



Monroe County

Minority and Women Business Enterprise (M/WBE) Certification Program and Utilization Administrative Rules and Regulations

Issued by the Monroe County Department of Diversity, Equity & Inclusion
Effective: January 1, 2022

Monroe County
Minority and Women Business Enterprise (M/WBE) Certification Program
Administrative Rules and Regulations

A. Introduction

The rules and regulations of the Monroe County Minority and Women Business Enterprise (“M/WBE”) Program are promulgated in accordance with Local Law No. 6 of 2021 (“Gantt’s Law”), which has been codified as Chapter 26 of the Monroe County Code. The purpose of the M/WBE Program is to encourage increased participation of minority and women-owned businesses in County government contracts and provide a means for County agencies to meet the M/WBE goals set forth in Gantt’s Law.

The Monroe County Department of Diversity, Equity, and Inclusion has administrative responsibility and oversight of the M/WBE Program.

B. Definitions— Unless otherwise defined herein, all capitalized words shall have the meaning ascribed to them under § 26-4 of the Monroe County Code.

- (1) **County**—Monroe County.
- (2) **County Certified Contractors**—Contractors that have been certified under the Monroe County M/WBE Certification Program and/or Monroe County Rapid Approval Program.
- (3) **County M/WBE Directory**—a directory of County Certified Contractors that have been certified under the Monroe County M/WBE Certification Program and/or Monroe County Rapid Approval Program.
- (4) **Department**—the Monroe County Department of Diversity, Equity, and Inclusion.
- (5) **Director**—the Director of Diversity, Equity and Inclusion - Chief Diversity Officer or his/her designee.
- (6) **Monroe County M/WBE Certification**—an M/WBE certificate issued by Monroe County as part of the Monroe County M/WBE Certification Program.
- (7) **Monroe County M/WBE Certification Program**—a County-wide program to issue local certifications for M/WBEs.
- (8) **Monroe County Rapid Approval Certification**—an M/WBE certificate issued by Monroe County as part of the Monroe County Rapid Approval Program.

- (9) **Monroe County Rapid Approval Program**—a County-wide M/WBE certification program for Contractors already certified under an eligible M/WBE program.
- (10) **Respondents**—prospective Contractors that submit a bid, expression of interest, qualifications, proposal, or any other response to a County Solicitation.
- (11) **County Solicitation**—bid documents, expressions of interest, request for qualifications, request for proposals, and/or any other procurement document released by the County.
- (12) **State M/WBE Directory**—NYS Directory of Certified Minority and Women Owned Business Enterprises

C. Application

Gantt’s Law shall apply to all County Contracts. The County’s M/WBE goals do not replace state, federal, or grantor goals, but may supplement those goals when permissible.

D. County-wide M/WBE Goals

(1) The County contracting participation goals for MBEs and WBEs, as required by Gantt’s Law §26-7, are as follows:

- i. The County shall have a participation goal of twelve percent (12%) of the total value of County Contracts in a given year for Minority-Owned Business Enterprises that are Certified Businesses.
- ii. The County shall have a participation goal of three percent (3%) of the total value of County Contracts in a given year for Women-Owned Business Enterprises that are Certified Businesses.

(2) The above goals shall coincide with the County’s good faith efforts to utilize local labor, veteran-owned businesses, and create jobs through County contracts.

E. Monroe County M/WBE Certification

(1) The Monroe County M/WBE Certification Program is hereby established under the administration of the Department.

(2) A business may be eligible for participation in the County’s M/WBE Certification Program if it meets all of the following criteria:

- i. It is a Minority Owned Business Enterprise or Women-Owned Business Enterprise;

ii. The business has been in operation for at least six (6) consecutive months at time of application for certification. Notwithstanding the foregoing, businesses in operation for less than twelve (12) consecutive months may be required to undergo a site visit or in-person interview to complete the certification process; and

iii. The business has established through documentary evidence that it is qualified to provide goods and/or services to the County.

