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November 17, 2026

ADDENDUM No. 1
EPIN 07227P0001
MODERNIZED COMMISSARY OPERATIONS

Dear Prospective Vendor,

The New York City Department of Correction (DOC) hereby issues **Addendum No. 1** to provide the following clarification to all prospective vendors.

Updated Cost Proposal

Please refer to the updated Cost Proposal uploaded in PASSPort for your use and reference.

MWBE Utilization Plan and PASSPort

Please be advised that the Commissary solicitation is subject to Minority-and Women Owned Business Enterprise (MWBE) requirements with a **30% MWBE Participation Goal** established for this contract. Attached, please find a guide with step-by-step instructions on how to complete the MWBE Participation Goal section in PASSPort.

Please ensure that your proposal complies with the M/WBE goal requirements for this solicitation. as specified by the agency. The Agency will verify the M/WBE Participation Plan during the responsiveness check of your submission.

For additional information regarding this requirement, please refer to the attached **Local Law 1 Notice to All Prospective Contractors**. Should you require further assistance completing the required information in PASSPort, please contact the **MOCS Help Desk** through the following link: MOCS Support - Jira Service Management to request your inquiry.

Questions asked by vendors:

Q.1 Would the Department consider separating the commissary and Securepak (Package Program) services into two distinct solicitations to allow for greater competition and specialized vendor participation?

A.1 The Department does not intend to separate the commissary and Securepak Package Program services into two separate solicitations. Due to existing staffing limitations and available administrative resources, the Department does not have the manpower necessary to manage, oversee, and administer two separate procurement and contract processes for these services.

Q.2 Will proposers be permitted to submit proposals for only one component of the solicitation, either commissary services or the Securepak Package Program, and remain eligible for an award?

A.2 The Department intends to solicit these services under one consolidated contract. Proposers should submit a comprehensive proposal addressing all requirements outlined in the solicitation. The Department is seeking a single vendor capable of providing and managing both commissary and Securepak Package Program services.

Q.3 Would the Department consider an alternative distribution model in which Department staff distribute package orders to Persons in Custody (PICs), rather than relying on the selected proposer's personnel? Under this model, the proposer would pay the NYC DOC a per-bag delivery fee. This approach would reduce operating costs and significantly lower package program item prices for PICs and their friends and family members. Would the Department be open to evaluating this model?

A.3 The Department does not intend to assume responsibility for the distribution of Securepak packages through Department personnel. Due to staffing limitations and existing operational responsibilities, the Department cannot commit additional personnel or resources to manage package distribution.

The selected contractor will be responsible for providing all necessary personnel, resources, and operational support required to fulfill and distribute package orders in accordance with the solicitation and Department requirements.

Q.4 The current Securepak provider offers approximately 80 items through the NYC DOC Package Program. Would the Department be interested in expanding the available product selection to include a broader assortment of clothing, footwear, electronics, hygiene products, food items, and culturally responsive options, including Halal, Kosher, Hispanic, and Asian products, as well as nutritional items?

A.4 The Department is open to reviewing proposed enhancements to the existing Package Program. Any expanded product offerings must be consistent with Department policies, security requirements, facility restrictions, and applicable nutritional and dietary guidelines.

Proposers may identify recommended product expansions and provide details regarding available culturally responsive, religiously appropriate, and nutritional product options as part of their proposals. All proposed items will be subject to Department review and approval

Q.5 As an established national provider of package programs including for the New York State Department of Corrections Community and Supervision, packages are fulfilled from our large

distribution center in Ohio. Would the Department permit NYC DOC package orders to be fulfilled and shipped from this existing facility?

A.5 The Department will consider the proposed fulfillment location, provided the vendor demonstrates its ability to meet all applicable solicitation requirements, including delivery schedules, inventory management, order accuracy, product quality, security requirements, and timely fulfillment.

The selected contractor must ensure that the location and fulfillment process comply with all applicable Department requirements.

Q.6 How many commissary orders were processed for PICs during calendar year 2025? Please also provide the total commissary sales for that period.

A.6 For calendar year 2025 (Jan 2025- December 2025), the total orders were 149,138 Commissary Total Sales - $8,816.914.01,

Q.7 How many Securepak package orders were processed and delivered during calendar year 2025? Please also provide the total sales generated by the Package Program during that period.

A.7 For Calendar Year 2025 (Jan. 2025 – December 2025) the Total Securepak Sales were $428,178.71; and the Total Securepak Orders were 18,061.

Q.8 What is the current population of Persons in Custody (PICs) within NYC DOC?

A.8 The total PIC population as of November 2026 is 6,684 people.

Q.9 Does the current commissary and Securepak provider pay NYC DOC a commission, revenue-sharing percentage, fees, or any other form of compensation? If so, please identify the applicable payment structure and rates.

A.9 Please submit your FOIL request at Peter.faherty@doc.nyc.gov for assistance.

Q.10 The Documents tab on PASSPort does not currently include sections for the following documents. Can sections be added so vendors may submit the completed forms?

a. Appendix A: General Provisions (Affirmation and Tax Forms sections).
b. Attachment C: Acknowledgement of Addenda.
c. Attachment F: Subcontracting Compliance Notice.
d. Attachment I: Security Requirements.
e. Questionnaire: Quality of Proposed Approach – Questions 3 and 4.

A.10 These documents and forms are required only from the awarded vendor. They are not required as part of the initial proposal submission. However, for item e, please attach and submit the paperwork regarding Questions 3 and 4 under the Document Submission Setup for Question #1 as these two questionnaires were inadvertently omitted.

Q.11 Can an additional documents section be created for miscellaneous information to be provided by vendors?

A.11 An additional document submission section cannot be created in PASSPort. Any relevant miscellaneous information should be incorporated into the vendor's proposal.

Q.12 Are vendors expected to provide responses to any other items under Section III, Scope of Work, that are not listed under the Questionnaire tab on PASSPort?

A.12 Proposers should ensure that their proposals address all applicable requirements outlined in Section III, Scope of Work, including the proposed operational approach, organizational capabilities, staffing, fulfillment and delivery processes, technology integration, security, and quality assurance. All questions and submission requirements identified in the PASSPort Questionnaire must also be completed. Any additional relevant information should be incorporated into the proposal narrative.

Q.13 Do vendors need to complete anything for Section M, page 26 of the RFP?

A.13 Section VI, Item M on page 25 does not appear to be applicable for completion by the proposer.

Q.14 Please confirm that the following documents are to be completed upon award and do not need to be submitted with the proposal:

a. The last page of Attachment I: Security Requirements, Clearance Request and Authorization Form.
b. Attachment K: Software EULA Agreement.
c. Attachment L: Cloud Services.

A.14 Correct. These documents are provided for informational and reference purposes. No separate submission is required for these attachments.

Q.15 Please confirm that the following documents included with the RFP are for vendor reference only and that no additional information or completed forms are required with the proposal submission:

a. Attachment D: Whistleblower Protection Expansion.
b. Attachment G: Community Hiring Rider.
c. Attachment H: Earned Safe and Sick Rider.
d. Attachment J: Instructions for Responding to the RFP.
e. Exhibit 1: NYC Food Standards.

A.15 Correct. These documents are provided for informational and reference purposes. No separate submission is required for these attachments.

Q.16 For the PREA Rider – Contractor Notice, please confirm whether vendors are to complete one form for the company with the RFP response and one form for each individual who will have contact with the PIC population upon award.

A.16 The proposer and its employees, agents, and subcontractor personnel who will provide services at DOC facilities are subject to DOC background investigations and approval prior to

commencing services. Any PREA-related documentation must be completed in accordance with the applicable PREA Rider instructions and DOC requirements.

