

Small Diverse Business Participation Survey

ACT 13 OF 2012 FY 2017-18

Tom Wolf, Governor
Curt Topper, Secretary of General Services

Background

This Annual Report for period of April 1, 2017 - March 31, 2018 (fiscal year 2017-2018) is presented to the State Government Committees of the General Assembly to provide information about the utilization of Small Diverse Businesses (SDBs) in contracting opportunities afforded by unconventional natural gas producers (Producers) as required by Section 2316 of Act 13 of 2012, 58 Pa.C.S. § 2316.

Act 13 of 2012 requires the Pennsylvania Department of General Services (DGS) to survey all Producers, and report on Producers' efforts to provide maximum practicable contracting opportunities to SDBs including DGS-verified minority, woman, veteran, and service-disabled-veteran-owned business enterprises. The results of the survey are to be compiled and reported annually.

Act 13 requires Producers to maintain policies prohibiting discrimination in employment and contracting based on gender, race, creed, or color; to use DGS's internet database to identify SDBs contracting opportunities; and to respond to the DGS annual survey within 90 days of receipt.

On August 27, 2018, DGS's Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO) distributed the survey to Producers identified by the Pennsylvania Department of Environmental Protection (DEP) as subject to the requirements of Act 13. BDISBO identified 86 Producers and sent a survey to each of those Producers. A copy of the survey is attached as Exhibit A. Producers were required to respond based on their activities during the period between April 1, 2017, and March 31, 2018.

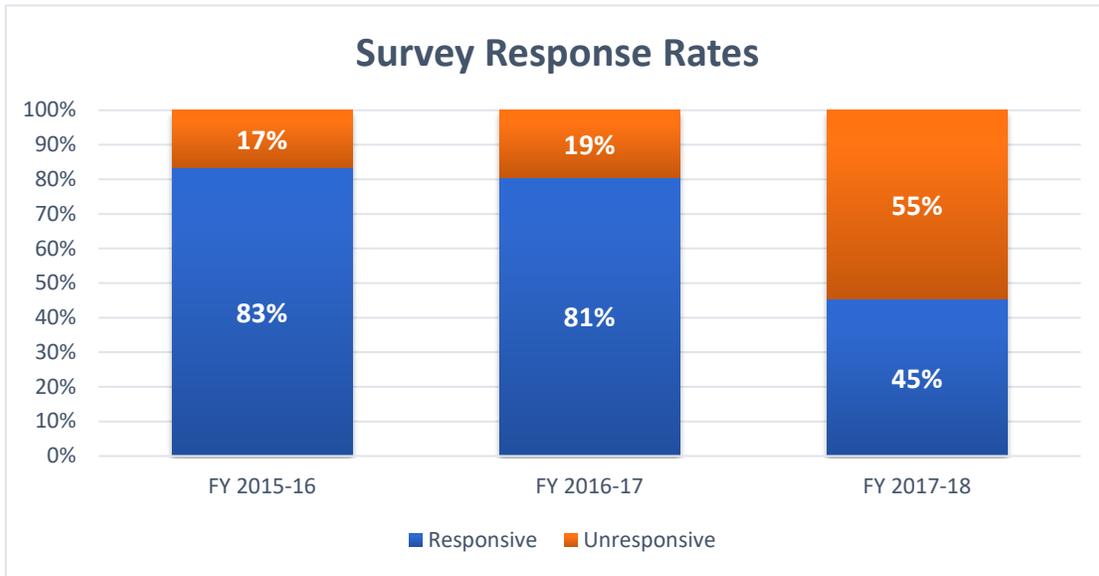
The Marcellus Shale Survey was conducted through SurveyMonkey, an online cloud-based survey service provider. In an effort to obtain a higher survey response rate, BDISBO sent six additional email reminders following the initial distribution. BDISBO also posted the survey link on its website, emailed PDF versions to Producers upon request, and offered technical assistance on completing the survey. The survey also was designed for ease of mobile, tablet, and desktop accessibility.

