



Category:  
Financial  
Legal and Compliance

Responsible Office:  
[Diversity, Equity, and Inclusion](#)

Procedure Title:  
Participation by Service-Disabled Veteran-Owned Business (SDVOBs)  
with Respect to State University of New York Contracts

Document Number:  
7564

Effective Date:  
May 01, 2016

This procedure item applies to:  
State-Operated Campuses

Table of Contents

[Summary](#)

[Process](#)

[Forms](#)

[Related Procedures](#)

[Other Related Information](#)

[Authority](#)

[History](#)

[Appendices](#)

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Summary

This procedure sets forth guidelines to assist state-operated campuses of the State University of New York (University) in the procurement of materials, supplies, equipment, construction, construction-related services and services (including printing) from New York State certified Service-Disabled Veteran-Owned Businesses (SDVOBs). Specifically, it outlines steps that campuses must employ in the procurement process for commodities and services (Procedure Item 7553) and construction (Procedure Item 7554) and construction-related services (Procedure Item 7555) in order to be in compliance with NYS Executive Law Article 17-B and 9 NYCRR Part 252.

This procedure applies to all procurements exceeding \$25,000 for labor, services (including architectural and design services), supplies, equipment or materials, and for procurements exceeding \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements.

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Process

## I. OBJECTIVES

As outlined in Executive Law 17-B, the University is required to ensure that SDVOBs, certified by the New York State Office of General Services (OGS), have an equal opportunity to receive and participate in University procurements. It is the intent of the University to reach, on an annual basis, a SDVOB utilization goal of 6% as established by New York State Executive Law [Article 17-B](#).

## II. OVERSIGHT RESPONSIBILITIES

The University's MWBE Program is responsible for oversight of the SDVOB Program and will comply with NY Executive Law [Article 17-B](#), 9 NYCRR Part 252. The responsibilities include, but are not limited to the following:

1. Submit to NYS Office of General Services (OGS):
  - a. an annual Master Goal Plan; and
  - b. a quarterly compliance report including, but not limited to, the number of total SUNY contracts awarded, the maximum dollar amount obligated to those contracts, and total expenditures pursuant to all such contracts; same for contracts awarded to certified SDVOBs.
2. Provide:
  - a. assistance to campuses with goal assignment on campus contracts
  - b. goals setting training and goal preparation tools;
  - c. assistance to campuses when goals fall below established University-wide goals threshold of 6%.
  - d. a partial or total waiver of goal requirements established on a contract provided there is documentation of good faith efforts by the vendor/contractor to meet the goal requirements of the contract.
3. The Campus MWBE Program Coordinator (Coordinator) as appointed under [Procedure 7557](#) shall be responsible for the implementation and monitoring for compliance with the SDVOB Program.

### III. NYS CERTIFIED SDVOB LIST

The New York State Office of General Services, Division of Service-Disabled Veterans' Business Development (DSDVBD) maintains the [Directory of NYS Certified SDVOBs](#). The directory is imported regularly into PRISM, SUNY's web-based contract management system. The [Directory of NYS Certified SDVOBs](#) is also posted on the OGS website.

### IV. SDVOB LANGUAGE FOR SOLICITATIONS AND CONTRACTS

Any solicitation for or contract that conforms to the definition of state contract as described in the [rules and regulations](#) of the SDVOB program (9 NYCRR § 252) shall include language referencing [Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance](#), pursuant to New York State Executive Law Article 17-B.

The Utilization Plan (UP) shall be submitted by the contractor at the time the bid/proposal is submitted.

### V. OPTIONS FOR USE OF SDVOBs

Campus procurement personnel have three primary options for using NYS Certified SDVOBs in their contracting/purchasing activities. It is the responsibility of each campus to determine which option, or combination of options, can best achieve the University's goal as published annually by the SUNY MWBE Program office.

1. **SDVOB set-asides:** Set asides permit certain University procurements to be reserved, in whole or in part, exclusively for SDVOBs when at least two NYS Certified SDVOBs are available and can provide the necessary materials, supplies, equipment, construction, construction-related services and other services (including printing) that will meet a campus' form, function and utility (9 NYCRR § 252.2(j)).
  - a. Types of procurements that may use set asides include:
    - i. Construction
    - ii. Construction Related Services
    - iii. Non-Construction Related Services
    - iv. Technology
    - v. Commodities
  - b. Set asides are subject to the laws, rules and procedures governing contracting for each type of

procurement, including but not limited to:

- i. Competitive bidding with award based on adherence to specifications and lowest price.
- ii. Competitive bidding with award based on technical responsiveness and best value.
- iii. Award based on qualifications (for architects, engineers, and land surveyors).
- iv. Purchase based on exercise of discretionary authority subject to Procedure 7557 guidance.

