

**EXHIBIT XX.XX**  
**STANDARD FLOW DOWN CLAUSES**  
**FOR CONTRACTS ENTERED INTO BY**  
**PSEG LONG ISLAND LLC**  
**AND**  
**LONG ISLAND ELECTRIC UTILITY SERVCO LLC**  
**as agent of and acting on behalf of the**  
**LONG ISLAND LIGHTING COMPANY d/b/a LIPA**

**Non Discrimination Provisions.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other New York State and Federal statutory and constitutional non-discrimination provisions, Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, marital status, sexual orientation, genetic predisposition or carrier status. Furthermore, in accordance with Article 220-e of the New York Labor Law, and to the extent that this Contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, national origin, sexual orientation, genetic predisposition or carrier status; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee for the performance of work under this Contract.

**Wage and Hour Provisions.** If this is a public work contract covered by Article 8 of the New York State Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the New York State Labor Law and as set forth in prevailing wage and supplement schedules issued by the New York State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the New York State Labor Department in accordance with the New York Labor Law and shall comply with all requirements set forth in Article 8 or Article 9 of the New York Labor Law whichever Article applies.

**Non-Collusive Bidding.** If this Contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition.

**International Boycott Prohibition.** If this Contract exceeds \$5,000, Contractor agrees, as a material condition of the contract, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC app. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void.

**Reimbursement for Inappropriate Payments/Setoff.** If at any time the Company has been overcharged under this Contract, the Company shall be entitled to a refund, setoff, or withholding. Any payments made by the Company for the Work performed by unqualified persons or entities shall be reimbursed to the Company. All

claims for money due or which becomes due from the Company shall be subject to deduction or setoff by the Company by reason of any claim arising out of this Contract or any other transaction with Contractor.

**Records.** Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records must be kept for six (6) years following the expiration or earlier termination of the contract. LIPA or its designee and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. LIPA shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) Contractor shall timely inform LIPA in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**Disclosure of LIPA Records or Information.** If any third party requests that Contractor disclose LIPA records or information, as defined in subdivision 4 of Section 86 of the Public Officers Law, Contractor shall notify LIPA of such request and LIPA shall determine, in accordance with Chapter 39 of the Laws of 2010, whether such LIPA records or information may be disclosed.

**Equal Employment for Minorities and Women.** In accordance with Section 312 of the New York Executive Law: (i) Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status and shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; (ii) at the request of LIPA, 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, marital status, sexual orientation, genetic predisposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein; and (iii) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status. Contractor shall include the provisions of (i), (ii) and (iii) above, in every subcontract over twenty-five thousand dollars (\$25,000.00) for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of Contractor. Upon request, Contractor shall submit within ten (10) days of such request an equal employment opportunity program statement and compliance report.

**New York State Minority and Women-Owned Business Enterprise Requirements.** Contractor agrees, in addition to any other nondiscrimination provision of this Contract and at no additional cost to Company, to fully comply and cooperate with Company in the implementation of New York State Executive Law Article 15-A and

Company policy with respect to equal employment opportunities for minority group members and women and contracting opportunities for New York State certified minority and women-owned business enterprises (“MWBEs”). MWBEs are to be provided opportunities to participate in Company’s contracting activities for the procurement of goods and services. 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 New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws. To the extent that there are MWBE subcontracting goals associated with this Contract, Contractor shall comply with Attachment 1 to this Exhibit to this Contract.

**New York State Service-Disabled Veteran-Owned Business Requirements.** Contractor agrees, in addition to any other nondiscrimination provision of this Contract and at no additional cost to Company, to fully comply and cooperate with Company in the implementation of Veterans’ Services Law Article 3 and Company policy with respect to promoting the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses (“SDVOBs”) have opportunities for maximum feasible participation in the performance of Company contracts. To the extent that there are SDVOB subcontracting goals associated with this Contract, Contractor shall comply with Attachment 2 to this Exhibit to this Contract.

**Late Payment Interest.** Any late payment interest to be paid by Company shall be no greater than permissible by New York State Law.

**Omnibus Procurement Act of 1992.** It is the policy of New York State 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. Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
One Commerce Plaza  
Albany, New York 12245.

A directory of certified minority and women-owned business enterprises is available from:  
NYS Department of Economic Development  
Minority and Women's Business Development Division  
One Commerce Plaza  
Albany, New York 12245.

The Omnibus Procurement Act of 1992 requires that by signing this Contract, Contractor certifies that: (a) Contractor has made commercially reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and woman-owned business enterprises, on this Contract, and has retained the documentation of these efforts to be provided upon request to the State; (b) Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) and Contractor agrees to make commercially reasonable efforts to provide notification to New York State residents of employment opportunities on this Contract through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. Contractor agrees to document these efforts and to provide said documentation to the State upon request. Contractor acknowledges that the State may seek to obtain offset credits from foreign countries as a result of this Contract and agrees to cooperate with the State in these efforts.

