# Supplier Diversity Program (SDP)

# Policy and Implementation Guidelines

### Background

Executive Order No. 524, Establishing the Massachusetts Supplier Diversity Program, states as a policy of the Commonwealth the promotion of “equity of opportunity in state contracting; and, to that end, [to] encourage full participation of minority and women owned businesses in all areas of state contracting.”

Executive Order No. 533 directed the Operational Services Division (“OSD”) to “[i]nvestigate opportunities to standardize and streamline the Commonwealth’s procurement processes both within OSD and the Executive Department in order to simplify the process for state agency procurement staff when conducting the procurements, for public entity purchasing staff when using the contracts and for interested bidders when bidding on the procurements….”

More recently, Executive Order No. 546 established the Service-Disabled Veteran Owned Business Enterprise Program (“SDVOBE Program”), which is designed to promote access and equity of opportunity to Commonwealth business opportunities to SDVOBE qualifying businesses.

Consistent with these directives, OSD has established the following SDP Policy and Implementation Guidelines.

### SDP Applicability

A Supplier Diversity Program (SDP) Plan is required for large procurements. No contract will be awarded to a bidder without a strong SDP Plan containing measurable commitments with certified vendors, barring any documented extenuating circumstances. All contract awardees, regardless of their certification status, are required to submit a completed SDP Plan Form, which can be found on the OSD Forms link on OSD’s website, as part of their response for evaluation. Although strongly encouraged for small procurements, the submission of an SDP Plan is mandated only for large procurements, defined as $150,000 and over. It is required that Supplier Diversity Program (SDP) participation accounts for no less than 10% of the total points in the evaluation.

**SDP Requirements by procurement size:**

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|  | **Small Procurement**  **(Total value equal to or less than $150,000)** | **Large Procurement**  **(Total value greater than $150,000)** |
| **Potential Bidder Notification** | While notification can be made to all businesses (small and large) that have registered with a specific COMMBUYS commodity code, the procurement must include a statement that the Department intends to award a contract to a COMMBUYS-verified SBPP bidder. | No additional requirements beyond posting on COMMBUYS. |
| **SDP Plan** | Encouraged | Required |
| **Quote Evaluation** | Evaluate all submissions using best value criteria. However, if no SBPP bidder bids or there are none that meet the Department’s best value criteria, then may award to non-SBPP bidder. | SDP Plan must be evaluated at a minimum of 10%. Evaluate all submissions using best value criteria. |

This policy applies to the acquisition of commodities and services by all Executive Departments pursuant to MGL Chapter 7, Section 22; MGL Chapter 30, Sections 51 and 52; and 801 CMR 21.00.

## Summary of Policy Requirements

The revised Supplier Diversity Program requires departments to:

* Include the revised SDP Plan template language and SDP Plan Commitment Form (included in this document) into large procurements ($150,000 or more),
* Require that contractors submit the Declaration of SDP Partner(s) Form (included in this document) no later than 30 days after signing the contract.

In addition, departments must:

* Regularly monitor contractor’s compliance with the commitment levels using the SDP Spending Report Form (available on the [OSD Forms](http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/osd/osd-forms.html) page) or their own reporting form;
* Verify all reported SDP spending is with SDO-certified MBE, WBE or federally-certified SDVOBE partners.
* Meet the annual supplier diversity spending benchmarks established for the department.

A Minority Business Enterprise (MBE) or a Woman Business Enterprise (WBE) is defined as a business that has been certified as such by the Supplier Diversity Office (SDO). An online directory of such businesses is available on the [SDO Webpage](http://www.mass.gov/sdo) (www.mass.gov/sdo).

A Service-Disabled Veteran-Owned Business Enterprise (SDVOBE) is defined as a business that has been certified as such by the Center for Veterans Enterprise. An online list of such businesses is available on the [SDO Webpage](http://www.mass.gov/sdo) (www.mass.gov/sdo).

For further information on SDO certification, go to the [SDO Webpage](http://www.mass.gov/sdo) (www.mass.gov/sdo) or contact the SDO via email at [wsdo@state.ma.us](mailto:wsdo@state.ma.us) or via phone at (617) 502-8831.

### Requirements Applicable to Initial SDP Plan Bid Response

Bidders responding to a solicitation requiring an SDP Plan are required only to identify a commitment in the form of a specific percentage of sales (See SDP Plan Forms) made under the resulting contract that will be spent with a Certified Partner(s). This percentage commitment will extend for the life of any resulting contract. Fixed dollar commitments are not allowed. This will facilitate an apples-to-apples comparison of bid responses for evaluation purposes. Further, this will ensure that SDP commitments are meaningful with respect to the overall value of the resulting contract.

