

## **Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)**

### **Attachment F**

#### **New York State Law**

Pursuant to New York State Executive Law Article 17-B, NYSERDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified service-disabled veteran-owned business enterprises (SDVOB) in the performance of NYSERDA contracts. Executive Law Article 17-B and its associated regulations require, among other things, that NYSERDA establish goals for maximum feasible participation of New York State Certified SDVOBs in the performance of New York State contracts.

#### **Contract Participation Goals by SDVOBs on NYSERDA procurements**

In accordance with Article 17-B of the N.Y. Executive Law (“Article 17-B”) and its associated regulations, NYSERDA has established certain contract participation goals for certified SDVOBs. NYSERDA's participation goals for contracts awarded pursuant to this solicitation are 6% for SDVOBs. This is in addition to required MWBE participation goals which are discussed in Attachments 1-6. The SDVOB participation goal is subject to the requirements of Article 17-B, and its implementing regulations as set forth in Title 9, Subtitle G Part 252 of the New York Codes, Rules and Regulations (the “Regulations”).

By submitting a proposal, the Proposer represents that it has reviewed and familiarized itself with the Regulations (see <http://ogs.ny.gov/About/Regs/docs/part252.pdf>) which are incorporated herein by this reference. Any conflicts between the solicitation and the Regulations shall be resolved in favor of the Regulations. Each proposer shall, in accordance with the Regulations, make good faith efforts and, in a manner that can be established in documentary form, solicit active participation by certified SDVOBs, as identified in the applicable state directory maintained by OGS. (see [http://ogs.ny.gov/core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/core/docs/CertifiedNYS_SDVOB.pdf))

Additionally, proposers are encouraged to contact the Division of Service-Disabled Veterans' Business Development at 844-579-7570 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing SDVOBs on the contract.

#### **Utilization Plan**

NYSERDA requires every proposer to undertake good faith efforts to actively solicit SDVOB participation in connection with the potential award of a NYSERDA contract. An SDVOB Utilization Plan (see Attachment 2) must be submitted with every proposal.

#### **Compliance Reporting**

Contract compliance reports are required to be submitted for all contracts that require a Utilization Plan. See Attachment 3.

#### **Waiver Requests**

A proposer may request a total or partial waiver of the requirements of the SDVOB participation goal (see Attachment 4). Prior to granting or denying a waiver, NYSERDA will evaluate the proposer's good faith efforts and may consider the factors set forth in the Regulations. In the event NYSERDA refuses to grant a waiver, the proposer may file a complaint with NYSERDA in accordance with the Regulations.

#### **Contractor Disqualification**

If NYSERDA determines, after having given notice of deficiency, that a contractor has failed to submit an acceptable Utilization Plan or satisfactorily document its good faith efforts, NYSERDA may proceed with

the next ranked bidder if NYSERDA has not received a request for a review of such finding from the contractor. NYSERDA shall conduct such review providing the contractor with an opportunity to be heard and make a determination that confirms the contractor is disqualified or reaffirms that the contractor is qualified. Such determination shall constitute a final agency determination.

**Contractor and NYSERDA Complaints**

Subsequent to the award of a contract to a contractor that becomes deficient with regard to its Utilization Plan, the contractor may file a complaint with NYSERDA. The complaint should state the reasons for the complaint, together with a demand for relief and include the following information: (1) the contractor's receipt of a written determination by NYSERDA that the contractor is not entitled to a partial or full waiver of the SDVOB goals; or (2) the contractor's receipt of a written determination by NYSERDA that the contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals. NYSERDA shall provide the contractor with an opportunity to be heard and shall conduct a review and shall render a determination regarding the merits of the complaint. Within 20 days of NYSERDA's determination that the contractor has not acted in good faith, has failed, is failing, or is refusing to comply with the SDVOB goals, NYSERDA may after giving the contractor an opportunity to be heard, make a determination that the contractor has failed to meet the contract goals and assess such other damages as were identified in the contract.

**Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)**

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf)

Proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality

and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

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Solicitation/Contract No. \_\_\_\_\_

Date \_\_\_\_\_

**I. PRIME CONTRACTOR INFORMATION**

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. ( ) \_\_\_\_\_ Federal ID # \_\_\_\_\_

Proposal/Contract Amount \$ \_\_\_\_\_

Brief Description of Work \_\_\_\_\_

Prime Contractor SDVOB Status SDVOB Non-SDVOB

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II. I, \_\_\_\_\_ HEREBY AGREE TO THE 6 % CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE (SDVOB) GOAL AS SET FOR IN THIS SOLICITATION/CONTRACT. I FURTHER SUBMIT THE BELOW NYS CERTIFIED SDVOBS FOR YOUR REVIEW AND APPROVAL IN COMPLIANCE WITH THE GOAL REQUIREMENTS ESTABLISHED IN THIS SOLICITATION/CONTRACT.