Note: Percentages in this report are rounded to nearest 1 percent and thus may not sum exactly to totals.

Findings & Results

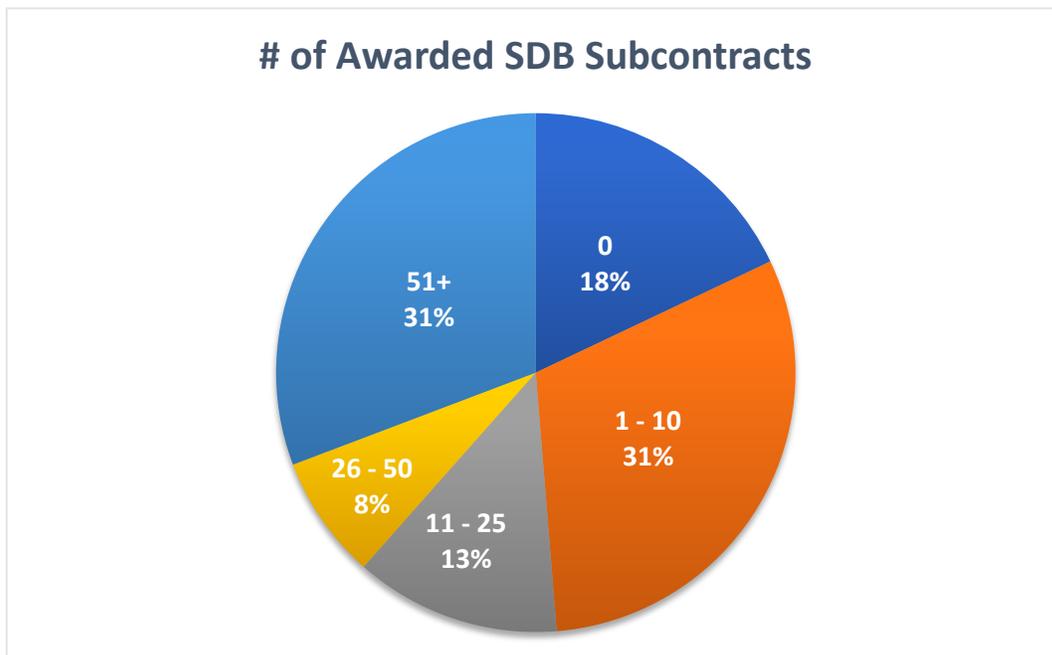
Overall Survey Responsiveness

Producers responded to the survey at a dim rate of 44%, a 36-percentage point decrease from the previous year. 58 out of 72 Producers responded to last year’s survey while 39 out of 86 Producers responded this year.



