



## Discretionary Purchasing Guidelines for Service-Disabled Veteran-Owned Businesses

Article 17-B of the Executive Law, enacted in 2014, provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (SDVOBs), thereby further integrating such businesses into New York State's economy. The Article established a goal of 6% of procurement expenditures to be made with SDVOBs by state agencies, public authorities and public benefit corporations. In addition to establishing goals for certain public procurements, the Article also provided for set asides of certain procurements for which only SDVOBs would be eligible.

An additional tool authorized by Chapter 569 of the Laws of 2015 has extended the authority for state agencies (not public authorities or public benefit corporations) under State Finance Law § 163 (6) to use discretionary purchasing authority of up to \$200,000 to purchase commodities, services and technology to further promote purchasing from SDVOBs. Similar discretionary authority had already been granted to state agencies for procurements from small businesses, minority-owned businesses or woman-owned businesses and, as applicable, from vendors of recycled or remanufactured products or food commodities, including milk and milk products that are grown, produced or harvested in New York State.

To identify SDVOBs in using discretionary purchasing authority, state agencies shall consult the Office of General Services (OGS) directory of certified SDVOBs at [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf) to determine if there is a competitive field of certified SDVOBs that appear to be suitable in meeting agency needs and that have sufficient capacity and resources. The up to \$200,000 discretionary purchasing threshold may be exercised by state agencies when the commodity, service or technology is not available from preferred sources or from OGS centralized contracts. Discretionary purchases are not subject to formal competitive bidding requirements set forth in State Finance Law § 163, but are subject to the advertising requirements published in the Contract Reporter as mandated by the Economic Development Law Article 4-C.

State agencies must also comply with their internal policies and procedures governing discretionary purchases, which should include an assessment as to whether a formal competitive procurement process, or one that is less formal, but still competitive, may best meet the agency's needs. Agencies may also determine based upon experience, knowledge and a current analysis,

whether it is appropriate to use a set aside for such discretionary purchase or to engage a larger competitive field that could also include small businesses, minority-owned businesses or woman-owned businesses and as applicable vendors of recycled or remanufactured products or food commodities, including milk and milk products, that are grown, produced or harvested in New York State. More information on set aside procurements is available at: <http://ogs.ny.gov/core/docs/Guidelines.pdf> at the link to Guidelines on Participation by Service-Disabled Veterans with Respect to State Contracts.

(NOTE: State Finance Law §160 (8) defines "small business" as meaning a business which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons).

State Finance Law §112 (2) (a) continues to require prior approval by the State Comptroller for contracts exceeding \$50,000. So discretionary purchases with a value between \$50,000 and \$200,000 from SDVOBs would need to be reviewed and be finally approved by the Office of the State Comptroller. Their review will encompass whether the state agency addressed the following issues:

1. The agency needs to ensure that the commodities, services or technology being acquired meets its form, function and utility.
2. The agency needs to document and justify the selection of the vendor.
3. The agency needs to document and justify the reasonableness of price.
4. The agency needs to ensure that the agency is buying from responsive and responsible vendors.

As a general rule, the State Comptroller would require a minimum of three (3) quotes; additional justification by state agencies relative to adequate competition and reasonableness of price should be provided if there are less than three (3) quotes.

Further information regarding the SDVOB program may be obtained by visiting the Division of Service-Disabled Veterans' Business Development (DSDVBD) webpage at <http://ogs.ny.gov/Core/SDVOBA.asp> or by contacting DSDVBD by phone or email:

Phone: 518-474-2015

Email: [veteransdevelopment@ogs.ny.gov](mailto:veteransdevelopment@ogs.ny.gov)