



# Purchasing from Minority, Women, and Service-Disabled Veteran-Owned Businesses / **Supplier Diversity Program**

Administrative Procedures & Guidance

University Office of Budget and Finance – February 2020

## **Overview**

The City University of New York (CUNY or the University) is committed to maximizing the participation of New York State-certified Minority and Women-owned Business Enterprises (MWBE) and Service-Disabled Veteran-Owned Businesses (SDVOB) in the University's procurement programs, in accordance with applicable law and CUNY policy. CUNY recognizes the potential economic benefits, as well as the societal benefits of working with MWBEs and SDVOBs. The University's efforts to promote diversity in its supply chain are collectively referred to as CUNY's Supplier Diversity program (Program).

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## I. Applicability

These Procedures and the Participation Goals described herein, apply to procurements of commodities and services using funds by the University, including all senior and community colleges and the Central Office. Funds covered by this Policy include: those appropriated by the State of New York (the State) or the City of New York (the City); student tuition and fees; and funds held by the State Treasury in income fund reimbursable accounts, such as technology fees. These Procedures do not apply to procurements by The Research Foundation of the City University of New York, The City University Construction Fund, college associations, auxiliary enterprise corporations, college foundations, or other separately incorporated affiliated entities (collectively “Related Entities”) except as described in any policies, guidelines, or procedures issued by the University, including any Office of the University Controller Financial Management Guidelines; however, these Procedures do apply to contracts funded by any of these organizations but entered into by the University. Related Entities may adopt certain sections of these Procedures in furtherance of their commitment to encourage MWBE and SDVOB participation on its contracts. In instances where University staff are working to secure external funding that contain MWBE/SDVOB participation goal requirements, and in instances where the funds will not be administered by the University, it is advised that one follows the instructions provided by the granter.

These Procedures supplement the [Procurement Policy and Procedures of The City University of New York](#), as adopted by the Board of Trustees on February 21, 2017 and amended on December 16, 2019 and the [Informal Purchasing \(Discretionary Purchasing Authority\)](#) memorandum issued by the Office of the General Counsel and the Office of the University Controller on November 9, 2015, and their successor documents, if any. These Procedures update and replace the current Purchasing from Minority, Women and Service-Disabled Veteran-Owned Business / Supplier Diversity Program Administrative Guidance and Procedures documents issued on January 2018.

This document reflects applicable law and policy, and provides colleges with comprehensive guidance on how to administer and comply with the requirements of the Program. As such, colleges should refer to and comply with these Procedures in all instances with respect to the University’s Supplier Diversity Program. This document may be updated from time-to-time, as new requirements, policies, procedures, and industry best practices are identified or developed by the University Office of Budget and Finance (OBF).

## II. Supplier Diversity Program

### A. Overview

The University is committed to promoting the maximum feasible participation of MWBEs and SDVOBs in its procurements in accordance with applicable law and University policy. Where practical, feasible, and appropriate, the University will set subcontracting goals to require CUNY contractors to use their good faith efforts to include MWBEs and SDVOBs, as subcontractors or suppliers, in the performance of certain CUNY contracts. In furtherance of the University’s commitment, CUNY establishes annual University-wide MWBE and SDVOB participation goals (Participation Goals).

### B. Objective

The intent of CUNY’s Supplier Diversity program is to promote the inclusion of MWBEs and SDVOBs in University procurements, increase competition for CUNY business, and lower overall contracting costs. The University will make good faith efforts to meet, on an annual fiscal-year

basis, the University's MWBE and SDVOB Participation Goals. These efforts will contribute to the overall economic growth of the State and City. In order to achieve the Participation Goals, the University will take steps to remove artificial barriers to participation and create equity in CUNY contracting procedures to allow MWBEs and SDVOBs to compete fairly for University procurement opportunities.

C. MWBE and SDVOB Participation Goals

The University adheres to annual MWBE and SDVOB Participation Goals set in collaboration with New York State (NYS)<sup>1</sup>. These aspirational participation goals are shared with the University staff on an annual, state fiscal-year basis, and are subject to change by the University and the applicable regulatory agency.

D. Accountability and Performance

The success of CUNY's Supplier Diversity program requires the active participation of the University's staff. The leadership team at each college is responsible for demonstrating efforts to meet the University's Participation Goals. Colleges that fail to make substantial progress toward the University's Participation Goals must prepare a Supplier Diversity Performance Improvement Plan (PIP) or an approved similar action plan. The PIP will describe in detail the efforts that the college intends to undertake to increase MWBE and SDVOB participation. OBF will monitor the college's progress towards complying with the initiatives specified in the PIP and will require that those actions be taken within 12 months, if not sooner.

E. Applicable Law

i. Article 15-A & NYCRR

Article 15-A of the NYS Executive Law and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations require CUNY, along with State Agencies and Authorities, and the vendors and contractors with whom they do business, to make good faith efforts to procure contracted labor, services (including legal, financial, and professional services), supplies, equipment, and materials from NYS-certified MWBEs.

ii. Article 17-B & NYCRR

Article 17-B of the NYS Executive Law and Parts 252 of Title 9 of the New York Codes, Rules and Regulations require CUNY, along with State Agencies and Authorities, and the vendors and contractors with whom they do business, to make good faith efforts to procure contracted labor, services (including legal, financial, and professional services), supplies, equipment, and materials from NYS-certified SDVOBs.

F. Record Keeping

As with all purchases, each college is subject to audit by the State of New York and CUNY's Office of Internal Audit. As such, colleges must maintain records relating to its procurement

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<sup>1</sup> The participation goal for SDVOBs are set by Executive Law Article 17-B at 6%. MWBE participation goals are based on the latest disparity study conducted by Empire State Development, which consists of fact-based techniques to provide evidence, in accordance with applicable laws to determine the extent the State has included MWBEs in public sector contracts and to what extent remedial programs for racial and gender discrimination are appropriate. Annually, the University will review the disparity study results, our applicable prior contracting history, and the current availability of MWBEs that can serve CUNY's diverse procurement needs to determine an MWBE participation goal for the University, which may be equal to the statewide participation goal.

efforts, including the efforts to consider MWBEs and SDVOBs on solicitations, and including all forms such as Utilization Plans, Request for Waiver Forms and Quarterly Contractor Compliance & Payment Report along with supporting subcontractor payment documentation to MWBEs and SDVOBs on certain CUNY contracts. Colleges are advised to perform and document on-site visits for construction projects on CUNY campuses to verify that any and all MWBEs and/or SDVOBs are providing goods/services in accordance with executed agreements.<sup>2</sup>

G. CUNY Office of Internal Audit

The University staff's participation is essential to detect and help deter fraud in CUNY's Supplier Diversity program, as any fraud diminishes the University's overall supplier diversity efforts. Suspected, perceived, or real activity that may be deemed fraudulent or suspicious must be referred to the CUNY's Office of Internal Audit by calling: (646) 664-3090.

### III. Data and Reports

A. University Utilization Reports

OFB is required to file an annual Master Goal Plan for senior colleges, projecting the upcoming fiscal year budget and goals with NYS Empire State Development (ESD) for MWBE participation and separately with NYS Office of General Services (OGS) for SDVOB participation.