**Attachment 1 to Exhibit XX.XX**

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION  
OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED  
BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY  
GROUP MEMBERS AND WOMEN**

**I. New York State Law**

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR 140-145, Long Island Lighting Company d/b/a LIPA (“LIPA”) by and through its agent, PSEG Long Island LLC (“PSEG LI”) and through its operating subsidiary, Long Island Electric Utility Servco LLC (“Servco”) (LIPA, PSEG LI, and Servco are collectively referred to as the “Company”) recognizes its obligation under the law to promote opportunities for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority group members and women in the performance of Company contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether MWBEs had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority and Women-Owned Business Enterprises: Evidence from New York” (“Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of MWBEs in state procurement contracting versus the number of MWBEs that were ready, willing, and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide MWBE program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that Company establish goals for maximum feasible participation of MWBEs and the employment of minority group members and women in the performance of New York State contracts. The goals are applicable to the total contract price (i.e., the base contract and all change orders). It is each contractor’s responsibility to secure participation in the contract scope of work by MWBEs to satisfy the goals or to document satisfactory good faith efforts taken to fulfill the goals. Participation is measured as the amount actually paid to the MWBEs, not the contract bid price for the work.

It is the policy of Company to encourage the greatest possible participation by MWBEs in Company’s procurement process. Therefore, to ensure that MWBEs are given the maximum practical opportunity to participate, the Parties agree, as a condition of this Contract, to be bound by the provisions of Section 316 of Article 15-A of the Executive Law, as well as to any other applicable provisions under the law and this Contract. **SANCTIONS MAY BE IMPOSED FOR CONTRACTOR’S NONCOMPLIANCE.**

**II. Business Participation Opportunities for MWBEs**

- A. For purposes of this solicitation, Company hereby establishes an overall goal of 30% for MWBE participation (based on the current availability of qualified MBEs and WBEs). The contractor on this Contract (“Contractor”) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that Company may withhold payment pending receipt of the required documentation. The directory of New York State certified MWBEs can be viewed at: <http://www.ny.newnycontracts.com> For

guidance on how Company will determine Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

Overall MWBE Participation	30%
Minority-Owned Business Enterprises ("MBE") Participation	15%
Women-Owned Business Enterprises ("WBE") Participation	15%

(Based on the current availability of qualified MBEs and WBEs)

- B. In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and Company may withhold payment from Contractor as liquidated damages.
- C. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

### **III. Contractor's Responsibilities**

- A. Contractor shall designate and make known to Company an MWBE officer who will have responsibility for and authority to effectively administer an MWBE program.
- B. Contractor hereby agrees to carry out this MWBE program in the awarding of subcontracts. Contractor further agrees to cooperate in any audits, studies, or surveys as may be conducted by Company or its agents, subsidiaries, or consultants, or any government agency that may have jurisdiction, as may be necessary to determine the extent of Contractor's compliance with this MWBE program.
- C. Contractor agrees that its acceptance of the terms of this Contract, including the specific goals established for MWBE participation, constitutes a commitment to make every good faith effort to meet such goals by subcontracting to or purchasing goods and services from MWBEs.
- D. Firms certified as both an MBE and WBE may count toward either the MBE or WBE goal on a single Contract, but not both, regardless of whether either goal is thus exceeded. Contractor must choose the goal to which the participation value is to be applied at the beginning of the Contract.
- E. Company is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts, as defined therein, 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.
- F. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to Company, to fully comply and cooperate with Company in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority

group members and women (“EEO”) and contracting opportunities for MWBEs. 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 New York State Executive Law Article 15 or other applicable federal, state, or local laws.

- G. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, and/or a breach of contract, leading to the withholding of funds or such other actions, and liabilities for liquidated damages pursuant to Section IX herein or enforcement proceedings as allowed by the Contract.

#### **IV. Contract Goals**

- A. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in Section II-A herein, Contractor should reference the directory of New York State certified MWBEs, which can be found at: <http://www.ny.newnycontracts.com>

Additionally, Contractor is encouraged to contact the Division of Minority and Women Business Development at (518) 292-5250; (212) 803-2414; or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- B. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. **In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and Contractor shall be liable to Company for liquidated or other appropriate damages, as set forth herein.**

- C. **WHERE COMPANY DISQUALIFIES A BID OR PROPOSAL OF A CONTRACTOR AS BEING NON-RESPONSIVE FOR FAILURE TO REMEDY DEFICIENCIES IN THE UTILIZATION PLAN, OR UPON A DETERMINATION THAT CONTRACTOR’S UTILIZATION PLAN DOES NOT INDICATE THAT THE CONTRACT GOAL REQUIREMENTS FOR PARTICIPATION OF MWBEs WILL BE MET AND CONTRACTOR HAS NOT DOCUMENTED GOOD FAITH EFFORTS, COMPANY, IN ITS DISCRETION, MAY AWARD THE CONTRACT TO THE NEXT LOWER RESPONSIBLE CONTRACTOR OR TO THE NEXT MOST TECHNICALLY QUALIFIED OR OTHERWISE ACCEPTABLE CONTRACTOR, NOTWITHSTANDING THAT THE DISQUALIFIED CONTRACTOR PURSUES ANY REMEDIES AVAILABLE TO IT PURSUANT TO ARTICLE 15-A OF THE EXECUTIVE LAW OR OTHERWISE.**