Q17. In Attachment I: Security Requirements, Item S, Contractor's Vehicles, states that vehicles are not permitted to remain at DOC facilities or on DOC property at the conclusion of each workday. Will the Department provide a waiver for vehicles, as currently permitted?

A.17 All contractor vehicles must comply with DOC security requirements and applicable facility procedures. Any exception to the vehicle requirements would require prior written approval from DOC.

Q.18 Does the Department have any plans to utilize a banking system other than IFCOM in the future?

A.18 At this time, the Department is utilizing IFCOM.

Q.19 Page 9 of the RFP states that the Department anticipates awarding one (1) contract from this RFP. Please confirm whether this will be an exclusive contract and whether items or services will be divided among multiple vendors.

A.19 As stated in the RFP, the Department anticipates awarding one (1) contract.

Q.20 Page 10 of the RFP requests various items categories and specific items that the Department recommends vendors include. Please confirm whether these items are to be bid in addition to the menu items listed in Attachment B: Cost Proposal – Commissary, or whether vendors are expected to create a new menu. How will additional items be evaluated outside of the spreadsheet included with the RFP?

A.20 Additional items will not be evaluated outside of the spreadsheet provided as Attachment B: Cost Proposal – Commissary.

Q.21 If moving to a new menu result in a reduction in sales, please confirm whether vendors will be permitted to negotiate contract terms to account for lost revenue and make operational adjustments, including staffing reductions due to factors such as smaller deliveries.

A.21 As stated in the RFP, payment will be based on actual commissary products ordered and delivered to the PIC population. The Department does not guarantee a minimum sales volume or revenue. The Department reserves the right to add, remove, or restrict commissary items based on operational needs and security considerations. Any proposed changes to contract terms or operational requirements must be reviewed and approved by DOC in accordance with the contract.

Q.22 Item H on page 11 of the RFP states that prices will be agreed upon by the winning proposer and the Department and locked in for the term of the contract. Is the Department requesting that prices remain fixed for the first year or the entire five-year base term?

A.22 As stated in the RFP, prices will be agreed upon by the winning proposer and the Department at the time of contract negotiations.

Q.23 Please confirm how the Department will verify the location and process requirements outlined in Item M on page 11. Will warehouse tours be required for each prospective vendor?

A.23 Proposers must demonstrate in their proposals that all proposer-operated locations and processes meet the security and confidentiality requirements necessary to support commissary operations. The Department reserves the right to request additional information, documentation, or verification of the proposed facilities and processes as necessary to assess compliance. A warehouse tour is not specifically identified as a mandatory proposal submission requirement in the RFP.

Q.24 **P**age 11, Item O, of the RFP requests deliveries between 6:00 AM and 2:30 PM, Monday through Friday. If DOC requires vendor staff to attend to matters other than commissary delivery during scheduled work hours, will the City compensate the vendor for any overtime incurred as a result?

A.24 No. The Department will not provide additional compensation for overtime incurred under these circumstances.

Q.25 Please confirm the following specifically for Bellevue Hospital Center if the vendor assumes responsibility for deliveries:

a. Vendor staff will be permitted to deliver directly to the floors.

b. Vendor staff will be issued permanent identification badges.

c. An escort will be provided for vendor staff.

A.25 Due to safety concerns DOC Leadership at Bellevue determined that vendor staff will not be permitted to deliver commissary directly to the PIC housing areas. Only vendor leadership personnel will be issued permanent DOC ID cards. Vendor staff will be escorted by DOC Uniformed staff to the loading dock at Bellevue to verify the commissary orders and bring the bins upstairs to the commissary area.

Q.26 Item P on page 12 requires the entire fulfillment and final delivery process to be completed within seven (7) days from order processing to delivery to the PIC. Since facility staff, rather than vendor staff, distribute final orders to the PIC population, vendors cannot ensure completion of the entire process within this timeframe. Will the Department consider removing or revising this requirement?

A.26 The seven (7)-day fulfillment and delivery requirement remains part of the RFP. Proposers must demonstrate an operational approach that supports the Department's required weekly ordering and delivery cycle. The vendor is responsible for fulfillment, transportation, and coordination of deliveries with DOC facility personnel. The Department will oversee the operational schedule and coordinate facility distribution procedures. Any implementation details will be finalized with the selected proposer during contract negotiations.

Q.27 For digital signatures requested in Item Q on page 12, does every PIC currently have a barcode wristband? If not, does the Department expect to provide every PIC with a wristband during the contract term?

A.27 The RFP does not establish a requirement for PIC barcode wristbands. Proposers may submit a proposed digital receipt solution, provided it captures the required signatures of both the PIC and the Department or vendor representative and meets DOC's operational, security, and recordkeeping requirements. Any proposed digital solution will be subject to DOC review and approval.

Q.28 Can the Department clarify and provide examples of potential situations anticipated under Item S on page 12? The RFP requires vendors to provide commissary products for other ancillary projects or initiatives that may arise during the contract term.

A.28 As outlined in the RFP, the Department reserves the right to request commissary products to support additional projects or initiatives that may arise during the contract term. The specific nature and requirements of any such initiatives will be determined by the Department based on operational needs. The vendor must ensure that regular commissary operations remain the priority and that sufficient resources are available to fulfill the Department's established commissary requirements.

Q.29 Please confirm whether security escorts to the housing units will be provided if the vendor is required to distribute final commissary orders directly to PICs in the future, as detailed on pages 12–13 of the RFP.

A.29 As stated in the RFP under Commissary Distribution Services to Persons in Custody, the vendor may be required to deliver commissary items to a Department-designated distribution area or directly to PICs with an escort by facility correctional staff, as appropriate, based on the facility's structure, operational needs, and security level.

For infirmary and mental health units, distribution will be conducted with an escort as required by facility operations and security procedures.

Q.30 Can NYC DOC clarify which breach notification timeframe vendors are expected to follow? Page 17 of the RFP states four (4) hours, while the Software and Cloud Services Agreements (Attachments K and L) specify 24 hours for verbal notification and 48 hours for written notification.

A.30 As stated in the RFP under Information Security Breach, the proposer must notify DOC immediately upon detecting or suspecting a security breach that may compromise DOC or customer data. The DOC Information Security Officer must be contacted within four (4) hours of the incident.

Proposers must comply with the applicable security and notification requirements established by DOC and the final executed agreements. Any differences between the RFP and the Software and Cloud Services Agreements will be addressed during contract negotiations.

Q.31 Under Labor and Staffing on page 18, the RFP states that the proposer shall not remove or reassign its management from NYC DOC for a minimum period of two (2) years without prior written approval from DOC, unless requested by DOC. Please confirm whether this requirement applies specifically to on-site personnel assigned to the commissary operation rather than regional management staff. Also, would staffing changes resulting from promotions be permitted?

A.31 This requirement applies only to on-site staff specifically assigned to the commissary operation.

Q.32 Will the Department provide a larger space to ensure that all work can be completed in a timely manner, considering the increased staffing levels required?

A.32 Space requirements will be discussed and agreed upon by the winning proposer and the Department during contract negotiations.

Q.33 Will permanent identification badges be available to the vendor's commissary staff?

A.33 All vendor personnel must successfully complete the required DOC background investigation and receive DOC approval before commencing services at DOC facilities. Identification and facility access will be subject to DOC security procedures and applicable facility requirements. The issuance of permanent identification badges is not guaranteed and will be determined by DOC security team.

Q.34 Who should vendors contact outside of normal business hours regarding commissary-related issues?

A.34 Vendors should contact the DOC Commissary Team regarding commissary-related issues.

Q.35 Please confirm how Attachment B: Cost Proposal – Commissary will be evaluated.

a. How will the Department weigh an exact product match against an alternate product? Does the Department prioritize matching the product specifications or the price per ounce?

b. Will the Annual Grand Total and Alternate Proposed Grand Total fields (cells B209 and E210) be considered equally in the evaluation?

