

## NOTICE OF PUBLIC HEARING

**Subject:** Opportunity to comment on proposed amendments to rules concerning participation by minority-owned and women-owned business enterprises in City procurement, including a correction of the goal for participation by women-owned business enterprises in procurements for professional services.

**Date / Time:** November 13, 2013 / 10 A.M.

**Location:** 110 William Street, 4<sup>th</sup> Floor,  
New York, New York 10038

**Contact:** Anne Rascon  
Deputy Commissioner, Division of Financial and Economic Opportunity  
Department of Small Business Services  
110 William Street, 2nd Floor  
New York, New York 10038

### Proposed Rule Amendment

The Commissioner of the New York City Department of Small Business Services (“DSBS”) intends to promulgate an amendment to Section 11-61 of Chapter 11 of Title 66 of the Rules of the City of New York pursuant to §1304 of the New York City Charter and § 6-129(d)(4) of the New York City Administrative Code.

The proposed amendments were included in this agency’s regulatory agenda.

### Instructions

- Written comments regarding the proposed amendment must be received by close of business on November 12, 2013. Written comments should be sent to:  
Anne Rascon  
Deputy Commissioner, Division of Financial and Economic Opportunity  
Department of Small Business Services  
110 William Street, 2nd Floor  
New York, New York 10038
- If you need a sign language interpreter or other form of reasonable accommodation for disability at the hearing, please notify Anne Rascon by close of business on November 6, 2013.
- Written comments and a summary of the oral comments will be available for public inspection within a reasonable time after receipt between 9:00 a.m. and 4:30 p.m. at the Department of Small Business Services.

## Statement of Basis and Purpose

The Commissioner of the New York City Department of Small Business Services (“DSBS”) intends to promulgate an amendment to Section 11-61 of Chapter 11 of Title 66 of the Rules of the City of New York pursuant to §1304 of the New York City Charter and § 6-129(d)(4) of the New York City Administrative Code. The City’s MWBE Program, originally enacted by Local Law 129 (2005), and codified in section 1304 of the New York City Charter and section 6-129 of the Administrative Code (Ad. Code), establishes goals for participation by minority-owned business enterprises (MBEs) and women-owned business enterprises (WBE’s) as contractors and subcontractors in the categories of construction, standard services, professional services and goods valued under \$1 million.

Local Law 1 of 2013 amends these provisions by, among other things:

- changing the participation goals for each of the four procurement categories
- removing the million dollar cap on construction, professional services, and standard services procurements for which goals may be established, and
- lowering the cap from \$1 million dollars to \$100,000 for goods contracts for which goals may be established.

The proposed rule implements the above provisions of Local Law 1; other rules will be proposed to implement other changes made by Local Law 1.

The new goals were established based on a Disparity Data Analysis conducted by the Mayor’s Office of Contracts Services, and incorporated as Appendix A in the Committee Report of the City Council’s Government Affairs Division and Committee on Contracts, dated December 17, 2012 (Local Law 1 Committee Report). That analysis compared the availability of MBEs and WBEs in the four procurement categories to their utilization as contractors and subcontractors in City procurements.

This proposed rule amends all the goals in Section 11-61 of Chapter 11 of Title 66 of the Rules of the City of New York to match with the new goals established by Local Law (except for the goal enacted in error, as explained below, for WBEs in the professional services category).

When Local Law 1 was drafted, it was intended that for each category where a significant disparity between availability and utilization was identified in the Disparity Data Analysis, a goal would be set corresponding to the availability of MBEs or WBEs in the category. The goal identified by the Analysis for WBEs in the professional services category was 17%; however, due to a drafting error, the goal enacted in Local Law 1 was incorrectly listed as 37%.

To reflect the correct goal of 17% for WBEs in the professional services category, the Commissioner is exercising his authority under Ad. Code § 6-129(d)(4) periodically to review the availability and utilization rates for MBEs and WBEs and, where appropriate, to revise the Citywide participation goals set forth in that section. This is being done in consultation with the City’s Chief Procurement Officer, as required by §6-129(d)(4). The section also provides that results of the review and any proposed revision to the goals are to be submitted to the Speaker of the City Council at least 60 days prior to publishing a rule that would revise the goals. The results of the review have already been provided to the Council, and, as noted above, the Council has included them in the Local Law 1 Committee Report.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

New text is underlined; deleted material is in [brackets].

