

# Rochester Joint Schools Construction Board Phase II Strategic Plan





# ROCHESTER JOINT SCHOOLS CONSTRUCTION BOARD PHASE II STRATEGIC PLAN

## Table of Contents

Every Child is a work of art...  
Create a masterpiece!



Noor Mohamed,  
Children's School of  
Rochester- 2002

### VOLUME 1: STRATEGIC PLAN SUMMARY

ACKNOWLEDGEMENTS

SECTION 1: EXECUTIVE SUMMARY

- Overview
- Master Schedule
- Financial Strategy
- Community and Engagement Summary

SECTION 2: ENROLLMENT BENCHMARKS

- Ten Year Projections
- Elementary Choice Zones
- Planned Operating Capacity & Projected Enrollment

SECTION 3: SCHOOL FACILITY INVENTORY

SECTION 4: CORE MODEL PROGRAM - PK / 6

SECTION 5: PHASE 2 RECOMMENDATIONS

- Building Area, Project Cost & MCA Summary
- Test Fit Concepts

SECTION 6: PROBABLE COSTS & MAXIMUM COST ALLOWANCES

### VOLUME 2: FINANCIAL PLAN

SECTION 1: INTRODUCTION

SECTION 2: FINANCIAL PLAN OVERVIEW

SECTION 3: PHASE I FINANCING PLAN

SECTION 4: TERMS AND CONDITIONS OF FINANCING (FINANCIAL AND LEGAL STRUCTURE)

SECTION 5: ESTIMATED FINANCING COSTS

SECTION 6: BUILDING AID PROJECTIONS: ASSUMPTIONS AND METHODOLOGY

SECTION 7: LOCAL SHARE SOURCES AND STRATEGIES

### APPENDICES:

A. INFORMATION ON PROPOSED FEES BY COMIDA AND DASNY (PENDING)

B. PRO-FORMA BOND CASH FLOWS

C. BUILDING AID PROJECTIONS

D. SCHOOL DISTRICT LETTER ACKNOWLEDGING THE LOCAL SHARE CONTRIBUTION (PENDING)

E. CITY ACKNOWLEDGMENT LETTER (PENDING)

F. OUTSTANDING DEBT AND STATE BUILDING AID PROFILE

### VOLUME 3: DIVERSITY PLAN

SECTION 1: ARTICLES

SECTION 2: ATTACHMENTS

### VOLUME 4: SUPPLEMENTARY APPENDIX

SECTION 1: EXISTING RECORD DRAWINGS

SECTION 2: BUILDING CONDITION SURVEY PRIORITIES

SECTION 3: PHASE 2 PROJECT CONSTRUCTION BUDGETS AND MCA DATA

SECTION 4: ENROLLMENT TRENDS

SECTION 5: SPECIAL EDUCATION ENROLLMENT ANALYSIS

SECTION 6: OPERATING CAPACITY ANALYSIS

SECTION 7: TEST FIT PLANS — PHASE 3 AND BEYOND



## ACKNOWLEDGEMENTS

SAVIN Engineers, P.C., Gilbane Building Co. and SWBR Architects extend their appreciation to the Rochester Joint Schools Construction Board, The Rochester City School District, and the City of Rochester for commissioning this project and for their cooperation to make this update possible.

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**ROCHESTER SCHOOLS  
MODERNIZATION PROGRAM  
PHASE 2**

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**DIVERSITY PLAN**

**For**

Rochester Joint Schools Construction Board

**WORKFORCE & BUSINESS PARTICIPATION**

**April 2016**





# **Table of Contents**

## **SECTION 1 ARTICLES:**

<b>Article I – Introduction</b>	<b>1</b>
<b>Article II – Principles and Objectives of the Diversity Plan</b>	<b>5</b>
<b>Article III – Program Management and Independent Compliance Officer (ICO)</b>	<b>9</b>
<b>Article IV – Compliance with Diversity Goals</b>	<b>11</b>
<b>Article V – Implementation of Goals on RSMP Contracts</b>	<b>13</b>
<b>Article VI – Compliance Review and Procedures for RSMP Contracts</b>	<b>15</b>
<b>Article VII – Severability</b>	<b>17</b>

## **SECTION 2 ATTACHMENTS:**

<b>Attachments – Diversity Program Forms</b>	<b>19</b>
• <b>EBE Utilization Plan (DP-1)</b>	<b>21</b>
• <b>EBE Letter of Intent to Perform (DP-2)</b>	<b>22</b>
• <b>Monthly Employment Utilization Report (DP-3)</b>	<b>23</b>
• <b>MBE/WBE/DBE/SBE Monthly Utilization Report (DP-3a)</b>	<b>24</b>
• <b>Promise of Non-Discrimination</b>	<b>25</b>
• <b>EBE Assurance Statement</b>	<b>25</b>
• <b>Good Faith Efforts Checklist</b>	<b>26</b>





## Article I. Introduction

The Rochester Joint Schools Construction Board (“RJSCB” or “Board”) recognizes the need to take action to ensure that minority-owned, women-owned, and disadvantaged business enterprises and minority and women members of the workforce are given the opportunity to participate in the performance of the contracts awarded as part of the Rochester Schools Modernization Program (“RSMP” or “Program”).

The Board recognizes that this opportunity for the participation in our free enterprise system by persons traditionally, socially and economically disadvantaged is essential to achieving social and economic equality and overcoming historical disparities. Accordingly, the Board fosters and promotes the participation of such individuals and business enterprises in RSMP contracts as further stated herein.

The implementation of this Diversity Plan (“Plan”) will create effective processes to increase the purchase of goods and services from diverse businesses and workforce members. It will also provide for coordination of local workforce development programs to provide new job opportunities for minority and women workers that will be created as a result the RSMP.

The Board also recognizes that workforce participation by City of Rochester residents is an important factor contributing to the economic growth of the area. Through the Phase 2 Project Labor Agreement and with the assistance of the Program Manager, the Board will continue to work with the Rochester Building & Construction Trades Council to help promote and recruit apprentices from the local Rochester community.

Construction activities for Phase 1 are scheduled to be completed in Fall of 2016. Phase 2 Construction is scheduled to start in 2016 and continue until Fall 2021. Future phases of the Program, when approved by the State Legislature, should allow for construction activities to continue for another 10 to 12 years beyond the completion of Phases 1 and 2.

### 1.01 Purpose

- (a) In accordance with Chapter 533 of the Laws of New York 2014, amending Chapter 416 of the Laws of 2007 (“the Act”), the Board developed this Plan to do the following:
  - (i) Update the diversity goals for Phase 2 of the RSMP (also called “the Program”);
  - (ii) Develop strategies that will create and coordinate efforts to ensure a more diverse workforce for RSMP projects as well as ensure the participation of minority-owned, women-owned, disadvantaged business enterprises, and small business enterprises;
  - (iii) Address accountability for attainment of the diversity goals by providing a description of the forms of monitoring that will be used, and how such information will be communicated to the public and most importantly to potential participants.

- (b) The Plan, in addition to facilitating the other goals set forth in the RSMP Strategic Plan, is designed to accomplish the following goals:
  - (i) Coordinate with ongoing programs at the Rochester City School District, City of Rochester, Monroe County, local labor organizations, and not-for-profit agencies to develop, recruit and train a new diverse workforce;
  - (ii) Promote equal and increased opportunities for under-represented business and labor segments throughout the City of Rochester to facilitate economic development and to encourage all entities associated with the Board’s procurement and contracting activities to commit to similar outreach and efforts;
  - (iii) Encourage, assist and sustain business development of under-represented populations (including Minorities and Women) and maximize the use of City of Rochester-based labor, local professional and construction-related business enterprises.
- (c) This Plan demonstrates the Board’s commitment to diversity and complies with the Act. The Board envisions the participation goals increasing as capacity increases.
- (d) This Plan acknowledges the guidance provided by New York State Article 15A and the regulations applicable thereto, including without limitation, Parts 142 and 143 of Chapter XIV of Title 5 of the New York State Codes, Rules and Regulations (“NYCRR”).

