

# MWBE Program Requirements Webinar Questions & Answers

## Presented: March 27, 2013

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**Question:** If our agency is not Woman or Minority Owned, does this information apply to us? We do receive funding through DCJS.

**Answer: Yes, any entity, or proposed entity, which receives funding from DCJS is subject to MWBE requirements.**

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**Question:** If field 4 is checked as workforce to be utilized on this contract (not total workforce for an entity), on the Local Assistance MWBE Equal Opportunity Staffing Plan (DCJS-3300) and/or the Local Assistance MWBE Workforce Employment Utilization Report, should field 8 on these forms also be the totals for workforce on this contract only?

**Answer: Yes, on both of these forms field 4 and field 8 should report on the same data. Although we anticipate most organizations will be reporting on workforce per specific contract, there may be instances when reporting on total workforce may be applicable.**

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**Question:** Do the MWBE requirements apply to all OTPS (other than personal service) lines on the budget?

**Answer: No, the MWBE requirements do not apply to all OTPS budget categories. This does not apply to the Travel budget category.**

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**Question:** Do we need to complete these forms for our current 2013 contracts?

**Answer: The MWBE forms will not be a requirement for any contract currently written. All new DCJS contracts and solicitations will be written with the applicable MWBE language. The requirements and forms will be implemented, beginning April 1, 2013. The DCJS Finance Office is requesting MWBE information be provided for current contracts, if it is readily available.**

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**Question:** Please confirm that the Detail Itemization of Non-Personal Service Expenditure forms need to be submitted with quarterly vouchers?

**Answer: Yes, applicable Detailed Itemization Forms must be submitted quarterly with State Aid Vouchers.**

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**Question:** If my county has a MWBE program in place for purchases made on a grant, is it necessary to complete form 3301 for subcontractors?

**Answer: Yes, even if a municipality has their own MWBE program, all applicable NYS forms must be completed.**

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**Question:** Does this effect Personnel charged to the grants?

**Answer: No, MWBE requirements do not apply to personal service budget categories.**

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**Question:** Is there a directory of all certified MWBE providers available from the Empire State Development Corporation (ESD) and what their areas of focus are?

**Answer:** Yes, the MWBE directory has many search options. Examples of the directory's search criterion include commodity code, industry type, and/or region.

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**Question:** If you subcontract out your DCJS award, please briefly state what you, as the county who is receiving the award, will need to complete and what will have to be completed by the subcontractor.

**Answer:** As the direct recipient of DCJS grant funding, the grantee (contractor) is responsible for the completion and submission of MWBE documentation for themselves and each subcontractor/supplier. The Local Assistance MWBE Equal Employment Opportunity Staffing Plan (DCJS-3300), the Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS-3301), and the Local Assistance MWBE Workforce Employment Utilization Report must be completed for the grantee and each subcontractor/supplier.

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**Question:** Are all of the state agency using the same forms for this program requirement?

**Answer:** Currently, each NYS agency has their own version of the MWBE forms. In most instances, the data requested and form format are fairly uniform.

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**Question:** Could you run us through an example such as our lab bidding out a contract for lean six sigma consulting?

**Answer:** If you are procuring a service with a limited number of providers (sole or single source) this would not be considered a "discretionary" purchase, so you would not need to try to identify a MWBE vendor.

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**Question:** What are the required percentage goals for MWBE participation?

**Answer:** DCJS has established an overall goal of 20% MWBE participation – 14% dedicated to MBEs and 6% dedicated to WBEs.

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**Question:** If our agency is the DCJS grantee and we do not use any subcontractors (perform all services ourselves), do we still need to complete all of the subcontractor forms?

**Answer:** Yes, all MWBE forms must be submitted, regardless of subcontractor/supplier utilization. They are applicable for both the grantee, as well as, the subcontractor/supplier.

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**Question:** If no vendors or contractors utilized under the grant are MWBE will that be a problem?

**Answer:** There may be some instances when a grantee's MWBE participation goal is 0%. Contracts funding 100% personal services are a good example. Bidders will be required to submit the Local Assistance MWBE Equal Opportunity Staffing Plan and the Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form at the application stage. DCJS will review these documents and approve or reject them. If there are deficiencies, DCJS may issue a Notice of Deficiency or deem an applicant to be non-compliant.

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**Question:** All of these forms deal with vendors, we as contractors deal with, correct? Do they deal with our workforce?

**Answer:** Yes, all MWBE forms are required for both the contract grantee and each subcontractor/supplier utilized, regardless of contract budget categories.

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**Question To:** How do we fill out these forms where there is a high turnover of employees?

**Answer:** The Local Assistance MWBE Equal Opportunity Staffing Plan is a planning document and will report on staffing at the application stage. After the contract has expired, and actual personnel information is available, a Local Assistance MWBE Workforce Employment Utilization Report must be submitted with your final reimbursement claim, detailing the actual workforce utilized.

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**Questions:** My program orders approximately \$500 worth of toxicology screening supplies and less than \$500 of other program supplies per year. Do these spending totals require MWBE reporting?

**Answer:** DCJS is requesting all grant award recipients provide applicable MWBE data, regardless of contract amount.

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**Question:** Are you saying that a local county government that receives DCJS grant funds and subcontracts for certain services is limited to doing business only with Minority or Women owned businesses?