**NYS Certified SDVOBs**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Estimated Contract Award Date: \_\_\_\_\_

Estimated Contract Award Date: \_\_\_\_\_

Estimated Contract Commencement Date:

Estimated Contract Commencement Date:

Brief Description of the Scope of Work:

Brief Description of the Scope of Work:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Estimated Contract Award Date: \_\_\_\_\_

Phone: \_\_\_\_\_

**Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)**

Estimated Contract Commencement Date:

Contact Person: \_\_\_\_\_

Brief Description of the Scope of Work:

\_\_\_\_\_

Estimated Contract Award Date: \_\_\_\_\_

\_\_\_\_\_

Estimated Contract Commencement Date:

Name: \_\_\_\_\_

Brief Description of the Scope of Work:

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

The Contractor shall undertake "good faith" efforts to actively solicit SDVOB participation in connection with its potential award of the NYSERDA contract.

**III.** Provide the name, title, address and telephone of person(s) responsible for implementing this subcontracting plan.

**IV.** If the Contractor anticipates that it will not be able to meet the contract SDVOB participation levels, a waiver request must be submitted with the proposal (see Attachment 10).

I hereby declare that the above information is to the best of my ability and intention correct and that every effort will be made in the attainment of the established SDVOB goal. I further declare that the utilization of SDVOBs for non-commercially useful functions may not be counted towards utilization of SDVOBs in the utilization plan.

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Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)**

**SDVOB WAIVER FORM**

Solicitation or Contract No.: \_\_\_\_\_ Date: \_\_\_\_\_

1. PRIME CONTRACTOR INFORMATION

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Federal ID #: \_\_\_\_\_

Brief Description of Work:

\_\_\_\_\_  
\_\_\_\_\_

2. I hereby request a **Partial** or **Total** (circle one) waiver of the certified SDVOB goals as established in the solicitation or contract identified above. To substantiate and demonstrate my good faith efforts the following information is submitted for the Authority's review and approval.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Print name and title Authorized Representative

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1. Provide a statement setting forth the basis for requesting a partial or total wavier of the certified SDVOB goal established in the solicitation:
2. List the certified SDVOBs that were solicited in writing to provide bids for purposes of complying with the SDVOB goal requirements of the solicitation.
3. Provide proof of dates on which such solicitations were made in writing and copies of said solicitations as well as copies of responses you received.
4. Provide a description of any contract documents, plans or specifications that were made available to certified SDVOBs for purposes of soliciting their bids.
5. Provide the dates and manner in which the above documents were made available.
6. Provide information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs
7. Attach any documentation you have of negotiations between the contractor and the certified SDVOB undertaken for purposes of complying with the goal requirements in the solicitation.
8. Provide any other information you deem relevant which may help us in evaluating your request for a wavier.
9. Provide the name, title, address and telephone number contractor's representative authorized to discuss and negotiate this waiver request.

Waiver request is:  Granted  Denied

By: \_\_\_\_\_ Date: \_\_\_\_\_

## **Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)**

NYSERDA may grant a partial or total waiver of the goal requirements established in the solicitation/contract upon the submission of a waiver form by a contractor documenting good faith efforts by the contractor to meet the goal requirements, and in consideration of the following factors:

1. The number and types of certified SDVOBS available to perform the work
2. The total dollar value of the contract and the scope of work to be performed
3. The project size and project term
4. The availability of other business enterprises located in the region qualified to do the work
5. The ability of certified SDVOBs located outside the region to perform the work
6. The extent to which the contractor's own actions contributed to its inability to meet the goal

In addition to the information provided by the contractor on this form, NYSERDA may also consider the following to determine whether the contractor has demonstrated good faith efforts:

1. Where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontractor or supplier opportunities in the contract
2. The number of certified SDVOBs in the region that could, in the judgment of NYSERDA, perform work required by the contract
3. The actions taken by the contractor to contact and assess the ability of certified SDVOBs located outside of the region in which the contract is to be performed to participate on the contract
4. Whether the contractor provided relevant plans, specifications or terms and conditions to certified SDVOBs sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier
5. The terms and conditions of any subcontractor or provision of suppliers offered to certified SDVOBs and a comparison of such terms and conditions of those offered in the ordinary course of the contractor's business
6. Whether the contractor offered to make up any inability to comply with the certified SDVOB goals in the subject contract in other state contracts being performed or awarded to the contractor
7. The extent to which the contractor's actions contributed to its inability to meet the goals
8. Whether the contractor knowingly utilized one or more certified SDVOBs, in the performance of the contract, that contractor knew or reasonably should have known could not perform a commercially useful function
9. Whether the contractor submitted compliance reports which identified certified SDVOBs that the contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned
10. Any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.