
 NEW YORK STATE Corrections and Community Supervision DIRECTIVE	TITLE Service-Disabled Veteran- Owned Business		NO. 2604S
			DATE 10/30/2020
SUPERSEDES	DISTRIBUTION A	PAGES PAGE 1 OF 10	DATE LAST REVISED
REFERENCES (Include but are not limited to) See Section II	APPROVING AUTHORITY 		

I. PURPOSE: This directive is applicable to all Contracting Units under the jurisdiction of the Department of Corrections and Community Supervision (DOCCS), including Central Office, Division of Correctional Industries, all facilities, and all regional/area offices. The purpose of this directive is to:

- A. Establish procedures that will assist DOCCS staff in their efforts to purchase commodities and services from responsible New York State certified Service-Disabled Veteran-Owned (SDVOB) firms; and
- B. Provide policy and procedures for reporting SDVOB activities.

II. REFERENCES

- Executive Law Article 17B: Section 369
- NYS Finance Law Article XI
- State Printing and Public Documents Law
- 9 NYCRR Section 252.1
- Directive #2914, “Contract Procurement, Monitoring, and Fiscal Responsibilities”
- Directive #2916, “Purchasing Supplies and Equipment”
- NYS Procurement Guidelines – Maintained by the Office of General Services (OGS)

III. DEFINITIONS

- A. Service-Disabled Veteran-Owned Business Enterprise (SDVOB): Shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation, including not-for-profit corporations, that is:
 - 1. At least 51 percent owned by one or more service-disabled veterans;
 - 2. An enterprise in which such service-disabled veteran ownership is real, substantial, and continuing;
 - 3. An enterprise in which such service-disabled veteran ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
 - 4. An enterprise authorized to do business in this State and is independently owned and operated;
 - 5. An enterprise that is a small business as defined herein; and
 - 6. Certified by OGS.

- B. Goal: Shall mean the percentage of aggregate agency expenditures targeted for the participation of certified SDVOBs sought to be included in State procurement opportunities as prime contractors, subcontractors, suppliers, consultants, joint ventures, teaming agreements, or other similar arrangements.
- C. Service-Disabled Veteran: Shall mean:
1. In the case of the United States Army, Navy, Air Force, Marines, Coast Guard, Army National Guard or Air National Guard, and/or Reserves thereof, a veteran who received a compensation rating of ten percent or greater from the United States Department of Veterans Affairs or from the United States Department of Defense because of a service-connected disability incurred in the line of duty; and
 2. In the case of the New York guard or the New York naval militia and/or reserves thereof, a veteran who is certified by the New York State Division of Veterans' Affairs, pursuant to the appropriate provisions contained within the Code of Federal Regulations, as having incurred an injury equivalent to a compensation rating of ten percent or greater from the United States Department of Veterans Affairs or from the United States Department of Defense because of a service-connected disability incurred in the line of duty.
- D. Set Aside: Shall mean the reservation in whole or in part of certain procurements by State agencies subject to guidelines to be issued by the commissioner regarding discretionary purchasing, bidding where more than one certified SDVOB can provide the construction, construction services, non-construction services, technology, commodities, products, and other classifications that will facilitate meeting the goal and meeting state agencies' form, function, and utility.
- E. SDVOB Directory: Shall mean the directory of certified SDVOB enterprises for use by State agencies and contractors in complying with the provisions of Article 17-B of the Executive Law.
- NOTE: Every Contracting Unit should have access to the SDVOB Directory, which is readily available online at: <https://ogs.ny.gov/Veterans/>.
- F. Veteran: Shall mean a person who served in, and who has received an honorable or general discharge from, the United States Army, Navy, Air Force, Marines, Coast Guard, and/or Reserves thereof, and/or in the Army National Guard, Air National Guard, New York Guard, and/or the New York Naval Militia.
- G. State Contract: Shall mean:
1. A written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby a contracting agency is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, commodities, supplies, equipment, materials, technology, or any combination of the foregoing to be performed for, rendered, or furnished to the contracting agency;
 2. A written agreement in excess of \$100,000 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and