- 1) If Company determines that Contractor has not fulfilled its MWBE obligations, Company will send a notice to Contractor requesting that Contractor provide in writing, within a reasonable time as stated by Company, the necessary evidence of good faith efforts. If Contractor fails to objectively demonstrate the required good faith efforts, Company shall determine Contractor to be in noncompliance and will so notify the Director of Empire State Economic Development, Division of Minority and Women’s Business Development, and Contractor in writing.
- 2) Whenever all efforts to effect compliance have failed and the necessary good faith efforts have not been demonstrated, Company may take the following actions:

- a) Reduction of the amount obligated for expenditure pursuant to the Contract.
- b) Suspension or termination of the Contract.
- c) Retention of payments until compliance is made with the Contract goal requirements.
- d) Bid forfeiture.
- e) Bar Contractor from eligibility for award of other Company contracts for a specific amount of time or until corrective action has been taken. The determination of what corrective action is acceptable is solely within the discretion of Company.
- f) Deem Contractor ineligible to submit a bid to any contracting agency or be awarded any such contract for a period not to exceed one (1) year following the final determination.
- g) Enforce any other penalties that are authorized by law.

**V. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement ("Form 100") to Company with its bid or proposal.
- C. Contractor shall comply with the following provisions of Article 15-A:
  - 1) Contractor and its subcontractors 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) Contractor shall submit an EEO policy statement to Company within seventy-two (72) hours after the date of the notice by Company to award the Contract to Contractor.
  - 3) If Contractor or subcontractor does not have an existing EEO policy statement, Company may provide Contractor or subcontractor a model statement (see below).

Contractor's EEO policy statement shall include the following language:

- a) Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, shall 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 workforce.



- b) 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) 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 shall affirmatively cooperate in the implementation of Contractor's obligations herein.
- d) Contractor shall include the provisions of subdivisions (a) through (c) of this Subsection V, which provide for relevant provisions of the nondiscrimination provisions required by New York State Executive Law Article 15 in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

**D. PLEASE NOTE: FAILURE TO COMPLY WITH THE FOREGOING REQUIREMENTS MAY RESULT IN A FINDING OF NON-RESPONSIVENESS, NON-RESPONSIBILITY, AND/OR A BREACH OF THE CONTRACT, LEADING TO THE WITHHOLDING OF FUNDS, SUSPENSION, OR TERMINATION OF THE CONTRACT OR SUCH OTHER ACTIONS OR ENFORCEMENT PROCEEDINGS AS ALLOWED BY THE CONTRACT.**

**E. Form 101 – Equal Employment Opportunity Staffing Plan (“Staffing Plan”)**

To ensure compliance with this Section, Contractor shall submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (“Form 101”) identifying the composition of the anticipated workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

**F. Workforce Utilization Form EEO 162 (“Workforce Report”)**

If awarded a Contract, Contractor shall submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report (“Form 162”), identifying the workforce actually utilized on the Contract.

- 1) Once a Contract has been awarded and during the term of that Contract, Contractor is responsible for updating and providing notice to the Company of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis using the Workforce Report (Form 162) during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- 2) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
- 3) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit Form 162 and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the

Contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit Form 162 and indicate that the information provided is Contractor's total workforce during the subject timeframe, not limited to work specifically under the Contract.

## **VI. Form 103 - MWBE Utilization Plan**

- A. Contractor shall use the MWBE Utilization Plan ("Form 103") for identification of MWBEs.
- B. Contractor shall submit a final MWBE Utilization Plan either prior to, or at the time of, the execution of the Contract. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to Company. Company will review the submitted MWBE Utilization Plan and advise Contractor of Company's acceptance or issue a notice of deficiency within thirty (30) days of receipt.
- C. If a notice of deficiency is issued, Contractor shall be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Office of Supplier Diversity a written remedy in response to such notice. If the written remedy that is submitted is not timely or is found by Company to be inadequate, Company shall notify Contractor and direct Contractor to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Company shall be entitled to any remedy provided herein, including, but not limited to, a finding of Contractor non-responsiveness.
- E. Company may disqualify a Contractor as being non-responsive under the following circumstances:
  - 1) If Contractor fails to submit an MWBE Utilization Plan;
  - 2) If Contractor fails to submit a written remedy to a notice of deficiency;
  - 3) If Contractor fails to submit a request for waiver, where applicable; or
  - 4) If Company determines that Contractor has failed to document good faith efforts.