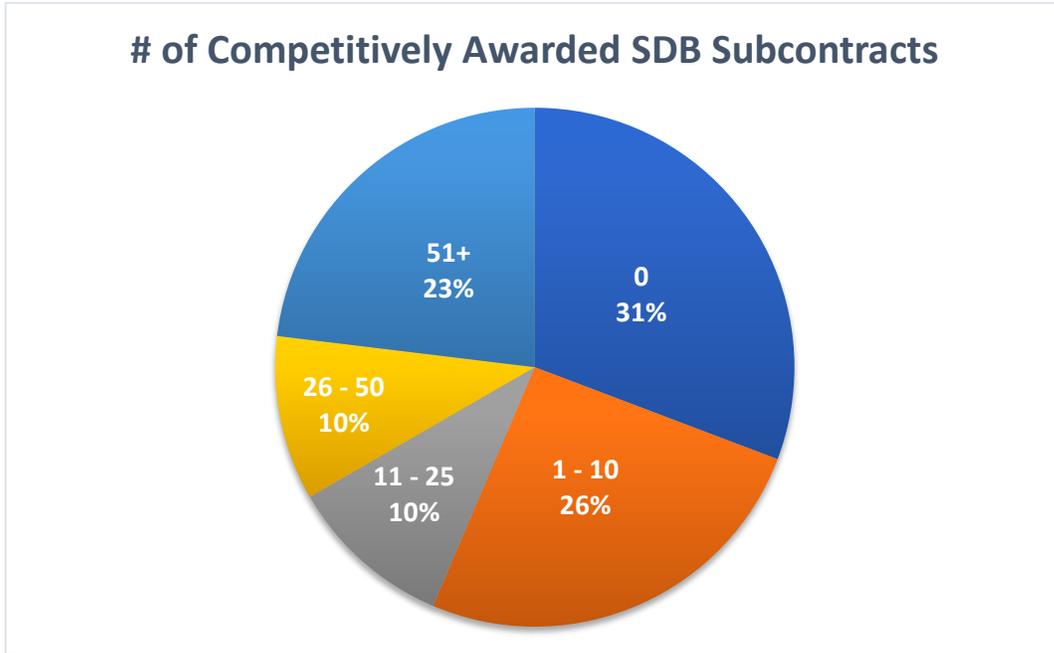
Subcontracts Awarded

For this reporting period, the majority of responding producers, 82%, awarded one or more subcontracts for services or supplies related to natural gas extraction. Almost a third, or 31%, awarded 51 or more. This represents a decrease from the FY 2016-17 reporting period during which 89% of responding producers awarded at least one subcontract, 44% of them awarding 51 or more. In FY 2015-16, the numbers were 68% and 23%, respectively



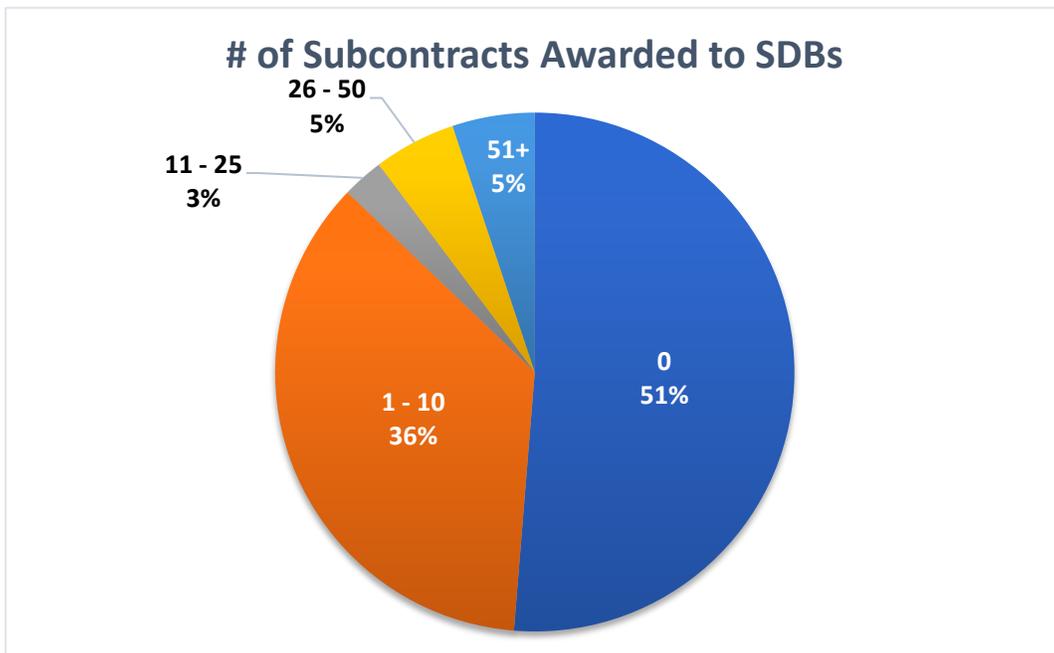
Competitively Awarded Subcontracts

A majority of 39 responding Producers, 69%, reported awarding subcontracts on a competitive basis. This is seven-percentage points lower than the FY 2016-17 reporting period where 76% of Producers awarded competitively-based subcontracts and ten-percentage points higher than FY 2015-16 where the number was 59%. The chart below shows a breakdown on the percentage of Producers and the number of competitively awarded subcontracts for the FY 2017-18 reporting period.



