



Guidelines for Making Discretionary Purchases from Service-Disabled Veteran-Owned Businesses

Article 17-B of the Executive Law, enacted in 2014 as the Service-Disabled Veteran-Owned Business Act, 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 to SDVOBs by State agencies. In addition to establishing goals for certain public procurements, the Article also provides for set asides of certain procurements for which only SDVOBs are eligible, as detailed in the SDVOB set aside guidelines posted at: <https://ogs.ny.gov/guidelines-participation-service-disabled-veterans-respect-state-contracts-through-set-asides>

One tool a State agency may use to meet the 6% SDVOB participation goal is its discretionary purchasing authority under State Finance Law § 163(6) to purchase commodities, services and technology having a value of up to \$500,000 from SDVOBs. State agencies may use similar discretionary purchasing authority to purchase up to \$500,000 from small businesses (as defined in State Finance Law § 160(8)) and minority and/or women-owned business enterprises (as defined in Executive Law § 310), and up to \$200,000 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 (as defined in State Finance Law § 163).

This discretionary purchasing authority 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 if they exceed \$50,000, such purchases are subject to the advertising requirements published in the Contract Reporter as mandated by the Economic Development Law Article 4-C. To identify SDVOBs that may be available to provide the necessary commodities or services, State agencies should review the NYS Certified Service-Disabled Veteran-Owned Business Directory available at <https://online.ogs.ny.gov/SDVOB/search>.

It is important to remember that State Finance Law § 112(2) (a) continues to require review and prior approval by the

Office of State Comptroller (OSC) for contracts exceeding \$50,000. OSC's review will examine whether the State agency has:

- Ensured that the commodities, services or technology being acquired meet the agency's form, function and utility;
- Documented and justified the selection of the vendor;
- Documented and justified the reasonableness of price; and
- Ensured that the agency is buying from a responsive and responsible vendor.

As a general rule, OSC would require a minimum of three quotes. If fewer than three quotes were obtained, the State agency should be prepared to justify the adequacy of competition and reasonableness of price.

When making a discretionary purchase in accordance with State Finance Law § 163(6), State agencies must comply with their internal policies and procedures, which should include an assessment as to whether the agency's needs are best met by the discretionary purchasing process or by a formal competitive procurement process. Agencies may also determine based upon experience, knowledge and a current analysis whether it is appropriate to limit the discretionary purchasing opportunity to SDVOBs only, or to engage a larger competitive field that could also include small businesses, minority-owned businesses or woman-owned businesses, or other types of vendors authorized under State Finance Law § 163(6).

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

Phone: 518-474-2015

Email: veteransdevelopment@ogs.ny.gov