### 1.02 Applicability and Scope

**Categories:** the Board may procure the following categories of services and goods:

- (a) **Category A - Construction:** Includes all contracting relating to buildings, facilities and other erected structures on school projects in the Program.
- (b) **Category B - Services (general):** Includes advertising, printing, non-construction repairs, janitorial services, training seminars and workshops, computer and information systems, security, shipping and mailing, microfiche and microfilm, courier, storage, travel, and consulting.
- (c) **Category C - Commodities:** Includes the purchase of all goods, equipment, office and other supplies, furniture, and other tangible items not associated with the provision of a service identified in Categories A and B.
- (d) **Category D - Employment Compliance:** Includes services associated with monitoring the implementation of this Plan to ensure that EBE and minority and female employment goals are met and maintained through the life of each project.
- (e) **Category E - Professional Services:** Includes:(1) professional design contracts requiring the services of licensed architects, engineers, planners and surveyors; (2) regulated professional contracts requiring the services of individuals and firms whose practices are regulated by the State of New York; (3) general consultant

contracts such as program and construction management services, affirmative action services and general business services.

- (f) **Category F - Financial Services:** Includes all business opportunities associated with investment banking services, bond counsel services and bank depository relationships.

**Purchasing Thresholds:**

The Goals set forth in this Plan shall apply to all RSMP Contracts that exceed \$25,000 with regard to contacts for goods and services in Categories B through F, and Contracts that exceed \$100,000 for goods and services in Category A.

Contractors will be required to comply with the terms and conditions of the Project Labor Agreement ("PLA") which is expected to be finalized prior to the start of construction, including but not limited to provisions concerning workplace non-discrimination.

**1.03 Definitions**

- (a) For the purpose of this Plan, the following words, terms, phrases and abbreviations shall have the following meanings:
- (i) **"Act"** shall mean Chapter 533 of the Laws of New York 2014, amending Chapter 416 of the Laws of 2007 ("the Act"), which is the authorizing legislation for the RSMP.
  - (ii) **"Bidder"** shall mean any person, partnership, corporation, joint venture, or other business entity that submits a bid to the Board for any Contract.
  - (iii) **"Broker"** shall mean a person or business entity that purchases and resells goods in the ordinary course of business, but which adds no material value to the goods it offers for resale, and which does not have a warehouse or storage facility. A Broker's participation will not be counted towards any program goals.
  - (iv) **"Certification"** or **"Certified"** with regard to EBE's shall mean the designation given by applicable state agencies, that a particular business is an MBE, WBE, or DBE, or alternatively, the ICO's determination that a business is an SBE as defined herein.
  - (v) **"Commercially Useful Function"** shall mean the execution by an EBE that performs the Contract or any part of the work thereof does so by actually performing, managing, and supervising the work involved. A business enterprise that serves as a Conduit shall not be deemed to perform a Commercially Useful Function. In determining whether an EBE Contractor or subcontractor is performing a Commercially Useful Function, the Board may consider factors, including but not limited to the following:
    - a. The nature and amount of work subcontracted to the EBE;
    - b. Whether the EBE has the skill and expertise to perform the work;
    - c. Whether the EBE actually performs, manages and supervises the work;
    - d. Whether the EBE is actually serving as a Broker; and
    - e. Standard industry practices relating to the use of subcontractors.

- (vi) **"Compliance"** shall mean the condition existing when a Bidder or Contractor has met the requirements of the RSMP and the Plan, including attaining the Goals are using sufficient Good Faith Efforts in attempting to meet the Goals.
- (vii) **"Conduit"** shall mean a person or business entity that is not a Broker, but rather, acts exclusively as a pass-through in purchasing goods or services from a vendor and reselling them to the Board or a Contractor. A Conduit's participation will not be counted towards any program goals.
- (viii) **"Contract"** shall mean any binding legal obligation of the Board created to acquire some good and/or service from one or more Contractors. In this context, the terms contracting, purchasing, and procurement are synonymous and refer to the process(es) by which the Board undertakes such acquisitions.
- (ix) **"Contractor"** shall mean a successful Bidder that is awarded a Contract with the Board, and where applicable, may refer to lower tier subcontractors, vendors and/or suppliers of the Contractor.
- (x) **"Disadvantaged Business Enterprise"** or **"DBE"** shall mean a business enterprise where the majority ownership is by a disadvantaged individual meeting the certification requirements for a disadvantaged business enterprise pursuant to federal designation under 49 C.F.R. Part 23 and 49 C.F.R. Part 26. The NYSDOT has adopted the federal DBE program by reference (see 17 NYCRR Section 35.3).
- (xi) **"Eligible Business Enterprise"** or **"EBE"** shall mean all or any of MBE, WBE, DBE or SBE, as those terms are defined herein.
- (xii) **"Goal"** shall mean the aspiration levels of participation by EBE's and by Minority and Women workforce members in RSMP Contracts as designated herein and/or by Contract.
- (xiii) **"Good Faith Efforts"** shall mean those active and aggressive actions established under this Program for a Bidder and/or Contractor undertaken to meet Goals.
- (xiv) **"Joint Venture"** shall mean an association of two or more independent persons, partnerships, corporations (or any combination of them) formed, consistent with the laws of the State of New York, to perform one or more specific Contracts limited in scope and duration; and for which purpose, the entities combined their property, capital, effort, skills, knowledge and other assets.
- (xv) **"Minority"** or **"Minority Group Member"** shall be as defined in Section 15-A of the New York Executive Law, which states as follows: "Minority group member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
  - a. Black persons having origins in any of the Black African racial groups;

- b. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
- c. Native American or Alaskan native persons having origins in any of the original peoples of North America;
- d. Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

(xvi) "**Minority Business Enterprise**" or "**MBE**" shall have the same meaning as "Minority-owned Business Enterprise" as defined in Section 15-A of the New York Executive Law, which states as follows: "Minority-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

- a. at least fifty-one percent owned by one or more minority group members;
- b. an enterprise in which such minority ownership is real, substantial and continuing;
- c. an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
- d. an enterprise authorized to do business in this State and independently owned and operated.

(xvii) "**Independent Compliance Officer**" or "**ICO**" shall mean the member of the Board who is selected as the responsible party for administration of this Plan and to perform all other functions designated by the Act.

(xviii) "**Owned**" shall mean that the minority, female, or disadvantaged owner(s) possess an ownership interest of at least fifty-one percent (51%) of the business, for purposes of determining whether a business is a Minority Business Enterprise, Disadvantaged or Women Business Enterprise.

(xix) "**Promise of Non-Discrimination**" shall mean voluntary promises made by a Bidder/Contractor relating to such party's conduct occurring prior to submission of a bid as well as after award of a Contract: (1) to adopt the policies of the Board relating to the participation of EBE's in the procurement process; (2) to undertake certain affirmative Good Faith Efforts to achieve diversity Goals; and (3) not to otherwise engage in discriminatory conduct inconsistent with said policies and promises.