Small Diverse Business Utilization

Of the Producers who completed the survey, 49% awarded one or more subcontracts to SDBs. This is down from 56% in FY 2016-17 but above par when compared with FY 2015-16 where 45% of Producers awarded subcontracts to SDBs.



As listed in Table 1 below, Producers reported, by designation, that they awarded 69 subcontracts to SDBs resulting in \$76.2 million in payments during the reporting period. However, there is no mechanism or authorization in place for BDISBO to substantiate the number of subcontracts and dollars paid to SDBs. As detailed in Table 2 below, BDISBO was able to corroborate the certification status of SDBs on just 10 Producer-awarded contracts that resulted in only \$461,340.30 paid to SDBs during the reporting period. Another \$2.22 Million resulting from 16 subcontracts was paid to DGS-self-certified Small Businesses (SBs) which are part of the Commonwealth’s race and gender-neutral program. The SB self-certification is a prerequisite for verification as an SDB by the Commonwealth of Pennsylvania.

Payments made to verified SDBs are barely 1% of what the Producers reported as being spent on SDB subcontractors during the reporting period. It is possible that many subcontractors who may meet the requirements to be considered an SDB but have not completed DGS’s self-certification and verification process. Although this is problematic, it also presents DGS with the opportunity to engage and assist these subcontractors to complete the certification and verification process.

PAYMENTS TO SDBs

Table 1

Table 2

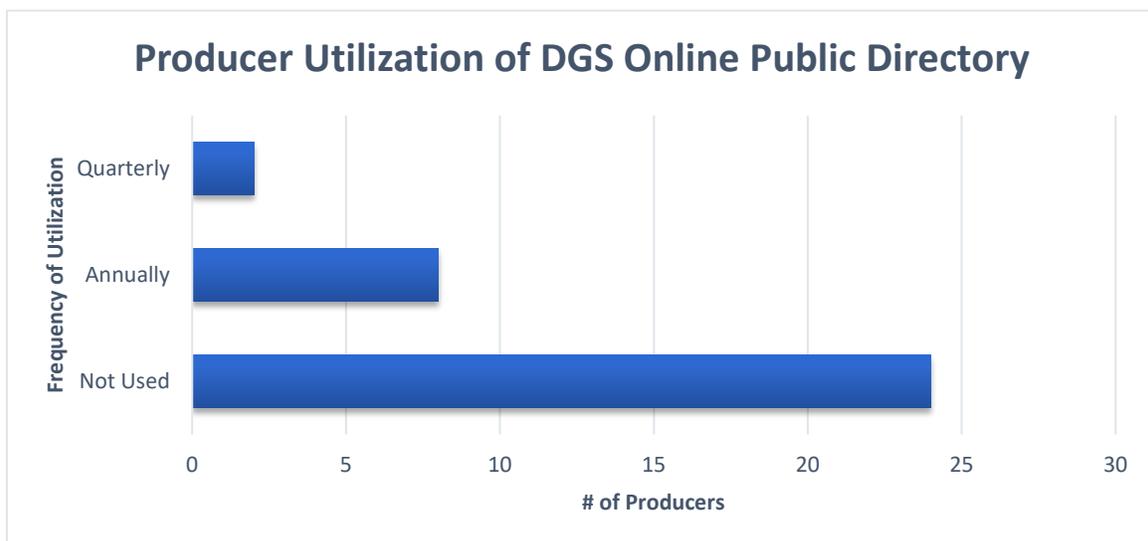
Designation	Awarded Contracts	Amount Paid	%	Designation	Awarded Contracts	Amount Paid	%
MBE	14	\$49,199,760.53	20.29%	WBE	8	\$430,167.56	30.77%
WBE	42	\$21,827,443.49	60.87%	MWBE	2	\$31,172.74	7.69%
MWBE	3	\$31,204.11	4.35%	SB	16	\$2,222,077.06	61.54%
VBE	9	\$832,698.41	13.04%				
SDVBE	1	\$4,348,122.81	1.45%				
Grand Total	69	\$76,239,229.35	100.00%	Grand Total	26	\$2,683,417.36	100.00%

SDBs can be awarded subcontracts by multiple producers.