A.35 Proposal will be evaluated as established in the Request for Proposal. Please see updated Cost Proposal in PASSPort.

Q.36. The Annual Grand Total and Alternate Proposed Grand Total fields at the bottom of Attachment B currently total the Price and Alternate Proposed Price columns rather than the Proposed Price per Ounce (PPO) and Alternate Proposed Price per Ounce columns. Assuming the spreadsheet will be evaluated on a PPO basis, can the Department issue an updated document?

A.36 Please see updated Cost Proposal in PASSPort (rev. Attachment B)

Q.37 The Alternate Proposed Grand Total field at the bottom of Attachment B does not currently include the first requested item, Conditioner Balsam & Protein. Specifically, the SUM formula in cell E210 does not include cell E4. Can the Department issue an *updated spreadsheet to ensure all vendors are competing using the same calculations?*

A.37 Please see updated Cost Proposal in PASSPort (rev. Attachment B).

Q.38 Will there be an ounce-size limit for proposed alternative products? For example, the DOC currently provides a 1.5-ounce bag of chips. Would a 10-ounce bag be permitted, or would it be prohibited due to security requirements?

A.38 Please see updated Cost Proposal in PASSPort.

Q.39 Please confirm that the RFP is for commissary services only, and that vendors are to only propose commissary services and cannot include value additions or bundles such as a PIC trust fund management system, food service, or a laundry program.

A.39 Yes. The RFP is for commissary services only. Vendors shall propose commissary services exclusively and shall not include additional services, value additions, or bundled offerings such as a PIC trust fund management system, food services, or a laundry program

Q.40 Please confirm that references to be provided by vendors will only be for commissary services.

A.40 Yes. All references provided by vendors shall be specific to commissary services only.

Althea Samuels

Althea Samuels, Assistant Commissioner/ ACCO

Please sign below in acknowledgement and submit this addendum in PASSPort with your bid/proposal submission.

I acknowledge receipt of **Addendum No. 1**

_____

Bidder/Company Name (Print)

_____

Authorized Representative (Print Name)

_____

Authorized Representative (Signature)

SCHEDULE B – M/WBE Utilization Plan & PASSPort

PASSPort
Procurement and Sourcing Solutions Portal

Modified July 2022

The M/WBE Requirements tab along with the information provided in the Subcontractors and Joint Ventures tab of the RFx encompasses a Prime Vendor's M/WBE Utilization Plan.

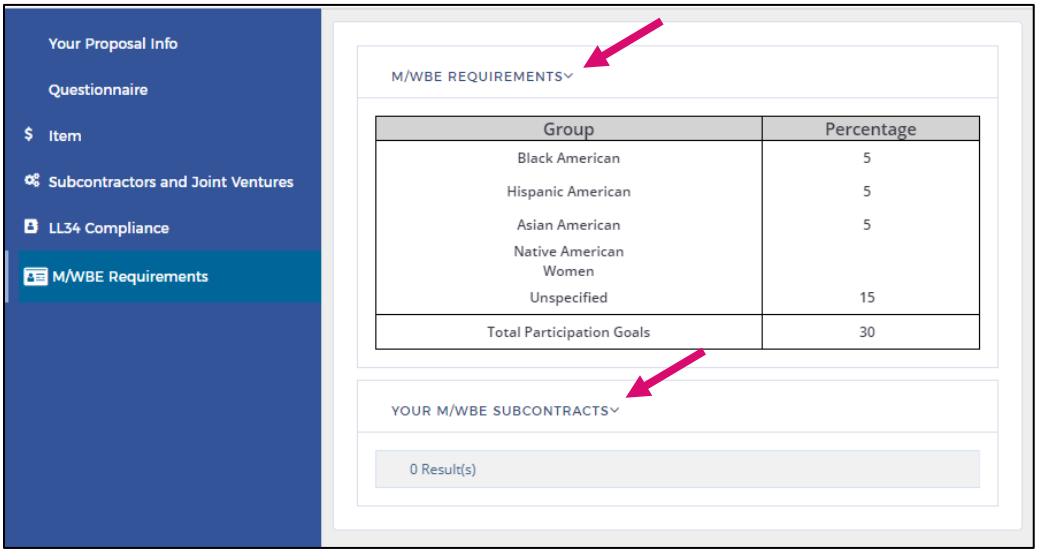
Part 1: M/WBE Participation Goals

The M/WBE Participation Goals are found in the M/WBE Requirements tab of your RFx (Solicitation) response in PASSPort. Please follow the instructions below to **review** an RFx's M/WBE Participation Goals in PASSPort. Please refer to the Local Law 1 Notice to All Prospective Contractors for additional information about the M/WBE program related to this solicitation.

1. Log in to PASSPort and click the **pencil icon** to access the RFx.

2. Click the **Manage Responses** tab of the RFx and click the **pencil icon** to access your in progress response.

3. Click the **M/WBE Requirements** tab. The M/WBE Requirements section will outline the goals for the RFx. The Your M/WBE Subcontracts section will list all subcontracting work that you've identified for certified M/WBEs. (Please see Part 2 for instructions on how to add subcontracting information in PASSPort.)



NYC Mayor's Office of Contract Services

Part 2: M/WBE Participation Plan

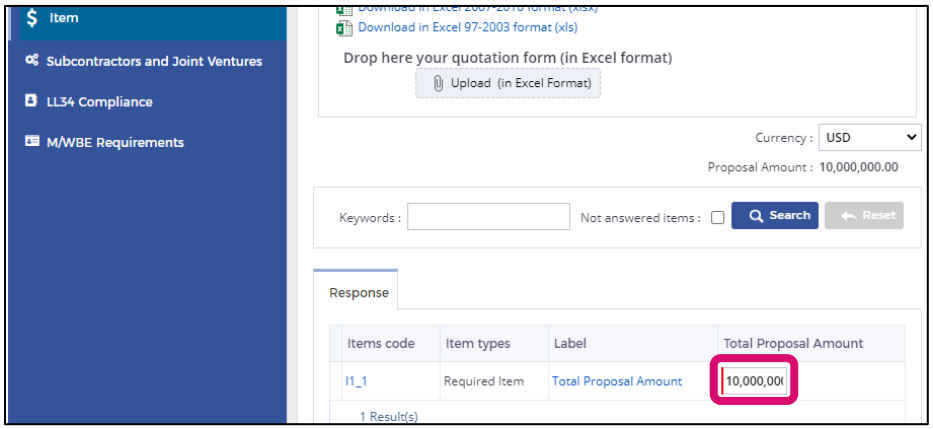
The M/WBE Participation Goals are found in both the M/WBE Requirements tab and the Subcontractors and Joint Ventures tab of your RFx (Solicitation) response in PASSPort. Please follow the instructions below to review an RFx's M/WBE Participation Goals and **enter** information in PASSPort to meet these goals. Please refer to the Local Law 1 Notice to All Prospective Contractors for additional information about the M/WBE program related to this solicitation.