- c. Campuses shall review the NYS Certified Service-Disabled Veteran-Owned Business Directory, available at [Directory of NYS Certified SDVOBs](#), 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.

SDVOB prime vendors can be found in PRISM by contacting the MWBE Program Coordinator on campus. If it is an open solicitation, please refer to the OGS Web site for certified vendors [Directory of NYS Certified SDVOBs](#).

- d. A competitive field is defined as two (2) or more certified SDVOBs.

- e. Although there is no dollar threshold associated with set asides, advertisement in NYS Contract Report is required for procurements exceeding \$50,000. The language in the Contract Reporter should read, *“this procurement is a set aside and the pool of bidders is limited to NYS certified Service-Disabled Veteran-Owned Businesses.”*

- f. Pursuant Article 15-A of the Executive Law, contracts established as a set-aside will be assessed for minority and women-owned business enterprise (MWBE) participation goals.

2. **SDVOB Contract Goal Setting:** A required percentage of SDVOB participation may be placed on qualified procurements pursuant to the regulations referencing discretionary thresholds exceeding \$25,000 or \$100,000.

- a. Any contract that conforms to the definition of state contract as described in the [rules and regulations](#) of the SDVOB Program at 9 NYCRR § 252, unless exempt or excluded, shall be assessed for SDVOB participation goals.

- b. The inclusion of utilization goals for SDVOBs on State contracts does not exempt contractors from the required utilization goals for MWBEs on State contracts as outlined in Executive Law 15-A.

3. **SDVOB Discretionary Purchasing:** NYS Certified SDVOB vendors may be chosen when making discretionary purchases. Discretionary purchases are procurements made below statutorily established monetary levels and at the discretion of the agency, without the need for a formal competitive procurement process.

- a. For a discretionary purchase from an SDVOB, the process is the same as that for determining the appropriateness of a campus exercising its discretionary purchasing authority under Education Law 355.5 and NY State Finance Law § 163.6. The process is provided in Section X of SUNY Procedure 7557 (Participation by Minority Group Members and Women).

- b. NYS Contract Reporter Advertisement. For procurements between \$50,000 and \$200,000 the language in the Contract Reporter shall read, *“The State University of New York intends to purchase the (goods/services) described below, pursuant to its discretionary authority under NYS Education*

*Law § 355(5) (b). This procurement opportunity is open only to NYS Service-Disabled Veteran-Owned Businesses (SDVOBs) that are certified pursuant to Article 17-B of the NYS Executive Law.”*

When assessing a procurement to determine which, of the three options for using NYS Certified SDVOBs should be used, a campus should consider:

- The contract and subcontract scope(s) of work;
- The potential subcontract opportunities available in the prime contract;
- The number and types of NYS Certified SDVOBs available to perform the State contract work;
- The geographic location of the contract performance;
- The extent to which geography is material to the performance of the contract;
- The ability of NYS Certified SDVOBs located outside of the geographic location of contract performance, notwithstanding the regional location of the NYS Certified SDVOB, to perform on the State contract;
- The total dollar value of the work required by the State contract in relation to the dollar value of the subcontracting opportunities;
- The relationship of the monetary size and term of the State contract to the monetary size and term of the project for which the State contract is awarded; and
- The agency or authority's annual agency-specific goal established pursuant to the [rules and regulations](#) of the SDVOB Program (9 NYCRR § 252).

## VI. SOLICITATION PHASE

1. The campus will incorporate the goals as published annually by the SDVOB Program into the Request for Proposal (RFP) or Invitation for Bid (IFB) of the solicitation along with any other information that the Coordinator deems relevant.
2. In addition to identifying a designated contact for procurement related activities, the campus will identify a designated contact for SDVOB-related inquiries. The statement below should be inserted in all procurement solicitations:
  - a. “For inquiries related specifically to Service-Disabled Veteran-Owned Business (SDVOB) provisions of this procurement solicitation, the designated contact is: list name, title, address, telephone number and email address.”
  - b. The SDVOB contact will respond to questions and requests for clarification received by telephone or visitation by bidders or their representatives. If it is a competitive procurement requests for clarification must be submitted in writing and answered in writing through an addendum to the IFB/RFP/RFQ.
  - c. All questions should cite the specific SDVOB section in the solicitation prompting the inquiry.
3. Pre-proposal/pre-bid conference or walk through: If the campus holds a Pre-proposal/Pre-bid conference as specified in the solicitation:
  - a. it must provide an opportunity to clarify SDVOB related questions;
  - b. it must provide a copy of the bidders list to any MWBEs or SDVOBs that request solicitation information; and
  - c. The campus contract administrator shall include SDVOB goals and participation requirements as a topic of discussion.
4. The campus contract administrator will issue a public notice of the procurement opportunity through

advertisements and outreach as follows:

- i. For procurements above \$50,000 require that an advertisement be placed in the New York State Contract Reporter.  
For all other procurements, a notice of solicitation (i.e., by phone, letter or email) should be sent to NYS certified SDVOB vendors in accordance with Article 17-B.
- ii. The full directory of NYS certified SDVOB vendors is produced by New York State Office of General Services (OGS) and is available on-line at [Directory of NYS Certified SDVOBs](#).
- iii. All advertisements and notices should be sent in a timely fashion allowing SDVOBs at least 15 days notification in advance of the response date if the procurement is greater than \$50,000.

## VII. SELECTION AND AWARD PHASE

1. The following SDVOB documentation is required from the vendor/contractor/consultant *with submittal of the bid or proposal*:
  - a. Service, Construction and Construction-Related Consultants Contracts
    - i. SDVOB Utilization Plan [7564-107](#)
2. The MWBE Coordinator will review the forms listed below to ensure the integrity of the SDVOB information being submitted.

## VIII. SDVOB DOCUMENTATION REVIEW AND APPROVAL

1. Before the contract is signed, the MWBE Coordinator, in consultation with appropriate campus staff, must review and approve all SDVOB Utilization Plans and MWBE Staffing Plans for commodities and services, construction and construction-related services contracts within twenty (20) business days, as required by 9 NYCRR 252.2(1)(3).
2. If approved, the contractor, at the direction of campus, must submit copies of all SDVOB Utilization Plans to the central repository ([MWBEProgram@suny.edu](mailto:MWBEProgram@suny.edu)).
3. If disapproved, the MWBE Coordinator will provide the contractor with a written notice of deficiency of the Utilization Plan within twenty (20) business days of its receipt, as required under 9 NYCRR § 252.2(1)(4). Should a notice of deficiency be issued, it shall include but not be limited to the following:
  - a. list of NYS certified SDVOBs that the contractor could potentially use as a subcontractor;
  - b. The name of any SDVOB which is not acceptable for the purpose of complying with the SDVOB participation goals, if applicable; and
  - c. Any other information which the MWBE Coordinator determines to be relevant to developing an approvable SDVOB Utilization Plan.
4. In addition to a revised Utilization Plan, the MWBE Coordinator may require additional SDVOB documentation if awardees submit deficient SDVOB good faith effort documentation.
5. The contractor shall respond to the notice of deficiency by submitting to the MWBE Coordinator a written remedy within seven (7) business days, as required by 9 NYCRR § 252.2(1)(5).
6. If the deficiency is rectified, the contractor, at the direction of campus, is to create an electronic file of the MWBE Waiver Request Form and Utilization Plan and post a copy of the SDVOB Utilization Plan form into PRISM.

