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The Commonwealth of Massachusetts Diverse and Small Business Program Policies for Goods and Services Procurements





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General SDO Program Policy

Background

Executive Order No. 599, Reaffirming Programs to Ensure Diversity, Equity, and Inclusion for Diverse and Small Massachusetts Businesses in State Procurement and Contracting, directs the Supplier Diversity Office (SDO) to administer and oversee programs for all Executive Department agencies "to ensure consistent and measurable progress in expanding access and equity of opportunity in state contracting." Consistent with the Executive Order, the SDO has established the following Program Policies. The sections below provide an overview of the Supplier Diversity Program (SDP) and Small Business Purchasing Program (SBPP) policies.

General SDO Program Applicability

This policy applies to the acquisition of commodities and services by all Executive Departments ("departments") pursuant to MGL Chapter 7, Section 22; MGL Chapter 30, Sections 51 and 52; and 801 CMR 21.00. A policy addendum is available to the implementation of the SDP on procurements and contracts issued by all Executive Departments for the acquisition of client health and human services, also referred to as the Purchase of Service (POS). Note that separate programming, known as the Affirmative Market Program (AMP), applies to construction and design projects.

The SDO and Departmental Responsibilities

The SDO, in partnership with the Governor's Office for Access and Engagement, provides overall coordination and oversight of the Commonwealth's Executive Branch diverse and small business programs. This includes, but is not limited to, the certification of diverse and small businesses, issuing policies and guidance, calculating benchmarks, providing program resources, informing departments on their benchmark progress, ensuring compliance with program requirements, and publishing the annual report with final program results for all departments.

Each department is responsible for the implementation of this policy and ensure that departmental staff and contractors comply. Each secretariat and department shall appoint a liaison(s), known as either a Secretariat Supplier Diversity Officer (SSDO) or an Agency Supplier Diversity Officer (ASDO), who shall be the central point of contact for questions regarding the department's diverse and small business programs. Should a department fail to explicitly designate an SSDO/ASDO, the position shall default to the department's Chief Procurement Officer (CPO). Departments may designate a different SSDO/ASDO by contacting katherine.l.thomas@mass.gov.

Annual Departmental Benchmarks

Annual benchmarks for departmental supplier diversity and small business spending are set by the SDO and are subject to approval by the Secretary for Administration and Finance and the Governor's Office for Access and Engagement. The benchmark spending amounts are based on applying current benchmark percentages to each department's discretionary budget and, at the end of each fiscal year, to its discretionary spending:[1]

[1] The SDO estimates each department's discretionary budget at the beginning of each fiscal year, based on prior spending in a set of discretionary object codes. At the end of each fiscal year, the SDO uses actual spending in those object codes to calculate the department's final benchmark amounts. Discretionary object codes for the year are published on the SDO's Program Resources for Departments webpage.

Program	Certification Type	Benchmark Percentage
Small Business Purchasing Program (SBPP)	Massachusetts-based Small Business or Nonprofit Organization	3.3%
Supplier Diversity Program Certifications (SDP)	Minority Business Enterprise or Nonprofit Organization (MBE or M/NPO)	8%
	Woman Business Enterprise or Nonprofit Organization (WBE or W/NPO)	14%
	Veteran Business, including Veteran Business Enterprise or Nonprofit Organization (VBE or V/NPO) and Service-Disabled Veteran-Owned Business Enterprise (SDVOBE)	3%
	Disability-Owned Business Enterprise (DOBE)	0.3%
	LGBT Business Enterprise (LGBTBE)	0.3%

Spend Planning and Tracking Progress

On a regular basis, departments must enter planned procurements in the SDO Supplier Diversity Hub. The purpose of the planning process is to identify purchasing, procurement, and contracting opportunities that will be available for diverse and small businesses and to assist agencies in achieving the following goals:

- Meet or exceed all SDO benchmarks for the fiscal year
- Increase the total spending with diverse and small companies compared to the previous fiscal year
- Increase the number of diverse and small firms the department buys from compared to the previous fiscal year

The SDO Hub enables departments to monitor their progress toward all three goals.