Following the Master Goal Plans and in accordance with the NYS fiscal year, OFB must file quarterly Utilization Reports for senior college expenditures (prime contractors, subcontractors, and suppliers) to report on the University's MWBE participation to ESD and SDVOB participation to OGS. Additionally, CUNY reports on purchase orders/contracts dispatched to NYS-certified SDVOBs for both senior and community colleges to OGS.

OFB will continue to monitor and internally report on the progress of each college's efforts to meet the University's Participation Goals.

i. CUNYfirst Reports

- a. The following queries are available to CUNYfirst users to track and monitor MWBE and SDVOB expenditures. These reports do not include p-card transactions, which are provided to colleges after each quarter from CUNY's credit card services provider.

- i. Senior Colleges: *CU\_MWBE\_SDVOB\_DATA\_STATE*

- ii. Community Colleges: *CU\_MWBE\_SDVOB\_DATA\_CITY*

- b. It is recommended that Colleges routinely review these queries to monitor their own progress towards the Participation Goals.
- c. Colleges must check the data for accuracy and make any necessary changes to reflect the correcting purchasing tracking information.

B. Covered Contracts

University designated buyers will endeavor to promote the maximum feasible participation of MWBE and SDVOB firms for all procurements, regardless of dollar value, consistent with the NYS overall Participation Goal for MWBEs and SDVOBs. This includes contracts entered into on

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<sup>2</sup> As a best practice, it is recommended that Colleges perform and document on-site visits for MWBE/SDVOB participation on construction/construction-related contracts procured by the University.

behalf of CUNY<sup>3</sup> and agreements funded by federal funds, grant funds<sup>4</sup>, and legislative member items from the NYS legislature and NYC Council.

Additionally, contracts greater than \$25,000 for contracted labor, services, supplies, equipment, or materials (or for procurements greater than \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements), must be assessed for MWBE/SDVOB subcontracting goals.

Collectively, these contracts are called “Covered Contracts”.

C. Contracts Not Covered

i. Exemptions

Certain types of payments are exempt from Covered Contracts, including the following; personal services (i.e. payments to staff for labor); debt service; travel reimbursements; utilities; contracts from sole source procurements; postage; telephones; staff benefits; operating transfers; certain rentals and repairs; and special departmental charges, such as unemployment insurance and tuition reimbursement.

ii. Exclusions

Each year, OBF analyzes the University’s procurements and researches the availability of MWBE/SDVOB firms in certain industries to identify where there are absolutely no MWBE/SDVOB firms. These procurements are excluded from Covered Contracts. The University may, with the approval of ESD and/or OGS, amend the list of excluded contracts during the year, to reflect the current availability of MWBEs and SDVOBs.

iii. Approval/Distribution of Contracts Not Covered

OBF receives approval from ESD and OGS on the list of Exempted and Excluded contracts each year. The Director of Supplier Diversity will provide a list of Exempted and Excluded contracts upon approval by ESD/OGS or request by the college.

D. Calculation of MWBE/SDVOB Participation Percentage

The attainment of the MWBE/SDVOB Participation Goal is reported as a percentage and is calculated by the following formula:

*Expenditures:* Payments (including p-card transactions) to NYS-certified MWBEs/SDVOBs as prime contractors, subcontractors, or suppliers; *divided by*

*Covered Contracts:* Payments to all contractors that were eligible for potential MWBE/SDVOB spend, including those payments made to MWBEs/SDVOBs.

E. MWBE Utilization Credit Policy

- i. All expenditures to NYS-certified MWBEs will be credited at 100% of the contract or subcontract value of actual expenditures, unless specified below.

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<sup>3</sup> Contracts entered into on behalf of CUNY may be through CUNY’s Related Entities. Please contact OGC for additional guidance.

<sup>4</sup> Grants funds received and administered directly by the College must be assessed for Participation Goals, unless the funding agreement prohibits local diversity participation goals. Copies of the agreement must be submitted for review by the University Office of Budget and Finance.

- ii. For *vertical and horizontal construction*, the following utilization credit policy will apply.

Type of MWBE	Definition	Utilization Credit
<b>Broker</b> (Identified by NAICS Code: 425120)	In instances when the firm fills orders for a client by ordering, purchasing, or receiving supplies from a third-party supplier rather than out of its own existing inventory, a broker (in light of the standard industry practices) provides no substantial service other than acting as an intermediary between a supplier and a customer, but it must also perform a commercially useful function.	Only for their commission, or markup percentage.
<b>Trucking Firm</b>	Transports goods or materials from a supplier to a contractor, and may have no liability or legal responsibility for the items being transported.	
<b>Manufacturers' Representative</b> (Identified by NAICS Code: 425120)	A firm that is not a supplier or broker takes legal responsibility for the items it provides to customers, and has a vehicle or delivery mechanisms. A manufacturer's representative must have an extensive and specific agreement with a manufacturer that requires the manufacturer's representative describing the rights and duties of the manufacturer's representative.	
<b>Supplier</b>	An MWBE participating on a contract as a supplier performs a commercially useful function when it sells materials, supplies, articles, or equipment out of its own inventory from a warehouse, yard, or other facility that it owns or leases.	Amount equal to 60% of the total contract value.
<b>Manufacturer</b>	Manufacturers produce and distribute the commodity without representatives or supplier relationships.	100% of contract value.

- iii. For *all other commodity and service* expenditures, the following MWBE utilization credit policy will apply.

Type of MWBE	Definition	Utilization Credit
<b>Broker</b>	In instances when the firm fills orders for a client by ordering, purchasing, or receiving supplies from a third-party supplier rather than out of its own existing inventory, a broker (in light of the standard industry practices) provides no substantial service other than acting as an intermediary between a supplier and a customer, but it must also perform a commercially useful function.	25% of the contract value

F. SDVOB Utilization Credit Policy

All expenditures to NYS-certified SDVOBs will be credited at 100% of the contract or subcontract value of actual expenditures.

G. Performing a "Commercially-Useful Function"

- i. In order for the University to receive utilization credit for work performed, the MWBE/SDVOB must perform a "Commercially-Useful Function". This review is required for procurements conducted by the University.<sup>5</sup>

<sup>5</sup> Centralized contracts often offer value-added resellers as means for MWBEs and SDVOBs to gain experience and entry into public sector contracts. It is the responsibility of the procuring entity, and not of CUNY (except in the



- ii. To perform a commercially useful function, an MWBE/SDVOB must, where applicable and in accordance with any CUNY specifications, be responsible for the execution of the work of the contract and carry out its responsibilities by actually performing, managing, and supervising the work involved. The MWBE/SDVOB may provide a Commercially-Useful Function, with respect to materials and supplies used on the contract, by ordering and negotiating price, determining quality and quantity and providing installation services.
- iii. An MWBE/SDVOB 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.
- iv. Factors to be used in assessing whether an MWBE/SDVOB is performing a Commercially Useful Function include: (1) the amount of work subcontracted; (2) industry practices; (3) whether the amount the minority, women, or 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 minority, women, service-disabled veteran-owned business enterprise utilization goals for the performance of the work by the minority, women, service-disabled veteran-owned business enterprise; and (5) any other relevant factors.

