

NEW YORK CITY MINORITY & WOMEN OWNED BUSINESS ENTERPRISE PROGRAM

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Sources

- Charter § 1304
 - 1989 referendum adopting recommendations of the Charter Revision Commission
- Administrative Code § 6-129
 - Local Law 129 of 2005
 - Minority & Women Owned Business Enterprises
 - Local Law 12 of 2006
 - Emerging Business Enterprises
(Socially & Economically Disadvantaged)
 - Local Law 1 of 2013

Department of Small Business Services Rules

- Certification of MWBEs – 66 RCNY § 11-21 et seq
- Certification of Emerging Business Enterprises – 66 RCNY § 11-81 et seq
- Program Rules – 66 RCNY § 11-60 et seq

Eligibility for MBE/WBE certification

51% ownership held by women or minorities who are citizens or permanent residents

Ownership must be real, substantial & continuing

Owners must have & exercise authority to control independently day to day business decisions

Firms owned by women who are minorities

- May be certified as both MBEs and WBEs
- May be counted by an agency and a contractor toward either a goal for MBEs or a goal for WBEs (but not both)

Emerging business enterprises

- 51% ownership by citizens or permanent residents
- Ownership is real, substantial & continuing
- Owners must have & exercise authority to control independently day to day business decisions
- Owners are “socially & economically disadvantaged”

Economic disadvantage

Net worth must be less than \$1M,
excluding ownership interest in the
business enterprise and equity in primary
personal residence.

Social disadvantage

Objective distinguishing feature that has contributed to social disadvantage, such as physical or mental disability, long-term residence in environment isolated from the mainstream U.S. society, or other similar causes not common to individuals who are not socially disadvantaged; and

Personal experiences of substantial and chronic social disadvantage in U.S. society; and

Negative impact on entry into or advancement in the business world because of the social disadvantage.

Certified firms must have nexus to City's geographic market

- (1) Principal office or place of business or headquarters is located within the City; or
- (2) Full-time employees in offices within the City to conduct or solicit business in the City the majority of their working time; or
- (3) Principal office or place of business or headquarters is located within the geographic market of the City, and (i) has transacted business more than once in the City within the last 3 years, or (ii) has sought to transact business more than once in the City within the last 3 years; or
- (4) 25% of annual gross receipts for the last 3 years were derived from transacting business in the City; or
- (5) 2 or more of the following: (i) the business has maintained a bank account or engaged in other banking transactions in the City; (ii) the business, or one of its owners, possesses a license issued by a City agency to do business in the City; (iii) the business has transacted/sought to transact business in/with the City more than once in the past 3 years.

Qualified joint venture

- Joint venture between one or more MBEs, WBEs and/or EBEs and another person
- MBE/WBE/EBE must be entitled to at least 25% of profits, exposed to at least 25% of losses

Graduate MBE/WBE/EBE

- Has been awarded contracts within past 3 years where total City funding was \$50M or more, and
- Size has exceeded standard for relevant industry by U.S. Small Business Administration for 3 years

Graduates

Contracts and subcontracts performed by “graduates” don’t count toward goals

Firms can apply to have “graduate” designation lifted after 2 years by demonstrating that they have been below the relevant SBA size standards for 2 years.

ANNUAL CITYWIDE GOALS			
CONSTRUCTION		STANDARD SERVICES	
Black American	8%	Black American	12%
Asian American	8%	Asian American	3%
Hispanic American	4%	Hispanic American	6%
Women	18%	Women	10%
Emerging	6%	Emerging	6%
PROFESSIONAL SERVICES		GOODS UNDER \$100K	
Black American	12%	Black American	7%
Asian American	--	Asian American	8%
Hispanic American	8%	Hispanic American	5%
Women	17%	Women	25%
Emerging	6%	Emerging	6%

Disparity study & updates

- Citywide goals are based on a study comparing availability & utilization of MBEs & WBEs in City procurements.
- Goals are set for categories where significant underutilization is found.
- Law requires Commissioner of SBS, in consultation with City Chief Procurement Officer, to review availability and utilization every 2 years, and adjust goals by rule as appropriate.