(xx) "**Small Business Enterprise**" or "**SBE**" shall mean a locally-owned business concern which, together with its affiliates has no more than 15 employees and average annual receipts that do not exceed \$2 million. Annual receipts shall be calculated in accord with the standard established under 13 CFR 121.104. Number of employees shall be calculated in accord with the standards

established under 13 CFR 121.106. Affiliates shall be determined in accord with the standards set forth under 13 CFR 121.103

(xxi) "**Women-owned Business Enterprise**" or "**WBE**" shall be as defined in Section 15-A of the New York Executive Law, as follows: "Women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

- a. at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
- b. an enterprise in which the ownership interest of such women is real, substantial and continuing;
- c. an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
- d. an enterprise authorized to do business in this State and independently owned and operated.



## Article II. Principles and Objectives of the Diversity Plan

### 2.01 Workforce Development and Diversification Principles and Goals

#### (a) Workforce Development and Diversification Principles

A primary objective of this Plan is to support workforce development and diversification opportunities that the Program may create. This Plan acknowledges the diverse community of the City Rochester as reflected in its workforce labor, and provides an opportunity to engage and encourage the participation of community members. This Plan also acknowledges the historical disparity experienced by Women and Minority members of the workforce in gaining access to participate in local projects. These principles are reflected in the workforce participation percentage Goals listed herein.

#### (b) Workforce Development and Diversification Goals

All firms or other businesses providing goods or services under a Contract meeting the dollar amount threshold set forth in this Plan shall comply with the workforce diversity Goals set forth herein.

**(i) Percentage goals:** In order to achieve the workforce diversification goals of the Program, each firm or other business providing goods or services shall use its best efforts to ensure that the workforce it engages to perform work for the Program shall demonstrate, in terms of the percentage of actual hours worked under the Contract, and/or contract as amended, participation rates as follows:

**a. Minority Workforce:** 22% of project personnel hours including skilled trades people, trainees, journeymen, apprentices, and supervisory staff.

**b. Female Workforce:** 8% of project personnel hours including skilled trades people, trainees, journeymen, apprentices, and supervisory staff.

Each Contractor, supplier, professional service provider, or other business providing goods and services shall strive to maximize the use of Rochester-based labor, contractors, suppliers, and service providers in performing the Contract.

### 2.02 Business Development and Diversification Principles and Goals

#### (a) Business Development and Diversification Principles

The capital investment represented by this Program creates a unique opportunity for participation of EBE's. To ensure that contracts for goods and services are placed with qualified EBE's, the Board, through its consultants, will oversee, facilitate, develop and implement the following tasks:

- (i)** Identify certified EBE firms available to provide goods and services to the Program and to create a reference list for all Program participants.
- (ii)** Identify firms that could/can be certified as MBE, WBE, DBE, or SBE.
- (iii)** Ensure that Contractors divide the goods or services to be provided into scopes, where economically and technically feasible, to create opportunities for EBE participation.
- (iv)** Coordinate activities and services with organizations such as chambers of commerce, trade groups, and community-based groups/organizations that promote MBE, WBE, DBE and SBE interests.
- (v)** Create opportunities for mentoring less experienced and/or start-up MBE, WBE, DBE and SBE's.
- (vi)** Encourage the formation of Joint Ventures, partnerships, or other similar arrangements where feasible.
- (vii)** Create a network for referral for banking and surety credit needs and advocate for the provision of an accelerated payment system, revolving credit and needs for project bonding.
- (viii)** Develop a methodology that assists any business providing goods or services to the Program to effectuate the business development and diversification Goals of the Plan. All Contracts shall include remedies and sanctions for non-compliance and identify a means by which inquiries and disputes about the project requirements may be addressed.
- (ix)** The Program Manager shall develop a Business Opportunities Program (BOP) as further described herein.

**(b) Business Development and Diversification Goals**

All Contractors or other businesses providing goods or services under a Contract meeting the dollar amount threshold set forth in this Plan shall comply with the business diversity Goals set forth herein.

**(i) Percentage Goals** (applicable to the total value of the project):

In order to achieve the business development goals of the Program, each Contractor, supplier, professional service firm or other business providing goods or services shall strive to and use Good Faith Efforts to engage minority-owned, woman-owned, disadvantaged business enterprises, and small business enterprises as follows:

- a. **MBE:** 17% of each Contract or purchase order
- b. **WBE:** 10% of each Contract or purchase order
- c. **DBE:** 3% of each Contract or purchase order
- d. **SBE:** 3% of each Contract or purchase order

**(c) Good Faith Efforts**

Bidders and Contractors are expected to engage in certain minimal “Good Faith Efforts” to meet and maintain the business and workforce development goals set forth in this Plan.

“Mandatory” Good Faith Efforts for Bidders on RSMP Contracts to which these Goals apply shall mean at a minimum the following in paragraph (i) through (ix). Bidders shall submit with their bids a “Good Faith Efforts Checklist” form, in the format attached hereto (or such other form as is provided for the particular bid), as proof of engaging in the following mandatory Good Faith Efforts:

**(i)** Delivery of written notice of the following to the ICO:

- a. at least 3 available certified EBE’s (provide names, addresses, and telephone numbers of each firm);
- b. all EBE’s which requested information on the Contract.

**(ii)** The written notice must contain:

- a. Adequate information about the plans, specifications, and relevant terms and conditions of the Contract and about the work to be subcontracted to or the goods to be obtained from subcontractors and suppliers;
- b. A contact person knowledgeable of the project documents within the Bidder’s office to answer questions;
- c. Information as to the Bidder’s bonding requirements (if applicable, including the procedure for obtaining any needed bond, and the name and telephone number of one or more acceptable surety companies to contact);
- d. The last date and time for receipt by Bidder of EBE bids or price quotations.

- (iii)** Attendance at any special pre-bid meeting to inform EBE’s of subcontracting or supply opportunities.
- (iv)** Division of the Contract, in accordance with normal industry practice, into small, economically feasible segments that could be performed by an EBE.
- (v)** Providing an explanation for rejection to any EBE whose bid or price quotation is rejected, unless another EBE is accepted for the same work, as follows:
  - a. Where price competitiveness is not the reason for rejection, Contractor must send the EBE a written rejection notice, including the reason for rejection.
- (vi)** Providing a written explanation for rejection of any EBE to the ICO, unless another EBE is accepted for the same work, including the name of the non-EBE firm proposed to be awarded the subcontract or supply agreement.
- (vii)** Providing to the ICO records of all EBE firms’ price quotations and the successful non-EBE firm’s price quotations, where appropriate.
  - a. Where price competitiveness is not the reason for rejection, a written rejection notice including the reason for rejection will be sent to the rejected EBE.
- (viii)** Contractors must take appropriate steps to ensure and maintain a work environment free of harassment, intimidation and coercion with regard to all Contract work, and shall adequately train all supervisory personnel to fulfill the Contractor’s obligation to maintain a suitable work environment.
- (ix)** Reporting improper conduct and all known violations of this Plan to the Board.

Additional Good Faith Efforts (Optional). In addition to, but not in lieu of, the above mandatory minimum Good Faith Efforts required under this Plan, Bidders are encouraged to engage in any or all of the following actions in paragraph (x) through (xv) to encourage and obtain the maximum practicable participation of EBE’s so as to meet (or exceed) and maintain the business development Goals of this Plan:

- (x)** Soliciting specific individual EBE’s whose availability to participate in a Contract can be reasonably ascertained. This measure includes:
  - a. Sending of letters or making other personal contacts with specific certified EBE’s, including those with whom Bidder has contracted in the past as well as other EBE’s with whom Bidder is unfamiliar. The ICO can provide, upon request, a list of Certified EBE’s that participated in Phase 1 of the Program.
- (xi)** Sending letters or making other personal contacts with other EBE programs as well as private minority trade associations and programs that publicize contracting and procurement opportunities for the benefit of their respective participants and/or members.



