



Office of Temporary
and Disability Assistance

MWBE/SDVOB Program Requirements

MWBE/SDVOB Management Unit

November 12, 2021

Program Background

Diversity is one of New York State's greatest strengths. NY is home to the highest minority and women-owned business (MWBE) utilization rate in the country. Additionally, our service-disabled veteran owned business (SDVOB) program has been nationally recognized for its achievements in awarding state and federal dollars to certified SDVOB firms.

Pursuant to Articles 15-A and 17- B of New York State Executive Law, NYS agencies and authorities are required to establish MWBE and SDVOB participation goals for all applicable procurements.

OTDA's MWBE/SDVOB Program Management Unit

- To administer OTDA's MWBE/SDVOB Programs pursuant to New York State Executive Law (Articles 15-A and 17-B).
- Encourage and assist providers that are engaged in contracting activities in maximizing MWBE/SDVOB participation on OTDA contracts.
- To promote equitable access to economic opportunities for MWBEs and SDVOBs by eliminating barriers to their participation in OTDA's contracting.
- Monitor contracts for compliance throughout the life of the contract and address any MWBE or SDVOB issues that arise during the contract's life cycle.

Reauthorization of Article 15-A

- The provisions of the new Article 15-A went into effect in January 2020.
- Article 15-A of the Executive Law, has extended the certification period from three (3) to five (5) years for all currently certified NYS MWBEs.
- The reauthorization of Article 15-A increases the personal net worth certification cap to \$15 million previously at \$3.5 million.
- The discretionary purchasing threshold for agencies and authorities will be increased from \$200,000 to \$500,000 without a formal competitive bidding requirements for commodities, services and technology that are recycled or remanufactured.
- New enhanced reporting from New York State Agencies and Authorities on MWBE contracting; including, projected growth plans, procurement strategies as well as advocacy measures undertaken by the State on behalf of MWBEs

MWBE Appendix Z

- Outlines the Minority and Women-Owned Business Enterprise (MWBE) participation requirements for all OTDA Contracts and Grants.



(Rev. 1/18)

Appendix Z

Minority and Women-Owned Business Enterprise (MWBE) participation requirements for all NYS Office of Temporary and Disability Assistance Grants

I. General Provisions

- The OTDA is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- The contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OTDA, to fully comply and cooperate with OTDA in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State-certified minority and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") and other applicable federal, state, and local laws.
- Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to OTDA pursuant to the Contract and applicable law.

II. Contract Goals

- For purposes of this Contract, OTDA hereby establishes an overall goal of ___% for MWBE participation, ___% for New York State-certified minority-owned business enterprise ("MBE") participation and ___% for New York State-certified women-owned business enterprise ("WBE") participation (collectively, "MWBE Contract Goals") based on the current availability of MBEs and WBEs.



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Additionally, the Contractor is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS - The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.] [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.]
- The Contractor must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
 - Evidence of outreach to MWBEs;
 - Any responses by MWBEs to the Contractor's outreach;
 - Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 - The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OTDA with MWBEs; and,
 - Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity ("EEO")

- The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- In performing the Contract, the Contractor shall:
 - Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and



SDVOB Appendix Y

- Outlines the Service-Disabled Veteran Owned Businesses (SDVOB) Participation Requirements for OTDA's HHAP Contracts



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APPENDIX Y

Service-Disabled Veteran Owned Businesses (SDVOB) Participation Requirements for NYS Office of Temporary and Disability Assistance Contracts

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. OTDA recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OTDA contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

I. Contract Goals

- A. OTDA hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: https://ogs.ny.gov/veterans/Docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to the OTDA Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or



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term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OTDA.

- C. OTDA will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OTDA acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to OTDA a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OTDA to be inadequate, OTDA shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OTDA, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. OTDA may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
- If a Bidder fails to submit an SDVOB Utilization Plan.
 - If a Bidder fails to submit a written remedy to a notice of deficiency.
 - If a Bidder fails to submit a request for waiver.
 - If OTDA determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OTDA shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the designated contacts at OTDA for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OTDA at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OTDA shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. *Exempt for a partial or total*



Discretionary versus Non-Discretionary expense

- Discretionary expenses are non-personal service costs that are associated with the provision of support services to OTDA's contracts such as, but not limited to, office supplies/equipment, insurances, construction materials, and contractual services – any individuals or organizations external to the contractor which have entered into an agreement with the contractor to provide services – e.g., security services.
- Non-Discretionary expense are personal services such as salary, fringe, direct travel reimbursement, rent, and utilities are exempted from the total contract value or grant amount.