(3) The business must submit the following proof to demonstrate eligibility for participation in the County's M/WBE Certification Program:

Eligibility Criteria	Required Proof
Citizenship/Minority Group Member/Gender	
Eligible Minority Group	Monroe County Ethnicity Attestation Clause
Gender	Birth Certificate, US Passport, or State Driver's License
U.S. Citizenship	US Passport, Birth Certificate, NYS Enhanced Driver's License, or US Naturalization Certificate
Permanent Resident Alien Status	Permanent Resident Alien Card or other documentation
Business Information	
Sole Proprietorship	Business Certificate from County Clerk
Partnership	Business Certificate from County Clerk
Limited Liability Company	Articles of Organization and Operating Agreement
Corporation	Certificate of Incorporation, Corporate By-Laws, Stock Certificates, and Stock Ledger
Business Operating Location	Current lease or utility bill in the firm's name
Previous Year's Business Tax Return	Corporate tax returns (Personal taxes if a Sole Proprietor)
Proof of business activity	Contracts, invoices, purchase orders, payments for recent work
Licenses or Certifications	Provide proof of current License/Certification
Business Profile	Basic company Information including product or services you intend to sell
Third-Party M/WBE Certifications	A copy of certification letter or other proof of certification by one or more of the entities listed in Section G.
Credentials/Licensing	
Current Resume	Must include your role in the applicant business
Personal License/Certifications	Provide proof of current License/Certification that are used for your business

F. Certification Procedures

(1) Businesses interested in participating in the County's M/WBE Certification Program shall submit applications via the County's M/WBE Certification Portal, available at: <https://www.monroecounty.gov/dei-mwbe>

(2) The Department will review fully submitted applications submitted via the M/WBE Certification Portal and will notify the applicant within 30 days of submission whether: (i) the application is complete; or (ii) any additional, missing, or incomplete information is necessary to complete the application.

(3) Applicants shall be solely responsible for providing any additional, missing, or incomplete information to complete the application. The Department shall not process an application for a Monroe County M/WBE Certification unless and until the application is complete.

(4) Within 60 calendar days of the Department notifying an applicant that its application is complete, the Department will provide the applicant with a written notice of determination approving or denying certification and, in the event of a denial, a statement setting forth the reasons for such denial.

(5) Approved businesses will be added to the County M/WBE Directory.

(6) Monroe County M/WBE Certifications will be valid for five (5) years from the date of issuance, subject to the annual recertification requirements set forth in Section I, below.

G. Monroe County Rapid Approval Program

(1) The Monroe County Rapid Approval Program is hereby established under the administration of the Department.

(2) A business may be eligible for participation in the Monroe County Rapid Approval Program if holds a current M/WBE certification, with a minimum of 12 months remaining on the current certification, with at least one of the following:

- i. New York State M/WBE Certification Program
- ii. Small Business Administration 8(a) Business Development Program
- iii. US Small Business Administration WOSB Program
- iv. New York State Disadvantaged Business Enterprise Program
- v. Buffalo Erie County/Joint Commission M/WBE Program
- vi. New York Port Authority M/WBE Program
- vii. City of Albany M/WBE Program
- viii. City of Syracuse M/WBE Program
- ix. City of New York M/WBE Program
- x. New York Power Authority M/WBE Program
- xi. MTA M/WBE Program
- xii. National Minority Supplier Diversity Council

- xiii. Women's Business Enterprise National Council
- xiv. US Women's Chamber of Commerce
- xv. National Women's Business Owners Corporation
- xvi. The El Paso Hispanic Chamber of Commerce

H. Rapid Approval Program Certification Procedures

(1) Businesses interested in participating in the Monroe County Rapid Approval Program shall submit applications via the County's M/WBE Certification Portal, available at: <https://www.monroecounty.gov/dei-mwbe> , including proof of current certification status.

(2) The Department will review fully submitted applications submitted via the M/WBE Certification Portal and will notify the applicant within 30 days of submission whether: (i) the application is complete; or (ii) any additional, missing, or incomplete information is necessary to complete the application.

