

# Agency Guidelines for Completing Agency Utilization Reporting Forms

Utilization Reporting Module - Article 15-A requires a submission of MWBE utilization and expenditure detail report to the MWBE Executive Director on a quarterly basis during the fiscal year.

A. As stated above MWBE utilization reports are due at the end of the quarter but no later than 15 days thereafter,

Q1 due: July 15 (for April - June)

Q2 due: October 15 (for July - September)

Q3 due: January 15 (for October - December)

Q4 due: April 15 (for January - March)

The reported data constitutes a summarization of the total numbers and dollar values of expenditure activities and the total dollar participation by MWBEs, including percentages against those activities.

B. Data entered into the Utilization Reporting Module includes:

I. Total number of transactions within the quarter.

II. Total dollar expended within the quarter.

III. Total dollar expended with MBEs and WBEs within the quarter (Detail section).

IV. All certified vendors utilized during the quarterly reporting period.

C. Agencies and authorities should not select vendors who are not NYS certified MWBEs, as such selection may result in the agency or authority not being granted MWBE utilization credit for that firm. Agencies and authorities cannot report expenditures for MWBE credit if a firm is not yet certified. Once a firm is certified only expenditures starting from the date the certification application was submitted can be counted for MWBE credit (and only within that fiscal year). If the firm does not get certified, the agency will not receive credit for its use.

D. Agencies and authorities may be required to provide ESD additional data regarding "Discretionary Spending" in a format as defined by the Division. This data includes a breakdown of discretionary spending in the quarter with MWBEs.

E. As a resource agencies and authorities should refer to the NYSCS Utilization Reporting training manual in B2G (Chapter 14), as well as the Statewide Financial System SFS import guide and the Quarterly Utilization Report Bulk Upload Guide.

F. Agencies and authorities with questions regarding the Utilization Reporting Module should contact their respective Agency Services Analysts and consult the NYSCS online manuals referenced herein.

1. While Article 15-A does not mandate that data be reported for contracts valued less than \$25,000 for commodities and services, and less than \$100,000 for construction, these statistics will assist the Division of Minority and Women's Business Development (DMWBD) in providing complete information concerning MWBE participation in all State procurement. A significant proportion of the total dollars going to MWBEs is through these smaller contracts, so it is necessary to track these expenditures to accurately report agency utilization of MWBEs.

Certified MWBE's on sole source contracts can be reported as MWBE utilization in the detail section.

MWBE utilization on preferred source and OGS statewide centralized contract (formerly p-contract) purchases should be counted towards the overall utilization percentage and reported in the NYSCS in the detail section of the Utilization module and broken down in the summary data section.

The dollar ranges on each category within the four industry codes refer to the size of the contract or obligation on which the expenditure is being reported. However, only actual dollars expended during the quarter should be reported. For example, suppose you are reporting a \$10,000 payment made on a service contract which was valued at \$100,000. The \$10,000 should be reported in the \$25,000+ dollar range, since it is being paid on a large contract award. If the \$10,000 payment was for the full value of the contract, the amount should be reported in the \$0 - 24,999 dollar range, since it would be considered a small contract.

2. Refer to the following definitions for clarification of terms:

**Expenditure:** An expenditure is an actual payment which has been made by an agency, either through the Office of the State Comptroller or by the agency's finance office directly, including subcontractor supplier payments made by a prime contractor and verified by the agency.

**Grants:** For the purposes of this report, grants are monies dispensed by a contracting governmental agency to a person or institution to accomplish a public purpose

authorized by law. According to Article 15-A, grants are considered to be State contracts. For the purpose of compliance reporting, the recipient of the grant is considered to be the "contractor". These contracts are subject to MWBE goals and reported in the same fashion as any other contract. Grant dollars expended should be reported in the summary data section (e.g. if the grant dollars are generally spent for construction, the monies should be reported in the construction expenditure category; if for training, the monies should be reported on the services consultant expenditure category).

