



## Office of General Services Division of Service-Disabled Veterans' Business Development

# Participation by Service-Disabled Veterans with Respect to State Contracts Through Set Asides Guidelines

Article 17-B of the Executive Law, enacted in 2014, provides for more meaningful participation in public procurement by Service-Disabled Veteran-Owned Businesses (SDVOBs), thereby further integrating such businesses into New York State's economy. One tool authorized by the law is the use of set asides. Set asides permit the reservation in whole or in part of certain procurements by State agencies for SDVOBs. The process for managing set asides are the subject of these guidelines from the Commissioner of General Services.

Types of procurements that may use set asides include:

1. Construction
2. Construction Related Services
3. Non-Construction Related Services (including finance/bond management)
4. Technology
5. Commodities

Set asides will be administered subject to the laws, rules and procedures governing contracting for each type of procurement, including, but not limited to:

1. Competitive bidding with award based on adherence to specifications and lowest price.
2. Competitive bidding with award based on technical responsiveness and best value.
3. Award based on qualifications and best value (for architects, engineers, and land surveyors).
4. Emergency award.
5. Single source award.
6. Sole source award.
7. Purchase based on exercise of discretionary authority subject to agency internal controls.
8. Other authorized procurement method(s) for making acquisition.

Accordingly, prior to making a "determination of need" for a procurement (within the meaning of the rules for procurement lobbying under State Finance Law §§ 139-j and 139-k), State agencies shall review the NYS Certified Service-Disabled Veteran-Owned Business Directory, available at <https://ogs.ny.gov/Veterans>, 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. If there is, the agency is strongly encouraged to reserve and conduct that procurement as a set aside for SDVOBs.

Each agency shall have in place an internal approval protocol for review of and finalizing the determination to proceed with a set aside procurement. It is recommended that at least two levels of approvals be included in the protocol. The approvals should be made part of the procurement record.

In order to determine that a competitive field of SDVOBs exists, an agency must review the certified SDVOB Directory and reasonably determine that at least two SDVOBs are able to respond to the procurement. During the agency review of the Directory and prior to the "determination of need" for the procurement, the potential SDVOBs may be contacted regarding their suitability to meet the agency need and whether the SDVOBs are likely to respond to the procurement.

The agency in providing public notice of the procurement opportunity shall include in its advertisement in the Contract Reporter the fact that the procurement is a set aside and the pool of bidders is limited to NYS certified SDVOBs. The agency shall then proceed with its procurement in accordance with the acquisition processes that are usually employed to secure the particular type of procurement. In making the contract award, the agency must assess and make a determination that the price offered by the vendor is reasonable and reflective of fair market value. Such finding should be made a part of the procurement record.

In the event that the set aside procurement does not result in a contract award, the agency may then open up the procurement and proceed with the acquisition with participation by all qualified vendors for the type of procurement.

Such procurements will continue to be subject to restrictions on communications during the procurement process governed by § 139-j and § 139-k of the State Finance Law. The agency, as part of the procurement process must also evaluate the responsibility of the SDVOB based upon financial and organizational capacity, legal authority, business integrity and past performance history.

State agencies shall report the number of completed set asides and ongoing set asides to the Director of the Division of Service-Disabled Veterans' Business Development, on a quarterly basis. See attached Report form. If there are no completed or ongoing set asides, the report should also indicate that status.

NOTE: Information about using SDVOBs in public procurement, including sample solicitation/contract documents, can be found at <https://ogs.ny.gov/Veterans>.