1. Log in to PASSPort and click the **pencil icon** to access the RFx.

2. Click the **Manage Responses** tab of the RFx and click the **pencil icon** to access your in progress response.

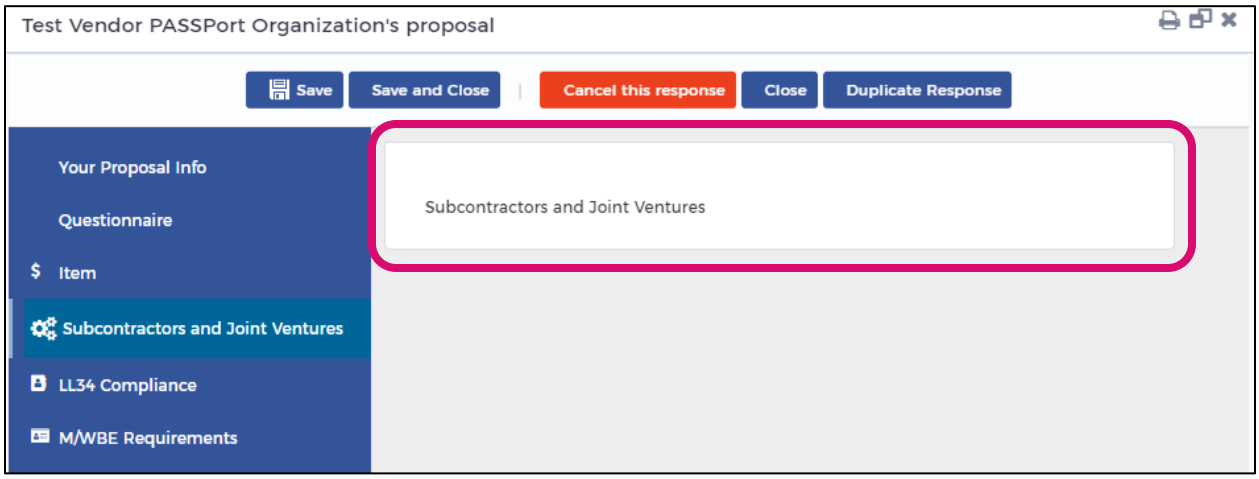
3. Complete all the required sections in the Your Proposal Info, Questionnaire, Item, LL34 Compliance (if required) and all other relevant tabs in your Response.

4. Be sure to complete the **Item** tab before the Subcontractors and Joint Ventures tab. Enter the **Proposal Amount** (or Bid Amount) and click **Save**.

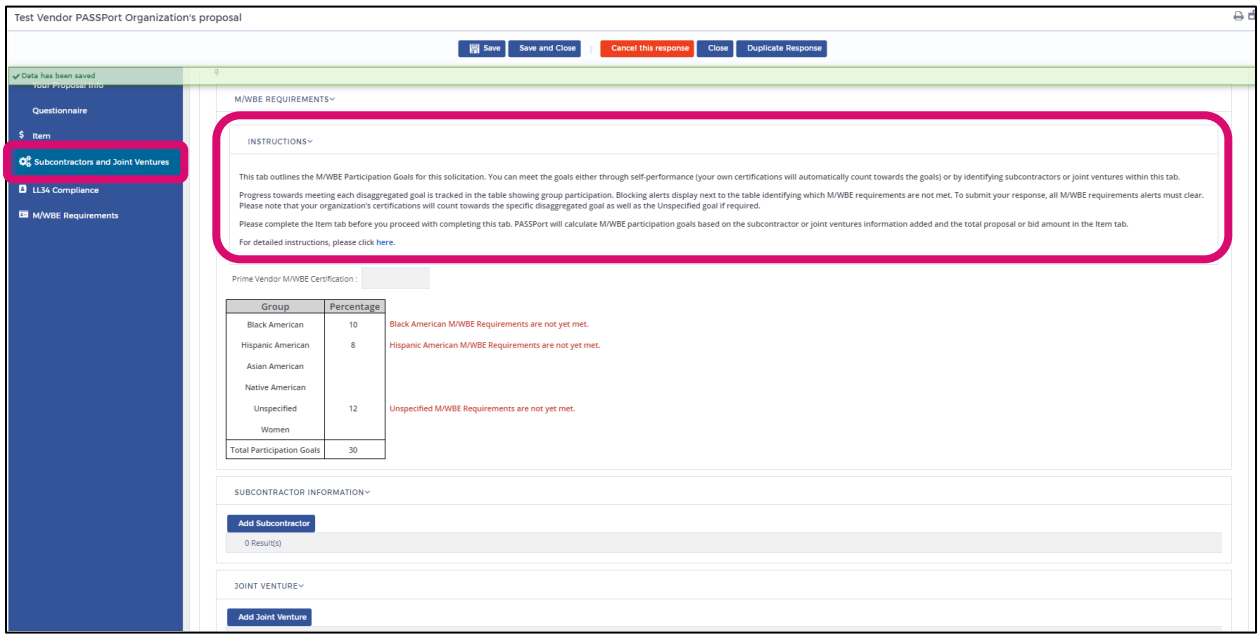


Mayor's Office of Contract Services

5. To identify your M/WBE subcontractors and joint ventures, click the **Subcontractors and Joint Ventures** tab and click the white box with the Subcontractors and Joint Venture text.

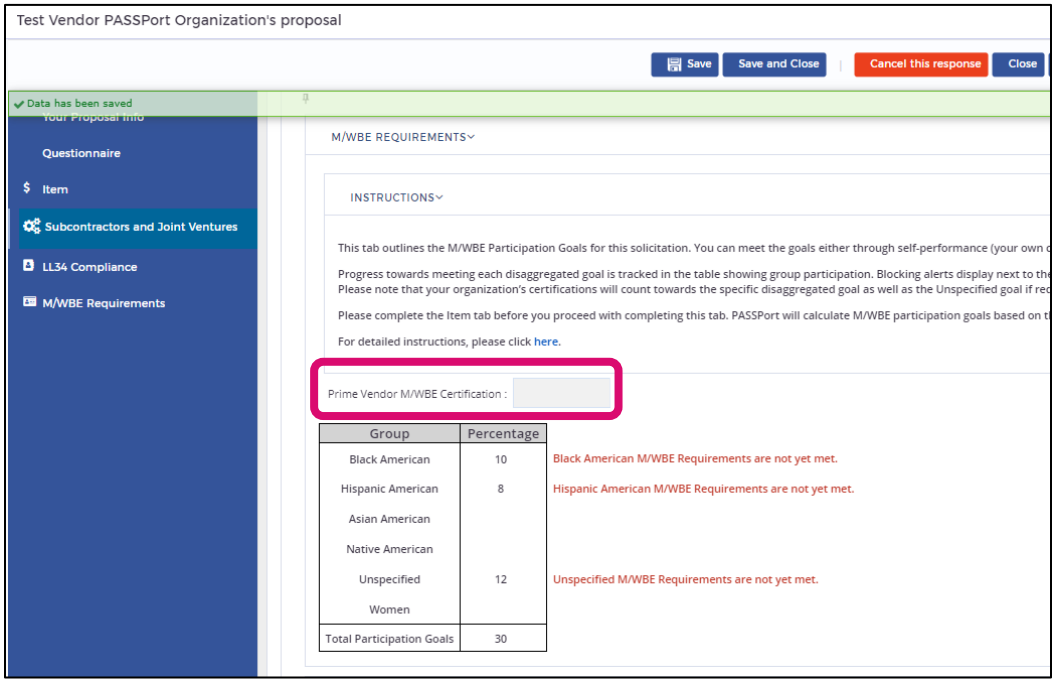


6. Read the instructions in the M/WBE Requirements section of this tab.

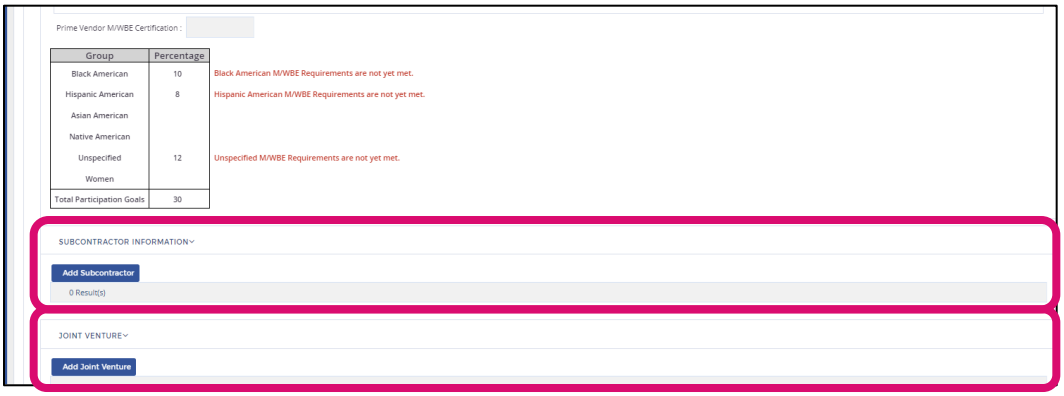


7. Your own organization's M/WBE certifications count towards the Total Participation Goals and automatically display in the field directly below the Instructions labeled as **Prime Vendor M/WBE Certification**. Any M/WBE participation goals that remain unmet are highlighted with red text alerts displaying to the right of the M/WBE Participation Goals table.