### **F. Good Faith Efforts**

To satisfy the MWBE participation requirements, Contractor must (at a minimum) make the following good faith efforts and must prove all such efforts through the submission of written documented evidence. Company may consider any criteria it determines is relevant, including, but not limited to:

- 1) A completed, acceptable MWBE Utilization Plan submitted in accordance with applicable requirements to meet goals established in the Contract for participation of MWBEs.

- 2) Copies of any advertisements published in appropriate general circulation, trade, and minority- and women-oriented publications in a timely fashion, and date(s) of the publication of such advertising.
- 3) Copies of any written solicitations made in a timely fashion to MWBEs listed in the Directory. If solicitations were received but a certified MWBE was not selected, the specific reason that such enterprise was not selected.
- 4) Timely responses made to any such advertisements and solicitations provided by MWBEs.
- 5) The dates of attendance by a representative of Contractor who is knowledgeable of the Contract scope of work at pre-bid, pre-award, or any meeting scheduled by Company for any purpose relating to Company's MWBE program.
- 6) Written notification to MWBEs and trade associations located within the region where the Contract scope of work will be performed.
- 7) Description of efforts by Contractor to reasonably structure the Contract scope of work for purposes of subcontracting with, or obtaining supplies from, MWBEs.
- 8) Actions to contact and assess the capabilities of MWBEs located both inside and outside of the immediate region in which the work was or will be performed.
- 9) Subcontract terms and conditions offered to MWBEs, comparable to those offered in the ordinary course of Contractor's business and to other subcontractors of Contractor.
- 10) Proof that Contractor made payments for work performed by MWBEs in a timely fashion so as to facilitate continued performance by MWBEs.
- 11) Contractor's offer to make up any inability to comply with goals established in the Contract in other Company contracts being performed or to be awarded to Contractor.
- 12) Documented evidence that Contractor has contacted all MWBEs that have expressed an interest in the specific Contract.
- 13) A statement setting forth Contractor's basis for requesting a partial or total waiver or any other information determined relevant by Company or Contractor.

## **VII. Form 104 – Request for Waiver**

- A. For waiver/reduction requests, Contractor shall use the Request for Waiver Form ("Form 104").
- B. If Contractor, after making good faith efforts, is unable to comply with the MWBE goals, Contractor may submit a request for a partial or total waiver of its MWBE requirement by submitting a Request for Waiver Form and documenting its good faith efforts undertaken to meet such goals. If the documentation included with the waiver request is complete, the Executive Chamber of the Office of the Governor of New York State will evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt to the extent possible.

- C. If Company, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports, determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such noncompliance, Company may issue a notice of deficiency to Contractor. 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 MWBE Contract goals.

**VIII. Form 105 - MWBE Quarterly Contractor Compliance Report**

Contractor is required to submit an MWBE Quarterly Contractor Compliance Report ("Form 105") to Company by the 10th day following the end of each quarter over the term of the Contract, documenting Contractor's compliance in achieving the MWBE goals of the Contract.

**IX. Liquidated Damages**

- A. Contractor expressly agrees to comply with the MWBE requirements set forth in the Contract and acknowledges that if it fails to comply and its actions are determined to be willful and intentional by Company, such determination may result in Contractor being liable for liquidated or other damages equal to or exceeding the dollar value of the MWBE subcontracting goals set forth in the Contract. Where Company determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to Company liquidated or other appropriate damages.

Such liquidated damages shall be calculated as an amount equaling the difference between:

- 1) All sums identified for payment to MWBEs had Contractor achieved the contractual MWBE goals; and
  - 2) All sums actually paid to MWBEs for work performed or materials supplied under the Contract; or
  - 3) As specified under the terms of Company's contract documents.
- B. In the event a determination has been made that requires the payment of liquidated damages and such identified sums have not been withheld by Company, Contractor shall pay such liquidated damages to Company within sixty (60) days after they are assessed by Company unless prior to the expiration of such sixtieth day, Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if Director renders a decision in favor of Company.

**X. MWBE Forms**

- A. MWBE Form 100 – Minority and Women Owned Business Enterprises – Equal Employment Opportunity Policy Statement.
- B. MWBE Form 101 – Equal Employment Opportunity Staffing Plan
- C. MWBE Workforce\_Utilization\_Form\_EEO\_162 Quarterly Report
- D. MWBE Form 103 – MWBE Utilization Plan
- E. MWBE Form 104 – Request for Waiver Form
- F. Fillable Draft Pre-RFP Waiver
- G. MWBE Form 105 – MWBE Quarterly Report

**MWBE Form 100**  
**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES –**  
**EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at :

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**MWBE**

This organization will and will cause its contractors and subcontractors to take good

faith actions to achieve the MWBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MWBE contractor associations.

Request a list of State-certified MWBEs from Company and solicit bids from them directly. Such listing is available at <http://www.esd.ny.gov/MWBE.html>.

Ensure that plans, specifications, request for proposals, and other documents used to secure bids will be made available in sufficient time for review by prospective MWBEs.

