

# New York State Vendor Responsibility

## Definitions List

### Administrative Proceeding

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Any government entity 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. Such a proceeding may be solely comprised of an exchange of written materials, which can include, but is not limited to, testimony recorded electronically, transcriptions, letters, documents, etc.

### Affiliate

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#### For-Profit:

SEE ASSOCIATED ENTITY

#### Not-For-Profit:

Any business entity (not-for-profit or 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 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.

### Associated Entity

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Generally, any entity that the Reporting Entity controls or is controlled by, including:

- a. Owner: Any business entity or organized group of principal owners or officers holding 50% or greater ownership interest in the Reporting Entity (i.e., holding company, parent company).
- b. Controlling entity: Any business entity which directs or has a right to direct the Reporting Entity's operations, regardless of percentage of ownership interest (i.e., headquarters).
- c. Controlled entity: Any business entity in which the Reporting Entity holds 50% or greater ownership interest, or the Reporting Entity directs or has a right to direct operations, regardless of percentage of ownership interest (i.e., subsidiaries, units under the Reporting Entity).

Note: "Associated Entity" does not include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

### Business Entity

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Includes a Legal Business Entity, a Reporting Entity or an Associated Entity as defined herein.

# New York State Vendor Responsibility

## Business Entity Leaders

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

## Business Entity Officials

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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.

## Certificate of Good Standing

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Certificate issued by the Business Entity's controlling jurisdiction indicating that the Business Entity is current with the filing requirements of the jurisdiction, issued within one year of the date of certification of the Vendor Responsibility Questionnaire.

## Charities Registration Number

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

## CIK Code

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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.

## Citation, Summons, Notice, Violation Order

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A notice to appear in court or at an administrative hearing or administrative proceeding, 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

## Claim

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A written, formal demand for money due, for property, for damages or for enforcement of a right, e.g., a fine or penalty sought by a Government Entity.

## Construction

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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

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

## Corporation – Not-For-Profit

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

## DBA - Doing Business As

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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.

## Debarred

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

## Disadvantaged Business Enterprise (DBE)

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A United States 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.

## Disqualification

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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

## DUNS - Data Universal Numbering System

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A unique 9-digit number provided by Dun & Bradstreet (D&B), a commercial information company. 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.

## EIN - Employer Identification Number

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Federal Employer Identification Number used for federal income tax reporting. Although this number may be the Social Security Number of an individual operating a business as a sole proprietor, vendors are encouraged to obtain an EIN for business purposes.

## Federal

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

## Financial Statements

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Presentation of financial data including balance sheets, income statements, and statements of cash flow, or any supporting statement(s) intended to communicate a business entity's financial position at a point in time and its results of operations for a period then ended.

## Formal Unsatisfactory Performance Assessment

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A written (including electronic), unsatisfactory performance assessment or evaluation issued by a government entity, after providing due process to a business entity. May include unsatisfactory past performance assessments determined under audit and/or required by law, rule, regulation, policy or procedure.

## Former Name

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Any previous name by which Legal Business Entity has done business as, inside or outside the State of New York.

## General Partnership

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

# New York State Vendor Responsibility

## Good Faith Effort(s)

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An effort to achieve a Minority-Owned Business Enterprise, Women-Owned Business Enterprise (M/WBE) or Disadvantaged Business Enterprise (DBE) 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 contractor has made good faith efforts to reach a DBE goal. Appendix A to Part 26 provides the following guidance for a bidder: "First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful."

Article 15-A of the Executive Law of the State of New York sets forth the standards for the M/WBE Program. These standards are to be used to determine whether a contractor has made "active and conscientious efforts to employ and to utilize minority group members and women at all levels and in all segments of its work force on state contracts, and the contractor will document these efforts."

## Government Audits

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Financial, compliance and/or performance audits completed for or by a government entity.

## Government Contract

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A contract entered into by a United States federal, state or local government entity.

## Government Contracting Process

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Bidding, evaluation, award and administration of a government contract.