Meeting Benchmarks

Departments are required to make a good faith effort to meet all diverse and small business spending benchmarks. They may accomplish this in the following ways:

Program	Creditable Spending
Small Business Purchasing Program (SBPP)	**Direct (Tier 1) Spending:** Spending with prime contractors that are validated as participants in the SBPP.
Supplier Diversity Program (SDP)	**Direct and Indirect (Tier 1 and 2) Spending:** Spending with diverse businesses certified or recognized by the SDO. [2]

Whenever a contract allows direct vendor selection, departments should utilize diverse and small businesses to the extent possible based on contract terms, SDO and departmental policies, laws, and regulations[3]. Additionally, departments shall make a preference for contractors with higher SDP commitments and/or spending whenever such a preference is feasible.[4]

Whenever a contract requires the solicitation of multiple quotes, departments shall, at a minimum, notify at least **two** diverse and/or small businesses capable of providing the product or service of the opportunity, if available.[5] Furthermore, departments shall apply the SBPP Policy below and shall follow SBPP implementation guidance.

[2]To count toward SBPP or SDP spending, spending must be with firms registered as SBPP members within the COMMBUYS system or included in either the SDO's Directory of Certified Businesses or in another directory accepted by the SDO, respectively

[3]Vendor selection should not be based on race or gender status alone

[4] Contractor SDP commitments are provided by bidders in their SDP Plan Forms and, after contract award, become contractual requirements. For Statewide Contracts, SDP commitments are listed in the Statewide Contract Contractor User Guides. Contractor SDP spending refers to the contractor's reported SDP spending compared to contract sales.

[5] On contracts that have one small or diverse vendor, this vendor must be notified. Contracts that have no small or diverse vendors are exempt from this requirement.

Whenever a department conducts a new open-market procurement, at least one program, SDP or SBPP, shall apply to all departmental and statewide procurements of commodities and services. The SDP shall serve as the default program in cases where the department is unable to estimate the procurement size. See below for additional policies concerning new procurements and purchasing.

Fostering Diverse and Small Business Participation in Contracting

Meeting program goals depends on the availability of diverse and small vendors on contracts. **To accomplish this, departments must attract more diverse and small vendors to their procurements.**

When planning and conducting procurements, departments must attempt to identify potential diverse and small bidders, identify and remove barriers for their participation, and collaborate with the SDO to encourage diverse and small business participation. The table below demonstrates the steps departments should take to attract more diverse and small vendors to their procurements.

The SDO's Cross-functional Team assists departments in promoting procurements. Furthermore, the SDO can assist with current contractor SDP requirements training and certification drives. Departments should contact Katherine.L.Thomas@mass.gov for more information.

Research and Planning	Conducting the Procurement	Managing Contract and Vendor Relations
• Make a list of potential small and diverse vendors • Include small and diverse vendors in industry and vendor research • Consider regional and category-based awards to create options for small and diverse businesses	• Revise bid terms and conditions that could create a barrier for or negatively impact small and diverse bidder participation* • Contact the SDO to promote the opportunity • Direct potential small and diverse bidders to COMMBUYS, vendor training, and other resources • Train all vendors on SDP requirements • Use clarification, BAFO, and negotiation • Conduct debriefings and give other types of feedback	• Ensure agency buyers are aware of small and diverse prime contractors available for ordering/RFQs • Ensure departmental prime contractors are submitting SDP reports in the Supplier Diversity Hub • Ensure compliance with SDP commitments** • Conduct a small/diverse business certification drive for existing contractors

* Commonwealth Terms and Conditions and Standard Contract Form and required solicitation language cannot be modified.
** Procurements with estimated values exceeding $250,000 annually.

The Small Business Purchasing Program (SBPP) Policy

Summary of Policy Requirements

Applicability

The revised policy applies to all new commodities and services procurements and RFQs posted on or after July 1, 2021.

Program Goal

The SBPP promotes the utilization of Massachusetts-based small businesses (including nonprofits) in the Commonwealth's goods and services procurements.

Eligible Businesses Included in the SBPP

To be eligible as an SBPP participant, an entity must be verified as a small business by the SDO and must be listed as an SBPP registered business in COMMBUYS. Entities are responsible for ensuring that the information in COMMBUYS is accurate.

