

# New York State Vendor Responsibility

## Definitions List

---

### **Administrative Proceeding**

---

Any government agency proceeding in which a determination of the legal rights, duties or privileges of named parties thereto is required by law to be made only on a record and after an opportunity to be heard.

### **Affiliate**

---

#### For Profit:

- a) Any business entity in which the submitting Business Entity holds 50% or greater ownership interest; and/or
- b) Any business entity or organized group of principal owners or officers holding 50% or greater ownership interest of the submitting Business Entity; and/or
- c) Any business entity which is owned
  - i) 50% or more by the same business entity or group described in (b) or
  - ii) by an individual holding 50% or greater ownership in the submitting business entity; and/or
- d) Any business entity in which the submitting Business Entity directs or has a right to direct such business entity's daily operations, regardless of percentage of ownership interest.

#### Not-For-Profit:

Any business entity (not-for-profit and for profit) which is entitled to exercise the membership rights of participation in the election of board members, participation and service on the committees of the not-for-profit and approval of changes to a business entity's governing documents, and any company or other legal entity which controls, or is controlled by, or is under common control with the not-for-profit business entity.

#### Construction:

- a) Any business entity in which the submitting Business Entity holds 5% or greater ownership interest; and/or
- b) Any business entity or organized group of principal owners or officers holding 5% or greater ownership interest of the submitting business entity; and/or
- c) Any business entity which is owned
  - i) 5% or more by the same entity or group described in (b) or
  - ii) by an individual holding 5% or greater ownership in the submitting business entity and/or
- d) Any business entity in which the submitting Business Entity directs or has a right to direct such entity's daily operations, regardless of percentage of ownership interest.

### **Business Entity**

---

#### For Profit:

A Corporation, Partnership (including General, Limited or Limited Liability Partnership), Limited Liability Company, Sole Proprietor, Unincorporated Association, or any other business organization.

#### Not-For-Profit:

A Not-for-Profit Corporation, Foundation, Partnership, Limited Liability Company, Unincorporated Association, or any other business organization.

# New York State Vendor Responsibility

## **Business Entity Leaders**

---

An officer, general partner, managing partner, manager of an LLC, and/or director.

## **Business Entity Officials**

---

Business Entity Officials - Individuals serving in an executive capacity, as staff and/or corporate officers, who have decision-making authority and responsibility for the oversight of a business entity; includes individuals who perform the functions of chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), and/or chairman of the board, or their equivalents. (Equivalent titles may include, but are not limited to, President, Executive Vice President, Treasurer, Secretary, Managing Trustee)

### Instructions:

Corporations: Identify the Business Entity Officials.

Partnerships: Identify the Senior Managing Partners, and any other partners with powers equivalent to Business Entity Officials.

Limited Liability Companies (LLC): Identify the Executive Managing Directors/Members, Senior Managing Directors/Members, and any other members/managers with powers equivalent to Business Entity Officials.

Sole Proprietors: Identify the individual who is the sole owner and manager of the business entity, or other persons, including staff, with powers equivalent to Business Entity Officials.

Unincorporated Associations: Identify the Executive Committee Members, including President, Vice President, Secretary and Treasurer, Executive or Managing Trustees, or other persons, including staff, with powers equivalent to Business Entity Officials.

## **CIK Code**

---

The Central Index Key (CIK) is a designation number established for each entity which has filed disclosures with the Securities and Exchange Commission (SEC). It is used on the SEC's computer systems to identify corporations and individual people who have filed disclosure with the SEC.

## **Certificate of Good Standing**

---

Certificate issued by the Business Entity's controlling jurisdiction indicating that the Business Entity is current with the filing requirements of the jurisdiction, and authorized to transact business within the controlling jurisdiction.

## **Charities Registration Number**

---

Number issued by the New York State Attorney General's Charities Bureau to qualified not-for-profit charitable organizations.

## **Citation, summons or notice of violation**

---

A notice to appear in court or at an administrative hearing, usually issued by a State or Local Government enforcement agency. Includes court issued writs, police issued orders, administrative orders or writs to appear at a certain time and place to do something demanded in the writ, or to defend against the citation, or to show cause for not doing so.