#### IV. MWBE & SDVOB Certifications

##### A. MWBE

- i. The University recognizes New York State Minority and Women-owned Business Enterprise certification issued by the Empire State Development. No other certifications will be accepted for utilization credit purposes.
- ii. Generally, an MWBE is considered to be a business, in operation for at least one year, in which at least fifty-one percent (51%) is owned, operated, and controlled by citizens or permanent resident aliens who are Black, Hispanic/Latino, Asian-Pacific, Asian-Indian, or Native American.
- iii. There are other requirements for NYS MWBE certification.
- iv. Certification is valid for 5 years, unless renewed.
- v. A directory of NYS-certified MWBE firms is available at: <https://ny.newnycontracts.com/>
- vi. When searching the directory, colleges are advised to use the search parameters described below.
  1. Commodity Code: Utilize NAICS (*North American Industry Classification System*) codes to conduct an initial search, and NIGP (*National Institute of Governmental Purchasing*) codes for specific products/services.
  2. Work Districts/Region: Select applicable work districts to identify MWBEs that are available in the region where the project is located.
  3. Reference: Utilize Industry to specify if the project is for Commodities, Construction, Construction Consultant, Service Consultant, or any combination thereof.
  4. Reference: Utilize Business Size to identify MWBEs that may be capable and interested in the size, scope, and scale of the project.

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case of centralized contracts established by CUNY), to determine Commercially-Useful Function when establishing value-added resellers on centralized contracts.

## B. SDVOB

- i. The University recognizes New York State Service-Disabled Veteran-Owned Business certification issued by the NYS Office of General Services. No other certifications will be accepted for utilization credit purposes.
- ii. Generally, an SDVOB is considered to be a business in which at least fifty-one percent (51%) is owned, operated, and controlled by service-disabled veteran with a service-connected disability rating of 10% or greater from the US Department of Veterans Affairs, with the business having a significant presence in New York State. There are other requirements for NYS SDVOB certification.
- iii. Certification is valid for 5 years, unless renewed.
- iv. A directory of NYS-certified SDVOBs is available at: <http://www.ogs.ny.gov/Veterans>
- vii. When searching the directory, colleges are advised to use the search parameters described below.
  1. Keyword or Certification Number: Use a business description keyword most likely utilized by firms in the industry.
  2. Business Category: Select a business category that best matches the scope of work.
  3. Work Location: Select a work district to identify SDVOBs that are available in the region where the project is located.

## C. Certification Questions

Refer all vendors interested in New York State certification to [cuny.edu/selltocuny](http://cuny.edu/selltocuny) where additional information is available.

## D. Certification Status

New York State MWBE and/or SDVOB certification status only confers that a particular business has met the defined requirements for certification. It does not guarantee that the certified business is well qualified or is responsible and responsive to provide any particular goods or services to the University. Colleges must exercise their discretion and judgement to evaluate all bidders/proposers and their capacity and capabilities to provide quality goods or services, while meeting the University's Participation Goals.

## V. **MWBE/SDVOB Subcontracting Goals during the Pre-Solicitation Phase**

### A. Threshold for Goals

The University reserves the right to fashion its procurements to advance this policy agenda, and has determined that it is reasonable, where appropriate, to identify projects where portions of the work can be subcontracted. Colleges should give thoughtful consideration to every Covered Contract so that MWBEs and SDVOBs can participate as subcontractors and/or suppliers to the University. As a matter of University policy and applicable law, CUNY is required to assess for MWBE and SDVOB subcontracting goals when procurements meet one or more of the following thresholds:

- i. **> \$25,000**: Labor, Services (including legal, financial, and professional services), Supplies, Equipment, and Materials.
- ii. **> \$100,000**: Acquisition, Construction, Demolition, Replacement, Major Repair or Renovation of Real Property and Improvements.
- iii. **All**: Revenue Contracts, as defined by State Finance Law Section 139-j.

B. Pre-Solicitation MWBE/SDVOB Participation Assessment Form / Review and Approval

Procurements meeting one or more of the thresholds identified above that are not sourced through a Preferred Source, a Centralized Contract<sup>6</sup>, or a CUNY-wide Contract must have a *Pre-Solicitation MWBE/SDVOB Participation Assessment* form submitted by the college to OBF. The college is expected to conduct a preliminary analysis for MWBE and SDVOB requirements for review and approval by OBF. Instructions on how to conduct this analysis are provided in the sections below. Subcontracting goals are expressed as a percentage of the overall contract value.

- i. In limited circumstances and upon the review and approval of OBF, the college may modify the subcontracting goals after the issuance of the solicitation, but prior to the contract award. An addendum must be issued to change the goal and extend the deadline for bids or proposals.

C. Goal-Setting Procedures (Expense Contracts)

Colleges must determine if MWBE and SDVOB subcontracting goals are practical, feasible, and appropriate for the solicitation.

- i. Review the scope of services and/or goods being provided from the procurement and determine what potential portion can be reasonably expected or encouraged to be subcontracted to vendors, including but not limited to non-staffing expenditures such as supplies and materials.
  1. On time/labor contracts, it may be helpful to identify the allocation of work to the prime versus a subcontractor.
  2. On deliverable/milestone contracts, it may be helpful to determine which milestones (or portions of the deliverables) can be subcontracted out.
  3. It is also important to review all prior contracting history on similar procurements at the college or at other CUNY colleges to identify which portions, if any, of the work were subcontracted in those cases.
- ii. Consider if the contract can be “unbundled”<sup>7</sup> to provide greater opportunities for MWBEs and SDVOBs to respond as prime contractors.
  1. Where contracts cannot be unbundled, colleges are encouraged to structure those contracts in a manner that maximizes MWBE and SDVOB participation, including setting, where practical, feasible, and appropriate, subcontracting goals, or where appropriate,

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<sup>6</sup> “Centralized Contracts” include: (1) goods or services contracts procured by the New York State Office of General Services (OGS) and (2) contracts identified by the University Office of Budget and Finance as having been procured by the following agencies and made available to the University: the City’s Department of Citywide Administrative Services; the City’s Department of Information Technology & Telecommunications; the Board of Education of the City of New York; the U.S. General Services Administration; and such other governmental agencies and entities as may be identified by the Office of the General Counsel and the University Office of Budget and Finance. All Centralized Contracts must be reviewed to determine if MWBE/SDVOB participation goals are practical, feasible and appropriate. Certain OGS Centralized Contracts may require a formal MWBE/SDVOB assessment to be completed. If an assessment is required, per the terms of the OGS agreement, the college must submit a Pre-Solicitation MWBE/SDVOB Participation Assessment Form to OBF for review/approval.

<sup>7</sup> “Unbundling” refers to the practice where the University can determine that the components of the project can be separately procured or the project can be progressed using a phased contract approach in order to increase participation without compromising project delivery.

using multiple award pools for projects of varying size (i.e. pools for small and large projects).