- a. Such contacts are relevant to the RSMP bid under consideration and the type of EBE needed; and shall provide the same information required by a Contractor or vendor to effectuate direct contacts with EBE's.
- (xii) Advertising in publications of general circulation in the Rochester area and trade publications that are otherwise marketed to EBE's.
  - a. The publication or media shall be one that reasonably covers the metropolitan area.
  - b. The advertisement shall identify and describe the subcontracting or other opportunity in reasonable detail, and shall state the applicable EBE Goal(s).
- (xiii) Conducting follow-up of initial solicitations of interest by contacting EBE's to determine whether these firms are interested.
- (xiv) Providing reasonable assistance to an otherwise qualified EBE.
- (xv) Providing equal opportunity to EBE's when replacing non-performing EBE's.
  - a. If an EBE subcontractor or supplier fails to perform successfully, Contractor must provide other EBE's an equal opportunity to replace the non-performing EBE subcontractor or supplier; and shall exercise the same Good Faith Efforts to secure the replacement.

To demonstrate compliance with the Good Faith Effort requirements of this Plan, Contractors shall keep detailed records of all correspondence and responses thereto, logs of all telephone calls made and received regarding the project or Contract, copies of advertisements in publications and other media, and other relevant papers as required by this program for a minimum period of three (3) years.

**(d) EBE Status**

- (i) To be counted toward the EBE participation Goals, an EBE must be certified at the time a bid is submitted. The judgment as to whether or not an EBE has the qualifications and experience for the type of work required by the Contract rests with the Contractor.
- (ii) To be deemed an MBE, WBE, DBE or SBE, a certificate or evidence of Certification of this status must be presented to the ICO prior to Contract award. Failure to produce an authentic certificate/letter demonstrating the firm's status as an MBE, WBE, or DBE, or failing to provide sufficient financial and other supporting information to demonstrate to the ICO that firm's status as an SBE, will result in the firm not receiving EBE credit for the project and may jeopardize Contractor's compliance with diversification Goals.
- (iii) MBE, WBE and DBE designations are honored only for the area/component for which the designation has been provided by an authorizing agent. The ICO will determine whether a firm qualifies as an SBE for the component of the project for which the Contractor proposes to receive credit for such firm's participation.

- (iv) The New York State Empire State Development's Division of Minority and Women Business Development, The Dormitory Authority of the State of New York (DASNY), Port Authority of New York and New Jersey, and New York State Department of Transportation (NYDOT) are the authorizing agents for MBE, WBE, and DBE designations.
- (v) MBE, WBE, DBE and SBE firms must maintain their applicable certifications throughout the duration of their work on the project. The RJSCB acknowledges that due to the timing of the recertification process, there may be a technical lapse in a firm's certification. If, upon completion of the recertification process, the certifying entity grants retroactive certification to the firm, the RJSCB will recognize the retroactive date set by the certifying entity.

**(e) Counting EBE Participation**

The value of the work procured from certified MBE, WBE, DBE and SBE firms to accomplish these Goals shall be determined as follows:

**(i) General Standards**

- a. The full dollar value of an EBE Contract or sub-contract will be counted toward the EBE participation Goals. Only EBE's that perform a Commercially Useful Function in the work of the Contract may be counted.
- b. An EBE firm that is certified in multiple categories may participate in any such category (MBE, WBE, DBE, or SBE) to count toward the Goal for such category for a Contract, but such participation may not be counted towards the Goals in multiple categories. A single EBE's participation in a Contract may not be divided between the MBE, WBE, DBE, and/or SBE Goals.

**(ii) Joint Ventures (JV)**

**JVs Between all EBE partners:** With respect to a Joint Venture (JV) where all JV partners are EBE's, EBE participation will be credited for that portion of the dollar amount of the Contract performed by the EBE's.

**JVs Between EBE and non-EBE partners:** With respect to a Joint Venture (JV) between an EBE and a non-EBE partner, an EBE Joint Venture partner must perform a Commercially Useful Function on the Contract. The ICO shall review all contractual agreements and review other supporting documentation pertaining to the structure and management of the JV in order to verify the arrangement between the partners as follows:

- a. The initial capital investment of each JV partner;
- b. The proportional allocation of profits and losses to each JV partner;
- c. The sharing of the right to control the ownership and management of the JV;

- d. Actual participation of the JV partners in the performance of work under the project or Contract;
- e. The method of and responsibility for accounting;
- f. The method by which disputes are resolved;
- g. Other pertinent factors.

The degree to which any Goals have been attained by JVs between EBE and non-EBE firms, shall be calculated as follows:

- a. A JV consisting of an EBE and non-EBE firm functioning as a Contractor will be credited with EBE participation on the basis of the percentage of the dollar amount of the work to be performed by the EBE(s) certified in the category for the applicable Goal (MBE, WBE, DBE or SBE).

**(iii) Suppliers**

Where a non-EBE Contractor utilizes EBE suppliers to satisfy the Goal(s) in whole or in part, all such EBE suppliers must perform a Commercially Useful Function. Participation of EBE's for purposes of achieving Goals may be approved upon the ICO's review.

- a. Upon approval by the ICO, fifty percent (50%) of the Contract amount for EBE suppliers and vendors shall count towards the Goal on construction Contracts ("Category A").
- b. Neither Conduit nor Broker participation will be counted on this project and will not be counted toward the Contractor's diversity Goals.

### Article III. Program Management and Independent Compliance Officer (ICO)

#### 3.01 Program Manager

The Board has retained an independent Program Manager (“PM”) pursuant to a competitive process to carry out all duties required of this position by the Act:

- (a) Qualifications:** The Program Manager (“PM”) shall have experience in planning, designing, and constructing new and/or reconstructing existing buildings, public facilities, commercial facilities, and infrastructure facilities, and in the negotiation and management of labor contracts and agreements, training programs, educational programs, and physical technological requirements for educational programs. All Contracts entered into by the Board for RSMP projects shall be managed by the Program Manager.
- (a) Business Opportunities Program:** The Project Manager for Phase 2 shall also develop and implement a “Business Opportunities Program (“BOP”)” consisting of Marketing/Outreach and Training/Mentoring elements. This effort includes a community-wide public relations campaign to provide specific information about the Program’s employment opportunities, referrals and training programs.
  - (i)** The Marketing/Outreach services shall promote the Program and engage the interest of MBE, WBE, DBE and SBE owned businesses to participate in the Program’s contract procurement opportunities.
  - (ii)** The Training/Mentoring program shall assist EBE firms to compete for Contract awards or participation in Contracts (e.g. as subcontractors or suppliers). The program will provide EBE firms exposures to a network of business experts, trainers, construction professionals, and large contractors to help them grow. It will offer support for aspects of business operations where participants can learn the strategic skills needed to effectively run their company.
  - (iii)** As part of the BOP, the ICO and Program Manager will actively participate in the various advocacy groups (i.e., Rochester Area Minority Contractors Association, National Association of Minority Contractors, Black Business Association, the Rochester Minority Business Council, the Hispanic Business Alliance, and the Small Business Administration, etc.) for feedback and to keep them abreast of the BOP.
  - (iv)** Notification of the BOP Marketing/Outreach Program will be forwarded regularly, and when updating is necessary, to media in the Rochester area focused or marketed to EBE’s. Publications with a known EBE audience will be targeted. Seminars and workshops will be held by Program Manager and/or ICO until the saturation effort is accomplished.
  - (v)** It is anticipated that Prime Contractors and Professional Services Firms will participate and provide assistance to the Program Manager in the training/mentoring Program.

#### 3.02 Independent Compliance Officer (ICO)

The Board will retain an Independent Compliance Officer (ICO) for Phase 2 to administer and enforce the Phase 2 Program Diversity Plan.