3. A written agreement in excess of \$100,000 whereby the owner of a State-assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project.
- H. Subcontract: Shall mean a contract between a Primary Contractor to an original contract and a third party; particularly, one who provides all, or a specified part of the work, materials, or services required in the original contract.
- I. Preferred Source: Products or services provided by the Division of Correctional Industries, New York State Preferred Source Program for the Blind (NYSPSP), and Industries for the Disabled.
- J. Joint Venture: An association of two or more businesses which is formed to carry out a particular business activity for profit in which they may combine property, capital, efforts, skills, or knowledge. The association is limited in scope and duration; consequently, a joint venture can never be certified.
- K. Discretionary Purchase: Agency purchases of commodities or services that cannot be supplied by a preferred source, OGS Centralized Commodity Contracts or OGS Centralized Services, and Technology Contracts. Purchases below an established dollar level that are authorized by law to be made without a formal competitive process (see Section XI, Procurement Guidelines and Procedures).
- L. Contracting Unit: Any unit with procurement responsibilities such as local business offices, Central Office Contract Procurement Unit (CPU), Central Office Purchasing Unit, and Correctional Industries.
- M. Contractor: An individual, a business, a not-for-profit corporation, or any other party to a State contract, or a bidder in conjunction with the award of a State contract or proposed party to a State contract.
- N. Good Faith Efforts: The documented due-diligence and sustained efforts made with the deliberate intention to produce desired contractual obligations and/or required goals.
- O. MWBE/SDVOB Team: This team coordinates/monitors the Department's SDVOB efforts.
- IV. POLICY**: It is the policy of DOCCS to actively encourage the greatest possible participation of service-disabled veterans in all DOCCS procurement opportunities and to make every effort to meet the goals established pursuant to Article 17-B of the Executive Law. Article 17-B of the Executive Law established the Division of Service-Disabled Veterans' Business Development (DSDVBD) and mandates the DSDVB to direct and monitor New York State's activities relating to the utilization of SDVOBs on State contracts. This law also requires that operational guidelines are established to assist SDVOBs with obtaining a fair share of contracts for the procurement of goods and services awarded by the State. Accordingly, in compliance with Article 17-B, DOCCS is required to submit quarterly SDVOB utilization reports to DSDVBD that are inclusive of Central Office, Correctional Industries, and all facilities and regional/area offices.

Goals: In accordance with Article 17-B, it shall be the policy of DOCCS to implement an SDVOB program that has a minimum established goal of six percent of purchases going to SDVOBs. This goal shall be based upon the total dollar value of consultant services contracts and procurement for goods and services awarded by the Department.

- V. STANDARD CONDITIONS FOR ALL CONSTRUCTION, CONSULTANT, SERVICE, AND PURCHASE CONTRACTS:** The Contracting Unit must require the Primary Contractor to agree that they shall make “Good Faith Efforts” to subcontract a minimum of six percent of the total dollar value of the contract to SDVOBs. The goal shall be contained in conformance with the Contractor Requirements for SDVOBs (Form [SDVOBCR](#), [SDVOBNA](#), or [SDVOBSA](#)) as applicable to all State contracts.

Failure to obtain these percentages or demonstrate a “Good Faith Effort” may lead to withholding of payment(s) or contract termination.

- VI. SET ASIDES:** State agencies may reserve or set aside certain procurement opportunities for purposes of achieving the goals for participation of SDVOBs to achieve the objectives of Article 17-B of the Executive Law.

The Commissioner, in consultation with State agencies, shall develop and provide guidance for conducting procurements through the use of set asides with consideration given, but not limited to:

- A. Ensuring that a competitive field of certified SDVOB enterprises would be able to participate in such procurement opportunities;
- B. The processes to be used in the exercise of discretionary authority to make purchases from certified SDVOB enterprises;
- C. Contract consideration shall be reasonable and reflective of fair market value;
- D. Developing and implementing pilot initiatives to initially test optimal use of set asides by State agencies;
- E. Securing input from SDVOBs and other interested parties on the use of set asides;
- F. The impact a set aside could have relative to the State agency achieving its goals for participation by SDVOBs in their procurements; and
- G. Other factors as may be relevant to the exercise of set asides in procurement contracts.

VII. SERVICE-DISABLED VETERAN-OWNED BUSINESS UTILIZATION PLANS AND PROGRAM WAIVER

- A. DOCCS has established certain statewide goals which it seeks to achieve in implementing the SDVOB Program. To promote participation of SDVOBs, Contracting Units must check all available SDVOB source documents to determine if any applicable contractors offer the commodity or service being purchased. The Contracting Unit will ensure that each individual contract shall have the State minimum goals for SDVOB participation at the time of execution.
- B. After the award of a bid, but prior to issue of contract, the Contractor shall submit [Form #SDVOB100](#), “Utilization Plan.” The Contracting Unit will review [Form #SDVOB100](#), using the SDVOB Directory to verify that Subcontractors reported are SDVOB certified.