   In this example, the Prime Vendor does not have any M/WBE Certifications displaying (the field is blank) and thus still needs to meet the requirements as indicated.



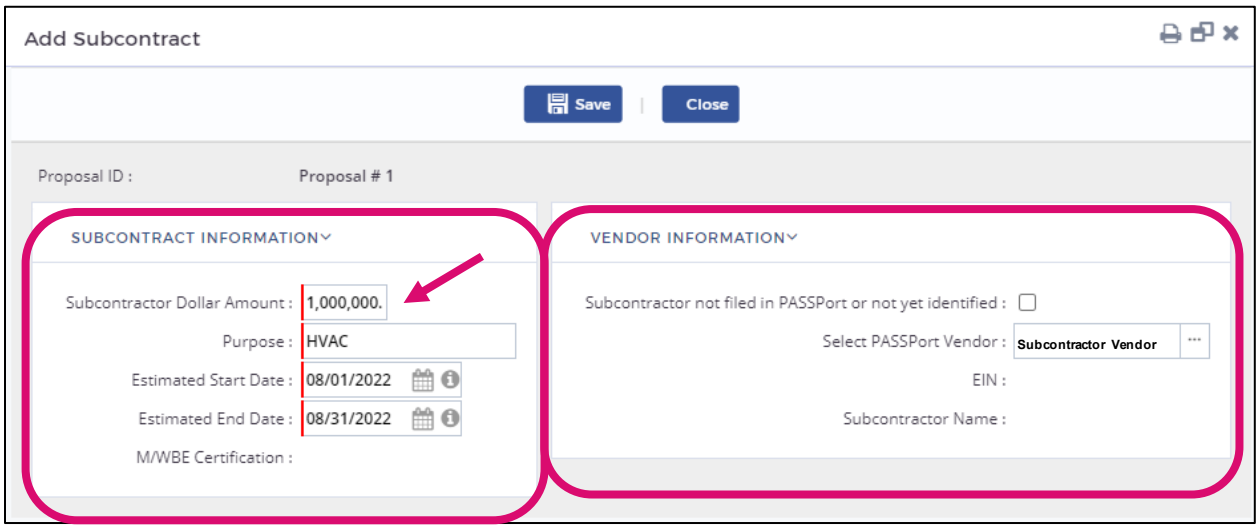
8. Any participation goal(s) your organization cannot meet through its own certification(s), must be met by identifying subcontractors and/or joint ventures with the required certifications in the **Subcontractor Information** and **Joint Venture** sections of the Subcontractors and Joint Ventures tab.



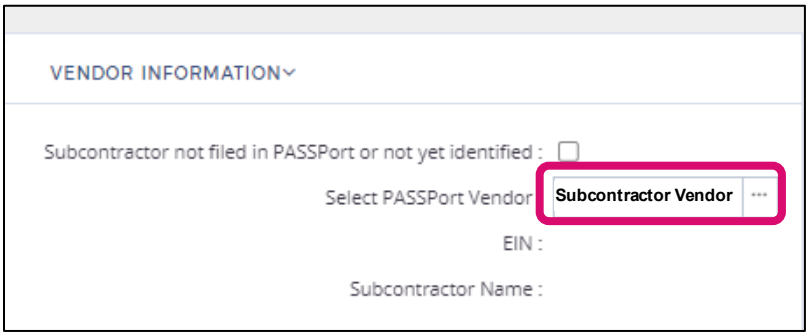
9. To add a subcontractor, click the **Add Subcontractor** button.

10. In the Add Subcontract window, complete all the fields in both the **Subcontract Information** and **Vendor Information** sections.
    Note, the **Subcontractor Dollar Amount** value entered will be calculated against the total Proposal Amount in the Item tab to determine the percentage towards your M/WBE Goal Participation for this RFx.

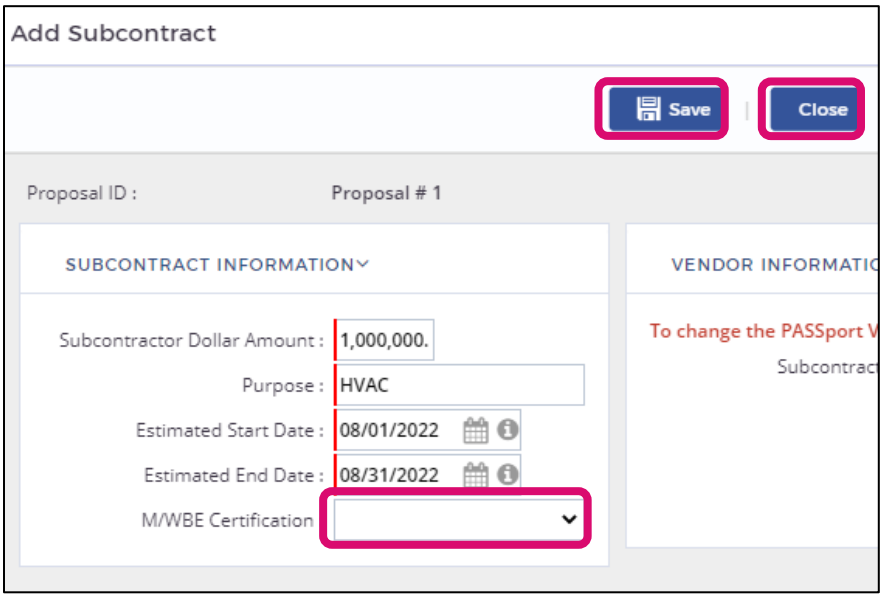
    In this example, $1 million is allocated to the **Subcontractor Dollar Amount** which is 10% of the Proposal Amount (in the Item tab) and can count towards a Participation Goal if the subcontractor is M/WBE Certified in one of the specified goals.



11. To identify a specific M/WBE certified PASSPort Vendor, type the subcontracting vendor name in the **Select PASSPort Vendor** field or click the ellipsis to search for and select the vendor. Click **Save**.