The ICO will verify that business diversity goals and minority and female employment goals are met and maintained through the life of each project.

##### **(a) General Duties of the ICO**

The ICO will have the following duties and obligations for purposes of implementing and achieving the policies and objectives of the Program:

- (i)** Administer and enforce RJSCB policies related to the Diversity Plan;
- (ii)** Promulgate rules, regulations and procedures consistent with the Diversity Plan;
- (iii)** Evaluate RSMP projects and, where this Plan would otherwise require the inclusion of the Goals set forth herein in the Contract, recommend to the Board whether and to what extent the Goals should apply to any given project;
- (iv)** Verify EBE’s are appropriately certified in accordance with the provisions set forth by recognized certification agencies. ICO shall determine whether a firm qualifies as an SBE upon review of pertinent financial and other supporting records;
- (v)** Develop, maintain and make available a database of certified EBE’s;
- (vi)** Attend pre-bid, pre-award, post-bid and bid-award meetings;
- (vii)** Conduct a pre-job meeting with all Contractors and subcontractors describing the administrative process of the project and the Goals;
- (viii)** Receive and investigate written complaints from Bidders and Contractors;
- (ix)** Notify all parties of the right to review any decision of the ICO;
- (x)** Provide recommendations to the Board, Program Manager and other pertinent personnel to effectuate the policies and objectives of this Diversity Plan;
- (xi)** Prepare and submit monthly, quarterly and annual reports to the Board; and
- (xii)** Perform other tasks necessary to fulfill the above duties and to carry out the intent of the RSMP.

**(b) Workforce and Business Development (EBE Participation) Duties**

In order to achieve the development of a diverse workforce and EBE participation for the Program, the ICO shall do the following:

- (i)** Develop a methodology that assists contractors, suppliers, professional service firms, or any other businesses providing goods and services to the Program to meet the workforce diversity Goals of the Program and the minimum standards to be attained when providing such goods and services to the Program.
  - a.** An independent compliance program that monitors performance of contractors, suppliers, and professional service firms.
  - b.** Regular monthly reporting process to the Board setting forth the results of all employment and compliance activity and dispute resolution activities.
- (ii)** Monitor the participation of EBE's in RSMP Contracts. Such monitoring shall include, but is not limited to, a statistical analysis of each commodity, construction trade and professional services, financial services, employment compliance monitoring at issue and a determination as to whether in any such classification there is utilization of minorities and women in a manner that is proportioned to their availability range. While this monitoring function may be performed on an ongoing, as-needed basis after the completion of construction, the ICO will provide monthly, quarterly and annual written reports to the Board during preconstruction and construction phase and post-construction phase.
- (iii)** The ICO will gather statistical data and report to the Board a summary of the purchases and contracts placed with EBE's for the period and the relative percentage to the total of purchases and contracts for that period. All reports submitted shall specify the percentage of EBE's that are MBE, WBE, DBE and/or SBE as defined herein, with each category reported separately. Payments made to non-certified firms shall be included as a separate set of figures for purposes of tabulating the total contract dollars paid to EBE's.
  - a.** The reports will emphasize quantity and quality of EBE involvement by dollar volume. Reporting will serve the dual purpose of giving credit where due and highlighting areas needing additional effort. Monthly expenditure reports to the Board shall include information relevant to purchasing efforts based on ethnicity and gender.

**(iv)** As an aide to Bidders, the Board or ICO may refer Bidders to various websites, EBE certifying entities and/or listings identifying certified EBE firms working in relevant business categories. For any EBE firm proposed by the Bidder, whether or not such firm is included in any courtesy information provided by the ICO, the Bidder must submit acceptable proof of the certification of each EBE firm for the ICO's review. An EBE's inclusion on any list provided by the ICO or any other source is not a representation that the EBE is qualified to do the work, which is solely in the determination of the Bidder/Contractor.

- a.** For example, New York State-certified contractor information may be found on the below websites:
  - i.** [www.ny.newnycontracts.com](http://www.ny.newnycontracts.com) - NYS ESD M/WBE Directory
  - ii.** [www.nysucp.net](http://www.nysucp.net) - NYS BizNet DBE Directory
  - iii.** [www.esd.ny.gov/mwbe.html](http://www.esd.ny.gov/mwbe.html) - NYS Empire State Development (MBE and WBE certification)
  - iv.** [www.dot.ny.gov/main/business-center/civil-rights/general-info/dbe-certification](http://www.dot.ny.gov/main/business-center/civil-rights/general-info/dbe-certification) - NYS DOT (DBE certification)

#### **Article IV. Compliance with Diversity Plan Goals**

##### **4.01 Requirements for Bidders and/or Contractors**

- (a)** Bidders on all RSMP Contracts exceeding the monetary thresholds to which the Goals herein apply must submit such Compliance monitoring forms (the "DP Forms") as are specified herein and included in Section 2 of this document, or as further required by the Contract and/or by the ICO.
- (b)** Failure to complete the DP Forms or adequately demonstrate compliance with Plan Goals or Good Faith Efforts may be grounds for the Board upon recommendation of the ICO to reject a bid or disqualify a Bidder.
- (c)** The Board reserves the right to modify the DP Forms from time to time during Phase 2 based on its experiences during the Program and on the advice of the Independent Compliance Officer ("ICO").
- (d)** Any agreement between a Bidder/Contractor and an EBE in which the EBE promises not to provide subcontracting quotations to another Bidder/Contractor is prohibited. Violation of this prohibition may be grounds to reject a bid, or exercise remedial actions permitted by the Contract or by this Plan.
- (e)** The ICO may request that the Bidder or Contractor supply additional information within a reasonable timeframe to perform a review and assess whether goals have been adequately stated, and/or maintained throughout Contract performance.

##### **4.02 Consideration of Bids**

- (a)** All Bidders shall use Good Faith Efforts to achieve business development goals through second tier participation (subcontractor work).
- (b)** The ICO will determine the acceptability and sufficiency of all DP Forms and other information required to be submitted by Bidders.
  - (i)** Any deficiency in a Bidder's DP Forms will be noted by the ICO and must be cured (if permitted by the Board's bidding policy and applicable law), or the bid may be rejected.
- (c)** Proposed EBE utilization shall become an additional factor considered in the evaluation of bids, in addition to, but not limited to all other generally accepted considerations.
- (d)** The ICO shall evaluate the apparent low Bidder's Good Faith Efforts for Compliance with Goals. Upon a determination of Compliance, the ICO shall forward a recommendation to the Board for Contract award.
- (e)** If there is an issue of non-Compliance, the ICO shall notify the affected party in writing (hereinafter "Notice of Non-Compliance Review") setting forth with particularity the reasons for the finding.
- (f)** Any Bidder or prospective EBE subcontractor allegedly aggrieved by a finding of non-Compliance or by other provisions of this Program may make a written complaint to the ICO to request a review of such findings.
  - (i)** If promptly requested in writing, a post-bid review conference shall be held with the ICO, the apparent low Bidder or other complainant, and if applicable, the Project Manager.
  - (ii)** The ICO may thereafter determine whether to uphold or modify the prior finding, and make an appropriate recommendation to the Board.





## Article V. Implementation of Goals on RSMP Contracts

### 5.01 Duties of the Contractor

#### (a) Workforce Diversity Goals

- (i) All Contractors or other firms or persons providing goods or services to the Board that are required to meet the workforce development and diversity Goals set forth herein shall do the following:
  - a. Provide the ICO with a monthly workforce census and other employment and certified payroll records necessary to verify achievement of the workforce diversity goals and demonstrate compliance with the minimum standards. Employee zip code information must be listed on monthly EEO report.
  - b. Provide on-demand access and cooperation to the ICO to review records on-site and/or at work-site premises to validate workforce participation. This may include unannounced visits and on-the-spot interviews that the ICO and its inspectors may hold with workers at the job site or at off-site work premises to verify their work status and claimed job classifications.