See Exhibit B for a breakdown of the services/supplies provided.

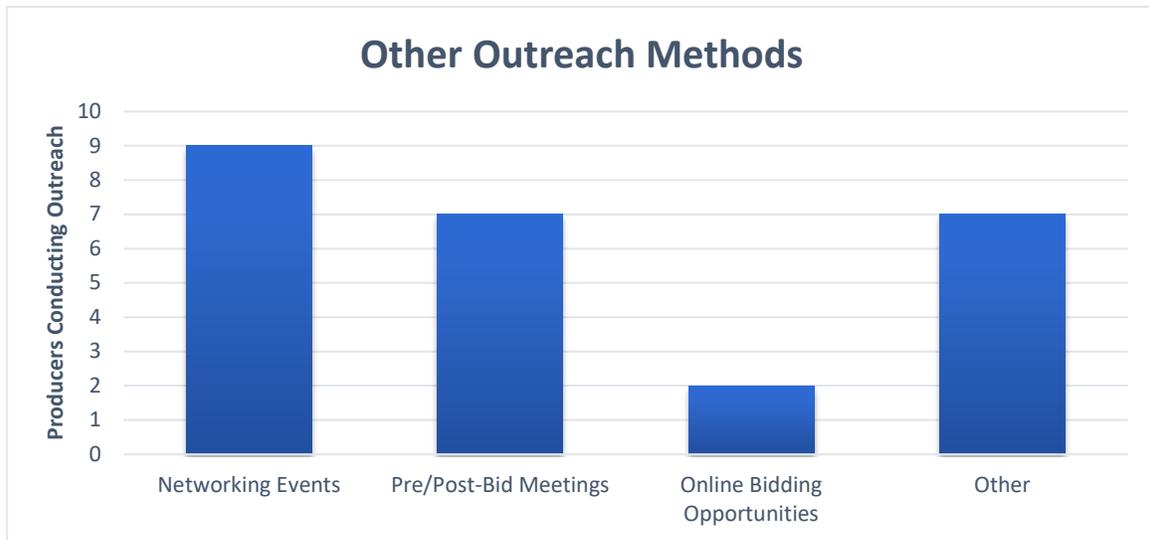
Producer Outreach Efforts

Pursuant to Section 2316(b)(2) of the Act, Producers are required to use DGS’s searchable online directory to identify SDBs. Of the Producers that responded to the survey, 24, or 62%, indicated that they did not utilize the online directory, while just 26% used the database within the reporting period. Five Producers did not respond to this question. Again, the Act does not provide a mechanism or give BDISBO authorization to enforce Producers to respond to surveys or to comply with the efforts.



Producers' reasons for their infrequent utilization of the online searchable directory varied from relying on established business relationships to asserting the need for specialized skills and training unique to the industry. Some Producers found no vendors providing necessary services in the relevant location. Other Producers searched for diverse businesses through other certifying organizations such as the National Minority Supplier Development Council, the Women's Business Enterprise National Council, the African American Chamber of Commerce, and others. A few Producers responded that they were unaware of the online database despite its reference in the Act and the annual survey process.

Producers claimed use of other outreach tools to contact potential SDBs. In general, they attend networking events and pre- and post-bid meetings likely to be attended by SDBs, and they posted bid opportunities online. Some have established relationships with industry groups or, as noted above, other third-party certifiers. Others utilized various supplier registries to locate qualified subcontractors. One Producer co-sponsored an annual diversity business fair focused on Oil & Gas. There are no mechanisms in place for BDSIBO to verify these efforts.



