

**Monroe County**  
**Service-Disabled Veteran-Owned Business Program**  
**Administrative Rules and Regulations**

**A. Introduction**

The rules and regulations of the Service-Disabled Veteran-Owned Business (“SDVOB”) Program are promulgated in accordance with the Executive Order dated October 18, 2023. The purpose of the SDVOB Program is to encourage increased participation of SDVOBs in County government contracts.

The Monroe County Department of Diversity, Equity, and Inclusion has administrative responsibility and oversight of the SDVOB Program.

**B. Definitions**

- (1) **Certified SDVOB Contractors**—Federal SDVOSB Certified Contractors and/or State SDVOB Certified Contractors.
- (2) **County**—Monroe County.
- (3) **County Contracts**—shall have the same meaning as defined in Section 26-4 of the Monroe County Code.
- (4) **County Solicitation**—bid documents, expressions of interest, request for qualifications, request for proposals, and/or any other procurement document released by the County.
- (5) **Department**—the Monroe County Department of Diversity, Equity, and Inclusion.
- (6) **Director**—the Director of Diversity, Equity and Inclusion - Chief Diversity Officer or his/her designee.
- (7) **Federal SDVOSB Certified Contractors**—Service-Disabled Veteran-Owned Small Business Concerns that have been certified by the U.S. Small Business Administration in accordance with 13 C.F.R. Part 128.
- (8) **Respondents**—prospective Contractors that submit a bid, expression of interest, qualifications, proposal, or any other response to a County Solicitation.
- (9) **State SDVOB Certified Contractors**—Service-Disabled Veteran-Owned Business Enterprises that have been certified by the New York State Division of Service-Disabled Veterans’ Business Development in accordance with Veterans’ Services Law § 41.

- (10) **Utilization Plan**—A plan prepared by a contractor and submitted in connection with a proposed County Contract. The utilization plan shall identify Certified SDVOB Contractors, if known, that have committed to perform work in connection with the proposed County Contract as well as any such Certified SDVOB Contractors, if known, which the contractor intends to use in connection with the contractor’s performance of the proposed County Contract. The plan shall specifically contain a list, including the name, address and telephone number, of each Certified SDVOB Contractors with which the contractor intends to subcontract.

### **C. Application**

The County’s SDVOB Program shall apply to all County Contracts. The County’s SDVOB goals do not replace state, federal, or grantor goals, but may supplement those goals when permissible.

### **D. County-wide SDVOB Goals**

Effective as of January 1, 2024, all Monroe County offices, departments, and administrative units, including but not limited to the Division of Purchasing and Central Services, shall have a participation goal for Certified SDVOB Contractors of 6% of the total value of County Contracts each calendar year.

### **E. Utilization Plans**

- (1) The County may determine, in its sole discretion, to require, permit, and/or prohibit the use of subcontracting in any County Contract, as well as waive any such prohibition, permission, and/or requirement set forth in a County Solicitation.

- (2) The Department, the Monroe County Purchasing Manager, and the County department requesting the contracted goods or services shall review the scope of work for a County Solicitation to determine if there is sufficient scope of work to allow for subcontracting.

- (3) Respondents shall, when required in a County Solicitation, submit a Utilization Plan on a form developed by the Department with their initial bid and/or procurement response. The County may require a contractor to indicate, within a Utilization Plan, what measures and procedures it intends to take utilize Certified SDVOB Contractors.

- (4) When the County determines, in its sole discretion, that it is in the County’s interest to permit subcontracting, Respondents shall use best efforts to solicit active participation by Certified SDVOB Contractors.

- (5) The Department shall review Respondents’ Utilization Plans within a reasonable period of time, but in any event within ten (10) business days of receiving Respondents’ Utilization Plan.

- (6) The Department shall notify a Respondent in writing within ten (10) business days

of receiving Respondent's Utilization Plan as to any deficiencies contained in the Respondent's Utilization Plan. The notice shall include the timeframe in which the Respondent must cure such deficiencies, which shall not be longer than five (5) business days.

(7) Respondents that are Certified SDVOB Contractors may count self-performed work in their Utilization Plan.

(8) The selected Contractor shall submit periodic compliance reports relating to the operation and implementation of any Utilization Plan.

(9) Any amendments to an approved Utilization Plan shall be subject to the review and approval of the Department.

#### **F. Waivers**

(1) Where it appears that a Respondent, after making its best efforts, cannot comply with a SDVOB participation requirement in a County Solicitation, a Respondent may submit a written application with its response or bid requesting a partial or total waiver of such requirements, setting forth the reasons for the Respondent's inability to meet any or all of the participation requirements and an explanation of the efforts undertaken by the Respondent to obtain the required participation of Certified SDVOB Contractors.

(2) The waiver request must include the following information as a minimum:

- i. List of Certified SDVOB Contractors solicited to provide bids. Respondents must use current State and Federal directories for Certified SDVOB Contractors and not just internal databases or list.
- ii. Methods used to solicit Certified SDVOB Contractors.
- iii. Time/date stamped evidence of when/how bids were solicited.
- iv. Time/date stamped evidence of searches conducted for Certified SDVOB Contractors.
- v. Copies of all bids (SDVOB and non-SDVOB) received.
- vi. Evidence of a minimum of 10 business days given to bidders to submit quotes.
- vii. Other steps taken to demonstrate best efforts, as listed in subsection (3), below.