# New York State Vendor Responsibility

## **Construction**

---

Contracts for work involving general contracting, building new structures and remodeling existing structures, demolition, concrete, paving and masonry, excavation, heating, ventilation and air conditioning, painting, plumbing, electrical work, asbestos abatement and lead abatement, hazardous waste remediation and abatement, hazardous materials remediation and abatement, design and architecture, suppliers of construction materials and roofing. Construction activity also includes grant and other activities in which a not-for-profit entity contracts with the State for construction services (e.g., the building of permanent and transitional housing, and day care facilities). Includes all construction activities whether provided directly or through the use of subcontractors

## **Corporation**

---

### For-Profit:

Entity organized for the purpose of making profit, created under the laws of a State or federal government. Ownership may consist of publicly traded or privately held shares of stock.

### Not-For-Profit:

A corporation formed for purposes other than financial gain, pursuant to and in accordance with a state's Not-For-Profit Corporation Law.

## **DUNS**

---

(Also Known as Data Universal Numbering System). A unique 9 digit number provided by Dun & Bradstreet (D&B). The DUNS Number is site-specific and division specific. Therefore, each physical location of an entity may have its own DUNS Number. Further, each separate division or branch of an entity may have its own, unique DUNS Number.

## **Debarred**

---

The exclusion of an individual or business entity from participating in the government procurement process for specified period of time.

## **Disadvantaged Business Enterprise**

---

A federal designation through a program run by the U.S. Department of Transportation. A for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which 51% of the stock is owned by one or more such individuals. State Agencies designate a business entity as a DBE based upon the federal standards.

## **Disqualified**

---

Any action taken by a government entity which prevents or precludes a business entity from receiving an award for a particular contract or from being placed on a prequalification list. A business entity may be disqualified for a number of reasons, including but not limited to determinations of non-responsibility or lack of required experience.

# New York State Vendor Responsibility

## Doing Business As

---

An assumed name a business entity uses for doing business, in lieu of using the legal business name or owner's personal name. The entity must have filed a "Business Certificate", otherwise known as a Certificate of Conducting Business Under an Assumed Name, or DBA, in the county clerk's office of the county in which the business entity is located, or in the case of corporate entities with the Department of State.

## EIN

---

Federal Employer Identification Number used for federal income tax reporting. This number may be the Social Security Number of an individual operating a business as a sole proprietor.

## Federal

---

Any department, division, board, commission or bureau of any federal department designated by the federal government.

## Financial Statements

---

Presentation of financial data including BALANCE SHEETS, INCOME STATEMENTS and STATEMENTS OF CASH FLOW, or any supporting statement that is intended to communicate an entity's financial position at a point in time and its results of operations for a period then ended.

## Formal Unsatisfactory Performance Assessment

---

Written (including electronic), negative overall performance assessment or evaluation made by a government entity, prepared either at the completion of performance of a government contract or prepared in conjunction with the termination of a government contract. May include unsatisfactory past performance assessments determined under audit and/or required by law, rule, regulation, policy or procedure.

## General Partnership

---

An association of two or more persons to carry on as co-owners of a business.

## Good Faith Efforts

---

An effort to achieve a Minority Owned Business Enterprise, Women Owned Business Enterprise or Disadvantaged Business Enterprise goal, federal requirement or New York State requirement, which, by its scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.

The code of Federal Regulations 49 C.F.R. Part 26 sets forth the standards to determine whether a Disadvantaged Business Enterprise has made good faith efforts to reach the goals set under a particular procurement.

Article 15-A of the Executive Law of the State of New York sets forth the standards to be used to determine whether a Minority Owned Business Enterprise or Disadvantaged Business Enterprise has made good faith efforts to reach the goals set under a particular procurement.

## Government Entity

---

Includes any federal, state or local government entity.

# New York State Vendor Responsibility

## **Government audits**

---

Financial and/or performance audits initiated, or required by a government entity.

## **Investigation**

---

An inquiry has been or is being made by any prosecutorial, investigative or regulatory agency concerning an individual or business entity or the activities and/or the business practices thereof.

## **Joint Venture**

---

When two or more persons or business entities join together for a specific purpose or project. Joint ventures normally terminate when the purpose or project for which the entities have joined is completed.

## **Judgment**

---

A court decision or order that settles the rights of the parties and disposes of issues in controversy.

## **Key Employee**

---

Any officer, managing director or managing trustee, executive director, and persons or entities that manage and/or control the daily operations of the not-for-profit, and any person having responsibilities or powers similar to those of officers, managing directors, or managing trustees, including the chief management and administrative officials of the Business Entity (such as executive director or chancellor), but does not include the heads of separate departments or smaller units within the business entity.