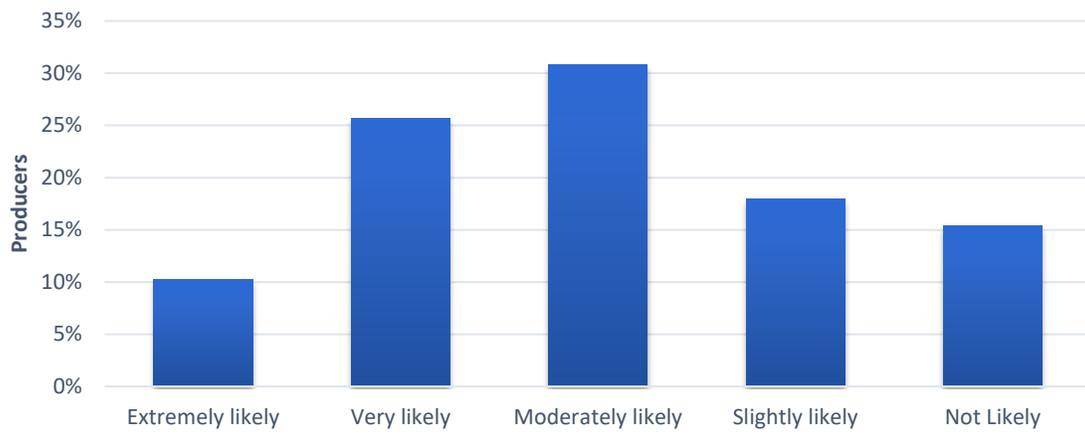
How can we help?

To better understand our Producers as they strive to comply with Act 13 and its mandate to provide maximum practicable contracting opportunities to small diverse businesses, BDISBO included additional questions in the Marcellus Shale Survey. See, Exhibit A (page 8).

BDISBO's analysis of the data received from the survey shows that:

- When Producers used SDBs, 51% often or always had written subcontract agreements.
- In general, subcontracts often did not indicate an estimated dollar value that the Producer agreed to pay to the subcontractor. For example, 67% of Producers selected "No" when asked if their subcontracts specified an estimated dollar amount that would be paid to the subcontractors. For those Producers that indicated that they often or always had written subcontract agreements with their SDBs, 50% indicated that the agreements specified an estimated dollar amount to be paid to SDBs.
- Eighty-four percent (84%) of Producers said they would be "Slightly likely" to "Extremely likely" to utilize SDBs in the future, an increase of ten percentage points over last year.

Likelihood of Future Business with SDBs



CONCLUSION AND RECOMMENDATIONS

Producer Compliance with the requirements of Act 13

Cultivating cooperative and mutually-beneficial relationships between Producers and SDBs is a challenge DGS takes seriously as we strive to meet our goals to efficiently, effectively, and safely deliver exceptional value for all Pennsylvanians. Over the last two years, significantly more Producers have responded to the survey. More Producers awarded subcontracts this year than in the prior year and 17% more Producers used competitive methods for contract award this year.

Fifty-six percent of Producers that responded to BDISBO's survey made contract awards to an SDB, which is an improvement from 45% the prior year. Most importantly, Producers are optimistic about future subcontracting work with SDBs.

Most Producers are largely complying with the requirements of Act 13. DGS continues to collaborate with DEP and Marcellus Shale Coalition and participate in industry program events in order to promote the utilization of SDBs in this industry.

Recommendations

Although DGS remains concerned that Producers are insufficiently utilizing verified SDBs. Section 2316(b)(2) of Act 13 states that Producers shall "Use the database available on the Internet website of the Department of General Services to identify certified diverse small businesses, including minority-owned business enterprises, women-owned business enterprises and veteran-owned businesses, as potential contractors, subcontractors and suppliers for opportunities related to unconventional natural gas extraction."