- iii. Upon determining the potential subcontracting opportunities, Purchasing Directors should use the current Participation Goals as a baseline to begin determining the appropriate MWBE and SDVOB subcontracting goals.
- iv. Using the current Participation Goals, Purchasing Directors should moderate the MWBE and SDVOB subcontracting goal based on a variety of factors, including but not limited to:
  - 1. Can this procurement support the required Participation Goals for my college?
  - 2. What is the total proposed dollar value and term of the work required in relation to the proposed dollar value and term of the subcontracting opportunities?
  - 3. Are there NYS-certified MWBEs and/or SDVOBs to perform the potential subcontracting opportunities<sup>8</sup>?
  - 4. Is this work required to be performed outside New York City and does this impact the performance of this Contract?
  - 5. How can we provide MWBEs and SDVOBs with a fair and equal opportunity to compete in this procurement?

D. Goal-Setting Procedures (Revenue Contracts)

The college entering into a revenue contract must follow the methodology listed above. However, any revenues being remitted directly to the college are exempted from goals assessments.

E. Goal-Setting Procedures (Not-For-Profits)

The college entering into an agreement with not-for-profit entities should follow the methodology listed above, but also may exempt the following expenses from goal assessments.

- i. Personal Services.
- ii. Rent.
- iii. Utilities.
- iv. Any services being self-performed by the not-for-profit entity.

F. Required Boilerplate Issued by OBF/OGC Attached to Solicitations

The University has standard documents that must be included in all solicitations with MWBE and/or SDVOB subcontracting goals. These documents provide a brief description of the MWBE and SDVOB legal requirements, inform bidders and proposers that all provisions of the law are incorporated into the proposed contract, instruct prospective bidders and proposers on where to find the participation goals of the contract, and describes the items that must be included with the bid or proposal. The document also refers bidders and proposers to the MWBE Directory and SDVOB List of Certified Firms and explains how a contractor may achieve the subcontracting goals. Additionally, the document makes clear that the subcontracting goals are a material term of the contract, explain how contractors may apply for a waiver of the goals, and outline the enforcement actions if the contractor fails to achieve the subcontracting goals.

- i. RFQ/IFB – Standard documents are attached to, or incorporated by reference into, OGC forms.

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<sup>8</sup> Review Section IV. MWBE & SDVOB Certifications for links to the directory/list of available, certified firms.

- ii. RFP – Standard documents are attached as an Appendix by the College. Documents are available on OGC’s SharePoint site at: [https://share.cuny.edu/sites/LegalAffairs/Procurement/\\_layouts/15/start.aspx#/SitePages/Home.aspx](https://share.cuny.edu/sites/LegalAffairs/Procurement/_layouts/15/start.aspx#/SitePages/Home.aspx)

G. Standard Language to be Included in Solicitation Documents

The University has designated an appropriate section on the Request for Quote, Invitation to Bid and Request for Proposals forms to indicate MWBE and SDVOB subcontracting goals. Generally, the following language must be included in RFPs. If subcontracting goals are set. Any modification to the language requires OBF and OGC review.

- i. CUNY has established a [enter goal amt]% participation goal (based on the current availability of qualified MWBEs) in the aggregate for New York State certified Minority-Owned Business Enterprise (“MBE”) and Women-Owned Business Enterprises (“WBE”, and together with MBE, “MWBEs”) and a [enter goal amt]% participation goal (based on the current availability of qualified SDVOBs) for New York State certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), to be part of the proposed team to provide the Services as subcontractor(s) or suppliers (the “Subcontractor(s)”). The Contractor shall be required to use good faith efforts to meet these participation goals. Additional MWBE, SDVOB, and Equal Employment Opportunity requirements applicable to this RFP and to the Contract are attached hereto as Attachment \_\_\_\_.
- ii. Proposers may identify potential MWBE Subcontractor(s) by, among other means, referencing the directory of New York State certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>.
- iii. Proposers may identify potential SDVOB Subcontractor(s) by, among other means, referencing the list of New York State certified SDVOBs found at the following internet address: <http://www.ogs.ny.gov/Veterans>
- iv. As part of the proposer’s response, a Supplier Diversity – MWBE/SDVOB Utilization Plan or a Request for Waiver form that is accompanied by supporting documentation must be submitted in order for the proposal to be considered responsive. The selected Contractor will be required to complete a Quarterly Contractor Compliance & Payment Report accompanied by proof of payment to MWBE/SDVOB Subcontractor(s), in such format as shall be required by CUNY on a quarterly basis during the term of the contract. Sample CUNY Supplier Diversity forms and reports may be found at [cuny.edu/vendorforms](http://cuny.edu/vendorforms).

H. Applicable Forms/Reports to be Attached in Solicitations As Necessary

- i. If MWBE and/or SDVOB subcontracting goals are associated with a solicitation, the following forms must be included or referenced in the solicitation:
  - 1. Utilization Plan
  - 2. Request for Waiver Form
  - 3. Quarterly Contractor Compliance & Payment Report
  - 4. MWBE and EEO Policy Statement
- ii. If the Workforce Utilization Report requirement (*refer to Section IX*) applies to the project, attached the following form:
  - 1. Workforce Utilization Report
- iii. MWBE and SDVOB forms/reports are available at [cuny.edu/vendorforms](http://cuny.edu/vendorforms).

I. Procurement Advertisement

- i. Any procurement with MWBE and/or SDVOB subcontracting goals may have the following language included in the procurement advertisement:  
  
“This solicitation is subject to [MWBE (and/or) SDVOB] participation goals pursuant to NY State Executive Law Article [15-A (and/or) 17-B]. To learn more about CUNY’s Supplier Diversity program, visit: [cuny.edu/selltocuny](http://cuny.edu/selltocuny).”
- ii. For the *NYS Contract Reporter*, select the appropriate goal notification for the solicitation in lieu of the procurement advertisement language above. These fields are specific to the solicitation and are not to be used to represent the University’s overall Participation Goals. If the contract is exempted or excluded from goals, please leave this section blank.
  1. Select “Total Participation Goals” to reflect a combined MWBE goal for the solicitation; or
  2. Select “Individual Participation Goals” to reflect a separate MBE and WBE goals for the solicitation.
  3. Select “Service-Disabled Veteran-Owned Business Contracting Goal” to reflect a SDVOB goal for the solicitation.

J. Pre-bid/proposal Conferences

As a best practice, college should invite potential MWBE and SDVOB subcontractors to pre-bid/proposal conferences on contracts with subcontracting goals. This practice is essential for increasing opportunities to MWBEs/SDVOBs, but will also help foster relationships between prime contractors and MWBE/SDVOB subcontractors who can be utilized to meet subcontracting goals. Additionally, potential prime contractors may also seek to demonstrate good faith efforts by attending pre-bid/proposal conferences.

K. Costs Related to Solicitation Packages

In accordance with Section 143 of the State Finance Law, CUNY may require the payment of a fixed sum of money, not exceeding \$100, for each copy of a solicitation document for the performance of public work (i.e., construction, reconstruction, repairs, and maintenance), requested by interested parties during the solicitation phase. However, MWBE and SDVOBs will be exempt from such fees upon request. Such payments may also be waived when the solicitation document are made available and obtained electronically or in any non-paper form.