Not-for-Profit: An entity organized as a not-for-profit corporation pursuant to State Law. According to Article 15-A, not-for-profit entities are considered to be "contractors". These contractors are subject to MWBE goals and should be treated and reported in the same fashion as any other contractor. The expenditure of dollars by a not-for-profit entity should be reported in the summary data section (e.g. if the dollars are generally spent to provide training and or rehabilitation services, then the monies should be reported in the services consultant expenditure category; if the expenditures are made on a contract for low-income housing, the dollars should be reported in the construction expenditure category).

Preferred Source: Entities given first preference in State procurement as identified in the State Finance Law, including the Division of Correctional Industries, the Industries for the Blind of NYS, Inc., the NYS Industries for the Handicapped, and the Office of Mental Health's Special Employment Program.

Exemptions: Monies that are not subject to 15-A or included in quarterly reporting. They include personal services, debt service, travel reimbursements, utilities, OGS centralized services, sole source contracts (subject to no MWBE availability when subcontracting is appropriate), postage, telephones, staff benefits, operating transfers, certain rental and repairs (such as OGS space chargebacks and real estate rentals), and special departmental charges (such as unemployment insurance and tuition reimbursement).

Exclusions: Exclusive to procurements and are an exemption of specific classifications of goods materials or services from all M WBE requirements. The classifications have been identified by procurement management and DMWBD as offering no procurement opportunities for M WBEs. DMWBD allows state agencies and authorities to reasonably exclude from their annual M WBE Goal Plan, goods/materials or services that have been determined to offer no M WBE prime or subcontracting opportunities. The determination or selection of such items by the agencies or authorities must be based on current industry knowledge that absolutely no M WBE firms exist that are capable of providing the particular goods/materials or services included on the list. This list must be approved by DMWBD. As M WBE vendors are identified that can provide the particular goods

materials or services, said goods/materials or services will be removed from the list. Exclusion expenditures are not included in MWBE quarterly reports.

In-Year Exclusions: If during the contracting year an agency discovers additional contracts and/or expenditures, which agency staff believes are appropriate for exclusion, authorized agency personnel should submit such In-Year Exclusions to ESD for written approval. Please be advised that In-Year Exclusions must be submitted on a contract-by-contract basis. Groups or classes of contracts may not be submitted for exclusion approval except during the Annual Exclusion process outlined above, which is conducted pursuant to a master goal plan or annual update to the master goal plan submission. Expenditures on in-year excluded contracts are not included in MWBE quarterly reporting.

Waivers: Defined in Article 15-A as a request by the contractor to set aside or modify the goal participation of certified minority and women-owned business enterprises in the performance of State contracts.

Subcontract:

a) For construction, a subcontract is any portion of the contract or any service performed or supplies provided relative to that contract by any party other than the prime contractor;

b) For commodities and consultant services, a subcontract is that portion of the total value of a contract portioned out to another consultant individual or vendor. This is also known as second tier spending;

c) For grants/not-for-profits contracts, a subcontract is that portion of funding expended for supplies, equipment, printing, consultants, trainers, services, etc.

3. It is critical that agencies and authorities provide the detailed information requested on the MWBE Detail Utilization Information Form. List each M WBE firm you have included in the MBE and WBE totals (for prime and subcontract expenditures) in each expenditure category. Missing information may result in the firm dollars not counting toward agency MWBE participation goals.

NOTES: OGS issues 'back drop' contracts that are pre-approved vendors for agencies to solicit when conducting a mini bid. Agencies that use the back drop contracts are responsible for tracking MWBE compliance for each such contract with MWBE goals. The end user of the contract (the agency) reports the MWBE utilization to DMWBD.

Second Tier spending (subcontract) for commodities and services should be captured when a certified M WBE vendor is used and the spending is entered in the detail section.

Any question regarding the above information should be direct to the agency's or authority's ESD assigned Agency Services Analyst.