Agency annual utilization plans

- Agency goals are set annually
- Considerations:
 - Citywide goals
 - Size & nature of agency's procurements
 - Availability of MBEs, WBEs & EBEs with capacity to perform specific types & scale of work the agency anticipates

Goals for individual procurements

- Factors:
 - Scope of work
 - Availability of MBEs, WBEs and EBEs
 - Prime contracting and subcontracting opportunities within their capacity
 - Agency's progress in meeting its annual goals through race- and gender- neutral means
 - Other relevant factors

Options for goals

- Agency may establish specific goals for particular services
- Agency may establish goals for particular types of certified firms (e.g. owned by Black Americans or Asian Americans or Hispanic Americans or Women or Economically/Socially Disadvantaged)
- Agency may specify that goals can be achieved by
 - Combination of prime contract & subcontract dollars
 - Combination of construction and services
 - Combination of MBEs, WBEs and/or EBEs

Credit

- Contractor that is a certified MBE/WBE/EBE may count own participation, after subtracting amounts awarded to subcontractors
- Contractor may count participation of subcontractors that are certified MBEs/WBEs/EBEs
- Qualified joint venture may count own participation, after
 - subtracting amounts awarded to subcontractors
 - multiplying the remainder by percentage of profit to which the MBE/WBE/EBE partner is entitled under the JV agreement

Credit for subcontractors' subcontractors

- The City Chief Procurement Officer may identify types of contracts where payments made to “indirect subcontractors” are credited toward the relevant goals.

Waivers (full or partial)

- A bidder/proposer may ask agency to reduce goal
 - on grounds it is unreasonable in light of availability of certified firms, or
 - by demonstrating it has legitimate business reasons for proposing lower level of subcontracting

Agency decisions on waivers

- Based on whether bidder/proposer has capacity and bona fide intention to perform contract without subcontracting, or without as much subcontracting as contemplated by the goals
- Considering
 - past practice of bidder/proposer
 - whether it made efforts to form a qualified joint venture
 - whether it made good faith efforts to identify portions of contract it intends to subcontract

Modifications

- May be granted at contractor's request or agency's initiative when agency determines contractor has made all reasonable good faith efforts to meet the goals.

Factors demonstrating good faith

- Advertising in general media, professional publications, and publications of minority and women's organizations
- Timely notice to minority and women's organizations
- Written notice to solicit M/W/EBEs
- Efforts to identify work that could be substituted for portions originally designated for M/W/EBEs
- Meetings with M/W/EBEs prior to due date of bid/proposal
- Efforts to negotiate with M/W/EBEs
- Timely requests for assistance to agency MWBE officer and SBS
- Description of how their recommendations were acted upon and why they did not lead to desired level of participation

Changes in scale/scope

- Agency may modify participation goals when it has changed scope of work in manner affecting scale & type of work that contractor's utilization plan indicated would be awarded to subcontractors.

Procurement Policy Board

- PPB has 3 appointees of the Mayor and 2 appointees of the Comptroller
- Charter § 311(b)(8) directs PPB to issue rules for making small purchases “in a manner that will advance the purposes of the program for minority- and women-owned business enterprises and emerging business enterprises” established pursuant to Charter § 1304(b).

PPB Rules

- **Micropurchases.** For procurements of construction up to \$35K, and goods and all other services up to \$20K, no competition is required. Contracting Officers must ensure that the noncompetitive price is reasonable and that purchases are distributed appropriately among responsible vendors, including M/WBE vendors. 9 RCNY § 3-08.
- **Small Purchases.** For procurements of construction between \$35K and \$100K, and goods and all other services between \$20K and \$100K, at least 5 vendors must be solicited at random from the appropriate citywide small purchases bidders list 9 RCNY § 3-08. The Mayor's Office of Contract Services has instructed agencies to solicit at least 10 MWBEs in addition to the 5 vendors solicited at random.
- **“Innovative rule”** implementing Charter amendments on **“discretionary spend”** enacted by Chapter 504 of 2017: No formal competition will be required for the procurement of goods and services to City-certified M/WBEs between \$20K and \$150K, except that in making such purchases, agency contracting officers should obtain price or rate quotations from at least 3 City-certified M/WBE vendors