After completion of the review, the Contracting Unit will issue a written notice, [Form #SDVOBNAD](#), "Notice of Acceptance or Deficiency," to the contractor within 20 days of receipt.

1. Notice of Acceptance: An SDVOB Notice of Acceptance will be accompanied by the following SDVOB form to be submitted by the Contractor to the Contracting Unit on a monthly basis upon award of the contract: [Form #SDVOB101](#), "Contractor's Monthly SDVOB Compliance Report," which lists all NYS Certified SDVOBs used to perform the State contract and the actual dollar amounts paid to the NYS Certified SDVOBs. The information supplied on this form must be checked for accuracy by accessing the SDVOB Directory and verifying that companies reported are certified.

NOTE: After a contract is awarded, the monthly reports are due no later than the 10th day after the end of each month.

2. Notice of Deficiency shall include:
 - a. The shortfall amount and/or shortfall percentage in SDVOB utilization that is contractually required;
 - b. The names of any SDVOBs which are not acceptable for the purpose of complying with the goal requirements; and
 - c. Elements of the contract scope of work which the Contracting Unit has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the contract by SDVOBs.
3. The Contractor shall respond to the Contracting Unit's Notice of Deficiency with a written remedy for correcting deficiencies and/or provide a "Good Faith Effort" statement within seven business days of receipt of deficiency. If the Contracting Unit determines that a Contractor has made "Good Faith Efforts" but is unable to comply with SDVOB goals because of the lack of availability of SDVOBs in their respective region, the Contractor will be directed by the Contracting Unit to submit in writing, a request for partial or total waiver of SDVOB participation goals. [Form #SDVOB200](#), "Application for Waiver of SDVOB Participation Goal," will be provided by the Contracting Unit.
4. The Contracting Unit will review and respond to the waiver request for approval or denial within 10 business days. The Contracting Unit may deny a request for a waiver. However, if the Contracting Unit determines that the waiver request should be approved; [Form #SDVOB200](#), along with all supporting documentation, should be forwarded to the (MWBE/SDVOB Team for review and final approval. MWBE/SDVOB Team's decision will be sent to the Contracting Unit within five business days. After receipt of MWBE/SDVOB Team's decision, the Contracting Unit will notify the Contractor within five business days regarding the Department's decision.
5. A Contractor may submit a request for partial or total waiver of SDVOB goals at any time during their contract period, but before requesting final payment.

NOTE: Failure to submit [Form #SDVOB101](#), and/or other reports or information as requested by DOCCS in a timely manner, may result in payments under the contract being delayed until such reports or other information have been received.

VIII. CONTRACTOR'S FAILURE TO COMPLY WITH TERMS OF THE AGREEMENT

- A. Goal percentages established in this contract are subject to the requirements of Article 17-B of the Executive Law and regulations adopted pursuant thereto.
- B. The parties agree as a condition of the contract to be bound by the provisions of Section 369 of the Executive Law.
- C. The Contractor shall submit, and shall require Subcontractors to submit, compliance reports on forms at intervals to be established by DOCCS. Reports not submitted at such times as required by DOCCS may be cause for the delay of scheduled payments to the Contractor.

IX. MWBE/SDVOB TEAM RESPONSIBILITIES

- A. The MWBE/SDVOB Team shall be responsible for implementing the SDVOB Program of the Department and for reviewing and reporting on the Department's activities and progress in establishing an effective SDVOB Program. The MWBE/SDVOB Team will act primarily as a compliance authority for all Contracting Unit SDVOB activities.
- B. The MWBE/SDVOB Team is available to provide technical assistance and training to Central Office, Division of Industries, facility personnel responsible for the SDVOB program requirements, and regional/area office personnel.
- C. The MWBE/SDVOB Team shall continue its involvement in public outreach efforts to community organizations representing SDVOBs. Whenever possible, the MWBE/SDVOB Team and facilities will arrange meetings and host SDVOB workshops/seminars for the purpose of sharing information about the Department's SDVOB Program, goals, and objectives.

