

## **Part IV Chapter 14 Small and Diverse Businesses**

### **A. Definitions.**

- 1. Small Business.** In order to be self-certified as a Small Business, a business must meet ALL of the following criteria:
  - a. It must be a United States business.
  - b. It must be independently owned.
  - c. It cannot be dominant in its field of operation.
  - d. It cannot exceed 100 full-time equivalent employees.
  - e. It must earn less than \$20,000,000 in gross annual revenues when averaged across the three most recent tax reporting periods for businesses providing construction supplies and services (\$7,000,000 for design/professional services).
  - f. It must meet criteria established by DGS regulation.
- 2. Small Diverse Business.** In order to be a Small Diverse Business, a business must first self-certify as a Small Business under Paragraph A(1) and must also meet AT LEAST ONE of the following criteria:
  - a. DGS-verified minority-owned business; and/or
  - b. DGS-verified woman-owned business; and/or
  - c. DGS-verified service-disabled veteran-owned business; and/or
  - d. DGS-verified veteran-owned business.
  - e. Small Businesses-holds an active certification from one of the [DGS approved third-party certifying entities](#)

### **B. Small Business Procurement Initiative (SBPI).** Pursuant to Executive Order 2011-09, the purpose of the Department's Small Business Procurement Initiative (SBPI) is to provide DGS self-certified Small Businesses with opportunities to compete against other DGS self-certified Small Businesses for commonwealth agency and DGS statewide contracts.

- 1.** The goal of the SBPI is to foster opportunities for growth and advancement among DGS self-certified Small Businesses. While the program aims to foster competitive procurement, there is no guarantee that a properly self-certified Small Business will receive a contract.
- 2.** Participation in the SBPI is race and gender neutral. The SBPI website may contain optional links to assist Small Businesses interested in participating in other contracting programs, but self-certification in the SBPI is a separate and

distinct process from the DGS verification process for minority, woman or veteran, or service-disabled veteran owned businesses.

3. Under the SBPI, a business that satisfactorily completes the self-certification process will be deemed a "Small Business." . A valid DGS SBPI certificate will be required as part of the bid/proposal in order to be deemed a responsive bidder on any SBPI bid or proposal. Any business without a valid certificate as of the bid/proposal due date may be rejected as non-responsive.
4. DGS reserves the right to modify the SBPI as necessary. Amended Guidelines will be posted on the DGS website with changes highlighted for comparison to the prior version.
5. **Self-Certification Process.**
  - a. **Process** – The process for certification is a self-certification process detailed at the link on the DGS SBPI Program website: [www.smallbusiness.pa.gov](http://www.smallbusiness.pa.gov). The SBPI Self-Certification Application will provide a step-by-step questionnaire to be completed by a duly authorized person representing the business.
  - b. **Time Period Certification is Valid** – The Self-Certification shall be valid for a period of one (1) calendar year from the day the DGS SBPI certificate is issued.
  - c. **Fluctuation of Data within the 1 year period** – The Small Business' gross annual revenue figure may fluctuate within the one (1) calendar year certification period so long as the figure was accurate at the time of the certification.
  - d. **Re-certification** – A DGS self-certified business will be notified thirty (30) days prior to the expiration of its certification. The Small Business assumes responsibility for re-certifying before the lapse of the one (1) calendar year period. If the self-certification lapses, the business may not bid on or be awarded any SBPI contracts during the period it does not have an active certification.
6. **Procurement Process.** The procurement processes for the Small Business Procurement Initiative for Construction and Design are outlined in Part IV, Chapter 9: Small Business Design and Construction Programs.
7. **Withdrawal from the Program.**
  - a. A Small Business may withdraw from the Program at any time for any reason.
  - b. The date of withdrawal shall be the date DGS receives written notice from the Small Business of their intent to withdraw.
  - c. As of the date of withdrawal:



attempting to obtain self-certification, re-certification or a contract under the SBPI will be subject to the following:

- (1) A determination by the Contracting Officer that the business and/or person is not responsible;
- (2) A determination that a contract entered into is void or voidable under § 1711.2 of the Commonwealth Procurement Code;
- (3) Liability for any costs incurred by the Commonwealth in investigating potential violations relating to the validity of information submitted during the self-certification process;
- (4) Suspension and/or debarment under §531 of the Commonwealth Procurement Code;
- (5) Criminal prosecution for procurement fraud, perjury, or other applicable crimes;
- (6) An entry in the Commonwealth's Contractor Responsibility Program System; and
- (7) All other actions permitted by law deemed necessary to protect the Commonwealth's interest and ensure compliance with the laws of the Commonwealth.

**10. Monitoring and Reporting to Measure Effectiveness of Program.**

Pursuant to Paragraph 2(e) of Executive Order 2011-09, DGS will measure the effectiveness of the Small Business Procurement Initiative by monitoring program data including but not limited to: number of self-certified Small Businesses; number of contracts targeted and awarded to self-certified Small Businesses; and dollar value associated with Small Business participation in Commonwealth contracting opportunities.