Where feasible, divide the work into smaller portions to enhance participation by MWBEs and encourage the formation of joint ventures and other partnerships among MWBE contractors to enhance their participation.

Document and maintain records of bid solicitation, including those to MWBEs, and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting MWBE contract participation goals.

Ensure that progress payments to MWBEs are made on a timely basis so that undue financial hardship is avoided, and ensure that bonding and other credit requirements are waived or appropriate alternatives are developed to encourage MWBE participation.

A. This organization 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 programs of affirmative action to ensure that minority group members 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 workforce on State contracts.

B. This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, disability, or marital status.

C. At Company's request, this organization shall request that each employment agency, labor union, or authorized representative 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 this organization's obligations herein.

**EEO**

D. Contractor shall comply with the nondiscrimination provisions required by

New York State Executive Law Article 15 and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors 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 New York State Executive Law Article 15 with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

E. This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ is designated as the MWBE Officer

(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (MWBE-EEO) program.

**MWBE Contract Goals**

\_\_\_\_\_ % Minority and Women Business Enterprise Participation

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women’s Business Enterprise Participation

\_\_\_\_\_  
(Authorized Representative)

Firm Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Phone: \_\_\_\_\_

Mailing address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**This MWBE-EEO Policy Statement shall be submitted to:**

Office of Supplier Diversity  
PSEG Long Island LLC  
175 East Old Country Road  
Hicksville, NY 11801

Please double click on form below to edit and save



**Division of Minority  
and Women's  
Business Development**

## STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
<b>Offeror's Name:</b>		<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor <b>Subcontractor's name</b> _____
<b>Offeror's Address:</b>		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender			Work force by Race/Ethnic Identification																				
		Total	Total	Total													Native American			Disabled			Veteran		
		Male (M)	Female (F)	X (X)	White (M) (F) (X)			Black (M) (F) (X)			Hispanic (M) (F) (X)			Asian (M) (F) (X)			(M) (F) (X)			(M) (F) (X)			(M) (F) (X)		
Officials/Administrators																									
Professionals																									
Technicians																									
Sales Workers																									
Office/Clerical																									
Craft Workers																									
Laborers																									
Service Workers																									
Temporary /Apprentices																									
Totals																									

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		Submit completed with bid or proposal MWBE 101 (Rev 03/11)



**MWBE FORM 101**  
**EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN**  
**Submit with Bid or Proposals – Instructions**

**General instructions:** All Contractors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (Form 101) and submit it as part of the bid or proposal package. Where the workforce to be utilized in the performance of the State contract can be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall complete this form only for the anticipated workforce to be utilized on the State contract. Where the workforce to be utilized in the performance of the State contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall complete this form for Contractor's and/or subcontractor's total workforce.

**Instructions for completing:**

1. Enter the Solicitation number that this report applies to along with the name and address of Contractor.
2. Check off the appropriate box to indicate if the party completing the report is Contractor or a subcontractor.
3. Check off the appropriate box to indicate if the workforce being reported is just for the Contract or Contractor's total workforce.
4. Enter the total workforce by EEO job category.
5. Break down the anticipated total workforce by gender and enter under the heading "Workforce by Gender"
6. Break down the anticipated total workforce by race/ethnic identification and enter under the heading "Workforce by Race/Ethnic Identification." Contact the OMWBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated workforce under the appropriate headings.
8. Enter the name, title, phone number, and email address of the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

<b>WHITE</b>	A person, not of Hispanic origin, who has origins in any of the original peoples of Europe, North Africa, or the Middle East.
<b>BLACK</b>	A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
<b>HISPANIC</b>	A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
<b>ASIAN &amp; PACIFIC ISLANDER</b>	A person who has origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
<b>NATIVE INDIAN (NATIVE AMERICAN/ALASKAN)</b>	A person who has origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

<b>DISABLED INDIVIDUAL</b>	Any person who: has a physical or mental impairment that substantially limits one or more major life activity(ies) has a record of such an impairment; or is regarded as having such an impairment.
<b>VIETNAM VETERAN</b>	<b>ERA</b> A veteran who served at any time between and including January 1, 1963 and May 7, 1975.
<b>GENDER</b>	Male or Female

Please double click on icon below to edit and save form

**Workforce Utilization Form EEO 162**

(see attached)



Workforce\_Utilizati  
on\_Form\_EEO\_162 2

**MWBE FORM 103**
**MWBE UTILIZATION PLAN**

**INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated Contract or within a reasonable time thereafter, but prior to Contract award. This MWBE Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (MWBE) under the Contract. Attach**

Contractor's Name: \_\_\_\_\_ Federal Identification No.: \_\_\_\_\_

Address: \_\_\_\_\_ Solicitation No.: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_ Project No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Total Dollar Value (\$): \_\_\_\_\_