MWBE NFP Exemptions

- Self-performance
- Utilities
- Rent
- Personal services

MWBE Compliance Documents

All contracts are required to have compliance documents:

- OTDA – 4934 Staffing Plan
- OTDA – 4970 MWBE EEO Policy Statement
- OTDA – 4976 Certification of Good Faith Efforts

Contracts that have MWBE discretionary expenses require additional documents:

- OTDA – 4937 Utilization Plan
- OTDA – 4938 Subcontractor Letter(s) of Intent
- OTDA – 4969 MWBE Waiver Request Form * *when applicable*

Post award:

- OTDA – 4968 MWBE Subcontractor Quarterly Compliance Report
- OTDA – 4971 Workforce Utilization Report

SDVOB Compliance Documents

All HHAP contracts are required to have compliance documents:

- SDVOB-100 – SDVOB Utilization Plan
- SDVOB-200 – SDVOB Waiver Request * *when applicable*

Post award:

- SDVOB-101 – Monthly SDVOB Contractor Compliance Report

NYS Certifications and Utilization Credit

- The MWBE/SDVOB unit provides technical assistance with vendor searches via the NYS Directory of Certified MWBEs and the Office of General Services Directory of SDVOBs.
- When a firm is certified at the time of contract execution, however, becomes decertified post execution, the MWBE/SDVOB unit still counts the amount towards the overall goal(s) for the contract.
- New contracts (i.e. – fresh 5-year term) will be required to identify a new certified firm(s) for the contract.

Broker-Supplier MWBE Utilization Credit

- Construction Supplier - 60% credit: Firms that sell goods out of their revolving inventory.
- Construction Manufacturers' Representatives/Brokers - only the amount of commission.
- MWBE Utilization Credit policy for applying MWBE utilization credit on non-construction contracts is as follows:
 - Manufacturer - 100% credit: Manufacturers that produce and distribute the item themselves.
 - Supplier – 100% credit: Firms that sell goods out of their revolving inventory.
 - Manufacturers' Representatives/Brokers – 25% utilization credit. Any firms that are listed as brokers or manufacturers' representatives (NAICS code 425120) and not specifically as suppliers fall in this category.

Not For Profit Contracts Review

- After all compliance document(s) have been reviewed by the MWBE/SDVOB unit. Notice is sent back to our internal program liaisons with comment(s) and/or required revisions. Once this information is reconciled the agency advances the contract for external approvals.
- After a contract is executed and ready to go into the system. The MWBE/SDVOB unit will then release a proposal to the provider via the Statewide Utilization Management Plan (SUMP) which is housed in the New York State Contract System (NYSCS).
- We monitor our contract compliance through NYSCS with quarterly report payment. The system will automatically alert the provider to submit a report until it is closed.

New York State Contract System

The two primary modules as it relates NYS MWBE compliance monitoring are as follows:

Statewide Utilization Management Plan (**SUMP**) – This is New York State’s central repository for MWBE Utilization Plans, and all MWBE Utilization Plans must be electronically entered into this system. It is the provider’s responsibility to enter MWBE Utilization Plans into SUMP.

- The requirement to enter MWBE Utilization Plans into SUMP applies to all new contracts as well as contract amendments and extensions.
- The Unit facilitates onboarding vendors into the NYSCS SUMP Module, and MWBE liaison’s/program areas act as resources to assist vendors with understanding their respective roles in this contract monitoring process.

Contract Compliance Module (**CCM**) – This is New York State’s tool to monitor and ensure MWBE contract compliance, and report MWBE utilization.

- All providers areas must use this system as a tool to monitor their contracts for MWBE compliance and work with the Unit to address non-compliance issues as they arise.

Waivers

- MWBE/SDVOB waivers occur at or after the time of award or prior to the end of the contract and result in a reduction or elimination of the MWBE/SDVOB goals that were originally established by the agency.
- A waiver shall not be granted unless the contractor has provided their documented Good Faith Efforts (“GFEs”).
- GFEs are the actions all contractors must demonstrate to certify they have performed their due diligence to solicit MWBE/SDVOB participation in support of their state contract.

Highlights

HHAC MWBE/SDVOB Participation

HHAC Projects are projected to yield over \$20 million in MWBE Participation .



Contact Us!

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