X. INSTITUTION STEWARD/CONTRACTING UNIT AND/OR EQUIVALENT RESPONSIBILITIES

- A. The Institution Steward or equivalent is charged with the task of ensuring SDVOBs are provided equal opportunity to bid on all discretionary purchases of goods and services contracts in accordance with provisions specified in Executive Law Article, 17-B.
- B. The Institution Steward or equivalent shall enforce specific procedural guidelines for the purchasing agents within the Contracting Unit relative to solicitation and utilization of SDVOBs in the procurement process.
- C. The Institution Steward or equivalent shall monitor the efforts of their respective Contracting Units in identifying SDVOBs to be contacted as services or goods are needed.
- D. In addition, the Institution Steward or equivalent shall continue to encourage collaboration and open communication between the Contracting Unit's purchasing staff and SDVOB representatives to obtain catalogues, price lists, and additional descriptive materials in order to enhance opportunities to utilize goods and services offered by these firms.
- E. Annual M/WBE-SDVOB Training: On an annual basis and upon being hired, all business office staff are required to review the M/W Business Enterprise-SDVOB training that is available on the DOCCS Training site at: *Business Office Procedures and Information>MWBE>Training and Resources>MWBE SDVOB Training for Stewards*. One hour of training credit is allowed for completing this training.

XI. PROCUREMENT GUIDELINES AND PROCEDURES

- A. General: It is the responsibility of all Department employees who have purchasing responsibilities or purchasing authority to solicit SDVOBs for all DOCCS contracts to assist such businesses to increase their involvement with the State of New York.
- These same employees will supply all requested information, assistance, and reports in matters concerning the Department budget, expenditures, plans, forms, and programs concerning SDVOB development to the MWBE/SDVOB Team.
- The said employees shall convey opportunities to SDVOB firms in full support of the Department's policy and the NYS Procurement Guidelines. These guidelines specify that a single quotation from a responsible Contractor of items not available from a preferred source, or on centralized contract, in amounts of up to \$500,000 for purchases made in accordance with the State Finance Law, may be utilized to expand SDVOB opportunities.
- All contracting units must maintain contractor files for specialized items unique to the Department and maintain a current file of active SDVOBs.
- All Contracting Units must compile information and prepare periodic reports as required by control agencies, administrative staff, the Budget Unit, and the MWBE/SDVOB Team.
- B. Sources: The following procedures are based on the NYS Procurement Guidelines, pursuant to Article XI of the State Finance Law and Section 1-9 of the State Printing and Public Documents Law.
- C. Open Market Purchases of \$0 to \$14,999
1. Check all available small business and SDVOB source documents to determine if any applicable Contractors offer the commodity or service being purchased.
 2. Purchase directly from an SDVOB Contractor if the Contractor meets the following criteria:
 - a. Provides a quality product or service;
 - b. Offers the product or service at a reasonable price (see Section XI-G, Reasonable Pricing); and
 - c. Has reasonable delivery terms.
- D. Open Market Purchases of \$15,000 and Over: Purchases of commodities or services of more than \$15,000 can be purchased using either of the following methods:
1. Discretionary purchasing between \$15,000 and \$500,000 allows agencies to promote the participation of SDVOBs. This method may not require competitive bidding. To use this method, you must:
 - a. Identify a responsible (certified) SDVOB;
 - b. Request the selected SDVOB to offer a price for supplying this requirement; and
 - c. Determine that the price offered is reasonable and prepare a statement indicating the basis for this determination (see Section XI-G).

2. Formal competitive bidding for purchases of \$50,000 and over: This method does not provide an opportunity to select an SDVOB Contractor which is not the lowest responsible bidder. However, agencies should utilize the SDVOB Directory to expand bid opportunities to SDVOBs.

All purchases \$50,000 and over must be advertised in the Contract Reporter. Although not required, advertising purchases between \$15,000 and \$49,999 is recommended as best practice to ensure competitive pricing. Additionally, any purchase over \$50,000 must have Office of State Comptroller (OSC) approval.

- E. Contracts Over \$25,000: Pursuant to the SDVOB policy of the Department, goals have been established to ensure Contractors exercise "Good Faith Efforts" to utilize SDVOB enterprises on all purchases/contracts.

Every service, construction, consultant, or purchase contract involving a Department expenditure of \$25,000 or more shall include a "Contractor Requirements for SDVOB" Appendix. There are three variations of the Contractor Requirements Appendix for SDVOBs: [SDVOBCR](#) applies to contracts with SDVOB goals, [SDVOBNA](#) applies to contracts with no SDVOB goals, and [SDVOBSA](#) applies to SDVOB Set-Asides. The Contractor Requirements Appendix shall set forth the SDVOB requirements of each Contractor working on the contract.