PPB Rules

- **Best value method for goods and standard services** – A certified M/WBE in a group for which there is a goal established must, except with the permission of the City Chief Procurement Officer, be given a price preference of 10% and will be evaluated as if the bid price were 10% lower. 9 RCNY § 3-02(o)(implementing authority under General Municipal Law § 103(1) to use the best value technique)
- **Best value method** expanded by Chapter 504 of the Laws of 2017
 - Best value technique may also be used for professional services.
 - May consider bidder's record of complying with existing labor standards, maintaining harmonious labor relations, and protecting workers' health and safety
 - May award points to City-certified MWBEs
 - Chapter amendment S7293/A 8995 requires that points be awarded to State-certified as well as City-certified MWBEs.

PPB Rules

- **Prequalified lists** - allows for consideration of “demonstrated commitment to working with minority and women-owned businesses through joint ventures or subcontractor relationships.” 9 RCNY § 3-10. (Authorized by General Municipal Law § 103(15).

New York City Housing Authority Modernization Investment Act

- Part LLL, § 2(b) of 2018 NY Budget bill
S7509-C/A 9509-C: authorizes use of best
value by NYCHA and New York City
Department of Design and Construction, with
points for State and City certified MWBEs

Industrial and Commercial Abatement Program

- Real Property Tax Law §§ 489-ddddddd and 489-kkkkkkk authorize City to require meaningful participation of MWBEs in construction work.
- Ad. Code § 11-278, 19 RCNY § 36-03(c): For projects >\$1.5 million (or \$750K, after May 5, 2018) applicant must inform City of contract and subcontract opportunities, and must solicit at least 3 MWBEs for each subcontract.

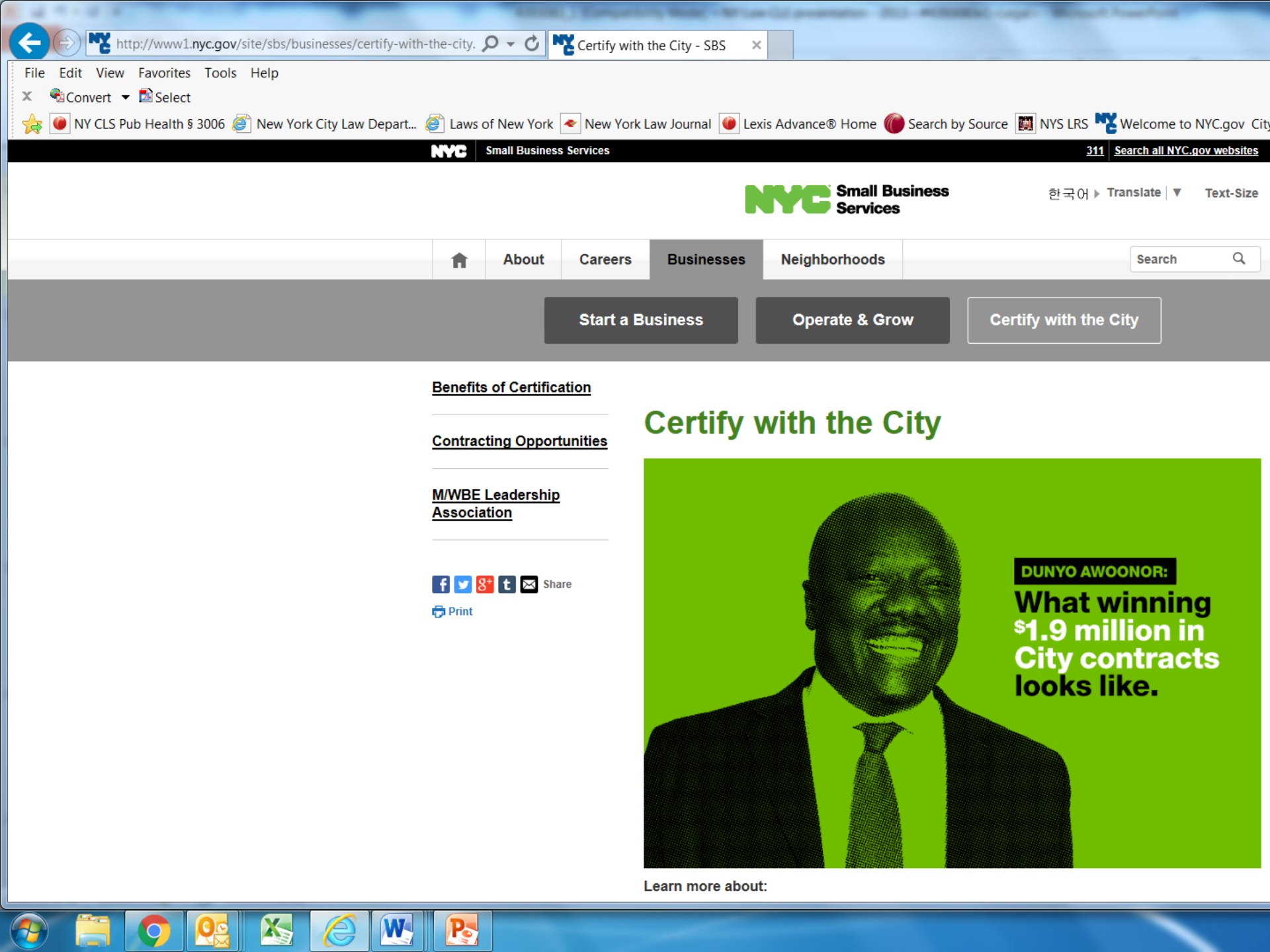
Department of Housing Preservation and Development

