USE THIS DOCUMENT FOR ALL PROJECTS.

**DOCUMENT 007327**

**SUPPLEMENTARY CONDITIONS – SDVOB**

This supplement modifies the General Conditions. Where any part of the General Conditions is modified by this supplement, the unaltered provisions of that part shall remain in effect.

Add the following article:

**ARTICLE 28 – PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Article 3 of the Veterans’ Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

* 1. **Contract Goals**

ADAPT THE LANGUAGE IN 28.1.1 BELOW TO REFLECT THE TRADES REQUIRED FOR THE PROJECT AND THE ESTABLISHED SDVOB GOALS FOR THE EACH OF THOSE TRADES.

* + 1. OGS hereby establishes overall goals under this contract of \_\_% for SDVOB participation for the C trade contractor, \_\_% for SDVOB participation for the E trade contractor, \_\_% for SDVOB participation for the H trade contractor, and \_\_% for SDVOB participation for the P trade contractor, based on the current availability of qualified SDVOBs. Trades with 0% goals are encouraged to make “good faith efforts” to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should refer to the **List of Certified NYS Service-Disabled Veteran-Owned Businesses**, which can be accessed from the OGS website page at the following link:

https://online.ogs.ny.gov/SDVOB/search.

Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts specified in Document 002113 Instructions to Bidders. Additionally, following Contract execution, Contractor is encouraged to contact DCSDVOB@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

28.1.2 Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause 28.4 below).

**28.2. SDVOB Utilization Plan**

28.2.1 The Contractor’s SDVOB Utilization Plan, using the form BDC 328S, available for download at <https://ogs.ny.gov/veterans/forms>, shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, and the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.

28.2.2 The apparent low bidder must submit the completed SDVOB Utilization Plan within seven (7) calendar days after the bids are opened. OGS will review the submitted SDVOB Utilization Plan and advise the bidder of OGS acceptance or issue a notice of deficiency within twenty (20) calendar days of receipt.

28.2.3 If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within nine (9) calendar days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within seven (7) calendar days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on form BDC 333S. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

* + 1. OGS may disqualify a Bidder’s bid or proposal as being non-responsive under the following circumstances:
1. If a Bidder fails to submit an SDVOB Utilization Plan;
2. If a Bidder fails to submit a written remedy to a notice of deficiency;
3. If a Bidder fails to submit a request for waiver; or
4. If OGS determines that the Bidder has failed to document good faith efforts.

28.2.5 If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth in this section.

28.2.6 Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

* 1. **Request for Waiver**

28.3.1 In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in 28.4 below, may submit a request for a partial or total waiver on form BDC 333S (https://ogs.ny.gov/veterans/forms), accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses 28.2.2, 28.2.3 and 28.2.4 will apply. If the documentation included with the waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

28.3.2 Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made prior to the submission of a request for final payment on the Contract. Such waiver requests shall be made on form BDC 333S, accompanied by supporting documentation, and emailed to ogs.sm.sdvobcomp@ogs.ny.gov.

28.3.3 If OGS, upon review of the SDVOB Utilization Plan (BDC 328S) and Contractor’s Monthly SDVOB Payment Report (BDC 58S), determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within nine (9) calendar days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

* 1. **Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

a. A list of the general circulation, trade, and other publications and dates of publications in which the Contractor solicited the participation of certified SDVOBs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.

b. A list of certified SDVOBs that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified SDVOBs. Describe specific reasons that responding certified SDVOBs were not selected.

c. Descriptions of the Contract documents, plans and specifications made available to certified SDVOBs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

d. A description of the negotiations between the Contractor and certified SDVOBs for the purposes of complying with the SDVOB goals of this Contract.

e. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.

f. Other information deemed relevant to the request.

* 1. **Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance each month to OGS during the term of the Contract for the preceding month’s activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be reported by the Contractor using form BDC 58S (form and instructions located at https://ogs.ny.gov/veterans/forms) and emailed by the 10th day of each month for the preceding month’s activity to ogs.sm.sdvobcomp@ogs.ny.gov.

* 1. **Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

**END OF DOCUMENT**