Furthermore, the above-noted SDVOB Contractor Requirements require the Contractor to supply information on Subcontractors and submit certain other compliance reports mandated by the Department of Economic Development and the DSDVBD.

- F. Change Orders and Amendments: Whenever a change order or contract amendment will increase the value of a service contract which was previously under \$100,000 to \$100,000 or more, or any service which was previously under \$25,000 to \$25,000 or more, the provisions of Article 17-B of the Executive Law will apply, and the appropriate paragraphs and contract provisions will be included in the change order or amendment.

- G. Reasonable Pricing: OGS, with the concurrence of OSC, has issued the following guidelines for determining reasonableness of price. These guidelines are also used as a basis for the verification and approval process.

"In general, the reasonableness of price may be determined by using one or more of the following actions: Comparing the price offered against product catalogs, published price lists, retail market surveys; consulting historical records of previous purchases for the same or similar items, consulting with other public and/or private purchasing officials; using professional experience and judgment, etc."

Some examples of appropriate statements in determining reasonable pricing are:

1. "Comparison with latest price catalog(s) shows this pricing to be lower than manufacturer's suggested selling price";
2. "A survey of the local retail market indicates this pricing is within the same price range";
3. "Review of previous purchases made on similar items shows this pricing to be at the same discount level";
4. "A telephone inquiry to a local government agency indicated it is paying a similar price for the same product"; and

5. "Based on years of purchasing experience, the price offered by this SDVOB Contractor is judged to be reasonable and acceptable."

H. Miscellaneous

1. Any firm that claims to be an SDVOB but is not included in the OGS SDVOB Directory should be encouraged to contact DSDVBD to obtain the appropriate certification.
2. An SDVOB firm that does not respond to a bid/quotation request should continue to be included on the Contracting Unit's list of prospective Contractors until no response is received on three separate and consecutive occasions. At which time, that Contractor should be contacted in writing by the Contracting Unit to verify their withdrawal from active participation.
3. Appropriate documentation should be maintained to be used to compile quarterly activity reports, as well as to substantiate the Contracting Unit's efforts to achieve established participation goals.
4. DOCCS is committed to an aggressive SDVOB procurement program pursuant to the requirements of Executive Law Article 17-B. Increased utilization of discretionary thresholds is one of the many methods available to help accomplish the objectives of this program. In order to achieve increased participation of the numerous SDVOBs located in New York State, maximum utilization of these thresholds must be made by all purchasing staff.

XII. REPORTING PROCEDURES

- A. State and contracting agencies shall submit a quarterly compliance report in a format and manner provided by the DSDVBD, including information regarding all Contracting Units' SDVOB activities.
- B. To enable the Department to meet the reporting requirements of the State's SDVOB Program and to analyze and strengthen our own program, each facility must submit reports of its SDVOB activity.

The Institutional Steward (or the functional equivalent) in each Contracting Unit is responsible for the timely and accurate submission of all appropriate reports and forms to the MWBE/SDVOB Team.
- C. Participation in this program and completion of the quarterly report is not optional. Facility administrators must take immediate steps to ensure that their Contracting Unit is in compliance.
- D. Instructions for completing facility utilization forms are included with each form.

XIII. LIST OF FORMS / DOCUMENTS REFERENCED IN THIS DIRECTIVE

Document Abbreviated Name	Document	Primary Section Referenced
SDVOB100	SDVOB Utilization Plan	VII-B
SDVOBNAD	SDVOB notice of Acceptance or Deficiency	VII-B
SDVOB101	Contractor's Monthly SDVOB Compliance Report	VII-B-1
SDVOB200	Application for Waiver of SDVOB Participation Goal	VII-B-3
SDVOBCR SDVOBNA SDVOBSA	Contractor Requirements for SDVOB: <ul style="list-style-type: none"> • SDVOBCR for contracts with SDVOB goals • SDVOBNA for contracts with no SDVOB goals • SDVOBSA for SDVOB Set-Asides 	V-A

Editable versions of the above-named forms can be obtained from the MWBE/SDVOB Team by email at: mwbe@doccs.ny.gov or by phone at: (518) 436-7886 ext.3135.