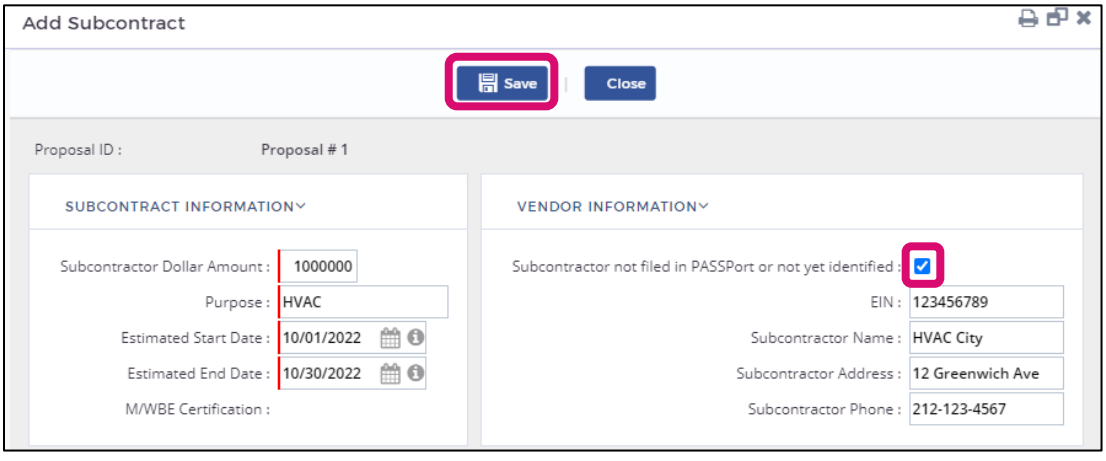
12. Choose the relevant **M/WBE Certification** from the drop-down in the Subcontract Information section of the Add Subcontract screen. Click **Save** and then click **Close** to return to the Subcontractors and Joint Ventures tab.



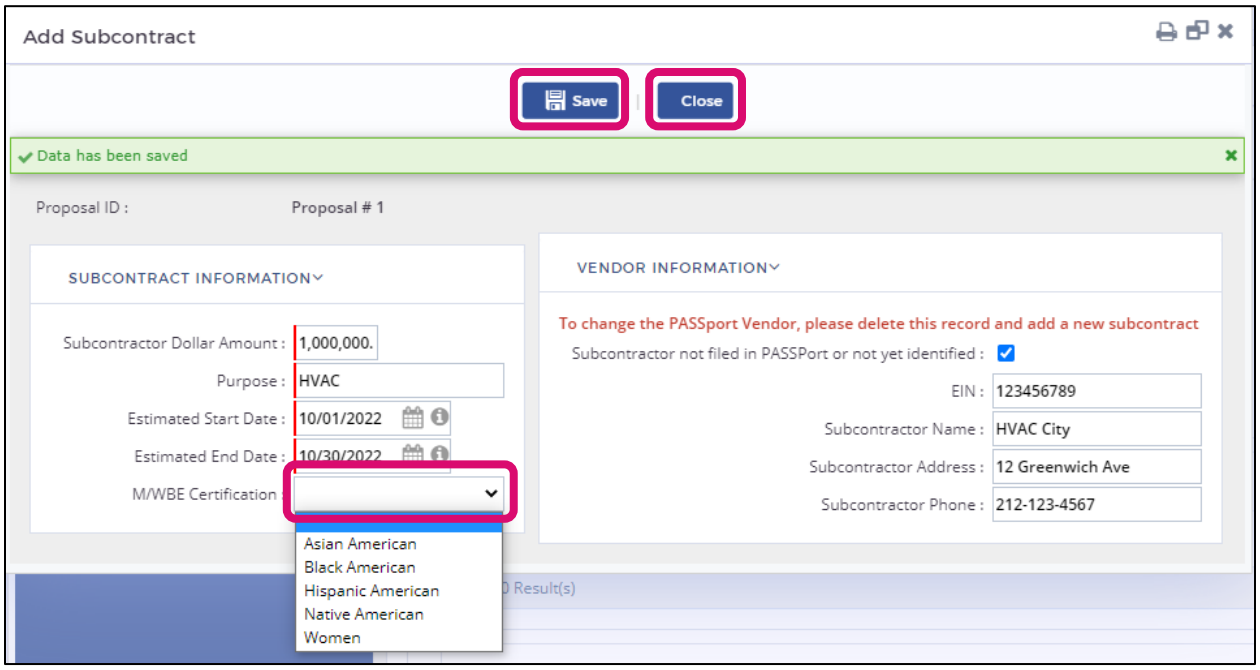
13. If the **Subcontractor is not Filed in PASSPort or not yet identified** (to be determined), click the corresponding checkbox in the Add Subcontract pop-up window. Be sure to complete all relevant fields in each section and click **Save**. The example below reflects scenarios 1 or 2.

    Scenarios to click this checkbox:

    1: If the subcontractor has a PASSPort account, but their PASSPort Vendor Status is not Filed.
    2: If the subcontractor does not have a PASSPort account.
    3: A specific subcontractor was not yet identified by your organization, and this serves as a placeholder to meet a specific participation goal.

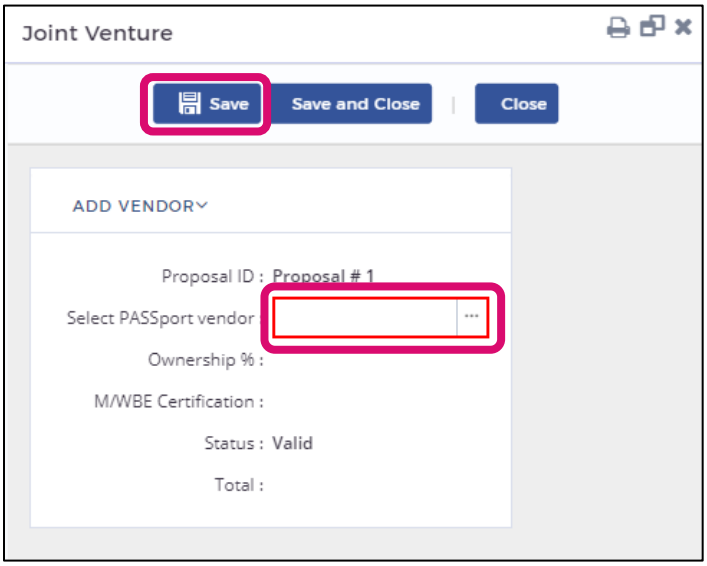


14. Choose the applicable **M/WBE Certification** from the drop-down to meet the corresponding Participation Goal for the subcontractor. Click **Save** and then **Close** to return to the Subcontractors and Joint Ventures tab.

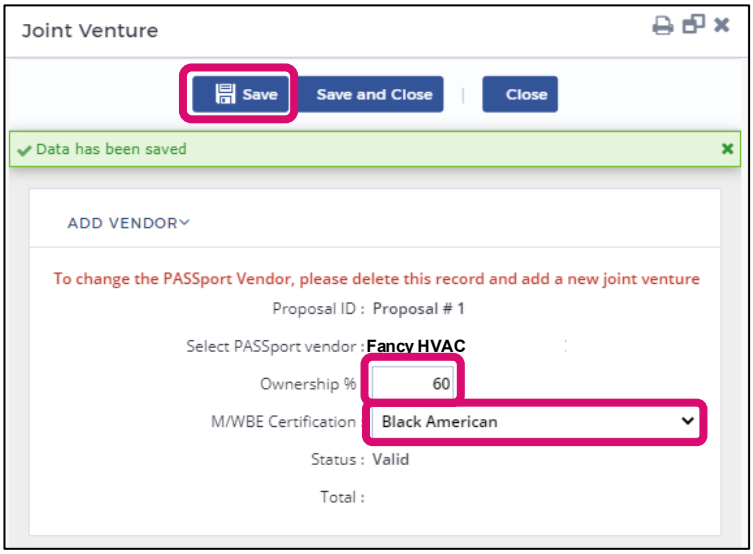


15. If you are submitting on behalf of a joint venture, click **Add Joint Venture** in the Subcontractors and Joint Ventures tab.

16. To identify a specific M/WBE certified PASSPort Vendor, type the vendor name of the joint venture partner entity in the **Select PASSPort Vendor** field or click the **ellipsis** to search for and select the vendor. Click **Save**.