Purchasing from Small Businesses

Whenever a contract allows direct vendor selection, departments shall utilize diverse and small businesses to the extent possible based on contract terms as well as SDO, OSD, and departmental policies, laws, and regulations.

SBPP Requirements for Competitive Solicitations

Small Business Award Preference and its Inclusion in the Solicitation: All Small Procurements (RFRs and RFQs with an estimated annual value equal to or less than $250,000) must include the SBPP Contract Language, stating that the department intends to award a contract to a Massachusetts-based Small Business if a response from an eligible SBPP participant is received and meets the department's best value criteria. For guidance regarding best value, consult with OSD.

SBPP language must be prominent within the main part of the solicitation document, and not only as part of an attachment or appendix. The SBPP contract language is included in the *RFR-Required Specifications for Commodities and Services* document and in the RFR templates found on the OSD forms webpage. The language is also provided on the SDO Program Resources for Departments webpage.

When creating a new bid in COMMBUYS which is eligible for the Small Business Purchasing Program, Departments must identify the bid as eligible for the SBPP by choosing "yes" from the drop-down menu in the "General" tab.

When purchasing from a contract requiring multiple quotes, departments shall, at a minimum, notify at least two diverse and/or small businesses capable of providing the product or service of the opportunity, if available.

Participation of Large Businesses: All businesses interested in bidding on Small Procurements may do so. However, under SBPP, buyers should only evaluate the bids received from, and award a contract to, an SBPP-participating bidder that meets the Department's best value criteria. Buyers may award a Small Procurement contract to a non-SBPP eligible bidder only if no responses are received from an eligible small business or if responses received from an eligible small business do not meet the requirements of the bid. Reponses received from an SBPP participant shall not be disqualified based on price or desirable criteria unless the Department conducts a clarification, Best and Final Offer (BAFO) and/or negotiation, and these efforts are unsuccessful.

Inclusion of Small Businesses in Large Procurements

While the SBPP preference does not apply to Large Procurements (estimated annual value greater than $250,000),

departments are encouraged to engage in the following best practices:

- Set small business award goals for procurements
- Provide an evaluation preference for SBPP-participating bidders
- Promote the procurement to possible SBPP-participating bidders

Compliance and Quality Assurance Reviews of SBPP Procurements

The SDO's Compliance and Quality Assurance Unit shall review and enforce department compliance with SDO programs, policies, and benchmarks and take appropriate compliance, enforcement, and corrective action measures.

The Supplier Diversity Program (SDP) Policy

Summary of Policy Requirements

Applicability

The revised policy applies to all new commodities and services procurements posted on or after July 1, 2021. It does not apply to rolling enrollment procurements or re-openings of existing open enrollment procurements issued prior to that date.

Program Goal

The Supplier Diversity Program (SDP) promotes the utilization of diverse businesses in the Commonwealth's goods and services contracting through:

- **Direct (Tier 1) purchasing from diverse businesses:** This type of contract result in departments making direct payments to diverse businesses.
- **Indirect (Tier 2) business-to-business partnerships between prime contractors and diverse businesses:** Such partnerships result in prime contractors making payments to diverse businesses and may be either ancillary/operational or subcontracting relationships.

Eligible Businesses Included in the SDP

The diverse business categories included in the SDP are:

- Minority Business Enterprise or Nonprofit Organization (MBE or M/NPO)
- Women Business Enterprise or Nonprofit Organization (WBE or W/NPO)
- Veteran Business Enterprise or Nonprofit Organization (VBE or V/NPO)
- Service-Disabled Veteran-Owned Business Enterprise (SDVOBE)
- Disability-Owned Business Enterprise (DOBE)
- LGBT Business Enterprise (LGBTBE)

To be considered valid SDP participants, companies in the above categories must be listed in the SDO Directory of Certified Businesses or the U.S. Small Business Administration's Veteran Small Business Certification (VetCert) Directory. Veteran or Service-disabled Veteran-owned business can also be found in the SBA - Dynamic Small Business Search. In the search field under Veteran-owned Small Business or Joint venture, "required" must be checked off. No other certification type listed on that webpage is recognized [6]

[6] The SDO partners with several third-party certification organizations, whereby the SDO recognizes their certifications for inclusion in specific diverse business categories in the SDO Directory of Certified Businesses or additional directories (e.g. SBA Veteran Small Business Certification (VetCert)). Therefore, the list of businesses participating in SDO programs is expected to grow. Please contact the SDO at sdp@mass.gov for assistance in finding certified diverse businesses.