**Answer:** No, grantees are not limited to doing business only with MWBE business enterprises. The goal is to provide meaningful participation opportunities to NYS Certified MWBEs, in the performance of NYS contracts. The goal that DCJS has established is 20% of non-discretionary funding, 14% dedicated to MBEs and 6% to WBEs. You may have a \$100,000 contract, but only \$10,000 is considered discretionary non-personal service. Your goal would be to contract \$1,400 (14%) with a MBE and \$600 with a WBE (6%).

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**Question:** Does the total work force include my regular staff, as well as the subcontractors?

**Answer:** No, the Local Assistance MWBE Equal Employment Opportunity Staffing Plan (DCJS-3300), the Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS-3301), and the Local Assistance MWBE Workforce Employment Utilization Report must be completed for the grantee and each subcontractor/supplier individually.

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**Question:** Should these forms be submitted through GMS or emailed directly to the program manager?

**Answer:** The forms due at the application stage can be submitted as attachments in GMS. The fiscal forms should be submitted in the usual manner.

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**Question:** What would be sufficient as documented efforts to show adherence to the MWBE requirements?

**Answer:** Criteria for demonstrating “good faith efforts” include, but are not limited to, any of the following and should be maintained by the contractor for audit purposes:

1. A completed, acceptable Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS-3301)
  2. Copies of relevant plans provided to MWBEs specifying terms and conditions of contract
  3. Copies of advertisements for solicitations, which should be placed in appropriate general circulation, trade, and minority and women oriented publications
  4. Written solicitations made to certified MWBEs listed in the directory
  5. Documented evidence that the contractor has contacted all MWBEs who have expressed an interest to participate
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**Question:** Are these forms required to be submitted based only on DCJS funding that we use or for our entire operating budget?

**Answer:** Only for DCJS funding, specific to the applicable solicitation or grant contract.

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**Question:** How do we know what vendors we are going to use at application time?

**Answer:** When you complete your application you should try to determine if there is any opportunity to procure the item or services from a MWBE vendor, remembering good faith efforts.

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**Question:** As a county department, we are required to purchase supplies, etc. from the winner of a county wide bid. So would those particular items I have budgeted for fall under non-discretionary?

**Answer:** Not necessarily, you would need to demonstrate that the solicitation included opportunities for MWBE vendors.

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**Question:** If an agency has been using same consultant for several years, what is the expectation now?

**Answer:** Often consultants are sole or single source procurements. If so, they would be exempt. If a new opportunity to procure these services occurs, you should check the ESD website to see if there are any other available vendors. If the consultant is not a single or sole source, and you prefer not to utilize another provider, look at other discretionary NPS budget lines to achieve the 20% MWBE goal.

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**Question:** As a county department we hire off of a civil service list. What are our requirements when we are required to hire off of those lists?

**Answer:** The MWBE requirements do not pertain to personal service budget categories.

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**Question:** We have two DCJS contracts currently. One is used in entirety for direct service staff, and a second is entirely for equipment purchases. We would fill out both the EO staffing plan form and the Actual workforce form for the first grant, and the subcontractor form for the second, is this correct?

**Answer:** No, all MWBE forms are required per grantee and each subcontractor/supplier.

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**Question:** As a County, we use vendors that have been contracted for all County Departments. Will the use of these vendors be considered as separate from the information provided on the quarterly forms?

**Answer:** Vendors which have been secured through a County contract will not be viewed separately. You would need to demonstrate that the County contract solicitation included opportunities for MWBE vendor participation.

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**Question:** Is purchasing off of the NYS contract sufficient?

**Answer:** Grantees should follow the pertinent procurement laws, policies, contract conditions, etc. when purchasing with grant funds. If the law requires a purchase off a NYS contract, grantees should follow the law. If MWBE vendors are among the NYS contractors, grantees should consider purchasing from a MWBE. If there is no discretion to purchase from a MWBE vendor, those dollars would be excluded from the discretionary non-personal service budget.

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**Question:** Are these forms to be submitted together with annual service plans?

**Answer: No.** Performance-based contracts are subject to MWBE requirements. The documentation required during the application stage is the same, but the fiscal documentation varies slightly. The Local Assistance MWBE Equal Employment Opportunity Staffing Plan (DCJS-3300) and the Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS-3301) are submitted with the grant application. The New York State DCJS Office of Probation and Correctional Alternatives Performance-Based Contracting Quarterly Fiscal Cost Report (OPCA-3269) must be submitted quarterly with the State Aid Voucher. The Local Assistance MWBE Workforce Employment Utilization Report (DCJS-3303) must accompany the final claim for reimbursement.

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**Question:** Where can I get a copy of the presentation?

**Answer:** The presentation is available on our website, [www.criminaljustice.state.ny.gov](http://www.criminaljustice.state.ny.gov).

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**Question:** What is the presenter's contact information?

**Answer:** Please feel free to contact Joann Tierney-Daniels directly by phone at (518) 457-0002 or via e-mail at [Joann.Tierney-Daniels@dcjs.ny.gov](mailto:Joann.Tierney-Daniels@dcjs.ny.gov).

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