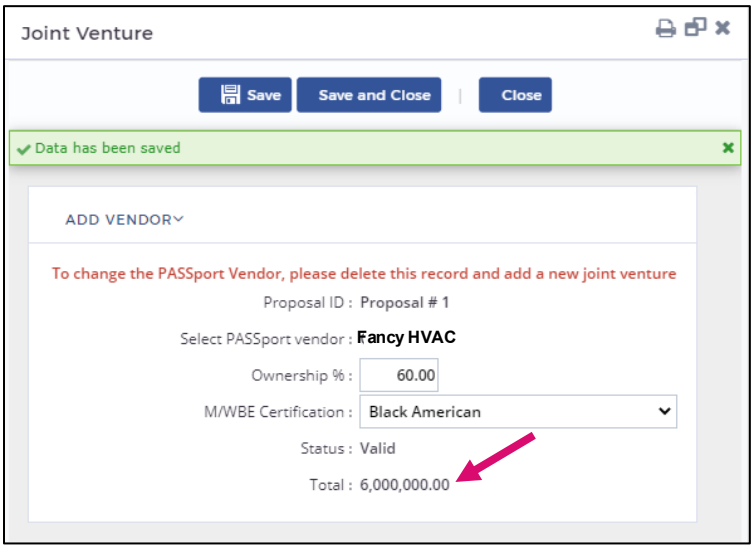


17. Complete the **remaining fields** in the Add Vendor section of the Joint Venture pop-up and click **Save**.

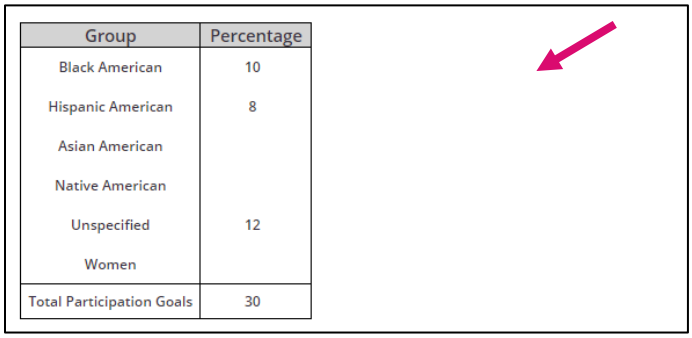


18. PASSPort automatically populates the **Total** amount covered by the joint venture based on the Ownership % entered compared to the Proposal Amount (see Item tab).

    In this example, the joint venture partner entity selected has 60% ownership which calculates here to equal $6 million in total of the full $10 million Proposal Amount.



19. Once participation goals are met and all alerts are addressed, the alerts will disappear from the tab.



Group	Percentage
Black American	10
Hispanic American	8
Asian American	
Native American	
Unspecified	12
Women	
Total Participation Goals	30

For vendors with **multiple M/WBE certifications,** please note that only one certification can be entered at a time. To add an additional certification, please repeat the Add Subcontractor or Add Joint Venture steps to meet additional participation goals.

If any information entered requires updating in an added Subcontractor or Joint Venture record, delete the record by clicking the **trash icon** and add it again with the updated information.

Part 3: Submitting a Request for Waiver of M/WBE Participation Requirement

Please review the instructions to submit a request for waiver of the M/WBE participation requirement. A copy of the blank form (3 pages) can be found at the end of this document with the linked Vendor Contract History Excel template on the first page of the form.

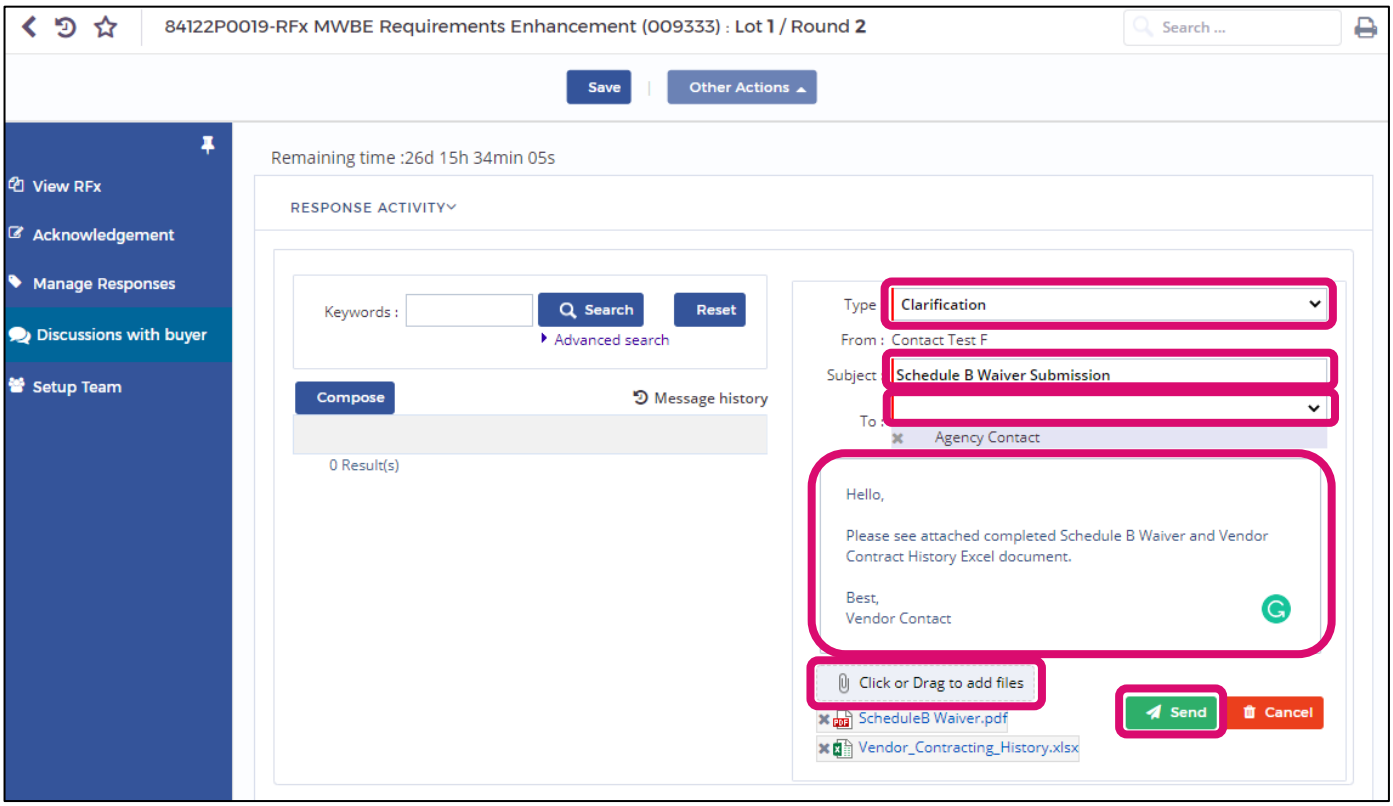
Follow these steps to submit a Waiver Request to the Agency:

1. Log in to PASSPort and click the **pencil icon** to access the RFx.
2. From the View RFx tab, download the Schedule B form and complete Part 3.
3. Navigate to the **Discussion with Buyer** tab and click the Compose button to start a draft message to the Agency.

Note: Be sure to Acknowledge the RFx prior to completing step 9.

4. Click the **Type** drop-down and select **Clarification**.
5. Type a subject in the **Subject** field such as “Schedule B Waiver Submission”.
6. Select Agency Contact from the **To** field drop-down.
7. Type your message in the **text area**.
8. Attach the completed Schedule B – Part 3 form and the completed Vendor Contract History Excel document by clicking the **Click or Drag to add files** button.