- Ad. Code § 4-120 Minority and women-owned business enterprises (L of 2014, Ch. 461): “Notwithstanding any provision of state or local law to the contrary, any agency of the city making a loan or disposing of property pursuant to [the Private Housing Finance Law, or General Municipal Law Articles 15 or 16] may implement such measures as are appropriate and consistent with the equal protection clause to facilitate and encourage meaningful participation by minority or women-owned business enterprises.”
- In 2013 HPD completed an in-house disparity study about developers.

HPD's M/WBE Build Up Program

- Developers/borrowers must spend at least a quarter of HPD/HDC supported costs on certified M/WBEs over the course of design and construction of certain HPD/HDC-subsidized projects.
- All payments to certified M/WBEs performing construction or providing professional services count toward the goal.

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NYC Online Directory of Certified Businesses

Connecting City agencies and other buyers with certified businesses

The Online Directory of Certified Businesses is a searchable list of M/WBE, LBE, and EBE certified businesses across the New York City area. You can find details and contact information about these firms, as well as what these companies sell or provide.

Search by Company Name or Job Experience



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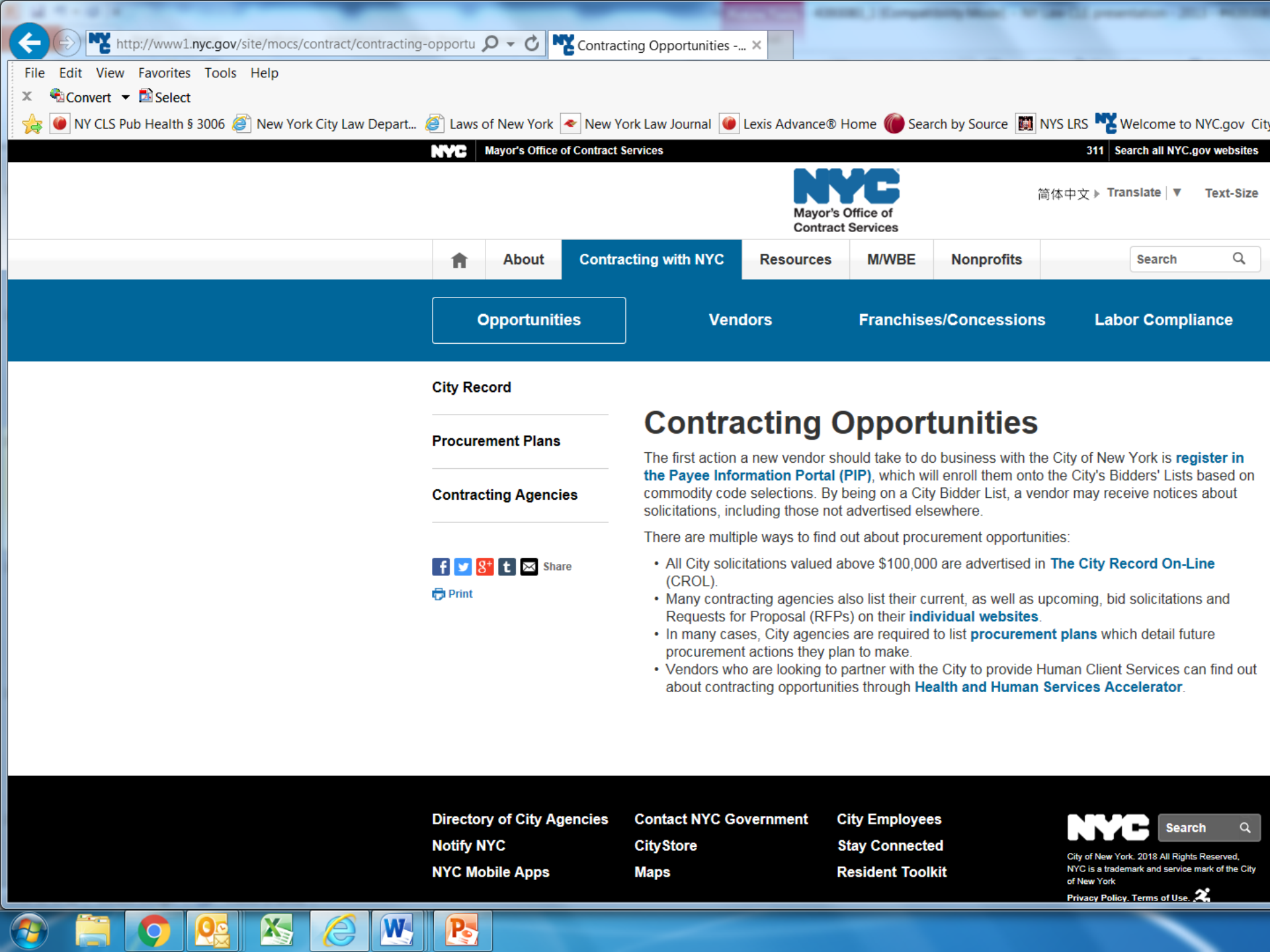


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Search terms in the MWBE Directory

- Industry type
- Largest contract experience
- Aggregate bonding limit
- Union firm?
- Location