A chief financial officer and the officer in charge of administration or program operations are both Key Employees if they have the authority to control the Business Entity's activities, its finances or both. The "heads of separate departments" reference applies to persons such as the head of the radiology department or coronary care unit of a hospital, or the head of the English department at a college. These persons are managers within their specific areas but not for the business entity as a whole and therefore, are not Key Employees.

## **LLC**

---

A Limited Liability Company (LLC) is a distinct type of business entity, usually formed for the purposes of economic gain. Formed pursuant to and in accordance with the Limited Liability laws of a state. The designation "LLC." must follow and be a part of the business entity's legal name.

## **LLP**

---

A Limited Liability Partnership is a partnership with no limited partners, the partners each of whom are a professional by law to render a professional service, and who are engaged in the practice of such profession and such business entity is registered as an LLP with the New York State Department of State, or a partnership with no limited partners registered or otherwise created under the laws of another jurisdiction. The designation "LLP" must follow and be a part of the business entity's legal name.

# New York State Vendor Responsibility

## LP

---

A Limited Partnership is a type of partnership which has two types of partners; general and limited. An LP has at least one general partner and one or more limited partners. The general partner acts in the same capacity as a partner in a general partnership. The limited partner is not involved in the day-to-day activity of the partnership. The designation 'LP' must follow and be a part of the business entity's legal name.

## Legal Business Name

---

The name of the entity as set forth in the Business Entity's creation documents.

- a) For Corporations, the name as set forth in the Certificate of Incorporation.
- b) For General Partnerships, the name as set forth in the Certificate of Assumed Name.
- c) For Limited Partnerships, the name as set forth in the Certificate of Limited Partnership.
- d) For Limited Liability Partnerships, the name as set forth in the Certificate of Registration.
- e) For Limited Liability Companies, the name as set forth in the Articles of Organization.

## Liens

---

A charge against property or property interest making it security for the payment of a debt, judgment, or taxes, including judgment liens, mechanics' liens, tax liens, attorneys' liens, New York State of Department of Environmental Conservation liens, but shall not include purchase credit liens, Uniform Commercial Code filings, or mortgages.

## Liquidated Damages

---

Compensation that contracting parties have agreed should be paid for any loss or damage arising from breach of an agreement.

## Local Government

---

Includes any department, division, board, commission, bureau or department of any city, county, town, village within the United States. (May include public authorities and public corporations, Municipal Economic Development Corporations, schools, school districts, water districts, fire districts, sewer districts and Industrial Development Agencies).

## Material Disallowance

---

Expenditures which have occurred in a contract or grant which an auditor has determined were not allowed under the guidelines established by the agency, the terms of the contract or grant, or by statute, in an amount that would be material in relation to the total value of the contract or grant.

## Material Weaknesses

---

A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that errors, fraud, or noncompliance may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions, in amounts that would be material in relation to the general purpose financial statements being audited.

# New York State Vendor Responsibility

## **Minority Community Based Organization**

---

A not-for-profit, local human service business entity having its origins in the geographic area that it serves. Generally, the governing bodies and personnel of community based business entities reflect the racial, ethnic and cultural makeup of the community being served. These types of business entities are characterized by majority representation of Native Americans, Asian-Americans, African-Americans and/or Hispanic-Americans, in both policy formulation and decision-making regarding management, service delivery and staffing reflective of the geographic area it serves.

## **Minority Owned Business Enterprise**

---

A business enterprise which is at least 51% owned, operated or controlled by U.S. citizens or permanent resident aliens who are minority members (as listed under Article 9-A of the New York State Executive Law ). A business entity must be certified by New York State.

A business entity must be certified by New York State as a Minority Owned Business Enterprise or Women Owned Business Enterprise in order to qualify as a Minority Owned Business Enterprise or Women Owned Business Enterprise.

## **New York State Government Entity**

---

Any New York State government entity, including, but not limited to: state agencies, authorities, boards, centers, colleges, commissions, committees, corporations, councils, courts, departments, districts, divisions, facilities, funds, institutions, legislative divisions, offices, task forces and universities.

## **New York State Small Business**

---

A business which is a resident of New York State, independently owned and operated, not dominant in its field and which employs one hundred or fewer people.