VI. **MWBE/SDVOB Subcontracting Goals during the Selection/Award Phases**

A. Forms to be Collected

- i. A (**MWBE and EEO Policy Statement**) and (**Utilization Plan** and/or **Request for Waiver**) is required to be submitted by the vendor to the college.
- ii. For Request for Quotes, Invitation for Bids, and Single Source contracts, the apparent awardee must submit a Utilization Plan, or Request for Waiver, or both, within ten (10) business days of the college’s request.
- iii. For Request for Proposal, all proposers are required to submit a Utilization Plan, or Request for Waiver, or both, along with their submitted proposal.
- iv. For Emergency Purchases, proposers may be required to submit a utilization plan and to comply with the post award requirements listed in Section VII.

- v. **Utilization Plan:** This document details how the bidder/proposer/contractor intends to achieve the established MWBE and/or SDVOB subcontracting goals.
  - 1. The contractor must indicate the scope of work they intend to subcontract and the total dollar value they plan to award to MWBEs and/or SDVOBs.
  - 2. MWBE/SDVOB subcontractors must perform a Commercially Useful Function (Section III.(G).
  - 3. Utilization Plans are considered material terms of the contract.
  - 4. Bidders/Proposers, who are NYS-certified MWBE and SDVOBs, and intend to self-perform the work and meet the established subcontracting goals, are expected to complete and submit a Utilization Plan.
- vi. **Request for Waiver:** This form indicates that the bidder/proposer made and documented Good Faith Efforts (GFE) to engage NYS-certified MWBEs and/or SDVOBs, but is unable to meet the established subcontracting goals. Waivers must be submitted with supporting GFE documentation.
  - 1. Waiver Types:
    - a. *Total Waiver Requests* - Contractors must provide documented GFE to utilize MWBEs/SDVOBs. This will eliminate the subcontracting goals for a proposed contractor.
      - Contracts that are granted Total Waivers are considered Exemptions (Not Covered Contracts).
    - b. *Partial Waiver Requests* – Contractors intend to self-perform some of the subcontracting items/services or indicates other circumstances and GFE to utilize MWBEs/SDVOBs. This will reduce the subcontracting goals for a proposed contractor.
      - Partial Waiver Requests must be submitted with the required supporting documentation AND with a Utilization Plan detailing how the bidder/proposer intends to achieve the remaining goal amount.
      - Contracts that are granted Partial Waiver will remain Covered Contracts.

#### B. Review and Approval Process

- i. The **Utilization Plan** and/or **Request for Waiver** must be submitted by the college to OBF for evaluation and approval. OBF's approval does not constitute a review and approval of the subcontractor's performance and/or work product. The college is required to conduct a review to approve all subcontracts. *Senior Colleges:* All Waivers must be submitted for review and approval by the Executive Chamber. OBF will coordinate the Chamber's review and approval.
- ii. CUNY is required to respond back to the Contractor within twenty (20) business days of receipt.
- iii. If any deficiencies are identified by OBF during its review, the college will be notified to contact the bidder/proposer. The bidder/proposer will submit a written remedy within seven (7) business days.
- iv. If a waiver is submitted but not granted, the bidder/proposer must submit a Utilization Plan in order for the bid/proposal to be considered responsive.
- v. Bids/Proposals may be disqualified from consideration if there is a failure to submit an adequate Plan, Waiver, or respond to Notices of Deficiencies in a timely manner, or if OBF,

- in consultation with the Executive Chamber when appropriate, determines that the bidder/proposer did not demonstrate good-faith efforts.
- vi. Bidders/Proposers may appeal the determination and request an administrative hearing, within five (5) days receipt of such notice, directly to the Senior Vice Chancellor and Chief Financial Officer, or his/her designee. The decision to grant or deny the partial or full waiver to the contractor made by the Senior Vice Chancellor will be final.
  - vii. Upon approval of Utilization Plans and Request for Waivers, OBF will make this information available to the general public on CUNY's Sell to CUNY website.
  - viii. To the extent practicable, upon completion of the restrictive period of a procurement, Colleges are required to notify the selected respondents and also any MWBE and SDVOB identified in the respondent's Utilization Plan of such selection.
  - ix. Contracts and/or purchase orders may not be issued by the college until an approved Plan or Waiver (or both) is on file with OBF.
  - x. Colleges must retain copies of the MWBE and EEO Policy Statement, Utilization Plan, and Request for Waiver (if applicable) for audit purposes.

## **VII. MWBE/SDVOB Subcontracting Goals during the Contract Management Phase**

### **A. Form to be Collected**

- i. Vendors with MWBE and/or SDVOB subcontracting goals are required to submit **Quarterly Contractor Compliance & Payment Report** to the college on or before 10 calendar days after each quarter, during the entire term of the agreement. (July 10, Oct 10, Jan 10, April 10)
- ii. The **Quarterly Contractor Compliance & Payment Report** details the payments made by CUNY to the vendor for each quarter (period of performance), along with the payments made by the vendor to NYS-certified MWBEs and/or SDVOBs as subcontractors or suppliers in connection with the CUNY contract. Quarterly Contractor Compliance & Payment Reports must be submitted with supporting documentation (e.g. copies of cancelled checks, bank statements, etc.)
- iii. It is imperative that colleges continuously monitor contract compliance and work with the vendors to proactively inform them of their progress towards meeting subcontracting goals.

### **B. Review and Approval Process**

Colleges are required to review the **Quarterly Contractor Compliance & Payment Report** for accuracy and to submit copies to OBF for utilization reporting purposes. College must maintain copies of these documents for future audit purposes.

### **C. Modification to Plans or Waivers**

- i. Utilization Plan: Vendors may submit requests to the college for changes to their previously filed Utilization Plans (e.g. switch vendors, update goods/services provided, change allocation without impacting overall goal, increase payment amount).
  - 1. The college must submit the modified Utilization Plan to OBF for review/approval.
- ii. Request for Waivers: Vendors may submit a new Request for a Waiver (e.g. original MWBE/SDVOB no longer available and no substitute possible, MBE Goal versus WBE Goal...etc.) any time before the final payment is issued.
  - 1. The college must submit the Request for Waiver to OBF for review and approval. *Senior Colleges:* Executive Chamber review and approval may also be required.



2. Vendors must document good faith efforts to identify qualified MWBEs and SDVOBs, as Waivers will not be approved until all such efforts have been exhausted and documented.
3. If a Waiver is not granted and work has been substantially completed, the University may assess the contract for liquidated damages.
4. The Contractor may appeal any waiver determination and request an administrative hearing, within five (5) days receipt of such notice, directly with the Senior Vice Chancellor and Chief Financial Officer, or his/her designee. The decision to grant or deny the partial or full waiver to the contractor made by the Senior Vice Chancellor will be final.

**D. Change Orders and Amendments to Contracts**

- i. College must review the scope of work and the scale and type of work involved in the change order/amendment to determine whether the subcontracting goal should be modified.
- ii. If the college determines that the goal should be modified, it should set the revised goal based on the same goal-setting guidelines provided above.
- iii. Unless the subcontracting goal is modified, the original goal applies to the entire contract value (original + amended).

**E. CUNY Options for Non-Compliance by Vendor**

- i. When a Contractor willfully and intentionally fails to comply with the MWBE and SDVOB requirements as set forth in the contract, CUNY may require the following remedies to satisfy the breach of contract. These options are included in CUNY's contract boilerplate documents and are in addition to other rights and remedies CUNY may have under applicable law, equity, or contract.
  1. MWBE - Liquidated Damages: Calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.
  2. SDVOB - Statutory Damages: Calculated based on the actual cost incurred by CUNY related to expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified SDVOB programmatic goals.