(3) The Department will consider the number and types of Certified SDVOB Contractors listed on the State and Federal directories, the total dollar value of the County Contract, the scope of work to be performed, and the project size and term to evaluate utilization waiver applications to determine if the Respondent's efforts are sufficient to grant the waiver. Efforts to obtain Certified SDVOB Contractors participation that are merely pro forma are not best efforts, nor are efforts that, even if they are sincerely motivated, given all relevant circumstances, could not reasonably be expected to produce a level of Certified SDVOB Contractors participation sufficient to meet the goal. In order to evaluate a Respondent's best efforts, the Department will consider the quality, quantity, and intensity of the different kinds of

efforts that the Respondent has made. Examples of best efforts to obtain Certified SDVOB Contractors participation include, but is not limited to:

i. Advertising in general circulation media, trade association publications, and/or publications focused on Certified SDVOB Contractors.

ii. Market research to identify small business contractors and suppliers and solicit, through all reasonable and available means, the interest of all Certified SDVOB Contractors that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events; advertising and/or written notices; posting of notices of sources sought and/or requests for proposals, written notices or emails to all Certified SDVOB Contractors listed in the State and Federal directories that specialize in the areas of work desired and which are located in the area or surrounding area.

iii. Soliciting Certified SDVOB Contractors interest as early in the bidding process as practicable to allow the Certified SDVOB Contractors to respond to the solicitation and submit a timely offer. The Respondent shall determine with certainty if the Certified SDVOB Contractors are interested by taking appropriate steps, including following up the initial solicitation with at least one additional solicitation via a different media. The Respondent shall solicit quotes from qualified firms listed in State and Federal directories, regardless if they have their own database of service disabled veteran owned firms. The Respondent shall keep records of efforts to solicit and negotiate with Certified SDVOB Contractors as evidence of best efforts. These records must include the firms contacted, method of contact, evidence of actions, and contact information of individuals that were sent outreach efforts. Certified SDVOB Contractors should be given a minimum of ten (10) business days to submit quotes.

iv. Selecting portions of the work to be performed by Certified SDVOB Contractors in order to increase the likelihood that the SDVOB goal will be achieved. This includes, where appropriate, either breaking down operations or combining like or related operations into logistically and economically feasible units to facilitate Certified SDVOB Contractors participation, even when the Respondent might prefer to perform these work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates Certified SDVOB Contractors participation.

v. Providing interested Certified SDVOB Contractors with adequate information on where and how to obtain the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their timely offer.

vi. Negotiating in good faith with interested Certified SDVOB Contractors. It is the Respondent's responsibility to make a portion of the work available to Certified SDVOB Contractors subcontractors and material suppliers and to select those portions of the work or material needs consistent with the available Certified SDVOB Contractors subcontractors and material suppliers, to facilitate Certified SDVOB Contractors participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of Certified SDVOB Contractors that were considered; a description of the information provided regarding the plans

and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for Certified SDVOB Contractors to perform the work.

vii. Making efforts to assist interested Certified SDVOB Contractors in obtaining bonding, lines of credit, or insurance as required by the Department or the Respondent.

viii. Making efforts to assist interested Certified SDVOB Contractors in obtaining necessary equipment, supplies, materials, or related assistance.

(4) The fact that there may be some additional costs involved in finding and using Certified SDVOB Contractors is not in itself sufficient reason for a Respondent's failure to meet the contract SDVOB goal, as long as such costs are reasonable. The ability or desire of a Respondent to perform the work of a contract with its own organization does not relieve the Respondent of the responsibility to make best efforts.

(5) A Respondent's inability to find a replacement Certified SDVOB Contractors at the original price is not sufficient to support a finding that best efforts have been made to replace the original Certified SDVOB Contractors. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make best efforts to find a replacement Certified SDVOB Contractors, and it is not a sound basis for rejecting a prospective replacement Certified SDVOB Contractor's reasonable quote.

(6) If the Department determines that a Respondent has failed to meet the good faith effort requirements, the Respondent will be notified in writing of the waiver disapproval within 30 days of the application therefor. The Respondent may appeal the decision in writing to the Director. The written appeal must be received within fourteen (14) days of receipt of the waiver denial letter.

## **G. Change Orders and Amendments**

(1) In the event a County Contract is amended (including but not limited to change orders) the Contractor shall update and revise its Utilization Plan to maintain the same percentage of SDVOB utilization as projected under the original County Contract amount. This shall apply when one of the following circumstances exist:

- i. For County Contracts with a total value of less than \$100,000 when an amendment or change order is more than 25% of the total contract value.
- ii. For County Contracts with a total value of more than \$100,000 when an amendment or change order is more than \$50,000.

## **H. County Responsibilities**

(1) The County shall identify SDVOB spending on County Contracts on quarterly

basis from each Department, which shall include, at a minimum:

- i. Contract/purchase order title and number
- ii. Prime contractor name.
- iii. Certified SDVOB Contractors subcontractor name.
- iv. Quarterly Certified SDVOB Contractors spending.
- v. Year to date Certified SDVOB Contractors contract spending in relation to approved Utilization Plan.
- vi. Information on removal/non-use of Certified SDVOB Contractors identified on the approved Utilization Plan.

(2) Each County department shall identify contracts for which Certified SDVOB Contractors are most likely to be available and may set forth additional requirements for outreach to Certified SDVOB Contractors particularly with regard to such contracts.

(3) The Department will maintain a list of upcoming contracts on the public county website, to the extent practicable, that is anticipated to have SDVOB participation goals.

(4) The Department will provide assistance to potential bidders in connecting with Certified SDVOB Contractors.

(5) The Department will provide assistance to eligible, non-certified service-disabled veteran owned firms within Monroe County to become certified.