## Government Entity

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Any United States federal, state or local government-created bureau, agency, department, division, board, commission, public authority or public benefit corporation.

## Investigation

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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

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When two or more persons or business entities join together for a specific business undertaking in which profits, losses and control are shared. Usually an enterprise with limited scope and duration but with shared liability and responsibility for debts or losses. Joint ventures normally terminate when the contract or project for which the entities have joined is completed. The Joint Venture may be established as a separate legal entity with its own federal Employer Identification Number (EIN).

# New York State Vendor Responsibility

## Judgment

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A court decision or judgment that settles the rights of the parties and disposes of all issues in controversy, except for award of costs and enforcement of the judgment. A judgment rendered by a lower court is deemed to be a final judgment, even if such judgment is subject to appeal.

## Key Employee

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Any officer, managing director or managing trustee, executive director, and persons or entities that manage and/or control the daily operations of the Business Entity, 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.

## Legal Business Entity

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A Business Entity registered with the Internal Revenue Service and assigned a federal Employer Identification Number. (Note: Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use an Employer Identification Number.)

Legal Business Entity includes for-profit and not-for-profit entities, and may take the form of:

- a. a Corporation, Partnership (including General, Limited or Limited Liability Partnership), Limited Liability Company, Sole Proprietor, Unincorporated Association, or any other business organization, in the case of for-profit entities, or
- b. a Not-for-Profit Corporation, Foundation, Partnership, Limited Liability Company, Unincorporated Association, or any other business organization, in the case of not-for-profit entities.

## Legal Business Entity Name

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The name of the entity as set forth in the Legal 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.

For purposes of this questionnaire, a Sole Proprietor or an individual seeking to do business as him/herself may use his/her name anywhere it asks for the name of the Legal Business Entity Name.

# New York State Vendor Responsibility

## Liens

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A form of security interest against property or property interest to secure the payment of a debt, judgment, or taxes, including, but not limited to, 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

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Compensation that contracting parties have agreed should be paid to one party for any loss or damage arising from breach of the agreement by the other party.

## LLC - Limited Liability Company

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A Limited Liability Company (LLC) is a type of business structure that offers limited liability for the debts and obligations of the business entity to the owners. An LLC provides management flexibility and the income and losses are passed through the owners of the entity, like a partnership. It must be formed pursuant to and in accordance with the Limited Liability laws of the state. The designation "LLC" must follow and be a part of the business entity's legal name.

## LLP - Limited Liability Partnership

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A Limited Liability Partnership is a partnership with no limited partners, where each partner is a professional by law and qualified to render a professional service, and is engaged in the practice of such profession. The 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.

## LP - Limited Partnership

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A Limited Partnership is a type of partnership which has two types of partners; general and limited. A LP has at least one general partner and one or more limited partners. The general partner acts in the same capacity as in a general partnership such as management control, right to use property of the partnership, shared profits and joint/several liability. The limited partner has limited liability, is not involved in the day-to-day activity of the partnership and has no management control. The designation "LP" must follow and be a part of the business entity's legal name.

## Material Disallowance

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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.

## Minority Community-Based Organization (MCBO)

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A not-for-profit, local human service organization having its origins in the geographic area that it serves. Generally, the governing bodies and personnel of community-based organizations reflect the racial, ethnic and cultural makeup of the community being served. These types of organizations 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.

# New York State Vendor Responsibility

## Minority-Owned Business Enterprise (MBE)

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A business enterprise which is at least 51% owned, operated or controlled by United States citizens or permanent resident aliens who are minority group members (as listed under Article 15-A of the New York State Executive Law).

A business entity must be certified by the New York State Division of Minority and Women-Owned Business Development as a Minority-Owned Business Enterprise in order to qualify for this status.

## New York State Small Business (SB)

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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 Finding

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A determination 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

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

- 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;

or, is exempt from taxation under Section 501 of the Internal Revenue Code.