#### (b) Business Development and Diversity Goals

- (i) Contractors shall exercise Good Faith Efforts to assist EBE firms to secure work on the Contract.
- (ii) If requested by the Board or ICO, the Contractor must submit a copy of its subcontract or agreement with the EBE firm with attached construction schedule describing the anticipated time periods that the EBE subcontractor will be utilized on the Project.
- (iii) During the term of the Contract, the Contractor shall submit monthly reports to the ICO demonstrating the continued participation and final percentage participation of the certified EBE firm(s). This verification should include monthly payment records, any change orders with the certified EBE and any other supporting data required by the ICO.
- (iv) Attainment of the Goals will be based on actual payment records and not solely on the stated EBE subcontract amount. Amounts claimed to be attributable to EBE's, but that are not substantiated by actual payment records, will not be counted toward the final Goal.
- (v) Contractors shall timely perform all other requirements of their Contract(s).

### 5.02 General Duties of Contractor

- (a) Contractor must submit records of payment (e.g., copies of checks) for EBE subcontract work, as well as certified payrolls and other documents required by any other terms of its Contract, to the ICO on a monthly basis to enable the Board and ICO to verify that EBE and workforce diversity percentage Goals were ultimately met.
- (b) The Contractor must keep records to substantiate compliance with the EBE and workforce diversity Goals and requirements for three (3) years following completion of its Contract, to be made available to the ICO and Board upon request.
- (c) Violations of this Diversity Plan shall constitute a material breach of Contract, and the measures defined in this Plan or by Contract may be taken against Contractors not in Compliance.
- (d) This Plan is intended only to provide guidance as to the general submission and evaluation processes. Bidders and Contractors should refer to the individual project specifications and Contract for detailed requirements. All Contracts shall include remedies and sanctions for noncompliance and identify a means by which inquiries and disputes about the Program requirement may be addressed.



## Article VI. Compliance Review and Procedures for RSMP Contracts

The Board, through the ICO, shall have the authority and power to enforce the provisions of this Diversity Plan. The ICO shall monitor Contractor's employment of the EBE firms and evaluate workforce participation. The Board reserves the right to revise the Program Goals during Phase 2 for new contracts, upon recommendation of the ICO.

### 6.01 ICO Oversight and Investigations

- (a) The ICO shall be authorized to determine the Contractors' compliance with Goals. Such a determination may be based on whether the Contractor is complying with the ICO-approved EBE utilization plan (DP-1); or other information made available to the Board through monitoring, onsite inspections, progress meeting, review of payrolls or other evidence.
- (b) Where Compliance with Workforce Diversity and/or Business Development Goals cannot be achieved through no fault and/or by act of omission of the Contractor, the Contractor shall present a plan to meet these Goals in an alternative manner acceptable to the ICO. In such case, the alternative plan shall be reviewed by the ICO for approval or rejection. The ICO will determine whether the alternative plan meets the intent and Goals and will notify the Contractor of the findings. The ICO shall notify the Board of any approved changes to the Contractor's plan.
- (c) The ICO may, upon review of documentation and other investigation, determine that the Contractor has failed to meet an obligation of the Plan and is therefore in violation of the Contract. Such determination may be based upon the Contractor's failure to achieve the Goals (or to undertake reasonable Good Faith Efforts to achieve the Goals), failure to provide sufficient documentation of Compliance, or otherwise failure to carry out the requirements of this Plan in the ICO's discretion.
- (d) A determination of the ICO acting on behalf of the Board is final, subject to the following appeal process. Any appeals therefrom must be formally submitted in writing to the Board within 5 days of the Contractor being notified of the ICO's determination. In the event of an appeal, the Contractor will have an opportunity to be heard at a meeting with members of the Board and the ICO.
- (e) After such a meeting takes place, the ICO may recommend and/or the Board may otherwise approve any of the sanctions for non-compliance set forth in Section 6.02(c).

### 6.02 Sanctions for Non-Compliance

- (a) The Board, through the action of the ICO, shall have the authority and power to enforce the provisions of this Plan. Failure to comply with the requirements may subject the non-complying party to administrative sanctions.
- (b) A violation of this Plan by a Contractor shall constitute a material breach of Contract and shall be enforceable as such by the Board as permitted by the terms of the Contract, in addition to or in conjunction with imposition of administrative sanctions set forth in this Plan.
- (c) The following sanctions and penalties are established for the enforcement of this Plan:
  - (i) Declaration of Non-Responsiveness: In addition to standard factors in bid evaluation, the Board may declare a bid non-responsive where it is determined that a Bidder has not filed some or all of the required DP forms or has failed to implement Good Faith Efforts.
  - (ii) Cancellation of Contract: The Board may declare a Contract null and void where, after such Contract has been awarded, an investigation by the ICO and Board determines that the Bidder's documents submitted to the Board contain false, fictitious, or fraudulent information.
  - (iii) Rejection of Future Bids: The Board may reject any or all future bids of a Bidder or Contractor until such time as such party shall have demonstrated that it is or shall come into Compliance with this Plan and the Contract.
  - (iv) Withholding Payment, Limited Suspension and Debarment: For falsifications, misrepresentations, or engaging in subterfuge to obtain a Contract, the Board may remove a Bidder or Contractor from its list of eligible firms entitled to do business with the Board for a period to be determined and/or withhold payment, upon reasonable notice and opportunity for due process hearing.
  - (v) Permanent Debarment: For repeated and/or egregious violations, the Board may determine that a Bidder or Contractor is no longer eligible firms to do business with the Board.

### 6.03 Guidelines for Imposition of Sanctions

- (a) General: No suspension shall be imposed by the Board except upon evidence of specific conduct on the part of an EBE participant (or proposed participant), Bidder or Contractor on an RSMP Contract that is inconsistent with or in direct contravention of the applicable provisions of this Plan and Program. Furthermore, the imposition and enforcement of sanctions shall be consistent with applicable State and Federal law.
- (b) Severity of Sanctions: In determining the length of any suspension, the Board shall consider the following factors:

- (i) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may have resulted from a misunderstanding on the part of the Contractor or EBE participant of the duties imposed on them by this Program or the Contract;
  - (ii) The number of specific incidences of failure by the Bidder or Contractor or EBE participant to achieve and maintain Compliance;
  - (iii) Whether the Bidder or Contractor or EBE participant has been previously subjected to sanctions;
  - (iv) Whether and to what extent the Bidder or Contractor or EBE participant has willfully failed or refused to provide the Board or the ICO with any information required by this Program, Contract, or applicable law;
  - (v) Whether the Bidder or Contractor or EBE participant has materially misrepresented any material facts in any filing or communication to the Board or the ICO or other agencies having legal authority over the parties; and
  - (vi) Whether any subsequent restructuring of the Bidder, Contractor or EBE participant's business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.
- (c) Length of Suspension: Suspensions may be for any length of time as determined by the Board. Suspensions in excess of one year shall be reserved for cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in contravention of applicable requirements, cases where the Bidder/Contractor or EBE participant has been previously suspended, or other similarly egregious conduct.

**Article VII. Severability**

If any of the provisions in this Plan or any section, clause, or other part thereof shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this Program shall not be affected by such invalidity. In the event of any conflict between this Plan and a Contract, the terms of the Contract shall prevail.