(3) Applicants shall be solely responsible for providing any additional, missing, or incomplete information to complete an application. The Department shall not process an application for a Monroe County Rapid Approval Certification unless and until the application is complete.

(4) Within 20 calendar days of the Department notifying an applicant that its application is complete, the Department will provide the applicant with a written notice of determination approving or denying certification and, in the event of a denial, a statement setting forth the reasons for such denial.

(5) Approved businesses will be added to the County M/WBE Directory.

(6) Rapid Approval Certifications will expire on the same expiration date of the certification used for the Rapid Approval Program, subject to the annual recertification requirements set forth in Section I, below.

I. Annual Recertification

(1) County Certified Contractors shall submit an annual re-certification form on or before February 1st each year verifying that there has been no change to the Certified Contractor's eligibility requirements.

(2) County Certified Contractors are required to notify the M/WBE Utilization Manager of any of the following changes to the business within 60 days of such change:

- i. Change in ownership or control.
- ii. Change in business structure.
- iii. Change of address and or telephone numbers.
- iv. Loss or suspension of other M/WBE certification(s).
- v. Revocation of professional license(s).

- vi. Addition/deletion of products and/or services provided.
- vii. Any event that may adversely affect the business's ability to provide services as a Certified Contractor.

(3) The M/WBE Utilization Manager shall review notices of change from County Certified Contractors. In the event the M/WBE Utilization Manager determines such change warrants a suspension or revocation of the Monroe County M/WBE Certification and/or Monroe County Rapid Approval Certification, such suspension or revocation shall be governed by Section K, below.

J. M/WBE Directories

(1) The Department shall maintain a County M/WBE Directory publicly available on the County's website, as well as a link to the State M/WBE Directory. The County M/WBE Directory will include the following information on County Certified Contractors:

- i. Business Name
- ii. Business Address/Phone
- iii. Point of Contact
- iv. Email address
- v. Phone number
- vi. Company Description
- vii. Services Provided (Plain Language)
- viii. North America Industry Classification System (NAICS) Codes identifying product/service offerings identified
- ix. Construction Specifications Institute Codes for product/service offerings (Construction related contractors only)

K. Suspension and Revocation of Certification

(1) The Department may suspend or revoke a Certified Contractor's Monroe County M/WBE Certification and/or Monroe County Rapid Approval Certification upon a finding that:

- i. The Certified Contractor is no longer owned and/or controlled by Minority Group Members or Women or otherwise does not qualify to be a M/WBE.
- ii. The Certified Contractor or one of its principals is convicted of fraud or other unethical business practices.
- iii. The Certified Contractor violated any term of the County contract.
- iv. The Certified Contractor fails to successfully perform on County contracts or subcontracts.
- v. The Certified Contractor is found liable for violating any County, State, or federal law, including but not limited to anti-discrimination and wage and hour laws.
- vi. Any other basis establishing sufficient cause for suspension or revocation, as determined by the Director.

(2) The Director shall be responsible for investigating whether cause exist to suspend or revoke the contractor's certification.

(3) If there is finding of sufficient cause, the Department will provide written notice to the Certified Contractor at least 30 days prior to the suspension or revocation action. The written notice must include the following:

- i. a detailed explanation of the basis for the Department's findings;
- ii. a description of the corrective actions the Certified Contractor may take to prevent the suspension or revocation of its certification;
- iii. notice of the Certified Contractor's right to request a meeting with the M/WBE Utilization Manager to review the findings; and
- iv. notice of the Certified Contractor's right to appeal the findings to the Director.

(4) The Certified Contractor shall be provided a written response to the notice by the deadline set forth therein.

(5) Failure to respond to the notice will result in the suspension or revocation of the Certified Contractor's certification without further review by the Director.