7. If the deficiency is not rectified, and the contractor is requesting a waiver:
  - a. If the written remedy submitted is found to be inadequate, the MWBE Coordinator will notify the contractor and direct that it submit, within five (5) business days, a request for partial or total waiver of SDVOB goals as required by 9 NYCRR § 252.2(1)(6) on Form [7564-114](#) provided by the MWBE Program Office.
  - b. The MWBE Coordinator is to submit a copy of the deficient Utilization Plan, along with the contractor's good faith documentation and waiver request [7564-114](#), along with the campus' SDVOB Form [7564-114a](#) to the MWBE Program to determine the appropriateness of submitting a waiver request.
  - c. The MWBE Program Office, in consultation with the campus MWBE Coordinator, will determine whether additional action can be taken to assist the contractor reach the required goal or whether a formal request will be made to waive the goal.
  - d. If a contractor is deemed non-responsive or non-responsible by the MWBE Program Office, the request for a waiver shall be deemed to be moot (9 NYCRR § 252.2(m) (2)).
  - e. The MWBE Program Office, in consultation with the campus MWBE Coordinator may grant a partial or total waiver of goal requirements established on the contract only upon the submission of information supporting a waiver request by the contractor and the verification of requisite documentation of good faith efforts by the contractor to justify a waiver request.
  - f. Should the waiver request be denied by the MWBE Program Office, this may be grounds for disqualification of the Contractor's bid or proposal.
  - g. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Contractor's bid or proposal.
8. Contractor Disqualification. The Business Officer or campus designee, upon consultation with SUNY Counsel, the MWBE Program Office and the MWBE Coordinator, may disqualify a contractor as being non-responsive to the requirements of NYS Executive Law Article 17-B (9 NYCRR § 252.2(o), and may proceed to the next ranked bidder if the contractor:
  - a. Fails to submit an acceptable SDVOB Utilization Plan; or
  - b. Fails to satisfactorily document good faith efforts; or
  - c. Fails to submit a request for waiver; or
  - d. The campus receives a denial of its waiver request from the MWBE Program Office; or
  - e. The campus or the MWBE Program Office determines that the contractor failed to perform good faith efforts to meet the SDVOB goals.
9. The University's determination shall be considered final, unless the contractor requests a review of such findings.

## **IX. CONTRACT EXECUTION AND MONITORING PHASE**

1. The MWBE Coordinator will, with the assistance of other campus staff, be responsible for monitoring compliance with the established SDVOB goals during the life of the contract.
2. The campus will monitor and verify the contractor's compliance with Executive Law Article 17-B by discussing SDVOB related issues during progress meetings.

3. The MWBE Coordinator will require the contractor to submit the following compliance reports to the campus and the MWBE central repository ([MWBEProgram@suny.edu](mailto:MWBEProgram@suny.edu)) on either a monthly or quarterly basis, as designated by the campus:
  - [7564-111 Monthly SDVOB Compliance Report](#)
  - [7564-113 Quarterly SDVOB Compliance Report](#)

If requested, the Business Officer or campus designee, shall require the contractor to provide access to other relevant documentation.

4. Any waivers of compliance issued by the MWBE Program Office, or modifications to the utilization plan, shall be posted on the MWBE Program Office website, or a campus website, if they have the capacity, within ten (10) business days of making such a decision.

Within forty-five (45) business days after completion of a contract, the MWBE Coordinator shall submit to the central repository at [MWBEProgram@SUNY.edu](mailto:MWBEProgram@SUNY.edu) a final SDVOB Compliance Report detailing total expenditures by the contractors to SDVOB subcontractors.

## Definitions

**Commercially useful function.** A service-disabled veteran-owned business enterprise performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a service-disabled veteran-owned business enterprise must, where applicable and in accordance with any State agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A service-disabled veteran-owned business enterprise does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. Factors to be used in assessing whether a service-disabled veteran-owned business is performing a commercially useful function include: (1) the amount of work subcontracted; (2) industry practices; (3) whether the amount the service-disabled veteran-owned business enterprise is to be paid under the contract is commensurate with the work it is to perform; (4) the credit claimed towards service-disabled veteran-owned business enterprise utilization goals for the performance of the work by the service-disabled veteran-owned business enterprise; and (5) any other relevant factors.

**Goal** - Shall mean the percentage of aggregate agency expenditures targeted for the participation of certified service-disabled veteran-owned business enterprises sought to be included in State procurements opportunities as prime contractors, subcontractors, suppliers, consultants, joint ventures, teaming agreements, or other similar arrangements.

**Joint venture** - A contractual agreement joining together two or more business enterprises, one of which is a certified service-disabled veteran-owned business enterprise, for the purpose of performing on a State contract. The certified service-disabled veteran-owned business enterprise must provide a percentage of value added services representing an equitable interest in the joint venture. All parties agree to share in the profits and losses of the business endeavor according to their percentage of equitable interest.

**Mentor-Protégé Agreement** - A contract between a prime contractor, the "Mentor," and a service-disabled veteran-owned business enterprise, the "Protégé," in which there is a transfer of knowledge, technology, or other resources, which promotes the economic growth of the service-disabled veteran-owned business enterprise or fosters the establishment of a long term business relationship between Mentor and Protégé.

