract and procurement opportunities; and
6. Improving procurement information systems to capture necessary information to assist with monitoring solicitations of and awards to MWBEs and SDVOBEs.

### IV. Definitions

#### A. Participation by MWBEs

"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, including a sole proprietorship, partnership, limited liability company or corporation 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.

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"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 descent of either Indian or Hispanic origin, regardless of race;
3. Native American or Alaskan native persons having origins in any of the original peoples of North America; and
4. Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

### **B. Participation by SBVOBEs**

Participation by SBVOBEs is pursuant to the statewide program established by Executive Law Article 17-B section three hundred sixty-nine thereof. Nothing herein shall require a bona fide service-disabled veteran-owned business to be certified as a condition precedent to being considered for NYSTRS contracts under this policy.

"Certified service-disabled veteran-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

1. At least fifty-one percent owned by one or more service-disabled veterans;
2. An enterprise in which such service-disabled veteran ownership is real, substantial, and continuing;
3. An enterprise in which such service-disabled veteran ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
4. An enterprise authorized to do business in this state and is independently-owned and operated;
5. An enterprise that is a small business which has a significant business presence in the state, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director [of the Division of Service-Disabled Veterans' Business Development in the New York State Office of General Services], but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto; and
6. Certified by the New York State Office of General Services.

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

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### 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 and SDVOBE participation;
3. Verify that the MWBE and SDVOBE has been certified by respective NYS certifying body;
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 and SDVOBE 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 and SDVOBE firms, respectively, on specific bid submissions and provide feedback related to improvement opportunities in meeting the requirements of NYSTRS solicitations;
9. Identify and evaluate on an on-going basis potential barriers that may limit MWBE and SDVOBE participation in NYSTRS contracting and procurement opportunities and develop possible solutions to minimize or eliminate the impact of these barriers on MWBE and SDVOBE participation: e.g., worker's compensation, insurance and bonding requirements;
10. Collect and maintain accurate and up-to-date data and records demonstrating MWBE and SDVOBE 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 and SDVOBE seminars and/or workshops to promote the opportunities at NYSTRS.

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### **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 and SDVOBEs 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 and SDVOBE firms or to purchase material supplies from MWBEs and SDVOBEs, 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 or SDVOBE 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 and SDVOBE participation, including data concerning prime and sub- contracts awarded to MWBEs and SDVOBEs. MWBE and SDVOBE procurement statistics, respectively, shall measure overall total dollar amount of awards to MWBEs and SDVOBE, respectively, and total dollar amount of awards to all vendors. 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 Managing 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 and SDVOBEs, 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 and SDVOBEs in such form and manner and at such time as NYSTRS may

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prescribe in the contract, and to report all suspected instances of companies fraudulently claiming MWBE or SDVOBE 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 or SDVOBE 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 and SDVOBEs. 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.