Purchasing from Diverse Businesses

Whenever a contract allows direct vendor selection for purchasing, departments should use diverse and small businesses to the extent possible based on contract terms, SDO and departmental policies, laws, and regulations. However, vendor selection shall not be made based on diversity status alone. Additionally, departments shall make a preference for contractors with higher SDP commitments and/or spending whenever such a preference is feasible[7].

Supporting Direct Contracting with Diverse Businesses

Departments may not award evaluation points to diverse businesses based on their certification. Instead, departments are instructed to follow the steps listed in the Fostering Diverse and Small Business Participation in Contracting section of this policy, above.

SDP Requirements for Competitive Solicitations

Including SDP Language in the Solicitation: All Large Procurements (RFRs with an estimated annual value exceeding $250,000) must include the SDP Contract Language. The SDP contract language is included in the *RFR-Required Specifications for Commodities and Services* document and in the RFR templates found on the OSD forms webpage. The language is also provided on the SDO Program Resources for Departments webpage. For guidance regarding best value, consult with OSD.

Such language must be prominent within the main part of the solicitation document, and not as part of an attachment or appendix. The SDP contract language is included in the *RFR-Required Specifications for Commodities and Services* document and in the RFR templates found on the OSD Forms webpage. The language is also provided on the SDO Program Resources for Departments webpage.

SDP Plan Form: Departments must use the SDP Plan Form in their bids and may not alter it without prior written approval from the SDO. To request approval, contact the SDO via email at sdp@mass.gov.

Promoting Program Awareness Prior to Bidding: Departments must help bidders understand the SDP requirements prior to submitting their bids. Investing time in this proactive measure reduces the need for compliance, enforcement, and corrective action measures. At a minimum, the SDP language of the solicitation must be prominent within the main part of the solicitation document, and not as part of an attachment or appendix.

Additionally, the following measures are strongly recommended:

- **Pre-bid conferences:** Departments are encouraged to invite SDO Training to provide a summary of the SDP requirements and a review of the SDP Plan form at a pre-bid conference. To request SDO Training at a pre-bid conference, please email Katherine.l.thomas@mass.gov.This information may also be delivered by the contract manager. The SDO can provide SDP presentation slides to department contract managers who opt to deliver the SDP information themselves at their pre-bid conferences.
- **Written Bid Q&A:** Post SDP-related questions and answers under the Bid Q&A tab of the solicitation in COMMBUYS. You can download a copy of the SDP frequently asked questions and attach it to the bid documents. The SDP frequently asked questions are located on the Program Resources for Departments webpage.

[7] Contractor SDP commitments are provided by bidders in their SDP Plan Forms and, after contract award, become contractual requirements. For Statewide Contracts, SDP commitments are listed in the Statewide Contract Contractor User Guides. Contractor SDP spending refers to the contractor's reported SDP spending compared to contract sales.

SDP Commitment: The following provisions apply to SDP Commitments made by Bidders and Contractors for goods and services contracts:

- Bidders responding to a bid solicitation requiring an SDP Plan must provide an SDP commitment as a specific percentage of sales from the resulting contract to be spent with Certified Partner(s).
- Bidders are required to have at least 1% SDP commitment, and cannot be awarded without an SDP commitment.
- Fixed dollar-amount commitments for goods and service contracts are not allowed--this ensures fair bid evaluations and allows SDP spending expectations to adjust based on the prime contractor's overall sales of the resulting contract.
- The SDP commitment must be met annually for the life of the contract.