**Service-Disabled Veteran** - Shall mean: (1) in the case of the United States Army, Navy, Air Force, Marines, Coast

Guard, Army National Guard or Air National Guard and/or Reserves thereof, a veteran who received a compensation rating of ten percent or greater from the United State Department of Veterans Affairs or from the United States Department of Defense because of a service-connected disability occurred in the line of duty; and (2) in the case of the New York guard or the New York naval militia and/or reserves thereof, a veteran who certifies, pursuant to the rules and regulations promulgated by the director of the division of service-disabled veterans' business development, to having incurred an injury equivalent to a compensation rating of ten percent or greater from the United States Department of Veterans Affairs or from the United States Department of Defense because of a service-connected disability incurred in the line of duty.

**Small business** - Is defined as one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

**State Contract** - For purposes of this procedure, a "state contract" with the State University of New York (the "University") is (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

**Subcontract** - Any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

**Teaming Agreement** - A utilization plan arrangement between two or more parties, one of which is a certified service-disabled veteran-owned business enterprise, to perform on a specific State contract if awarded to the team. The team itself may be a joint venture, or one of the team members may be designated to act as the prime contractor, and the other member(s) designated to act as subcontractors.

**Unbundling** - a process whereby the procurement contract is divided into smaller parts to provide NYS certified SDVOBs better access to SUNY's procurement opportunities. Unbundling can be divided into two types, horizontal and vertical. Horizontal unbundling divides the procurement contract into multiple lots. Vertical unbundling divides each lot into different phases of the procurement process. This offers opportunities for campuses to prepare a bid on one or a larger set of lots, where each of the phases offers new opportunity for SDVOB participation. Procurement staff may reduce barriers to bid packages by employing the strategy of "unbundling" projects.

**Utilization Plan** - The plan which must be submitted by a contractor to a State agency listing certified service-disabled veteran-owned business enterprises that the contractor intends to use in the performance of a proposed State contract, or any components of the contract scope of work which the contractor intends certified service-disabled veteran-owned business enterprises to perform. The plan shall specifically contain a list, including the name, address and telephone number of each certified enterprise with which the contractor intends to subcontract, or otherwise submit in connection with satisfaction of the contract goals.

**Set Aside** -shall mean the reservation in whole or in part of certain procurements by State agencies subject to guidelines to be issued by the commissioner regarding discretionary purchasing, bidding where more than one certified service-disabled veteran-owned business can provide the construction, construction services, non-construction services, technology, commodities, products and other classifications that will facilitate meeting the goal and meeting

state agencies' form, function and utility.

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## Forms

[7564-001](#) - SDVOB Awards

[7564-002](#) - SDVOB Disbursements/Utilization

[7564-003](#) - SDVOB Waivers

[7564-107](#) - SDVOB Utilization Plan

[7564-111](#) - Monthly SDVOB Compliance Report

[7564-113](#) - Quarterly SDVOB Compliance Report

[7564-114](#) - SDVOB Waiver Request

[7564-114a](#) - Request for Waiver from Campus to University-wide MWBE Program

[7564-121a](#) - Prospective Bidder's Notice Commodities Services

[7564-121b](#) - Prospective Bidder's Notice Construction

[7564-121c](#) - Prospective Bidder's Notice Construction-Related Consultant Services

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## Additional Forms

[7555-15](#) - Sub-Consultant Staffing List - Architecture and Engineering

[7555-16](#) - Sub-Consultant Staffing List - Construction Management

[7555-17](#) - Sub-Consultant Staffing List - Commissioning

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## Related Procedures

[SUNY Procedure Document No. 7553](#) - Purchasing and Contracting (Procurement)

[SUNY Procedure Document No. 7554](#) - Construction Contracting

[SUNY Procedure Document No. 7555](#) - Construction-Related Consultant Contracting Procedures

[SUNY Procedure Document No. 7561](#) - Contract Award Protest Procedure

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## Other Related Information

[SUNY Policy Document No. 7556](#) - Procurement Opportunities for New York State Certified Minority- and Women-Owned Businesses

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## Authority

[NYS Executive Law: Article 17-B - \(§§369-H-369-J\)](#) Participation by Service-Disabled Veterans with Respect to State Contracts

[NYS Education Law §355](#) (Powers of Trustees).

[NYS State Finance Law Article 11 \(§§160 -168\)](#) State Purchasing

*[New York State laws are available through the [New York State Legislature materials website](#), under ‘[Laws of New York State](#)’ section].*

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## History

There is no history relevant to this procedure.

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## Appendices

[SUNY Guidance Bulletin, SUNY MWBE/SDVOB Exemption and Exclusion Procedure, Volume 6, SFY 2016-17 \(May 10, 2016\)](#)

[Exhibit A-1](#) - Standard Contract Clauses