### Definition of Certified Partner

Certified Partners may include both SDO-certified (M/WBEs) businesses and Service-Disabled Veteran-Owned Businesses (SDVOBE). Contract awardees may designate either SDVOBE and/or SDO-certified M/WBEs for purposes of meeting their SDP Plan commitments.

### No Requirement to Categorize Spending with Certified Partner

The SDP Plan does not distinguish between categories of services for which bidders opt to use a Certified Partner. Departments will be responsible for ensuring that the percentage commitment of contract spend is met with a currently certified partner(s). Departments will not be responsible for reviewing or determining the appropriate type of relationship between the contract awardee and its Certified Partners (i.e., subcontracting, ancillary services, or growth and development).

### Identification of Certified Partner Not Required Prior to Contract Execution

While bidders are encouraged to consider and investigate potential SDP Partners throughout the bidding process, submission of the appropriate SDP Form, identifying a Certified Partner is required no later than 30 days after contract execution. This simplifies the burden for prospective bidders, since they will not be required to identify, select and negotiate conditional agreements with Certified Partners unless they are awarded a contract. Further, this creates more reasonable expectations for Certified Partners and should result in more tangible business opportunities, since the bidder has received a contract award.

## Planning for the Supplier Diversity Program Plan in a Procurement

During the planning stages of the procurement, departments must strive to tailor the Supplier Diversity Program Plan to the industry and supplier base for the product or service being sought. The following steps should be taken:

* Involve the department Supplier Diversity (SD) Officer or their designees as Strategic Sourcing Services Team (SSST), also referred to in some departments as a Procurement Management Team (PMT) participants or advisors;
* Research the SDO-certified M/WBE, and/or certified SDVOBE vendor pool availability, industry capacity and climate;
* Determine if any SDO-certified M/WBE, and/or certified SDVOBE can participate as prime vendors and encourage them to register in COMMBUYS;
* Include the SDP Plan template language andSDP Plan Commitment Form in the RFR;
* Determine how the SDP Plan Commitment Form will be evaluated (at least 10% of the total available evaluation points must be allocated for the SDP Plan);
* Define compliance and reporting methodologies and incorporate language into the RFR, including the decision as to whether to use the SDP Spending Report Form or the department’s own reporting method.

## Negotiation of the SDP Plan before Contract Signing

* SDP Plan evaluation scores will be based on the bidders’ original proposals with possible clarifications and BAFOs (Best and Final Offers), if used. It is in the best interest of bidders to offer a high percentage of sales commitment with SDO-certified M/WBEs, or certified SDVOBEs in their original proposals. Including SDP Plan improvements in the BAFO process, and whether such improvements result in increased SDP Plan Evaluation scores, is at the discretion of the department.
* Prior to signing a contract, departments may achieve higher percentage of sales commitments for the duration of the contract through negotiation with apparent successful bidders. During the negotiation, apparent successful bidders may only increase SDP percentage commitments submitted in the original response. Such increases will not result in an increase in the evaluation scores for the bidders.

## The SDP Plan Implementation

Once the contract is signed, the following steps should be taken to guide contractors in the implementation of their SDP commitments:

* The contractor must submit a completed Declaration of SDP Partner(s) Form to the department within 30 days of signing the contract. Contractors are required to list their SDP Partners in Part II of the Declaration of SDP Partner(s) Form. If the RFR includes language that specifically authorizes the contractor to defer identification of their SDP Partners, then the contractor has the option to do so by checking the box in Part II, thereby acknowledging their SDP commitment.
* If the Declaration of SDP Partner(s) Form is incomplete or is not submitted by the deadline, the department may use penalties, including, contract suspension and termination until the contractor has remedied the situation, or may award the contract to the next apparent successful bidder;
* The department should also review with the contractor the requirements for reporting the contractor’s spending with SDP partner(s) as documented in the RFR. This review may also include the Spending Report Form.

In addition, the SSST, SD Officer or Strategic Sourcing Services Lead (SSSL; also referred to in some departments as a Procurement Team Leader, or PTL) will set timelines for contractor progress reviews to ensure the contractor’s compliance with the annual spending commitments. Reviews should be conducted either quarterly or semi-annually as determined by the SSST, SD Officer or SSSL. These regular reviews are designed to address any issues or difficulties in a timely, proactive manner. They may also allow the department and contractor to set a strategic plan for M/WBE and SDVOBE use prior to the annual review. All progress review documentation must be included in the department's procurement file.

## Guidelines for Monitoring and Enforcing Compliance of the SDP Plan

Compliance with the SDP Plan is a contractual requirement. The monitoring process for the program consists of the following components:

* The contractor will be required to submit regular SDP spending reports to the department. OSD recommends quarterly reporting, but you must require reports at least twice a year;
* Departments will review reports and take action if the reports are incomplete or if there are questions about the validity of the information in the reports or if reports are not submitted;
* On an annual basis (contract anniversary or fiscal year), the department will review compliance with the spending commitment for the year.