**ATTACHMENTS:**

**DIVERSITY PROGRAM (“DP”) FORMS**

The attached Diversity Program (DP) Forms are provided as an example of the type of forms used by the ICO and Board to monitor Compliance with the Goals of the Diversity Plan. The Board or ICO may update or modify these forms as appropriate or require additional or different forms for specific projects. Therefore, Bidders and Contractors must review the bid and Contract documents and shall not rely upon the forms attached hereto.

**INSTRUCTIONS FOR USE OF THE ATTACHED DP FORMS:**

**1. DP -1: SCHEDULE OF EBE PARTICIPATION**

This form is to be completed and submitted with the response to the RFP or Bid. The selected respondent shall be required to resubmit its final version showing all those contractors and or vendors it has entered into agreement with to meet the goals for participation by Eligible Business Enterprises (“EBE’s”), defined within the RSMP Diversity Plan (e.g., MBE’s, WBE’s, DBE’s and SBE’s).

**2. DP -2: EBE LETTER OF INTENT TO PERFORM**

This form is required of the selected contractor. The contractor must fill these out and secure signatures from all EBE firms being proposed as subcontractors.

**3. DP – 3: MONTHLY EMPLOYMENT UTILIZATION REPORT**

This form provides a monthly summary of employment manpower utilization. It is used to track the diversity of a particular contractor’s manpower and his responsiveness to the objectives illustrated in the Diversity Plan. The selected contractor is required to submit this form on a monthly basis.

**4. DP – 3: MONTHLY EBE UTILIZATION REPORT**

This form provides a monthly summary of work provided by EBE’s listed in the Utilization Plan (DP-1). The selected contractor is required to submit this form on a monthly basis.

**7. PROMISE OF NON-DISCRIMINATION**

**8. EBE ASSURANCE STATEMENT**

This form is to be completed and submitted with the response to the RFP or Bid.

**9. GOOD FAITH EFFORTS CHECKLIST**

This checklist must be completed to indicate the efforts that Bidder/ Proposer undertook in attempting to meet Diversity Program goal.



EBE UTILIZATION PLAN (DP-1)		Rochester Schools Modernization Program		
1. Project :		2. Bidding on Contract No./Contract Description		
3. Bidding contractor Name / Address / Phone No. / Fax No. / FEIN		4. Bid Submittal Date (MM/DD/YY)		
		<input type="checkbox"/> Original DP-1 <input type="checkbox"/> Revised DP-1 Rev. Date: _____, 20__		
<b>Project Goals: MBE - 17%    WBE - 10%    DBE - 3%    SBE - 3%</b>				
6. Name/Address/Phone No. and FEIN of Proposed EBE	7. Certified as EBE	8. Performance Category	9. Scope of Services to be provided	10. Proposed Dollar Amount
<b>The undersigned, being an authorized representative of the bidding company, hereby certifies that the above information is accurate, and that bidder has received a proposal from, or discussed with, each of the EBE firms listed herein prior to the submission of the accompanying bid.</b>				
[Bidding Company's Official Printed Name and Title]: _____				
Authorized Signature: _____ Print Name: _____ Title: _____ <b>The</b> <b>ICO may follow up with the EBE firms listed herein to verify that each either submitted a proposal to, or discussed with, the bidder the amounts indicated above.</b>				

**EBE LETTER OF INTENT TO PERFORM -- RSMP DP-2 FORM**

*This form is to be completed and submitted to the ICO by the apparent successful bidder.*

RSMP PROJECT: \_\_\_\_\_ BIDDER: \_\_\_\_\_

The undersigned has agreed to perform work in connection with the above project as:  
\_\_\_\_sole proprietorship (individual) \_\_\_\_partnership \_\_\_\_ corporation \_\_\_\_joint venture

Detailed description of work items to be performed by EBE: \_\_\_\_\_  
\_\_\_\_\_, for the following price: \$ \_\_\_\_\_.

Check all categories that apply to proposed EBE subcontractor: \_\_DBE \_\_ MBE \_\_WBE \_\_SBE

The total value of EBE participation is \$\_\_\_\_\_; which is \_\_\_\_\_% of the total Proposal.

(Type or Print Name of EBE subcontractor/Joint Venture) \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This EBE is currently certified as a MBE, WBE, DBE or SBE in the above-indicated performance category. **As evidence of this fact, attached is a certification letter from the appropriate certifying authority confirming the current MBE, WBE, DBE or SBE status in the applicable performance category. Failure to include said certification letter(s) to the satisfaction of the ICO is grounds for rejection of the proposed EBE.** Should any revisions to this pending agreement be necessary after the submission of this form, the bidding contractor shall immediately resubmit the necessary revised forms to the attention of the ICO for consideration. The undersigned will enter into a written agreement for the work described upon the approval of the ICO and award and execution of a contract with RJSCB to the bidder.

_____ Bidder Name	_____ Proposed EBE Name
_____ Address	_____ Address
_____ Phone Number	_____ Phone Number
_____ Company Officer Name & Title (Print)	_____ Company Officer Name & Title (Print)
____ / ____ / ____ Company Officer Signature Date	____ / ____ / ____ Company Officer Signature Date

For RJSCB Use Only

\_\_\_\_\_  
Owner Signature                      Date

\_\_\_\_\_  
ICO Signature                      Date

MONTHLY EMPLOYMENT UTILIZATION REPORT - DP-3/RSMP						ROCHESTER SCHOOLS MODERNIZATION PROGRAM											
1. Project :						2. Reporting Period (MMM / YYYY) ____ / ____											
3. Reporting contractor Name / Address / Phone No. / Fax No.						4. Reporting contractor is a ( )1st Tier or ( )Lower Tier contractor 4b. If lower tier, input to whom you are a subcontractor: _____											
<b>Project Goals : Minority - 22% Women - 8 %</b>																	
5. POSITION	EMPLOYEE	6a. Total All Hours by Service		6b. Black ( <i>non-Hispanic Origin</i> ) (Hours)		6c. Hispanic (Hours)		6d. Asian or Pacific Islander (Hours)		6e. American Indian or Alaskan Native (Hours)		7. Minority % of Total Hours	8. Female % of Total Hours	9. Total Number of Employees		10. Total Number of Minority Employees	
		M	F	M	F	M	F	M	F	M	F			M	F	M	F
Grand Total																	
<b>Certification Statement:</b> the below signed, being an authorized representative of the reporting company, hereby certifies that the above information represents all the hours worked by the reporting company's employees on the above noted Project site during the above noted month.																	
11. Print Company Official's Printed Name / Title Name: _____ Title: _____						12. Reporting Company Official's Signature _____						13. Date __ / __ / __		14. Page __ of __			

DDP-3A  
**MBE/WBE/DBE/SBE MONTHLY UTILIZATION REPORT**  
**Rochester Schools Modernization Program**

\_\_\_\_\_/\_\_\_\_\_  
 Month                      Year

**Project Name:** School 28  
**Contract No.:** \_\_\_\_\_  
**Contractor Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone No.:** \_\_\_\_\_  
**Fax No.:** \_\_\_\_\_  
**Change Orders to Date:** \_\_\_\_\_

**Original Contract:** \_\_\_\_\_  
**Current Contract:** \_\_\_\_\_  
**MBE % of Current Contract:** \_\_\_\_\_  
**WBE % of Current Contract:** \_\_\_\_\_  
**DBE % of Current Contract:** \_\_\_\_\_  
**SBE % of Current Contract:** \_\_\_\_\_

Subcontractor Name	MWBE DBE/ SBE	Original Subcontract	Change Orders to Date	Total Current Subcontract to MWBE/DBE/ SBE	Amount Paid to Date to MWBE/DBE/ SBE	Total Amt of Invoices Submitted to Date	Cancelled Checks Submitted to Date

1. DDP-3A is to be submitted monthly.
2. List all M/WBE/DBE/SBE subcontractors, even after their work is substantially complete.
3. When adding a subcontractor, attach a revised DDP-1 and DDP-2 to this form.
4. Attach invoices and cancelled checks to this form, if requested.