L. Appeals

Upon the denial, suspension or revocation of a business's application for a Monroe County M/WBE Certification and/or Monroe County Rapid Approval Certification, said business shall be entitled to an appeal and review of such determination in accordance with the following procedures:

(1) The business must submit a written request for review and appeal of the determination to the Diversity Action Plan Advisory Committee within 30 calendar days of receipt of the notice of such determination.

(2) The business must serve a copy of the written appeal upon the Director and the Committee by personal service or certified mail with return receipt requested.

(3) The Committee shall, within 60 days of receipt of the business's written request, conduct a hearing and issue written recommendations to the Director to affirm, reverse, or modify the Department's determination.

(4) The Director shall, within 30 days of the issuance of the Committee's recommendation, by order, accept, reject, or modify such recommendation setting forth the reasons therefor.

(5) The Director shall serve a copy of the final order and reasons therefor upon the business by personal service or by certified mail with return receipt requested.

M. Utilization Plans

(1) The County may determine, in its sole discretion, to require, permit, and/or prohibit the use of subcontracting in any County Contract, as well as waive any such prohibition, permission, and/or requirement set forth in a County Solicitation.

(2) The Department, the Monroe County Purchasing Manager, and the County department requesting the contracted goods or services shall review the scope of work for a County Solicitation to determine if there is sufficient scope of work to allow for subcontracting.

(3) Respondents shall, when required in a County Solicitation, submit a Utilization Plan on a form developed by the Department with their initial bid and/or procurement response. The County may require a contractor to indicate, within a Utilization Plan, what measures and procedures it intends to take to comply with the provisions of Gantt's Law.

(4) When the County determines, in its sole discretion, that it is in the County's interest to permit subcontracting, Respondents shall use best efforts to solicit active participation by enterprises identified in the County M/WBE Directory and State M/WBE Directory.

(5) The Department shall review Respondents' Utilization Plans within a reasonable period of time, but in any event within ten (10) business days of receiving Respondents' Utilization Plan.

(6) The Department shall notify a Respondent in writing within ten (10) business days of receiving Respondent's Utilization Plans as to any deficiencies contained in the Respondent's Utilization Plan. The notice shall include the timeframe in which the Respondent must cure such deficiencies, which shall not be longer than five (5) business days.

(7) Respondents that are Certified Businesses may count self-performed work in their Utilization Plan. In the event a Respondent is a MBE, such Respondent shall remain subject to the goal of subcontracting at least three percent (3%) of the total cost of services to a WBE. In the event a Respondent is a WBE, such Respondent shall remain subject to the goal of subcontracting at least twelve percent (12%) of the total cost of services to a MBE. In the event a Respondent is both a MBE and WBE, the Respondent shall choose one of the two designations and shall remain subject to the subcontracting best efforts requirement for the designation not chosen.

(8) The selected Contractor shall submit periodic compliance reports relating to the operation and implementation of any Utilization Plan.

(9) Any amendments to an approved Utilization Plan shall be subject to the review and approval of the Department.

N. M/WBE Participation

(1) The following participation by M/WBEs may be counted toward meeting the

M/WBE contract goals, subject to all of the following conditions:

i. *Commercially Useful Function*: The Contractor is responsible for ensuring that M/WBEs working on the contract perform a commercially useful function. A M/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out his/her responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice (except where such practices are inconsistent with the M/WBE regulations). Arrangements that erode the ownership, control, or independence of the M/WBE or in any other way does not meet the commercially useful function requirement, the Contractor shall receive no credit toward the goal.

ii. *Work Force*: The M/WBE firm must employ a work force (including administrative and clerical) separate and apart from that employed by the Contractor, other subcontractors on the project, or their affiliates. This does not preclude the employment by the M/WBE of an individual that has been previously employed by another firm involved in the contract, provided that the individual was independently recruited by the M/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the M/WBE shall not be allowed.

iii. *Supervision*: All work performed by the M/WBE must be controlled and supervised by the M/WBE without duplication of supervisory personnel from the Consultant/ Contractor or other subcontractors. This does not preclude routine communication between the supervisory personnel of the M/WBE and other supervisors necessary to coordinate the work of the contract.

iv. *Equipment*: M/WBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. However, no more than 50% of the equipment required to perform the work of the subcontractor may be obtained from the Contractor, other subcontractors on the project, or their affiliates. If the M/WBE obtains equipment from any of those sources, the County of Monroe shall receive from the M/WBE documentation demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include, but not be limited to, copies of the rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment.