Evaluation: SDP plan form evaluations must at least 25% of the total evaluation score with 15% dedicated to the bidder's SDP commitment. Vendors with higher SDP commitments should be awarded more evaluation points. Additional guidance on bid evaluations is available in Best Value Evaluation of SDP Plan Forms: A Guide for Strategic Sourcing Teams.

Subcontracting vs. Ancillary (general business needs) Relationships: While the SDP Plan Form separates subcontracting and ancillary business-to-business relationships, this does not imply that one is more inherently valuable than the other. The total SDP commitment shall be used as a measure of each contractor's compliance with contract terms. Unless the RFR includes a specific desirable criterion for subcontracting or ancillary partnership spending, separate partnership types should not be assigned separate scores.[7]

Clarification, Best and Final Offer (BAFO), and Negotiation: Departments are encouraged to include the SDP commitment into contract clarification, BAFO, and negotiation procedures. Consult the OSD Conducting Best Value Procurements Handbook for more information about conducting clarifications, BAFOs, and negotiations.

Implementing, Monitoring, and Enforcing Compliance of the SDP Plan

Standard Contract Form: The Standard Contract Form includes a section regarding Supplier Diversity Program (SDP) obligations and commitments. Agencies should use this section to record the prime contractor's commitment listed on the SDP Plan form.

Contractor Awareness after Award: Departments must ensure that contractors understand the SDP requirements that apply to them after contract award. Continued focus on contractor awareness reduces the need for subsequent compliance, enforcement, and corrective action measures. The following steps are encouraged:

- Agencies are encouraged to include a summary of the SDP requirements and review of the SDP reporting form(s) and process(es) in any contractor meetings at the start of the contract. This information may be delivered by the contract manager or by the SDO. To request SDO presence at a contractor on-boarding or another contractor meeting, please email katherine.l.thomas@mass.gov.
- Departments also are encouraged to distribute the Contract Vendor Responsibilities document.

Contractor SDP Reporting and Compliance Monitoring: Departments are required to monitor contractor compliance with their SDP commitments as follows:

- Departments must enter newly awarded contractor information into the SDO's Supplier Diversity Hub within **30 days after contract award** and ensure that contractors log in and acknowledge their SDP commitments in the system.

[7]While the SDP allows subcontracting, some contracts may prohibit or have other conditions applicable to subcontracting (e.g. buyer approval prior to the use of subcontracting). Please consult contract RFR specifications and other terms to ensure that the SDP contract language is consistent with those terms.

- During the first year of the contract, departments should monitor contractor reports closely to ensure that contractors are on track to meet their SDP commitments. The SDO recommends regular performance reviews to identify issues or problems in a timely, proactive manner.
- Departmental prime contractors must use the SDO's Supplier Diversity Hub to report SDP spend reports. The SDO recommends vendors report quarterly, but SDP spending information must be reported annually.
- Departments must follow up with contractors who do not submit an SDP spending report, if the report is incomplete, or if there are questions as to the validity of the information submitted.
- Departments must notify the SDO of any vendors not meeting their SDP commitment. The SDO will work with you to help the vendor meet their obligation.

Resolving Compliance Issues: The SDP provisions are considered material terms, and a prime contractor's SDP commitment is a material obligation required by the contract. As a result, consequences of non-compliance are governed by the Suspension or Termination language of the Commonwealth Terms & Conditions, which are signed by the contractor:

> *The Department […] may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract.*

The application of the above language includes, but is not limited to, the following:

- Suspending the non-compliant contractor from entering new engagements (while completing existing ones).
- Renewing the contract with a non-compliant contractor for a term that is significantly shorter than the renewal term for contractors in good standing (e.g. six months to a year for non-compliant vendors vs. two years for vendors in compliance) with further renewals being contingent on SDP compliance.
- Choosing not to renew the contract for an additional term.

It is understood that suspension, termination, and non-renewal are last resort measures and, as such, parties may negotiate to avoid these measures. Tools that are used to ensure contract performance in these cases include:

- Sending the vendor a joint letter from the agency and the SDO, notifying the vendor they are in violation of contractual obligations
- Having the vendor contact the SDO directly. The SDO assists non-compliant vendors by identifying SDP partners, and vendors may reach out to the SDP Help Desk at sdp@mass.gov.
- Revising the current SDP Plan Form which will result in at least equal or better value than the original SDP commitment.
- Corrective action plans with a timeline for reaching contract compliance.

