

## **Guidelines and Instructions for Submitting Workforce Utilization Reports Pursuant to Executive Order No. 162 (“EO 162”): Ensuring Pay Equity by State Contractors**

Workforce utilization reports will be collected from each contractor and subcontractor performing work on State contracts. Per current contract and grant requirements, contractors and subcontractors performing work on construction contracts over \$100,000 must submit workforce utilization reports to Empire State Development (“ESD”) on a monthly basis, while contractors and subcontractors performing work on commodities and services contracts over \$25,000 must submit workforce utilization reports on a quarterly basis. In addition, all contractors must submit workforce gross wage data on a quarterly basis, with the first monthly report due by **February 12, 2018**, and the first quarterly report due by **April 10, 2018**.

*Please note* that all vendors on construction projects over \$100,000 must submit monthly workforce reports with no pay data **and** a quarterly report with pay data, thus reporting the hours worked twice.

### **1. Who Must Report**

Prime contractors and any subcontractors on state contracts executed on or after June 01, 2017 are required to report on the gross wages of employees performing work on the subject State contract. State contracts include all contracts in excess of \$25,000 for services and commodities, and all contracts in excess of \$100,000 for construction.

Solely for the purposes of this reporting requirement: (1) subcontractors include any entity engaged in a contract with a prime contractor to provide services directly to or on behalf of the prime contractor on a State contract, and (2) subcontractors do not include any entity exclusively providing goods and transportation directly to or on behalf of the prime contractor on a State contract.

### **2. What and How to File**

The updated *OCSD-3: Workforce Utilization Report* (the “Report”) must be completed by **both** prime and subcontractors party to a State contract, documenting their actual employment of minority group members and women during the pay periods covered by the report. The *prime contractor* must complete a report for its own workforce and collect reports completed by each of their subcontractor for submission to ESD.

Reports must be submitted electronically in **Excel format only**, using the attached Report worksheet, to [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov) within ten (10) days following the end of each month or quarter, whichever is applicable.

Please review the attached “Completing and Submitting Workforce Utilization Reports In Accordance to Executive Order No. 162” for additional reporting instructions.

*Prime contractors and subcontractors may not modify the Workforce Utilization Report form provided by ESD.*

### **3. Compensation Information to be Reported**

Contractors and subcontractors must report the gross wages paid to each of their employees for the work performed by these employees exclusively to the State contract.



- a. For individuals compensated at an hourly rate, the contractor must report the product of such employees' hourly wage and the number of hours worked on the State contract during the period covered by the Report.
- b. For salaried individuals not compensated on an hourly basis, the contractor must first determine the average hourly gross wages of such employees by dividing the employees' gross wages by the estimated number of hours worked by such employees during the period covered by the Report. After determining the average hourly gross wages of salaried employees, contractors must report the product of such employees' average hourly wage and the number of hours worked on the State contract during the period covered by the Report.

When all contractor employees perform functions that prevent the contractor from determining the number of hours worked on the State contract, such as call center operators simultaneously providing call center services for multiple clients, the contractor may report the total gross wages of such employees.

When some employees of a contractor perform functions that prevent the contractor from determining the number of hours worked on the State contract, but the contractor is able to determine the number of hours worked on the State contract by other employees of the contractor, the contractor should report only on the gross wages of the employees whose work on the State contract can be precisely determined and need not report the gross wages of any other employees.

#### **4. When to Report Employee Compensation**

For commodities and services contracts, each contractor must report workforce utilization and employee gross wages on the Report on a quarterly basis, and ensure that each subcontractor performing work on the contract reports such information on a quarterly basis.

For construction contracts, each contractor must continue to provide workforce utilization reports monthly, and ensure that each subcontractor performing work on the contract reports such information monthly. In addition, employee gross wages information on the workforce utilization report must be reported quarterly.

When reporting gross wages of employees on State contracts, each contractor and subcontractor must report gross wages of employees by gender, racial or ethnic group, and job title. As an example:

If a contractor employs two Hispanic-American men as electricians and one Caucasian woman as an insulation worker on a State contract, the contractor should report the combined gross wages of the two Hispanic-American men employed in the same job title as one entry on the report. The contractor should report the gross wages of the Caucasian woman as one entry on the workforce utilization report as she is the only Caucasian woman employed by the contractor on the State contract under the title of insulation worker.

#### **5. Confidentiality**

Reports do not require contractors to identify any individual employee by name, number, or other identifier specific to any individual. The state will notify contractors of any Freedom of Information Law ("FOIL") requests that are made to obtain any of the data provided on any Report, and will protect the confidentiality of Report data to the maximum extent possible, consistent with FOIL and the trade secrets exemption as set forth pursuant to Public Officers Law Section § 87(2)(d).