## **Non-Responsibility**

---

A finding by a government entity that a business entity does not have the requisite financial or organizational capacity, and/or legal authority, and/or integrity, and/or acceptable performance on previous government contracts to perform on a government contract.

## **Not-for Profit**

---

A business entity organized for the purpose of social, religious, charitable, educational, athletic, literary, and political or other such activities, which is registered with

- a) the New York State Department of State as a Not-for-Profit Corporation in accordance with Article 13 of the Not-for-Profit Corporation Law; and/or
- b) the New York State Attorney General Charities Bureau; and/or
- c) exempt from taxation under Section 501 of the Internal Revenue Code.

## **OSHA Serious Violation**

---

An Occupational Safety and Health Administration (OSHA) finding that a serious violation has occurred. A serious violation is defined as a violation where there is substantial probability that death or serious physical harm could result and that the employer knew or should have known of the hazard.

# New York State Vendor Responsibility

## **OSHA Willful Violation**

---

An Occupational Safety and Health Administration (OSHA) finding that a willful violation has occurred. A willful violation is defined as a violation that the employer knowingly commits or commits with plain indifference to the law. The employer either knows that what he or she is doing constitutes a violation, or is aware that a hazardous condition existed and made no reasonable effort to eliminate it.

## **Principal Owner**

---

Any person whose ownership interest in the business entity is 10% or greater, (5% or greater ownership interest in the construction business entity), or major shareholders. Major shareholders, are those holding 10% or more ownership interest in a publicly traded corporation, 25% or greater in a privately held corporation.

## **Principal Place of Business/Executive office**

---

The main place where the business entity principally transacts and controls its business affairs, and where the business entity's books and records are centrally maintained; usually the location of the principal executive office. The head office of a business entity, usually distinguished within the business entity's formation documents.

## **Registered to do business in New York State**

---

A business entity is registered to do business in New York State, when it has met the statutory filing requirements of filing for authority to do business in New York State, usually by filing with the New York Department of State.

## **Sanction**

---

Any fine, penalty, judgment, injunction, violation, debarment, suspension or revocation.

## **Sole Proprietor**

---

A business entity owned and operated by one individual, although there may be employees. All business decisions are made by the sole owner.

## **Space Shared**

---

Space is considered to be shared when any part of the space utilized by the submitting Business Entity, at any of its sites, is also utilized on a regular or intermittent basis for any purpose by any other entity, and where there is no lease or sublease in effect between the submitting Business Entity, and any other entity, that is sharing space with the submitting Business Entity.

## **State Government**

---

Any agency, department, division, board, commission, bureau or department of any state, including public authorities and public corporations.

# New York State Vendor Responsibility

## **Statutory Affirmative Action Requirements**

---

The statutory inclusion of language in government procurement contracts that

- a) require a business entity to affirmatively act to ensure and promote equal opportunity employment on government contracts,
- b) prohibit a business entity from discrimination in employment, and
- c) provide for termination of such contracts for a business entity's failure to comply with such terms.

## **Suspension**

---

Action taken by a government entity to temporarily restrict the business entity's right to provide new or continuing contractual obligations.

## **TIN**

---

Taxpayer Identification Number used for federal income tax reporting. This number may be the Federal Employer Identification Number (EIN) or the Social Security Number (SSN) of an individual operating a business as a sole proprietor.

## **Terminated for Cause**

---

The exercise of a government entity's right to completely or partially terminate a contract due to the vendor's failure to perform its contractual obligations, or for the vendor's failure to comply with statutory and/or regulatory responsibilities.

## **Trade Name**

---

Any name used by a person to identify a business or vocation of such person. A person shall include an individual (natural person), firm, partnership, corporation, union, association or other business entity capable of suing and being sued in a court of law. (Include any trade, franchise or licensee names.)

## **Unincorporated Association**

---

This is a type of business entity that may be created contractually. The contractual relationship is between the members of the association, all of whom have agreed to join together for a particular purpose. These types of business entities include, but are not limited to, unions, historical societies, professional membership associations, and recreational societies.

## **Women Owned Business Enterprise**

---

A business enterprise which is at least 51% owned, operated or controlled by U.S. citizens or permanent resident aliens who are women. A business entity must be certified by New York State as a Women Owned Business Enterprise in order to qualify for this status.