The prime contractor should immediately communicate any difficulties relative to compliance with SDP requirements to the sourcing lead, SSST or SD Officer. Once the SSSL, SSST or SD Officer has had an opportunity to make an assessment of the circumstances and issues involved, appropriate measures will be taken to address any concerns or issues of non-compliance for all parties involved. A contractor may be considered out of compliance with the SDP Plan under certain conditions including, but not limited to, the following:

* Failure to submit the Declaration of SDP Partner(s) Form;
* Failure to submit an SDP spending report;
* Failure to meet the commitment obligation on an annual basis.

If the contractor is not in compliance with the terms agreed to in the SDP Plan, the SSSL or SD Officer should work closely with the contractor to resolve any outstanding issues. This may involve informal discussions and/or meetings with the contractor regarding their specific problems. The contractor will be required to provide information needed for the SSSL, SSST or SD Officer to ascertain its compliance with the terms of the SDP Plan.

If no resolution occurs and the issues/problems are found, more formal steps should be taken, including the following:

* Send written notice to the contractor from the sourcing lead, SSST or SD Officer describing the problem, proposed solution and response time required. Send a copy of the notice to the SSSL and OSD, if applicable.
* Conduct follow-up meetings with the contractor.
* Initiate formal corrective action plans with written notice from the department or OSD, as appropriate, if no resolution has occurred at this point.
* Review invoices upon receipt for the purpose of determining whether to reject said invoices. Any rejected invoices should be returned with a written explanation for its rejection. This may occur at any time during the period of non-compliance with the SDP Plan (depending upon department-established internal control procedures, the SSSL, SSST or SD Officer and in conjunction with the responsible accounts payable person). Upon notice to the contractor, a department may suspend a contract until a contractor has resolved the SDP non-compliance. A department may also impose a penalty fee, upon notice, if it has statutory authority and has specified the potential for a penalty in the RFR.
* Refer the matter to the department’s legal counsel if a contractor’s poor performance in meeting their SDP Plan benchmarks is serious enough to suggest contract termination, debarment or other actions.

The SSSL, SSST or SD Officer should maintain sufficient documentation of all written or verbal communication to support the actions taken to resolve any non-compliance issues with the SDP Plan.

## Guidelines for SDP Plan Exemptions

The SDP Plan approach allows prime contractors the freedom to pursue business relationships with any SDO-certified MBE or WBE or federally-certified SDVOBE that meets the goods and services needs of their company, in order to fulfill their SDP commitment. This new flexibility should eliminate the need for any exemptions from the SDP Plan, however exemptions may be considered by OSD on a case by case basis.

To request an exemption from requiring an SDP Plan in a large procurement, send the request with supporting documentation to [purchasing.agent@massmail.state.ma.us](mailto:purchasing.agent@massmail.state.ma.us) The SDP office will respond to all waiver requests within 10 working days.

## Setting Departmental Benchmarks

Annual benchmarks for departmental Supplier Diversity spending are set by the Supplier Diversity Office subject to approval by the Assistant Secretary for Operational Services and the Assistant Secretary for Access and Opportunity. The benchmarks are based on the following percentages of each department’s discretionary budget:

MBE: 7%

WBE: 13%

SDVOBE: 3%

The SDP approach is meant to simplify the process and to encourage *all* types of business to business relationships between the Commonwealth’s prime contractors and their certified partners. All spending associated with all business relationships with SDO-certified MBEs, WBEs and federally-certified SDVOBEs counts towards meeting the departmental benchmarks. It is the department’s responsibility to develop an approach that will result in the department meeting its annual SDP benchmarks.

*Note on subcontracting:* All subcontracting relationships are governed by additional contract terms, which can be found in the Commonwealth Terms and Conditions and in the RFR*. (See RFR Template Subcontracting Policies, and Commonwealth Terms & Conditions Section 9, Subcontracting By Contractor.)*

## References and Related Materials

* [Executive Order 524, Establishing the Massachusetts Supplier Diversity Program](http://www.mass.gov/courts/docs/lawlib/eo500-599/eo524.pdf).
* Supplier Diversity Plan Guidance for Human and Social Services/Purchase of Service (POS) Contracts:
  + [Supplier Diversity Program Policies and Plan for Purchase of Services (POS) Contracts](http://www.mass.gov/anf/docs/osd/pic/posammendedsdppolicy.docx)
  + [SDP Language for POS RFR](http://www.mass.gov/anf/docs/osd/pic/sdp-language-for-pos-rfr.docx)
* Supplier Diversity Program Plan Forms are located on the [OSD Forms](http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/osd/osd-forms.html) webpage.