Corrective Action Plans: An effective SDP corrective action plan must include the following components:

- A clear measurement of the gap in contract compliance: the contractor's SDP commitment, total contract spending over the period of non-compliance, total SDP spending reported by the contractor, and the difference between the total SDP spending reported and the expected total SDP spending.
- Specific steps the contractor commits to taking to come into compliance with deadlines for each step. Steps may include, but may not be limited to:
    - Identification of specific individuals within the company responsible for the implementation of the corrective action plan
    - Meeting with the agency/SDO to better understand the SDP
    - Analysis of current suppliers to identify firms that currently are certified by the SDO or SDO-recognized third-party certifying organizations
    - Outreach to current suppliers to identify those that may be eligible for supplier diversity certification and follow-up to monitor their certification status prior to end of the current fiscal year (The SDO does not guarantee all certification applicants will receive certification)
    - Analysis of current and upcoming contract-related projects/engagements to identify potential new diverse subcontractors

    - Analysis of current and upcoming business needs to identify potential new diverse ancillary partners
- Specific deadlines/milestones for completing the steps above.
- The expected date of resolving contract non-compliance.

Documentation: The agency should maintain documentation of all communications with contractors to support any action taken to resolve non-compliance with the SDP Plan.

Compliance and Quality Assurance Reviews of SDP Plans and Reports

The SDO's Compliance and Quality Assurance Unit shall review and enforce department compliance with SDO programs, policies, and benchmarks and take appropriate compliance, enforcement, and corrective action measures. The unit shall assist departments in addressing vendor compliance issues on departmental contracts.

Procurements and Contracts Exempt from this Policy

Procurement Exceptions: The following procurement exceptions listed in 801 CMR 21.00 are not required, but are encouraged, to include applicable SDP and/or SBPP provisions to the extent possible:

- Legislative exemptions or legal restrictions due to a general or special law or other existing legal obligations
- Emergency situations that require the immediate acquisition of a commodity or service to eliminate the emergency
- Incidental purchases

Non-discretionary Expenditures and Other Special Situations: Additionally, unless directed otherwise, departments are not required but are encouraged to include applicable SDP and/or SBPP provisions to the extent possible in procurements or solicitations related to:

- Awards, grants, and subsidies (refer to the Program Resources for Departments webpage for SDO guidance for grants)
- Pensions and insurance
- Entitlement programs, loans, and special payments
- Transactions outside of the Massachusetts Management Accounting and Reporting System (MMARS)
- Revenue-generating contracts
- Products and services acquired from public entities (municipalities, public schools, etc.)
- Products and services acquired through an Interagency Service Agreement (ISA)

This policy was designed to allow prime contractors the freedom to meet their SDP commitments by pursuing business relationships with SDP partners that meet the general business needs of their company. While this flexibility should eliminate the need for other exemptions from the SDP plan requirement, exemptions may be considered by the SDO on a case-by-case basis.

To request an exemption from applying SDP or SBPP requirements or to suggest an alternative means of achieving program goals on a specific procurement or a contract, departments must send the request with supporting documentation to sdp@mass.gov. The SDO will respond to all waiver requests within 10 business days.

References and Related Materials

- Learn about the Supplier Diversity Program (SDP)
- Learn about the Small Business Purchasing Program (SBPP)
- Executive Order No.599, Reaffirming Programs to Ensure Diversity, Equity, and Inclusion for Diverse and Small Massachusetts Businesses in State Procurement and Contracting
- The Conducting Best Value Procurements Handbook
- Best Value Evaluation of SDP Plan Forms: A Guide for Strategic Sourcing Teams
- Best Value Evaluation of Responses to Small Procurements: A Guide for Strategic Sourcing Teams
- Supplier Diversity Program Plan Forms are located on the SDO Forms webpage

Revision History

Version Number	Date	Brief Description
1.0	06/28/2021	Initial release
2.0	09/29/2023	Comprehensive revision
3.0	07/01/2025	Comprehensive revision