Region/Location of Work: \_\_\_\_\_ MWBE Goals in the Contract: MBE % WBE %

Certified MWBE Subcontractors/Suppliers' Business Name, Address, Telephone No., Contact Person, Email Address	Classification (MBE or WBE)	Federal ID No.	Detailed Description of Work, Products and/or Services to be provided (Attach additional sheets, if necessary)	MBE and WBE Subcontract Value (\$)	MWBE % of Work Performed in New York State	MWBE Projected Start and Completion Date
	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE					
	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE					

**IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, CONTRACTOR MUST SUBMIT A REQUEST FOR WAIVER FORM (Form 104).**

**AUTHORIZED SIGNATURE:**

**DATE:**

**NAME AND TITLE OF PREPARER (Print or Type):**

If Contractor is a corporation, partnership, or joint venture, this form must be signed, respectively, by the President of the corporation, a General Partner, or the President/General Partner of one of the joint ventures. If it is signed by anyone else, you must include appropriate proof (such as certified copy of the bylaws, partnership agreement, or joint venture agreement) that confirms that the person signing this form is authorized to do so. By signing below, Contractor authorizes Company to verify all information provided on this form.

**SUBMISSION OF THIS FORM CONSTITUTES CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.**

**TELEPHONE NUMBER:**

**EMAIL ADDRESS:**

\*\*\*\*\*FOR COMPANY USE ONLY\*\*\*\*\*

**REVIEWED BY:**

**DATE:**

**MWBE UTILIZATION PLAN APPROVED:** ☐ YES ☐ NO Date: \_\_\_\_\_

**Contract No.:**

**Project No. (if applicable):**

**Contract Award Date:**

**Estimated Date of Completion:**

**Amount Obligated Under the Contract:**

**Description of Work:**

**NOTICE OF DEFICIENCY ISSUED:** ☐ YES ☐ NO Date: \_\_\_\_\_

**NOTICE OF ACCEPTANCE ISSUED:** ☐ YES ☐ NO Date: \_\_\_\_\_

**MWBE FORM 104  
REQUEST FOR WAIVER FORM**

<b>INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.</b>		
<b>Contractor Name:</b>	<b>Federal Identification No.:</b>	
<b>Address:</b>	<b>Solicitation/Contract No.:</b>	
<b>City, State, Zip Code:</b>	<b>MWBE Goals: MBE ___%    WBE ___%</b>	
<b>By submitting this form and the required information, Contractor certifies that every good faith effort has been made to promote MWBE participation pursuant to the MWBE requirements set forth under the Contract.</b>		
<b>Contractor is requesting a:</b>  1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial  2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial  3. <input type="checkbox"/> Waiver Pending ESD Certification – Check here if subcontractors or suppliers of Contractor are not certified MWBE, but an application for certification has been filed with Empire State Development. Date of such filing with Empire State Development: _____		
<b>PREPARED BY (Signature):</b>  SUBMISSION OF THIS FORM CONSTITUTES CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.	<b>Date:</b>	
<b>Name and Title of Preparer (Printed or Typed):</b>	<b>Telephone Number:</b>	<b>Email Address:</b>
<b>*****FOR COMPANY USE ONLY *****</b>		
<b>Submit with the bid or proposal or if submitting after award submit to:</b>  Office of Supplier Diversity PSEG Long Island LLC 175 East Old Country Road Hicksville, NY 11801	<b>REVIEWED BY:</b>	<b>DATE:</b>
	<b>Waiver Granted:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	
	<input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ <b>*Comments:</b>	

**MWBE FORM 104**  
**REQUEST FOR WAIVER FORM**

**REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS**

**When completing the Request for Waiver Form, please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the Request for Waiver form:**

A statement setting forth your basis for requesting a partial or total waiver.

The names of general circulation, trade association, and MWBE-oriented publications in which you solicited certified MWBEs for the purposes of complying with your participation goals.

A list identifying the date(s) that all solicitations for certified MWBE participation were published in any of the above publications.

A list of all certified MWBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your MWBE participation levels.

Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified MWBEs.

Copies of responses made by certified MWBEs to your solicitations.

A description of any contract documents, plans, or specifications made available to certified MWBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.

Documentation of any negotiations between you and the MWBEs undertaken for purposes of complying with the MWBE participation goals.

Any other information you deem relevant that may help us in evaluating your request for a waiver.

The name, title, address, telephone number, and email address of Contractor's representative authorized to discuss and negotiate this waiver request.

Copy of notice of application receipt issued by Empire State Development.

**Note:**

Unless a total waiver has been granted, Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by Company to determine MWBE compliance.

