

ATTACHMENT E

Article 17-B (SDVOB) Contract Provisions (non-construction)

1. General Provisions

- a. NYSERDA is required to implement the provisions of New York State Executive Law Article 17-B and Title 9, Subtitle G Part 252 of the New York Codes, Rules and Regulations (the "Regulations") 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.
- b. The Contractor to the subject contract ("Contractor" and "Contract" or "Agreement" respectively, agrees to fully comply and cooperate with NYSERDA in the implementation of New York State Executive Law Article 17-B and the Regulations. These requirements include the promotion of opportunities for maximum feasible participation of certified service-disabled veteran-owned business enterprises (SDVOB) in the performance of NYSERDA contracts and 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. Contractor's demonstration of "good faith efforts" pursuant to the Regulations shall be a part of these requirements.
- c. Failure to comply with all of the requirements herein may result in a breach of contract, leading to the withholding of funds or other such actions as allowed by the Contract.
- d. The Contractor further fully agrees to cooperate with NYSERDA in the implementation of such additional requirements as may be required by the Division of Service-Disabled Veterans' Business Development located within OGS.

2. Contract Goals by SDVOBs NYSERDA's participation goals for this procurement are 6 for SDVOBs. This is in addition to required MWBE participation goals which are discussed in Attachments 6.

3. Participation Goals The Contractor 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 this Agreement and the Regulations shall be resolved in favor of the Regulations. The Contractor 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). Additionally, the Contractor is encouraged to contact the Division of Service-Disabled Veterans' Business Development at 844-579-7570 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing SDVOBs on the contract. In furtherance thereof, the Contractor has submitted a completed SDVOB Utilization Plan (see **Attachment 8**) and/or a NYSERDA approved Waiver Form (see **Attachment 10**), which information sets forth NYSERDA's and Contractor's agreed upon participation goals during the performance of this Agreement.

4. Compliance Reporting In order to demonstrate compliance with the stated Contract goals set forth above, Contractor shall be required to submit compliance reports. Unless NYSERDA has granted a total waiver or Contractor is a certified SDVOB with OGS and is responsible for 100% of the performance of this Agreement, the Contractor shall submit to NYSERDA an SDVOB Compliance Report on a quarterly basis in the form attached hereto as **Attachment 9**. The

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Contractor's failure to follow the applicable reporting requirements or failure to comply with the stated participation goals in the previous Section set forth above may result in NYSEDA's submission of a complaint to OGS Division of Service-Disabled Veterans' Business Development

5. **Waiver Requests** In Accordance with the Regulations, Contractor may submit, at any time prior to its request for final payment, a request to NYSEDA for total or partial waiver of the requirements of the SDVOB contract goal. NYSEDA may grant a partial or total waiver of the requirements of the Contract goals established hereunder. Prior to granting or denying a waiver, NYSEDA shall evaluate the Contractor's good faith efforts and may consider the factors set forth in the Regulations. If NYSEDA, upon review of the SDVOB Utilization Plan and updated Quarterly SDVOB Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, NYSEDA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days. Such response may include a request for a partial or total waiver of SDVOB Contract goals. In the event NYSEDA refuses to grant a waiver, the proposer may file a complaint with NYSEDA in accordance with the Regulations and as stated below.
6. **Contractor and NYSEDA Complaints** If the Contractor becomes deficient with regard to its Utilization Plan as provided above, the Contractor may file a complaint with NYSEDA. 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 NYSEDA 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 NYSEDA that the Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals. NYSEDA 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 NYSEDA's determination that the Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with the SDVOB goals, NYSEDA 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.
7. **Article 17-B Compliance Monitoring** NYSEDA is responsible for monitoring Contractor's compliance with the applicable Regulations. In that regard, NYSEDA may, at its discretion, notify the Contractor in writing of NYSEDA's intent to inspect relevant records and documents related to Article 17-B compliance. NYSEDA shall analyze and consider such records, documents and other data to determine whether the Contractor has made conscientious and active efforts to employ and utilize SDVOBs on the State contract.
8. **Violations** Any Contractor who willfully and intentionally fails to comply with the SDVOB contract goals and requirements contained in the Agreement and Regulations shall be liable to NYSEDA for damages as otherwise specified in the Agreement. Damages shall be calculated based on the actual cost incurred by NYSEDA related to NYSEDA's expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing SDVOB programmatic goals.