City Record

Procurement Plans

Contracting Agencies

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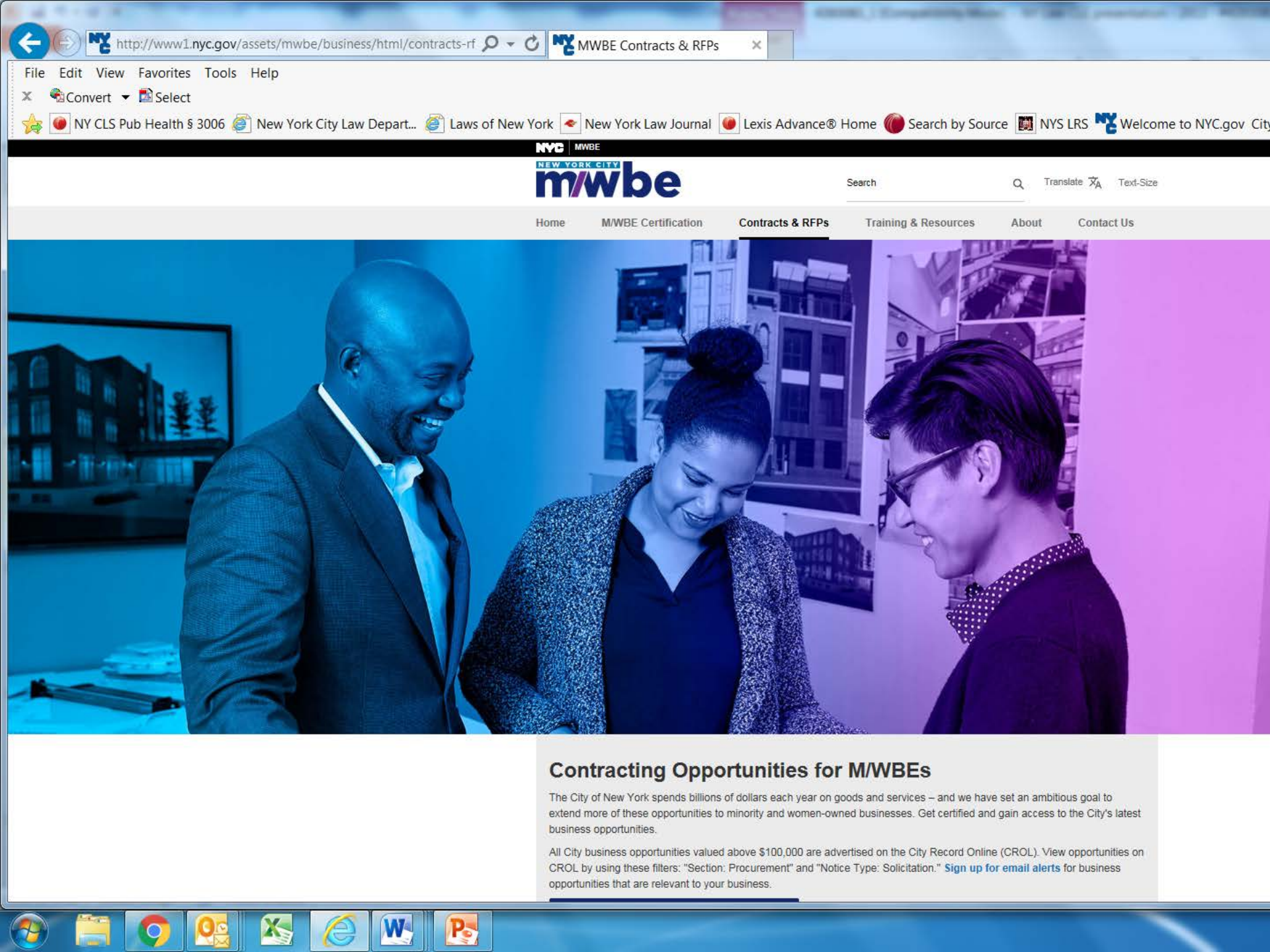
Contracting Opportunities

The first action a new vendor should take to do business with the City of New York is [register in the Payee Information Portal \(PIP\)](#), which will enroll them onto the City's Bidders' Lists based on commodity code selections. By being on a City Bidder List, a vendor may receive notices about solicitations, including those not advertised elsewhere.

There are multiple ways to find out about procurement opportunities:

- All City solicitations valued above \$100,000 are advertised in [The City Record On-Line \(CROL\)](#).
- Many contracting agencies also list their current, as well as upcoming, bid solicitations and Requests for Proposal (RFPs) on their [individual websites](#).
- In many cases, City agencies are required to list [procurement plans](#) which detail future procurement actions they plan to make.
- Vendors who are looking to partner with the City to provide Human Client Services can find out about contracting opportunities through [Health and Human Services Accelerator](#).





Contracting Opportunities for M/WBEs

The City of New York spends billions of dollars each year on goods and services – and we have set an ambitious goal to extend more of these opportunities to minority and women-owned businesses. Get certified and gain access to the City's latest business opportunities.

All City business opportunities valued above \$100,000 are advertised on the City Record Online (CROL). View opportunities on CROL by using these filters: "Section: Procurement" and "Notice Type: Solicitation." [Sign up for email alerts](#) for business opportunities that are relevant to your business.