**VIII. Diversity Practices Assessment (Contract Value ≥ \$250,000)**

**A. Applicability**

- i. Diversity Practices (DP) Assessment is only applicable to Request for Proposals or other best value procurements meeting the following criteria:
  1. The estimated contract value is equal or greater than \$250,000.
  2. If it is practical, feasible, and appropriate to evaluate the diversity practices of respondents to include NYS-certified MWBEs in their business practices.
  3. NYS-certified MWBEs must be available to participate as subcontractors or suppliers in the industry, even if such subcontracting or supplying opportunities do not exist on this procurement. The Director of Supplier Diversity will work with the college to develop appropriate questions and scoring methodology for the solicitation.

B. Standard Language to Include in Solicitations as Required

Colleges must include this language in solicitations that contain a Diversity Practices Assessment.

The City University of New York has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Proposers to this procurement is practical, feasible, and appropriate. Accordingly, Proposers to this procurement shall be required to include as part of their response to this procurement, as described in [Section ###] herein, forms [Diversity Practices Form Numbers]. Visit [cuny.edu/diversitypractices](https://cuny.edu/diversitypractices) for additional information.

C. Methodology to Incorporate the Requirements

The college will determine if Diversity Practices Assessment is practical, feasible, and appropriate for the solicitation. If a Diversity Practices Assessment is included in the solicitation, then the College will take the next steps outlined below.

- i. A series of questions - provided by the Director of Supplier Diversity - will be incorporated into the solicitation.
- ii. The scoring matrix will reflect a weighted technical score for the DP, at no more than 10 percent (or less than 5 percent) of the overall technical score.
- iii. The Director of Supplier Diversity will provide DP evaluation guides and the evaluation committee will evaluate and score the DP responses.
- iv. The Director of Supplier Diversity will act as the technical advisor to the evaluation committee on all solicitations containing the DP requirement.

IX. **Workforce Utilization Report / Equal Employment Opportunity Information**

A. Threshold for Report

A Workforce Utilization Report is required from Contractors and all Subcontractors providing services (if any), to detail the composition of the workforce – by gender and ethnicity – utilized on CUNY contracts. Pursuant to Executive Order 162 of 2017, this Report must include job titles and compensation history. Colleges are required to collect this Report from their Contractors when the Purchase Order or contract meets one of the following thresholds:

- i. **> \$25,000:** Contracts for projects involving labor, services, equipment, and/or materials must have a value greater than \$25,000. Reports must be submitted **quarterly** for these contracts.
- ii. **> \$100,000:** Contracts for projects involving the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements, must have a value greater than \$100,000. Reports must be submitted **monthly** for these contracts.
- iii. Total prime contract value determines the applicability of the Reporting requirement.
  1. Examples: Reports required from both the Prime Contractor and Subcontractor when the prime contract is worth \$25,001 and the subcontract is worth \$10,000.
- iv. Refer Contractors to visit [cuny.edu/workforceutilizationreport](https://cuny.edu/workforceutilizationreport) for additional information and instructions on how to complete the report.

## B. Exceptions

Under the discretion provided by the State to CUNY, the following category of contracts and contractors are generally not required to submit Workforce Utilization Reports regardless of dollar threshold:

- i. Procurements that have been deemed “exempt” from MWBE participation. (*Refer to Section III.C.(i) to identify “exempt” versus “excluded”.*)
- ii. Subscriptions to publications.
- iii. Purchase orders issued against centralized government contracts (OGS, DCAS, DOE, or GSA), Piggybacking or directly to Preferred Sources.
- iv. Contractors in the following categories because their work will typically not yield data on the compensation of individuals performing work specifically on a CUNY contract:
  1. A contractor performing work on a CUNY contract exclusively with employees who are located outside of New York State;
  2. Any banking or financial institution engaged solely in processing financial transactions;
  3. A grant recipient and any of its contractors;
  4. Any contractor engaged solely in licensing intellectual property to CUNY;
  5. Primary and secondary school systems, and institutions of higher learning;
  6. American Indian or Alaskan Native tribes;
  7. Any contractor organized in a country other than the United States of America; and
  8. Subcontractors that are exclusively providing goods and transportation directly to or on behalf of the prime contractor.

## C. Standard Language to Include on Solicitations as Required

Colleges shall include the following language in solicitations for contracts that are anticipated to be covered under Section IX(A) above:

- i. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report, in such format as shall be required by The City University of New York on a [QUARTERLY/MONTHLY] basis during the term of the contract.
- ii. Separate forms shall be completed by Contractor and any Subcontractor.
- iii. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- iv. The Contractor shall comply with the provisions of the Human Rights Law and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- v. Pursuant to Executive Order 162 of 2017, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract.

- vi. Visit [cuny.edu/workforceutilizationreport](http://cuny.edu/workforceutilizationreport) for additional information and instructions on how to complete this Report.

#### D. Review and Approval Process

- i. Vendors are required to submit Workforce Utilization Reports to the college on or before 10 calendar days of each quarter. (Jan 10, April 10, July 10, and Oct 10)
- ii. The college must review submitted Reports to ensure accuracy between the EEO-1 Job Group, SOC Job Titles and SOC Job Codes provided by the vendor. A complete classification guide is available on [cuny.edu/workforceutilizationreport](http://cuny.edu/workforceutilizationreport). Other classifications or identifiers, including those titles assigned by the Contractor, will not be accepted for this requirement.
- iii. Only Workforce Utilization Report templates issued by CUNY will be accepted. US Department to Labor Form for similar data collection purposes are not accepted.
- iv. The college will submit copies to OBF for reporting purposes.
- v. Colleges must maintain all copies of the Workforce Utilization Reports for audit purposes.
- vi. Generally, Contractors who do not comply with Workforce Utilization Report requirements and are not categorized under “Exceptions” in Section IX(B) are considered to have breached the terms and condition of their contract with CUNY.

#### E. Confidentiality / Freedom of Information Law Requests

College’s and FOIL officers must inform the University Office of Budget and Finance and affected Contractors of any requests under the Freedom of Information Law (FOIL) for workforce utilization reports submitted by the Contractor. Additionally, CUNY may withhold any information that would harm the competitive position of a Contractor pursuant to § 87(2)(d) of the Public Officers Law. Colleges must contact OBF and the Office of the General Counsel prior to responding to any such FOIL requests.

### X. **Overview of MWBE/SDVOB Procurement Thresholds Chart**

The chart below is a reference guide of the various dollar thresholds regarding MWBE/SDVOB participation for use by CUNY purchasing departments.