## Not-For-Profit Corporation

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

## Official(s)

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Individual who serves in an executive capacity with decision-making authority and responsibility for the oversight of a Legal Business Entity, a Reporting Entity or an Associated 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 the following:

- a. Corporations: The chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), and/or chairman of the board
- b. Partnerships: The Senior Managing Partners
- c. Limited Liability Companies (LLC): The Executive Managing Directors/Members, Senior Managing Directors/Members
- d. Sole Proprietors: The individual who is the sole owner and manager of the business entity
- e. Unincorporated Associations: The Executive Committee Members, including President, Vice President, Secretary and Treasurer, Executive or Managing Trustees

# New York State Vendor Responsibility

## Organizational Chart

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A diagram which illustrates the relationship and management structure of the Reporting Entity to the Legal Business Entity and other Associated Entities as herein defined

## Organizational Unit

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An established portion of a Legal Business Entity which is within and operating under the authority of the Legal Business Entity, with a designated manager or management team responsible for the operation thereof. For example, a department, division, branch or chapter directly or primarily responsible for fulfilling the terms of the contract. (See Reporting Entity)

## OSHA Violation

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### Serious

A violation designated as “serious” by the Occupational Safety and Health Administration (OSHA). Generally, 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.

### Willful

A violation designated as “willful” by the Occupational Safety and Health Administration (OSHA). Generally, 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 exists and makes no reasonable effort to eliminate it.

## PC – Professional Service Corporation

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A Professional Service Corporation (PC) is organized by one or more individuals authorized to provide a professional service for the purpose of making a profit and for the purpose of rendering such professional service as licensed thereto. Shares may only be issued to those licensed individuals as are authorized to practice their professional service in this state and who have engaged in such profession or will be engaged in the practice of such profession of the PC within 30 days of the issuance of the shares. The designation "PC" must follow and be a part of the business entity's legal name.

## PLLC – Professional Service Limited Liability Company

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A Professional Service Limited Liability Company (PLLC) is a limited liability company organized for the purpose of providing professional services. Members may only consist of those licensed individuals as are authorized to practice their professional service in this state, and who have engaged in such profession, or will be engaged in the practice of such profession. The designation "PLLC" must follow and be a part of the business entity's legal name.

## Primary Place of Business

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The location where the direction and management of the Reporting Entity takes place.

## Principal Owner

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Any person holding 10% or more of the voting stock of a publicly traded corporation, or 25% or more of a privately held corporation. For construction business entities, any person whose ownership interest is 5% or more.

## Principal Place of Business

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The location of the primary control, direction and management of the Legal Business Entity.

# New York State Vendor Responsibility

## Registered to do business in New York State

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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.

## Reporting Entity

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The Reporting Entity may be either the entire Legal Business Entity or a portion of the Legal Business Entity, which does or anticipates doing business with the State of New York. If it is not the entire Legal Business Entity, the portion must be an established organizational unit within and operating under the authority of the Legal Business Entity, with a designated manager or management team responsible for the operation thereof. The established organizational unit must have the same Employer Identification Number as the Legal Business Entity. The organizational unit must also be part of the Legal Business Entity, with primary responsibility for fulfilling the terms of the anticipated contract. Examples of a Reporting Entity include, but are not limited to, a department, division or branch.

## Sanction

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(Sanction or sanctioned) Any fine, penalty, judgment, injunction, violation, debarment, suspension or revocation.

## Shared Space

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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.

## Sole Proprietor

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

## State Contracting Entity

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Any New York State government-created entity with the authority to enter into a contract. This includes any New York State created agency, department, division, board, commission or bureau, including public authorities and public benefit corporations.

## State Government Entity

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

## Statutory Affirmative Action Requirements

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The statutory inclusion of language in government procurement contracts that

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

# New York State Vendor Responsibility

## Suspension

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

## Terminated for Cause

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

## TIN – Taxpayer Identification Number

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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. (Note: Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use an Employer Identification Number.)

## Trade Name

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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. This also includes any trade, franchise or licensee names.

## Unincorporated Association

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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 (WBE)

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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 the New York State Division of Minority and Women-Owned Business Development as a Women-Owned Business Enterprise in order to qualify for this status.