Please double click on form below to edit and save

## Pre-RFP Waiver Request

Contract No / Project No.:	
ESD Region:	DBE Goals (check one): <b>Yes</b> <b>No</b>
Project Title:	Contract Funding Type (check one): State                      Blended (Federal & State) Contract Value Total: State funding amount: Federal funding amount (if applicable):
Contract Value:	Contract Term:
Agency contact information: Name: Email: Phone number:	

Project Description:
Reason for Request (Lack of subcontracting, lack of MWBE availability, etc.):
Recommended Goal:    MBE ____ %       WBE ____ %

1. When a lack of subcontracting opportunities is a reason for the waiver request please provide a breakout of any scopes of work and their know/estimated values.
2. If a lack of MWBE availability is a reason for the waiver request you must provide your search parameters; industry codes, regions, keywords, etc. and your search results.

**MWBE FORM 105**  
**MWBE QUARTERLY REPORT**

of

NYS AGENCY Contract No. \_\_\_\_\_ Project No. \_\_\_\_\_

<b>Contractor's Name and Address</b>		<b>Federal ID#</b>		<b>Goals/\$ Amt.</b> MBE 15%= _____ WBE 15%= _____		<b>Contract Type:</b> <b>Paid to Contractor This Quarter:</b> <b>Total Paid to Contractor To Date:</b>				
		<b>Project Completion Date</b>		<b>Work Location</b>		<b>Reporting Period:</b> <input type="checkbox"/> 1 <sup>st</sup> Quarter (4/1-6/30) <input type="checkbox"/> 3 <sup>rd</sup> Quarter (10/1-12/31)  <input type="checkbox"/> 2 <sup>nd</sup> Quarter (7/1-9/30) <input type="checkbox"/> 4 <sup>th</sup> Quarter (1/1-3/31)				
<b>MWBE Subcontractor/Vendor</b>	<b>Product Code*</b>	<b>Work Status This Report</b>	<b>Total Subcontractor Contract Amount (\$)</b>		<b>Amount Paid this Quarter (\$)</b>		<b>Previous Payments (\$)</b>		<b>Total Payment Made to Date (\$)</b>	
			<b>MBE</b>	<b>WBE</b>	<b>MBE</b>	<b>WBE</b>	<b>MBE</b>	<b>WBE</b>	<b>MBE</b>	<b>WBE</b>
<b>Name:</b> <b>FED ID#:</b> <b>Address:</b>		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
<b>Name:</b> <b>FED ID#:</b> <b>Address:</b>		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
<b>Name:</b> <b>FED ID#:</b> <b>Address:</b>		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
<b>Name:</b> <b>FED ID#:</b> <b>Address:</b>		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
<b>Total</b>										

The following information indicates the payment amounts made by Contractor to the New York State Certified MWBE subcontractor on this Contract.

The payments as shown are made in compliance with contract documents for the above-referenced Contract.

\*See Reverse Side for Product Codes

**Date** \_\_\_\_\_ **Name** \_\_\_\_\_ **Title** \_\_\_\_\_ **Signature** \_\_\_\_\_

**MWBE FORM 105**  
**MWBE QUARTERLY REPORT**  
**PRODUCT KEY CODE**

- A      Agriculture/Landscaping (e.g., all forms of landscaping services)
- B      Mining (e.g., geological investigations)
- C      Construction
- C15   Building Construction – General Contractors
- C16   Heavy Construction (e.g., highway, pipe-laying)
- C17   Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)
- D      Manufacturing
- E      Transportation, Communication, and Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
- F/G    Wholesale/Retail Goods (e.g. hospital supplies and equipment, food stores, computer stores, office supplies)
- G52   Construction Materials (e.g., lumber, paint, law supplies)
- H      Financial, Insurance, and Real Estate Services
- I      Services
- I73    Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)
- I81    Legal Services
- I82    Education Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
- I83    Social Services (Counselors, vocational training, child care)
- I87    Engineering, architectural, accounting, research, management, and related services



**Attachment 2-A to Exhibit XX.XX**  
**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS**  
**PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED**  
**SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Veteran's Services Law Article 3 of the New York State **Executive Law** provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. Company recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Company contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

**I. Contract Goals**

- A. Company hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed to Company's Office of Supplier Diversity. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

**II. SDVOB Form 100 - SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Form 100 - SDVOB Utilization Plan - with their bid.
- B. The SDVOB Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false

representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to Company.

- C. Company will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of Company's acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to Company a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by Company to be inadequate, Company shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five (5) business days of notification by Company, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. Company may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - a. If a Bidder fails to submit an SDVOB Utilization Plan;
  - b. If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c. If a Bidder fails to submit a request for waiver; or
  - d. If Company determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Company shall be entitled to any remedy provided herein, including, but not limited to, a finding of Contractor non-responsibility.

### **III. SDVOB Form 200 - APPLICATION FOR WAIVER OF SDVOB PARTICIPATION GOAL**

- A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to Company's Office of Supplier Diversity or designated Procurement associate for guidance.**
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on SDVOB Form 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by Company at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, Company shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to Company, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If Company, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, Company 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 SDVOB contract goals.
- E. Waiver requests should be sent to Company's Office of Supplier Diversity.

#### **IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by Company with certified SDVOBs whom Company determined were capable of fulfilling the SDVOB goals set in the Contract.

- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.
- F. SDVOB Form 105 (quarterly)

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report quarterly SDVOB Form 105 during the term of the Contract for the preceding quarter's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB Form 105 and should be completed by the Contractor and submitted to Company, by the 10th day of each quarter during the term of the Contract, for the preceding quarter's activity to:

Office of Supplier Diversity  
PSEG Long Island LLC  
175 East Old Country Road  
Hicksville, NY 11801

#### **V. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the Contract and Contractor shall pay damages as set forth therein.

#### **VI. SDVOB Forms**

SDVOB Form 100 – SDVOB Utilization Plan

SDVOB Form 105 (quarterly)

SDVOB Form 200 – Application for Waiver of SDVOB Participation Goal

# SDVOB Form 100

## SDVOB UTILIZATION PLAN

☐ Initial Plan      ☐ Revised plan      Contract/Solicitation #

**INSTRUCTIONS:** This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS Certified Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Bidder/Contractor commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. Making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.

BIDDER/CONTRACTOR INFORMATION		SDVOB Goals In Contract
Bidder/Contractor Name:	NYS Vendor ID:	%
Bidder/Contractor Address (Street, City, State and Zip Code):		

Bidder/Contractor Telephone Number:	Contract Work Location/Region:
-------------------------------------	--------------------------------

Contract Description/Title:
-----------------------------

CONTRACTOR INFORMATION			
Prepared by (Signature):	Name and Title of Preparer:	Telephone Number:	Date:

Email Address:
----------------

*If unable to meet the SDVOB goals set forth in the solicitation/contract, bidder/contractor must submit a request for waiver on the SDVOB Waiver Form.*

SDVOB Subcontractor/Supplier Name:	
------------------------------------	--

Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
---	-----------------------------	----------------

Address:	Email Address:
----------	----------------

Detailed description of work to be provided by subcontractor/supplier:
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Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %
--

SDVOB Subcontractor/Supplier Name:	
------------------------------------	--

Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
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Address:	Email Address:
----------	----------------

Detailed Description of work to be provided by subcontractor/supplier:
--

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %
--

### FOR COMPANY USE ONLY

Company Authorized Signature:	<input type="checkbox"/> Accepted	<input type="checkbox"/> Accepted as Noted	<input type="checkbox"/> Notice of Deficiency
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NAME (Please Print):	SDVOB %/\$		Date Received:	Date Processed:
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Comments:
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NYS CERTIFIED SDVOB SUBCONTRACTOR/SUPPLIER INFORMATION: The directory of New York State Certified SDVOBs can be viewed at:  
[http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf)  
*Note: All listed Subcontractors/Suppliers will be contacted and verified by Company.*

# ADDITIONAL SHEET

<b>Bidder/Contractor Name:</b>		<b>Contract/Solicitation #</b>	
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<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

  

<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

  

<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

  

<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

## SDVOB Form 200

### APPLICATION FOR WAIVER OF SDVOB PARTICIPATION GOAL

(must be submitted before requesting final payment on the Contract)

<b>Section 1: Basic Information</b>			
Contractor's Name:		Federal Identification Number:	
Street Address:		E-Mail Address:	
City, State, Zip Code:		Telephone: (     )     -	
Contract Number:		SDVOB CONTRACT GOALS:     %	
<b>Section 2: Type of SDVOB Waiver Requested</b>			
<input type="checkbox"/> Total	<input type="checkbox"/> Partial	If partial waiver, please enter the revised SDVOB percentage:	%
Please explain the reason for the waiver request:			
<b>Section 3: Supporting Documentation</b>			
<p>Provide the following documentation as evidence of your good faith efforts to meet the SDVOB goals set forth in the contract and in support of your waiver application:</p> <p><b>Attachment A.</b> Copies of solicitations to SDVOBs and any responses thereto.</p> <p><b>Attachment B.</b> Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.</p> <p><b>Attachment C.</b> Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by Company with certified SDVOBs whom Company determined were capable of fulfilling the SDVOB goals set forth in the contract.</p> <p><b>Attachment D.</b> Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.</p> <p><b>Attachment E.</b> Other information deemed relevant to the request.</p>			
<b>Section 4: Signature and Contact Information</b>			
<p><b>By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote SDVOB participation pursuant to the SDVOB requirements set forth under the solicitation or Contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.</b></p>			
Prepared By: (Signature)			Date:
Name and Title of Preparer (Print or Type):			

**For Company Use Only**

Reviewed By:

Date:

Decision:

- ☐ Full SDVOB waiver granted  
☐ Partial SDVOB waiver granted; revised SDVOB goal: \_\_\_\_\_ %  
☐ SDVOB waiver denied

Approved By:

Date:

Date Notice of Determination Sent:

Comments



**Attachment 2-B to Exhibit XX.XX**  
**PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-  
DISABLED VETERAN-OWNED BUSINESSES**

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. Company recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Company contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, Company conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.