9. Click the **Send** button to submit your message and its attachments to the Agency Contact.
10. The Agency will review the waiver and the result of the Agency's waiver determination will be reflected in PASSPort in both the M/WBE Requirements tab and the Subcontractor and Joint Ventures tab of your RFx response. For additional information, refer to **the Local Law 1 Notice to All Prospective Contractors**.



Mayor's Office of Contract Services

SCHEDULE B – Part 3

Request for Waiver of M/WBE Participation Requirement

Contract Overview

Tax ID#_____ FMS Vendor ID#_____

Business Name_____ Contact Name_____

Email_____ Telephone_____

Contracting Agency_____

PASSPort PIN#_____ Bid/Proposal Due Date_____

M/WBE Participation Goals for Services

Defined by AGENCY in bid/ solicitation documents

Percent of the total contract value to be subcontracted to M/WBE vendors for services and/or credited to an M/WBE Qualified Joint Venture.

Unspecified _____ %

Black American _____ %

Hispanic American _____ %

Native American _____ %

Asian American _____ %

Women _____ %

Total Participation Goals _____ %

Proposed by VENDOR seeking waiver

Percent of the total contract value anticipated in good faith by the bidder/ proposer to be subcontracted to M/WBE businesses for services. Or if M/WBE Qualified Joint Venture, percent of total contract value anticipated to be credited to M/WBE vendor(s).

Unspecified _____ %

Black American _____ %

Hispanic American _____ %

Native American _____ %

Asian American _____ %

Women _____ %

Total Participation Goals _____ %

Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)

☐ Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.

☐ Vendor subcontracts some of this type of work but at a lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. Identify your subcontracting plan in the vendor certification section below.

☐ Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal requested here. Explain under separate cover.

Vendor Contract History

Using the linked Excel template, list all contracts (for City and Non-City work) performed within the last 3 years and provide the requested information for each contract.

From the list of all contracts, provide reference information below for the 5 most relevant contracts in size, scale and scope (performed for New York City or any other entity) to the bid or proposal for which you are submitting this waiver request. Provide the requested information for each subcontract awarded during the life of the listed reference contract.

Please make sure to highlight the 5 reference contracts provided below among the comprehensive list of all your contract awards within the attached Excel template.

Reference 1

Agency/Organization_____ Contract #_____

Reference Contact_____ Telephone_____ Email_____

Contract Start Date _____ Contract End Date_____ Total Contract Value $_____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor? ☐ Prime Contractor ☐ Subcontractor

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

_____ $_____

For information or assistance, please contact your contracting City Agency

Reference 2

Agency/Organization _____ Contract # _____

Reference Contact _____ Telephone _____ Email _____

Contract Start Date _____ Contract End Date _____ Total Contract Value $ _____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor? ☐ Prime Contractor ☐ Subcontractor

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

_____ $ _____

Reference 3

Agency/Organization _____ Contract # _____

Reference Contact _____ Telephone _____ Email _____

Contract Start Date _____ Contract End Date _____ Total Contract Value $ _____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor? ☐ Prime Contractor ☐ Subcontractor

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

_____ $ _____

Reference 4

Agency/Organization _____ Contract # _____

Reference Contact _____ Telephone _____ Email _____

Contract Start Date _____ Contract End Date _____ Total Contract Value $ _____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor? ☐ Prime Contractor ☐ Subcontractor

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

_____ $ _____

Reference 5

Agency/Organization _____ Contract # _____

Reference Contact _____ Telephone _____ Email _____

Contract Start Date _____ Contract End Date _____ Total Contract Value $ _____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor? ☐ Prime Contractor ☐ Subcontractor

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

_____ $ _____

Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

_____ $ _____

Vendor Certification

Identify/list all the work areas you intend on subcontracting on the current anticipated contract for which you are submitting this waiver request.

I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith. I further affirm that the work that I did not list as work that will be subcontracted on this contract for which I am submitting this waiver request is work that I have performed on past contracts and will not subcontract if awarded this contract.

Signature _____ Date _____

Print Name _____ Title _____

☐ Partial Waiver Approved with Revised Participation Goals

Unspecified ____ %

Black American ____ %

Hispanic American ____ %

Native American ____ %

Asian American ____ %

Women ____ %

Total Revised Goals ____ %

Approvals (for Agency completion only)

ACCO Signature _____ Date _____

CCPO Signature _____ Date _____

Waiver Determination

☐ Full Waiver Approved

☐ Waiver Denied

NOTICE TO ALL PROSPECTIVE CONTRACTORS

PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

ARTICLE I. M/WBE PROGRAM

Section 6-129 of the Administrative Code of the City of New York ("Section 6-129") establishes the program for participation in City procurement ("M/WBE Program") by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "M/WBE Utilization Plan") and are detailed below. Contracts solicited through the Procurement and Sourcing Solutions Portal (PASSPort) will contain a Schedule B in the format outlined in the Schedule B – M/WBE Utilization Plan & PASSPort rider. The provisions of this notice will apply to contracts subject to the M/WBE Program established by Section 6-129 regardless of solicitation source.

The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

References to MBEs or WBEs shall also include such businesses certified pursuant to the executive law where credit is required by section 311 of the New York City Charter or other provision of law.

Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

PART A

PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, ("**Participation Goals**"), as applicable, are set forth on Schedule B, Part 1 to this Contract (see Page 1, Line 1 Total Participation Goals) or will be set forth on Schedule B, Part 1 to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with DSBS as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part 2 (see Pages1-2) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by

MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor's required certification and affirmations. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered ("Master Services Agreement") and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part 2 (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed non-responsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part 2 (see Pages 1-2) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor's required certification and affirmations. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART 2). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART 3). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE

VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below $3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of city-certified MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6451, or by visiting or writing DSBS at One Liberty Plaza, New York, New York, 10006, 11th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to,: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where

applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE** Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE** Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE** Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or $500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of **the Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the Participation Goals in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its M/WBE Utilization Plan.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part 3 of Schedule B **and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency Contact Person listed in Schedule B, Part 1**. **Full or partial waiver requests that are received later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due may be rejected as untimely**. Bidders, proposers, or contractors, as applicable, who have submitted timely requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of

subcontracting in its **M/WBE** Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE** Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of **M/WBE** Utilization Plan. (a) A Contractor may request a modification of its **M/WBE** Utilization Plan after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below $3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's **M/WBE** Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;

(iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the **M/WBE** Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

(v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

(vii) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;

(viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If the Contractor was required to identify in its bid or proposal the MBEs and/or WBEs they intended to use in connection with the performance of the Contract or Task Order, substitutions to the identified firms may only be made with the approval of the Agency, which shall only be given when the Contractor has proposed to use a firm that would satisfy the **Participation Goals** to the same extent as the firm previously identified, unless the Agency determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts. In making such determination, the Agency shall require evidence of the efforts listed in Section 11(a) above, as applicable, along with any other relevant factors.

13. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE** Utilization Plan and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its **M/WBE** Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

15. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B

MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of a **M/WBE** Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See §6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the **M/WBE** Utilization Plan.

2. Pursuant to DSBS rules, construction contracts that include a requirement for a **M/WBE** Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.

3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.

4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required **Participation Goals**.

ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any **M/WBE** Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements

Section 6-129, including, but not limited to, any **M/WBE** Utilization Plan, Agency may determine that one of the following actions should be taken:

(a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;

(b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;

(c) making a finding that the Contractor is in default of the Contract;

(d) terminating the Contract;

(e) declaring the Contractor to be in breach of Contract;

(f) withholding payment or reimbursement;

(g) determining not to renew the Contract;

(h) assessing actual and consequential damages;

(i) assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;

(j) exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or

(k) taking any other appropriate remedy.

4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6-129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

6. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE and/or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.