\_\_\_\_\_  
**Contractor Representative Signature**

**PROMISE OF NON-DISCRIMINATION**

KNOW ALL MEN BY THESE PRESENTS, that I/we, \_\_\_\_\_,  
Title(s) \_\_\_\_\_, Name of Company \_\_\_\_\_  
(hereinafter "Company"), in consideration of the privilege to submit Proposals on contracts funded, in whole or in part, by the Rochester Joint Schools Construction Board (herein, "RJSCB" or "Owner"), hereby consents, covenants and agrees as follows:

- (1) No person shall be excluded from participation in, denied the benefit of, or otherwise be discriminated against on the basis of race, color, national origin or gender in connection with any bid submitted to Owner or the performance of any contract resulting from;
- (2) That it is and shall be the policy of this Company to provide equal opportunity to all business persons seeking to contract or otherwise interested in contracting with this Company, including;
- (3) In connection herewith, I/We acknowledge and warrant that this Company has been made aware of, understands and agrees to make Good Faith Efforts to solicit EBE's to do business with this Company;
- (4) That the promise of non-discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption;
- (5) That the promises of non-discrimination as made and set forth herein shall be and are hereby deemed to be made a part of, and incorporated by reference into, any contract or portion thereof which this Company may hereafter obtain;
- (6) That the failure of this Company to satisfactorily discharge any of the promises of non-discrimination or Good Faith Efforts to attain the EBE utilization Goals and reporting requirements, as made and set forth in the Contract Documents, shall constitute a material breach of contract entitling the Owner to declare the Contract in default and to exercise any and all applicable rights and remedies, including but not limited to, cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Authorized Company Representative Signature)

**EBE ASSURANCE STATEMENT**

*To be filed on bidding company's letterhead and signed and dated by the Bidder.*

**Subject Proposal for** \_\_\_\_\_

The undersigned bidder, having submitted a proposal for the referenced project, if awarded the Contract, agrees that the EBE Utilization Plan (DP-1) submitted with the bid or as thereafter modified and approved by the ICO will be incorporated into the Contract upon submission of the EBE Letter of Intent to Perform. We are committed to ensure EBE participation in the manner indicated below as subcontractors, supplier or in joint venture partnership as follows:

**Representation of EBE Status**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone #: \_\_\_\_\_  
Fax#: \_\_\_\_\_  
Email: \_\_\_\_\_  
FEIN: \_\_\_\_\_

**Work to be performed:**

\_\_\_\_\_  
\_\_\_\_\_.

**Dollar amount:** \_\_\_\_\_  
**Percentage of the Total Bid amount:** \_\_\_\_\_

**This subcontractor represents that it *is / is not* a certified MBE/DBE/WBE/SBE (circle the appropriate status).**

**This sub contractor is a (circle one): Sole proprietorship / individual / corporation / partnership / a joint venture**

**Contractor/Bidder acknowledgement:**

The undersigned contractor/bidder represents that the above information is true and correct to the best of its knowledge:

Name of Contractor/Bidder firm: \_\_\_\_\_  
Authorized representative: \_\_\_\_\_  
Authorized signature: \_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_

**\*\* EBE Assurance statement should be submitted on bidder's letterhead and must signed by bidder.**

**GOOD FAITH EFFORTS CHECKLIST**

The Rochester Joint Schools Board (RJSCB) welcomes your participation in the Rochester School's Modernization Program (RSMP). Pursuant to the requirements of the RSMP and in consideration of the privilege to submit bids/proposals on contracts funded, in whole or in part, by RJSCB, I/WE, \_\_\_\_\_, by Owner/Principal \_\_\_\_\_,

HEREBY attest that we have exercised the following Good Faith Efforts in addition to my /our regular and customary solicitation process:

I/We have delivered written notice to three available certified EBE's for each potential subcontracting or supply category in the Contract AND all potential subcontractors or vendors which requested information on the Contract.

I/We have provided all potential subcontractors or vendors with adequate information as to plans, specifications, relevant terms and conditions of the Contract, bonding requirements, and the last date and time for receipt of price quotations.

I/We have attended a special meeting called to inform business and individuals of subcontracting or supply opportunities.

I/We have, in accordance with normal industry practices, divided the contract into economically feasible segments that can be performed by an EBE.

I/We have provided a written explanation for rejection of any potential subcontractor or vendor to the EBE/, including the name of the firm proposed to be awarded the subcontract or supply agreement, where price competitiveness is not the reason for rejection.

I/We have actively solicited, through sending letters or initiating personal contact, EBE's in all feasible and appropriate categories providing subcontracting opportunities for the contract under consideration.

I/We have utilized the services of available community organizations and associations, contractors' groups, and trade associations known to publicize contracting and procurement opportunities, for the purpose of obtaining assistance in the contacting and recruitment of EBE's for the RJSCB's contract under consideration.

I/We have advertised in publications of general circulation in the Rochester Metropolitan Surrounding Area and other media owned by, or otherwise focused or marketed to

EBE's, and the advertisement identifies and describes the specific subcontracting or other opportunity in reasonable detail.

I/We have conducted discussions with interested EBE's in good faith, and provided the same willingness to assist EBE's as has been extended to any other similarly situated subcontractor.

I/We have taken steps to ensure that all labor supervisors, superintendents, and other supervisory personnel are aware of and carry out the obligation to maintain a non-discriminatory work environment, free of harassment, intimidation and coercion at all construction sites, offices and other facilities to which employees are assigned to work.

Please identify below all subcontractors, suppliers, or a joint venture partner you invited to participate that declined.

1. Name of subcontractor/Vendor: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date of Offer to Participate: \_\_\_\_\_  
Date Offer was declined: \_\_\_\_\_  
Reasons Given for Declining: \_\_\_\_\_

Please note all categories of ownership that apply:

- \_\_\_ Minority-Owned Business Enterprise
- \_\_\_ Disadvantaged Business Enterprise
- \_\_\_ Small Business Enterprise
- \_\_\_ Women-Owned Business Enterprise

2. Name of subcontractor/Vendor: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date of Offer to Participate: \_\_\_\_\_  
Date Offer was Declined: \_\_\_\_\_  
Reasons Given for Declining: \_\_\_\_\_

Please note all categories of ownership that apply:

- \_\_\_ Minority-Owned Business Enterprise
- \_\_\_ Disadvantaged Business Enterprise
- \_\_\_ Small Business Enterprise
- \_\_\_ Women-Owned Business Enterprise



3. Name of subcontractor/Vendor: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Address \_\_\_\_\_  
Date of Offer to Participate: \_\_\_\_\_  
Date Offer was Declined : \_\_\_\_\_

Reasons Given for Declining:  
\_\_\_\_\_

Please note all categories of ownership that apply:

- \_\_\_ Minority-Owned Business Enterprise
- \_\_\_ Disadvantaged Business Enterprise
- \_\_\_ Small Business Enterprise
- \_\_\_ Women-Owned Business Enterprise

4. Name of subcontractor/Vendor: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Address \_\_\_\_\_  
Date of Offer to Participate: \_\_\_\_\_  
Date Offer was Declined: \_\_\_\_\_  
Reasons Given for Declining:  
\_\_\_\_\_

Please note all categories of ownership that apply:

- \_\_\_ Minority-Owned Business Enterprise
- \_\_\_ Disadvantaged Business Enterprise
- \_\_\_ Small Business Enterprise
- \_\_\_ Women-Owned Business Enterprise Name of subcontractor/Vendor