## The Amended Rule

§1. Section 11-61 of Chapter 11 of Title 66 of the Rules of the City of New York is amended to read as follows:

### § 11-61 Citywide Goals.

(1) The citywide contracting participation goals for MBEs, WBEs and EBEs, which may be met through awards of prime contracts or subcontracts as described in § 11-67 of this subchapter, shall be as follows:

For construction contracts [under one million dollars]:

<u>[Race/gender group] Category:</u>	<u>Participation goal:</u>
Black Americans	[12.63%] <u>8%</u> of total annual agency expenditures on such contracts
<u>Asian Americans</u>	<u>8%</u> of total annual agency expenditures on <u>such contracts</u>
Hispanic Americans	[9.06%] <u>4%</u> of total annual agency expenditures on such contracts
<u>Women</u>	<u>18%</u> of total annual agency expenditures on <u>such contracts</u>
Emerging	6% of total annual agency expenditures on such contracts

For professional services contracts [under one million dollars]:

<u>[Race/gender group] Category:</u>	<u>Participation goal</u>
Black Americans	[9%] <u>12%</u> of total annual agency expenditures on such contracts
Hispanic Americans	[5%] <u>8%</u> of total annual agency expenditures on such contracts
[Caucasian females] <u>Women</u>	[16.5%] <u>17%</u> of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For standard services contracts [under one million dollars]:

[Race/gender group] <u>Category</u> :	Participation goal:
Black Americans	[9.23%] <u>12%</u> of total annual agency expenditures on such contracts
<u>Asian Americans</u>	<u>3% of total annual agency expenditures on such contracts</u>
Hispanic Americans	[5.14%] <u>6%</u> of total annual agency expenditures on such contracts
[Caucasian females] <u>Women</u>	[10.45%] <u>10%</u> of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For goods contracts under one [million] hundred thousand dollars:

[Race/gender group] <u>Category</u> :	Participation goal:
Black Americans	[7.47%] <u>7%</u> of total annual agency expenditures on such contracts
Asian Americans	[5.19%] <u>8%</u> of total annual agency expenditures on such contract
Hispanic Americans	[4.99%] <u>5%</u> of total annual agency expenditures on such contracts
[Caucasian females] <u>Women</u>	[17.87%] <u>25%</u> of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

[For construction subcontracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 12.63% of total annual agency expenditures on such subcontracts

Asian Americans 9.47% of total annual agency expenditures on such subcontracts

Hispanic Americans 9.06% of total annual agency expenditures on such subcontracts

Emerging 6% of total annual agency expenditures on such contracts

For professional services subcontracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 9% of total annual agency expenditures on such subcontracts

Hispanic Americans 5% of total annual agency expenditures on such contracts

Caucasian females 16.5% of total annual agency expenditures on such subcontracts

Emerging 6% of total annual agency expenditures on such contracts]

(2) (a) The division and the city chief procurement officer shall develop a citywide utilization plan for procurements of goods.

(b) Agencies shall develop agency utilization plans pursuant to § 11-64 of this subchapter. The citywide goals shall not be summarily adopted as goals for all annual agency utilization plans; rather, goals for such plans may be set at levels higher, lower, or the same as the citywide goals, subject to the approval of the commissioner as described in paragraph three of § 11-64 of this subchapter. When setting its goals, each agency shall consider the citywide goals, the size and nature of its own procurement portfolio, and the availability of MBEs, WBEs and EBEs with the capacity to perform the specific types and scale of work for which the agency anticipates it will solicit procurements during the year. Agencies shall seek to ensure substantial progress toward the attainment of these goals in as short a time as practicable.

(3) The citywide goals shall not be summarily adopted as goals for individual procurements; rather, as set forth in § 11-66 of this subchapter, goals for such procurements may be set at levels higher, lower, or the same as the citywide goals. In setting such goals, each agency shall take into account the citywide goals and the agency's annual utilization plan, the size and nature of the procurement, and the availability of MBEs, WBEs and EBEs with the capacity to perform the specific types and scale of work involved in its procurements.

(4)[(A)](a) No later than 2015, [Beginning January 29, 2007 and every two years thereafter,] the commissioner, in consultation with the city chief procurement officer, shall, for each industry classification and each minority group, review and compare the availability rates of firms owned by minorities and women to the utilization rates of such firms in agency contracts and direct subcontracts, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this section. In making such revision, the commissioner shall consider the extent to which discrimination continues to have an impact on the ability of minorities and women to compete for city contracts and subcontracts. The commissioner shall submit the results of such review and any proposed revisions to the participation goals to the speaker of the council at least sixty days prior to publishing a proposed rule that would revise participation goals. Such review shall thereafter be conducted at least once every two years.

[(B)](b) No later than 2015, [Beginning May 23, 2007 and every two years thereafter,] the commissioner shall review information collected by the department to determine the availability and utilization of EBEs, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this section. Such revised goals shall be set at a level intended to assist in overcoming the impact of discrimination on such businesses. Such review shall be conducted in 2015 and at least once every two years thereafter.

**NEW YORK CITY LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-788-1087**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE: Goals for Utilization of Minority and Women Business Enterprises**

**REFERENCE NUMBER: 2013 RG 058**

**RULEMAKING AGENCY: Department of Small Business Services**

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: July 9, 2013

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Goals for Utilization of Minority and Women Business Enterprises**

**REFERENCE NUMBER: SBS-2**

**RULEMAKING AGENCY: SBS**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

July 9, 2013  
Date