ALL		APPROVAL	Revenue Contracts, as defined by State Finance Law Section 139-j, Must be assessed for MWBE/SDVOB Participation (Subcontracting) Goals. Submit <b><i>Pre-Solicitation MWBE/SDVOB Participation Assessment</i></b> form to OBF.
> \$25,000	Informal Purchases (Discretionary Purchasing Authority)	APPROVAL	Contracts for labor, services, supplies, equipment, and/or materials: Assess for MWBE & SDVOB Participation (Subcontracting) Goals. Submit <b><i>Pre-Solicitation MWBE/SDVOB Participation Assessment</i></b> form to OBF.
		VENDOR FORM (Supplier Diversity)	For Agreements with MWBE/SDVOB Participation (Subcontracting) Goals: <b><i>MWBE/SDVOB Utilization Plan</i></b> and/or <b><i>Request for Waiver</i></b> collected from all proposers for RFPs or from apparent awardee (for all other solicitations and contracts). If goals apply, a <b><i>Quarterly Contractor Compliance &amp; Payment Report</i></b> required from selected contractor for each quarter during the entire term of the agreement.
		VENDOR FORM (EEO)	Contracts for labor, services, supplies, equipment, and/or materials: Collect <b><i>Workforce Utilization Report</i></b> from contractor and all subcontractors (services only) each QUARTER during the entire term of the agreement.

< \$250,000		EXPEDITED REVIEW	If a Procurement Department makes purchases using the discretionary authority/informal purchasing method by issuing a Request for Quotes and an executable contract to a NYS-certified MWBE or a NYS-certified SDVOB, then the Department is not required to seek approval as to form from the Office of General Counsel provided that all of the conditions outlined in Section XVI(D) are met.
≤ \$500,000		INCREASED THRESHOLD	Generally, CUNY policy permits the use of an informal purchasing method for purchases that are valued at less than \$250,000, except where prohibited by law. In addition, CUNY policy permits the use of an informal purchasing method for purchases that are valued up to \$500,000 for purchases from qualified NYS small businesses, NYS-certified MWBEs & SDVOBs, and for purchases of recycled or remanufactured commodities or technology. Additional restrictions apply to food purchases.
> \$100,000	Formal Procurements	APPROVAL	Contracts for acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements: Assess for MWBE & SDVOB Participation (Subcontracting) Goals and EEO Workforce Goal. Submit <b>Pre-Solicitation MWBE/SDVOB Participation Assessment</b> form to OBF.
		VENDOR FORM (Supplier Diversity)	For Agreements with MWBE/SDVOB Participation (Subcontracting) Goals: <b>MWBE/SDVOB Utilization Plan</b> and/or <b>Request for Waiver</b> collected from all proposers (for RFPs) or from apparent awardee (for all other solicitations and contracts). If goals apply, a <b>Quarterly Contractor Compliance &amp; Payment Report</b> required from selected contractor for each quarter during the entire term of the agreement.
		VENDOR FORM (EEO)	Contracts for acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements: Collect <b>Workforce Utilization Report</b> from contractor and all subcontractors (services only) each MONTH during the entire term of the agreement.
≥ \$250,000		APPROVAL	For RFPs/Best Value Procurements Only - Assess for inclusion in MWBE Diversity Practices. Submit <b>Pre-Solicitation MWBE/SDVOB Participation Assessment</b> form to OBF.

## XI. MWBE/SDVOB Opportunities within CUNY's Purchasing Hierarchy

Opportunities for MWBEs and SDVOBs exist at every level in CUNY's purchasing hierarchy.

### A. Preferred Sources

- i. MWBEs and SDVOBs can act as subcontractors to Preferred Sources and offer the University an opportunity to advance both social agenda policies. Buyers should check with Preferred Source contacts to further review this opportunity.

### B. Centralized Contracts

- i. MWBEs and SDVOBs are listed as contractors or value-added resellers on many of the centralized contracts utilized by the University. Buyers should routinely check the contract documents to identify MWBEs/SDVOBs available on centralized contracts.
- ii. Certain OGS centralized contracts contain provisions to assess for MWBE/SDVOB subcontracting (participation) goals on CUNY purchase orders. Buyers should review the terms and conditions of OGS centralized contracts to determine if MWBE/SDVOB assessment is recommended.

### C. CUNY-wide/University-wide Contracts

- i. The University Office of Budget and Finance actively works to build, where practical, feasible, and appropriate, MWBE and SDVOB participation on University-wide contracts.

Buyers should always review the University-wide contract lists to not only check to see if a University-wide contract would meet the college's requirements, but to also confirm whether an MWBE or SDVOB vendor is available under such contracts to provide the needed goods or services.

**D. College-Specific Purchasing**

- i. Where no Preferred Sources, Centralized Contracts or CUNY-wide Contracts exists, colleges may exercise their discretionary purchasing authority, further detailed in CUNY's Informal Purchasing memorandum, issued on November 9, 2015.
- ii. College can build MWBE/SDVOB subcontracting opportunities by properly assessing for subcontracting goals on applicable contracts.

**XII. Set-Aside Procurements with SDVOBs**

In certain circumstances, the University may "set-aside" certain procurement opportunities exclusively to NYS-certified SDVOBs. Set-asides are still subject to the laws, rules, procedures governing procurements, including but not limited to:

- A. Competitive solicitation procedures with awards based on adherence to established specifications and lowest price.
- B. Competitive solicitation procedures with awards based on technical responsiveness and best value.
- C. Solicitation documents, and procurement advertisements for awards estimated to be greater than \$50,000, must include following language: *Pursuant to Executive Law Article 17-B, this procurement has been identified as a set-aside and the pool of bidders/proposers is limited to NYS-certified Service-Disabled Veteran-Owned Businesses.*
- D. If practical, feasible, and appropriate, assessment of MWBE participation/subcontracting goals.

CUNY colleges interested in conducting "set-aside" procurements for SDVOBs must contact OBF and OGC during the pre-solicitation phase to receive additional guidance and for State reporting purposes.

**XIII. Enhanced Informal Purchasing Threshold with MWBEs and SDVOBs**

State Finance Law 163(6), provides the framework for purchases of commodities and services without a **formal** competitive process. Colleges should refer to the [Informal Purchasing guidelines](#) issued on November 9, 2015, or any successor administrative guidance document, for additional information.

- A. The law provides the University with discretion to increase informal purchase threshold from \$250,000 to \$500,000 for commodities and services (except construction, architecture, engineering and surveying services), when the opportunity is expected to result in a contract to or for the following vendor-categories:
  - i. NYS-certified MWBEs;
  - ii. NYS-certified SDVOBs;
  - iii. NYS Small Businesses; or
  - iv. Recycled or remanufactured commodities or technology.
- B. The University recognizes that on certain procurements, colleges can achieve adequate competition while also advancing the University's socio-economic goals by directly engaging NYS-certified MWBEs and SDVOBs.

- C. When the college exercises its discretion to use the enhanced informal purchasing threshold, please include the following statement in all procurement advertisements and the solicitation document.

1. Alternative #1

Pursuant to its discretionary authority under the New York State Education Law and State Finance Law, this procurement opportunity is limited to businesses certified pursuant to Articles 15-A (MWBE) and/or 17-B (SDVOB) of the New York State Executive Law.

2. Alternative #2

Pursuant to its discretionary authority under the New York State Education Law and State Finance Law, this procurement opportunity is limited to New York State small businesses, businesses certified pursuant to Articles 15-A (MWBE) and/or 17-B (SDVOB) of the New York State Executive Law, and, if applicable, businesses selling commodities or technology that are recycled or remanufactured or commodities.