O. Waivers

(1) Where it appears that a Respondent, after making its best efforts, cannot comply with M/WBE participation requirements, a Respondent may submit a written application with its response or bid requesting a partial or total waiver of such requirements, setting forth the reasons for the Respondent's inability to meet any or all of the participation requirements and an explanation of the efforts undertaken by the Respondent to obtain the required participation of Certified Businesses.

(2) The waiver request must include the following information as a minimum:

- i. List of Certified Businesses solicited to provide bids. Respondents must use current County M/WBE Directory and State M/WBE Directory and not just internal databases or list.
- ii. Methods used to solicit Certified Businesses.
- iii. Time/date stamped evidence of when/how bids were solicited.
- iv. Time/date stamped evidence of searches conducted for Certified Businesses
- v. Copies of all bids (M/WBE and non-M/WBE) received.
- vi. Evidence of a minimum of 10 business days given to bidders to submit quotes.
- vii. Other steps taken to demonstrate best efforts, as listed in subsection (3), below.

(3) The Department will consider the number and types of Certified Businesses listed on the County and NYS directories, the total dollar value of the County contract, the scope of work to be performed, and the project size and term to evaluate utilization waiver applications to determine if the Respondent's efforts are sufficient to grant the waiver. Efforts to obtain M/WBE participation that are merely pro forma are not best efforts, nor are efforts that, even if they are sincerely motivated, given all relevant circumstances, could not reasonably be expected to produce a level of M/WBE participation sufficient to meet the goal. In order to evaluate a Respondent's best efforts, the Department will consider the quality, quantity, and intensity of the different kinds of efforts that the Respondent has made. Examples of best efforts to obtain M/WBE participation include, but is not limited to:

- i. Advertising in general circulation media, trade association publications, and/or publications focused on minorities or women.

- ii. Market research to identify small business contractors and suppliers and solicit, through all reasonable and available means, the interest of all Certified Businesses that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events; advertising and/or written notices; posting of notices of sources sought and/or requests for proposals, written notices or emails to all Certified Businesses listed in the County M/WBE Directory and State M/WBE Directory that specialize in the areas of work desired and which are located in the area or surrounding area.

- iii. Soliciting M/WBE interest as early in the bidding process as practicable, to allow the M/WBEs to respond to the solicitation and submit a timely offer. The Respondent shall determine with certainty if the M/WBEs are interested by taking appropriate steps, including following up the initial solicitation with at least one additional solicitation via a different media. The Respondent shall solicit quotes from qualified firms listed in the County M/WBE Directory and State M/WBE Directory, regardless if they have their own database of M/WBE firms. The Respondent shall keep records of efforts to solicit and negotiate with M/WBEs as evidence of best efforts. These records must include the firms contacted, method of contact, evidence of actions, and contact information of individuals that were sent outreach efforts. Certified Businesses should be given a minimum of ten (10) business days to submit quotes.

iv. Selecting portions of the work to be performed by Certified Businesses in order to increase the likelihood that the M/WBE goal will be achieved. This includes, where appropriate, either breaking down operations or combining like or related operations into logistically and economically feasible units to facilitate M/WBE participation, even when the Respondent might prefer to perform these work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates M/WBE participation.

v. Providing interested Certified Businesses with adequate information on where and how to obtain the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their timely offer.

vi. Negotiating in good faith with interested Certified Businesses. It is the Respondent's responsibility to make a portion of the work available to M/WBE subcontractors and material suppliers and to select those portions of the work or material needs consistent with the available M/WBE subcontractors and material suppliers, to facilitate M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of Certified Businesses that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for Certified Businesses to perform the work.

vii. Making efforts to assist interested Certified Businesses in obtaining bonding, lines of credit or insurance as required by the Department or the Respondent.

viii. Making efforts to assist interested Certified Businesses in obtaining necessary equipment, supplies, materials, or related assistance.