**C. Small Diverse Business Program for Low Bid Capital Construction Projects.**

Projects with an estimated value above \$300,000 (referred to as "Capital Projects") are handled differently than Small Business projects. These projects are typically procured using Invitation for Bids ("IFB", also commonly referred to as 'low bid procurement'.) The department [Statement of Policy](#) outlines the specific policies and guidelines for the Small Diverse Business Program for Construction IFBs.

1. DGS establishes a minimum participation level (MPL) for the participation of small diverse businesses as subcontractors, suppliers, and manufacturers. The established MPL is based on factors such as:
  - a. Geographic location of the project; and
  - b. Contract size and type; and
  - c. The availability of SDBs to participation as subcontractors, suppliers, and professional service providers.

2. Construction IFBs with a value greater than \$50,000, but not subject to the Small Business Procurement Initiative as outlined in Part IV Chapter 9, are subject to the Small Diverse Business Program for Construction.
3. Bidders who submit bids on a DGS Capital project are not required to address the project MPL in the bid submittal and do not submit any other information addressing the Small Diverse Business Program as part of their bid package. If selected as the successful low bidder, when the contractor receives the contract for signature, the contractor must select either the Opt-In or Good Faith choice.
  - a. "Opt-In" requires the contractor to meet the MPL for SDBs. Contractors selecting "Opt-In" must:
    - (1) Submit a Small Diverse Business Utilization Report (SDBUR) with each Application for Payment. This Report, documents all commitments and payments made to Small Diverse Businesses during the contract term by name of company, description of work, and amount paid; and
    - (2) Agree and commit to meet or exceed the project MPL by the project close-out inspection date.
  - b. "Good Faith Documentation" requires the contractor to:
    - (1) Submit a Small Diverse Business Utilization Report (SDBUR) with each Application for Payment. This Report documents all commitments and payments made to SDBs during the contract by name of company, description of work, and amount paid and
    - (2) Agree to utilize and document reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses as subcontractors, manufacturers, and/or suppliers for each subcontract and purchase order executed in excess of \$10,000. throughout the duration of the project in efforts to achieve the project MPL.
    - (3) Provide Minimum "Good Faith Documentation" including, but not limited to:
      - (a) A certification attesting that the contractor accessed the Small Diverse Business database; and
      - (b) A certification attesting that the contractor negotiated fairly with Small Diverse Businesses; and
      - (c) A record of all solicited Small Diverse Businesses and non-Small Diverse Businesses to perform the contract work; and



5. **NOTE:** If a prime contractor on a DGS Capital Project is a Small Diverse Business, DGS **will not** credit the value of the prime contractor's contract toward meeting the MPLs. All contractors (including Small Diverse Businesses who hold prime contracts) are expected to comply with the Small Diverse Business participation section as found in the Instruction to Bidders.
6. The contractor is allowed to use contract amounts at any tier of supply or subcontracting, provided that the Small Diverse Business is the initial Small Diverse Business firm in the organizational hierarchy. Therefore, if the contractor or any of its non-Small Diverse Business subcontractors or suppliers makes a commitment to a Small Diverse Business, the credit for the subcontract/purchase order commitment, regardless of the level or tier, shall be calculated and credited toward the contractor's MPL.
7. **The dollar value of any commitment to a Small Diverse Business cannot be double counted.** In the event that the Small Diverse Business whose entire subcontract value is counted toward the contractor's MPL then subcontracts a portion of the work or supplies associated with this subcontract to another Small Diverse Business, the dollar value of the subcontract with/to this lower tier Small Diverse Business is NOT counted in the contractor's MPL in order to prevent the duplicate counting of Small Diverse Business commitments. In this example, the dollar value of this subsequent Small Diverse Business subcontract has already been included within the scope of work and dollar value of the Small Diverse Business commitment already counted as a part of the contractor's MPL.

#### **Diverse Business Program for Capital Construction Projects Using Request for Proposals (RFPs).**

1. Proposers responding to a Construction RFP shall provide a Small Diverse Business Submittal representing the total percentage of the proposer's contract costs that the proposer will pay to DGS-verified Small Diverse Businesses, who may provide a wide variety of services and supplies on the project.
2. Each proposer will be scored on an objective basis, based upon their individual percentage of commitment. The proposer with the highest percentage (not the total dollar value of commitments) will receive the most points. All other proposers will receive points based upon the formula set forth in the applicable scoring paragraph of the specific Request for Proposal.
3. To the extent the Department awards Base Bids, the RFP will provide separate percentages for each Base Bid. The Department reserves the right to select the Base Bid to be awarded.
4. If a prime contractor on a DGS Capital Project is a Small Diverse Business firm, DGS **will not** credit the value of the prime contractor's contract toward meeting the MPLs. All contractors (including Small Diverse Businesses who hold prime contracts) are expected to comply with the Small Diverse Business participation section as found in the Instruction to Proposers.