#### **XIV. Workforce Diversity Program**

The 2019 MWBE Reauthorization Bill has created a Workforce Diversity Program for contracts greater than \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements. The State will develop aspirational goals, no less frequently than twice each year, for the utilization of minority group members and women in each construction trade, profession and occupation. Goals shall be expressed as a percentage of the total hours of work to be performed by each trade, profession and occupation based on availability. Colleges are expected to include Workforce Diversity Program provision on applicable contracts, and additional guidance will be provided by OBF.

#### **XV. Strategies to Encourage and Maximize MWBE and SDVOB Participation**

Colleges are also encouraged to take the following steps to further MWBE and SDVOB participation:

- A. Conduct outreach to college departments to educate staff on CUNY's Supplier Diversity program;
- B. Ensure compliance with all aspects of these procedures;
- C. Send notice of solicitations to appropriate NYS-certified MWBEs and SDVOBs;
- D. Hold pre-bid/proposal conferences to facilitate questions for MWBE/SDVOBs subcontractor requirements;
- E. Notify the Director of Supplier Diversity of upcoming contract opportunities;
- F. Refer MWBEs/SDVOBs to the Director of Supplier Diversity and other third-party resources that provide technical assistance;
- G. Attempt to unbundle college contracts and solicit from NYS-certified MWBEs and SDVOBs;
- H. Consider encouraging in its procurements joint ventures, teaming agreements, partnerships, or other similar arrangements between prime contractors and NYS-certified MWBE and SDVOB vendors;
- I. Develop bidder lists that include NYS-certified MWBE and SDVOB vendors;
- J. Determine reasonableness of price in accordance with the University's Informal Purchasing guidelines to award MWBEs and SDVOBs for informal purchases;
- K. Utilizing the University's Informal Purchasing guidelines to award contracts to MWBEs and SDVOBs;

- L. Use “OGS or Less” procedures, when applicable, to MWBEs/SDVOBs that provide a lower price than centralized contract holders;
- M. Refer vendors to [cuny.edu/selltocuny](http://cuny.edu/selltocuny); and
- N. Refer vendors to attend the annual Supplier Diversity conference. Additional information on the conference is available at [cunybiz.com](http://cunybiz.com)

## **XVI. Chancellor’s Supplier Diversity Plan**

On August 2, 2019, Chancellor Félix Matos Rodriguez announced the first phase of a strategic plan for increasing the City University of New York’s engagement with MWBEs and SDVOBs. The plan requires the University Office of Budget of Finance to provide:

- A. Mentor-Protégé Program: OBF is expanding its current pilot mentor-protégé program, where large CUNY prime contractors will mentor MWBE and SDVOB firms to provide training and on-the-job learning to accelerate the firm’s development.
- B. Informal Purchasing Thresholds: CUNY’s general Informal Purchasing Authority will automatically be raised from \$100,000 to \$250,000 upon the effectiveness of the Memorandum of Understanding (MOU) between the NYS Governor’s Office, CUNY, SUNY, CUCF, SUCF and OGS dated August 15, 2019.
- C. Enhanced Informal Purchasing Authority: As of January 2020, CUNY will have raised its Enhanced Informal Purchasing Authority to target certain procurements to NYS-certified MWBEs and SDVOBs from \$200,000 to \$500,000.
- D. Expedited Procurement Review: If a Procurement Department (“Department”) makes purchases using the discretionary authority/informal purchasing method by issuing a Request for Quotes (using a form issued by OBF/OGC) (“RFQ”) and an executable contract (using a form issued by OGC) (“CUNY Contract”) to a NYS-certified MWBE or a NYS-certified SDVOB, then the Department is not required to seek approval as to form from the Office of General Counsel if:
  - the Department issues a written RFQ using the current OBF/OGC-issued form; and
  - the Department includes in the RFQ and CUNY Contract all OGC-required terms and conditions in their entirety, and no modifications are made or attempted to be made to the CUNY Contract by the Department or by the vendor; and
  - the Department includes in the CUNY Contract a detailed Scope of Work with clear responsibilities and measurable deliverables that do not conflict with the OGC terms and conditions, and these documents are reviewed and approved both by the requesting department and by the Procurement Department; and
  - any purchase of software includes only software that is commercial off-the-shelf (“COTS”) software<sup>[1]</sup> as defined below; and
  - the purchase does not involve any personally identifiable information and does not involve any kind of information that is subject to the Family Educational Rights and Privacy Act (“FERPA”); and
  - a minimum of three signed written Quotes with Quote Prices are received by the Procurement Department; and

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<sup>[1]</sup> COTS software that is eligible for expedited procurement review: (1) Software that is not cloud-based or web-based. (2) Software must require minimal customization and be installed and run on a CUNY-owned or CUNY-managed computer (e.g., desktop, laptop, tablet, or server). (3) Software that is new to CUNY or software that is already in use under an agreement scheduled to expire. (4) Software agreement cannot exceed a five-year term. (5) Software must be eligible for processing through CUNYfirst. Note: COTS Software Purchases are subject to all laws, regulations and CUNY policies.



- the College and the University do not receive any vendor complaints or protests in connection with either the discretionary authority/informal purchase or the CUNY Contract; and
- the purchase, including all renewals, does not exceed \$250,000 in the aggregate.

As a reminder, all procurements, including those processed through the *Expedited Procurement Review* process, must:

- use an appropriate procurement method, pursuant to laws and University policy, and take into consideration best practices; and
  - include a comprehensive pricing schedule and payment terms that are reviewed by and approved by both the requesting department and by the Procurement Department; and
  - ensure all University signature authority policies are followed, including having the General Counsel (or other authorized officer) sign all contracts; and
  - obtain all necessary internal reviews and approvals, including approvals from the Office of the General Counsel; Office of Budget and Finance; Facilities, Planning and Construction Management; Environmental, Health & Safety; Risk, Audit and Compliance; and the College CIO and Central Office Computer Information Systems; and
  - the requesting department and the College's Purchasing Director have reviewed and approve of the purchase, and the College's Purchasing Director certifies in the CUNY Contract that the requirements of this Section have been satisfied; and
  - follow all University policies and all procurement laws, rules and requirements, including advertising any expenditure valued at \$50,000 or more, and conduct an appropriate vendor responsibility determination and background check.
- E. Exclusions: The University Office of Budget and Finance will continue to reduce the number of exclusions approved by identifying additional MWBE and SDVOB firms that can perform work on CUNY contracts.

The College will participate in this strategic plan by:

- F. Accountability: Part of the University's annual presidential reviews will consist of MWBE and SDVOB reviews to make sure the colleges are on track and meeting these goals.
- G. +3 Initiative: For all CUNY solicitations, excluding awards made to Preferred Sources, centralized contracts, single source and sole source procurements, colleges will use its good faith efforts to solicit a minimum of three New York State-certified MWBE and SDVOB firms. Data will be collected for each Purchase Order issued through CUNYfirst.
- H. Single Source and Sole Source Procurements: For all single source and sole source procurements, colleges will be required to submit their justification to OBF in the form and manner requested. OBF will review these procurements to unbundle contracts whenever possible to drive additional MWBE and SDVOB participation and strengthen subcontracting goals for small businesses.

[end]