(4) The fact that there may be some additional costs involved in finding and using Certified Businesses is not in itself sufficient reason for a Respondent's failure to meet the contract M/WBE goal, as long as such costs are reasonable. The ability or desire of a Respondent to perform the work of a contract with its own organization does not relieve the Respondent of the responsibility to make best efforts.

(5) A Respondent's inability to find a replacement Certified Businesses at the original price is not sufficient to support a finding that best efforts have been made to replace the original Certified Business. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make best efforts to find a replacement Certified Business, and it is not a sound basis for rejecting a prospective replacement Certified Business's reasonable quote.

(6) If the Department determines that a Respondent has failed to meet the good faith effort requirements, the Respondent will be notified in writing of the waiver disapproval within 30 days of the application therefor. The Respondent may appeal the decision in writing to the Director. The written appeal must be received within fourteen (14) days of receipt of the waiver denial letter.

(7) In the event that the Director fails or refuses to issue a requested waiver to a Respondent within 30 days of the application therefor, or if the Director denies such application in whole or in part, the Respondent may file an appeal with the Committee, setting forth the facts and circumstances giving rise to the Respondent's appeal. The Respondent shall serve a copy of such appeal upon the Director and the Committee by personal service or by certified mail, return receipt requested within fourteen (14) days of receipt of the waiver denial letter. The Director shall be afforded an opportunity to respond to the appeal in writing. The Committee shall render its decision on the appeal within 30 days of being served with the appeal.

P. Disqualification

Without limiting other grounds for the disqualification of bids or proposals on the basis of nonresponsiveness and/or nonresponsibility, the County may disqualify a Respondent's bid or proposal as being nonresponsive and/or nonresponsible for: (1) failure to provide a Utilization Plan; (2) failure to remedy noted deficiencies in the Respondent's Utilization Plan within a period of time specified in the Department's notice of deficiency; or (3) failure to obtain a waiver, provided pursuant to Section O.

Q. Change Orders and Amendments

(1) In the event a Contract is amended (including but not limited to change orders) the Contractor shall update and revise its Utilization Plan to maintain the same percentage of M/WBE utilization as projected under the original Contract amount. This shall apply when one of the following circumstances exist:

- i. For Contracts with a total value of less than \$100,000 when an amendment or change order is more than 25% of the total contract value.
- ii. For Contracts with a total value of more than \$100,000 when an amendment or change order is more than \$50,000.

R. County Responsibilities

(1) Tracking. The County will be responsible for tracking of M/WBE spending in County Contracts and will issue an annual report to the County Executive.

(2) The County shall identify M/WBE spending on County Contracts on quarterly basis from each Department, which shall include, at a minimum:

- i. Contract/purchase order title and number
- ii. Prime contractor name.
- iii. M/WBE subcontractor name.
- iv. Quarterly M/WBE spending.
- v. Year to date M/WBE contract spending in relation to approved Utilization Plan.
- vi. Information on removal/non-use of M/WBE identified on the approved

Utilization Plan.

(3) Each County department shall identify contracts for which Certified Businesses are most likely to be available and may set forth additional requirements for outreach to Certified Businesses particularly with regard to such contracts.

(4) The Department will maintain a list of upcoming contracts on the public county website, to the extent practicable, that is anticipated to have M/WBE participation goals.

(5) The Department will provide assistance to potential bidders in connecting with Certified Businesses

(6) The Department will host an annual forum to provide training and up to date information to the M/WBE community on trends within government contracting. The event will be held annually in a manner where there is no cost to attend. The following services will be provided during the forum:

- i. Department Procurement Forecast/Needs Briefing
- ii. Training Sessions - Various topics
- iii. Networking Sessions
- iv. Government to Business Matchmaking