5. The successful proposer, who will execute a prime contract with DGS, will have the duration of the contract to meet or exceed the percentage commitment set forth in the proposal.

**E. Duties of the Department of General Services (DGS).**

1. **Assistance Within State Agencies.** DGS shall provide appropriate staff who shall be responsible to the department and who shall serve to assist small and small diverse businesses in learning how to do business with Commonwealth Agencies.
2. **Assist Agencies in:**
  - a. Identifying small categories for contracting with Small Businesses.
  - b. Identifying contracts suitable for competition by, and award to, Small Businesses.
  - c. Identifying self-certified small and small diverse businesses to solicit for procurement contracts.
  - d. Training agency personnel with respect to contracting with small and diverse businesses.
3. **Special Publications.** DGS shall give special publicity to procurement procedures and issue special publications designed to assist small and small diverse businesses in learning how to do business with Commonwealth Agencies.
4. **Source Lists.** DGS shall compile, maintain, and make available source lists of small and small diverse businesses for the purpose of encouraging procurement from small and diverse businesses.
5. **Solicitation Mailing Lists.** DGS shall include small and small diverse businesses on solicitation mailing lists.
6. **Solicitation of Small and Small Diverse Businesses.** DGS shall monitor the advertisement of solicitations to ensure that small and small diverse businesses are solicited on procurements for which the businesses may be suited.
7. **Training Programs.** DGS shall develop special training programs to assist small and small diverse businesses in learning how to do business with Commonwealth agencies.
8. **Eligibility Requirements.** DGS shall establish and regularly review eligibility requirements for small and small diverse businesses, including the number of employees and revenue thresholds.
9. **Small Business Commodity Categories.** DGS shall establish and regularly update specific commodity categories to target and/or reserve for Small Business competition and participation.

10. **Guidelines.** DGS shall develop specific guidelines for competition for those commonwealth procurement contracts identified for award to Small Businesses.
11. **Bonding/Progress Payments.** DGS shall develop policy that will provide for alternative and reduced bonding requirements and make special provisions for progress payments.
12. **Monitoring and Reporting.** DGS shall develop and implement monitoring and reporting metrics to measure the effectiveness of all Small Business procurement initiatives.
13. **Enforcement.** DGS shall implement enforcement measures to verify the eligibility of competitors and to investigate allegations of non-eligibility.
14. **Report to General Assembly.** DGS is required to provide a written report annually (prior to October 1<sup>st</sup>) to the General Assembly concerning the awarding of contracts to small diverse businesses during the preceding fiscal year.

**F. Duties of Purchasing Agencies.**

1. **Bonding.** Notwithstanding other provisions of *Act 57* (Commonwealth Procurement Code), a purchasing Agency may reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent reasonably necessary, to encourage procurement from small and diverse businesses.
2. **Progress Payments.** A purchasing Agency may make special provisions for progress payments, as it deems reasonably necessary, to encourage procurement from small and diverse businesses.
3. **Reporting.** Purchasing Agencies shall prepare and submit reports to DGS on forms and at intervals specified concerning the agency's small and small diverse business contracting activities.

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**References:**

1. [www.smallbusiness.pa.gov](http://www.smallbusiness.pa.gov)
2. <http://www.emarketplace.state.pa.us>
3. [http://www.dgs.pa.gov/Businesses/Materials and Services/Procurement/Procurement-Resources/Pages/RFP\\_SCORING\\_FORMULA.aspx](http://www.dgs.pa.gov/Businesses/Materials_and_Services/Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx)

Statement of Policy

<http://www.pacode.com/secure/data/004/chapter68/chap68toc.html>

SDBUR -

<http://www.dgs.pa.gov/layouts/download.aspx?SourceUrl=http://www.dgs.pa.gov/Bus>

[Businesses/Minority,%20Women%20and%20Veteran%20Businesses/Documents/SDBUR.xlsx](#)

Certification Form Good Faith Effort Document ACCESSING DGS' WEBSITE -

<http://www.dgs.pa.gov/Businesses/Minority,%20Women%20and%20Veteran%20Businesses/Documents/Good%20Faith%20Search.pdf>

Certification Form Good Faith Effort Document NEGOTIATING FAIRLY -

<http://www.dgs.pa.gov/Businesses/Minority,%20Women%20and%20Veteran%20Businesses/Documents/Good%20Faith%20Negotiation.pdf>

SDB Solicitation Log -

<http://www.dgs.pa.gov/layouts/download.aspx?SourceUrl=http://www.dgs.pa.gov/Businesses/Minority,%20Women%20and%20Veteran%20Businesses/Documents/SDB%20Solicitation%20Log.xlsx>

SDB Database – [www.dgsweb.state.pa.us/mbewbe](http://www.dgsweb.state.pa.us/mbewbe)