DGS recommends that the General Assembly review Act 13 and consider potential amendments to Section 2316, such as:

1. **Mandating that Producers Create an SDB Utilization Plan.** The Marcellus Shale Report for FY 2017-18 analysis reflects that 62% of the Producers did not utilize the searchable online directory of Small Diverse Businesses as required by Section 2316 of Act 13. A partnership that includes Producers, SDBs, and the Commonwealth working together to create a strategy and plan of action would foster greater collaboration between the interested parties would result in an increased usage of DGS's searchable online directory.
2. **Adding Sanctions Against Producers for Non-compliance with the Duties Outlined in the Act.** Although 81% of Producers report subcontracting to SDBs, only 12% of the subcontractors are positively identified as DGS-verified. Producers that do not use the online directory of verified SDBs cannot be penalized. Further, there is currently no mechanism beyond continual reminders and follow-up to ensure Producers complete the survey as is required by the Act. Amending Act 13 to include sanctions for non-response and non-compliance would send a firm message to Producers of the importance of providing opportunities for SDBs to work as subcontractors and suppliers.
3. **Allowing the Audit of Producers for Compliance with the Act.** The Act also contains no provisions that would allow for auditing of Producers' compliance with their responsibilities under the Act. There is no way to ensure that Producers are complying with the requirement to maintain policies prohibiting discrimination in employment or contracting. In addition, there is currently no way to verify and confirm that Producers use and pay their SDBs subcontractors and suppliers.
4. **Requiring Proactive Reporting on Utilization of SDBs.** There is currently no requirement in the Act that Producers provide their future plans with regards to using SDBs in the upcoming year. Allowing visibility into Producers' plans would enable DGS to provide technical assistance by identifying SDBs that are ready, willing, and able to perform those services the Producers require.
5. **Establishing Goals for SDB Participation in Activities Related to Unconventional Natural Gas Extraction and Providing Incentives for Producers to Meet and Exceed Them.** The Act currently lacks targets for utilization of SDBs and incentives for Producers to include SDBs in contracting opportunities.

DGS is available to answer questions from members of the General Assembly regarding the information presented above.

EXHIBIT A: Act 13 of 2012 – Small Diverse Business Participation Survey



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Act 13 of 2012: Small Diverse Business Participation Survey

Scope and Purpose

Act 13 of 2012 requires the Pennsylvania Department of General Services (DGS) to survey and collect data on producers' efforts to provide maximum practicable contracting opportunities to small diverse businesses (hereafter SDBs) including minority, woman, veteran, LGBT, disabled, and service-disabled veteran-owned businesses. The results of this survey, including information identifying those companies that do not complete the survey, will be compiled into the Marcellus Shale Annual Report for the General Assembly and made publicly available on the DGS website. Act 13 requires producers to respond to the DGS survey within 90 days of receipt. Data collection is for activity period between April 1, 2017 and March 31, 2018.

*** 1. Producer Company Name**

*** 2. Producer Company Location**

Company Address

Company City

Company State

Company Zip

*** 3. Contact Information**

Producer Contact Name

Survey Preparer Name (if
different from above)

Producer Contact Email
Address

Producer Contact
Telephone

* 4. During this reporting period, **April 1, 2017 through March 31, 2018**, did your company utilize a subcontractor?

YES

NO



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Act 13 of 2012: Small Diverse Business Participation Survey

Initial Questions

* 5. How many subcontracts did your company award during the reporting period?

- 0
- 1 - 10
- 11 - 25
- 26 - 50
- 51+

* 6. Of the total subcontracts awarded, how many were solicited and awarded competitively?

- 0
- 1 - 10
- 11 - 25
- 26 - 50
- 51+

* 7. Of the total subcontracts awarded, how many were awarded to Small Diverse Businesses (SDBs) located within the state of Pennsylvania?

- 0
- 1 - 10
- 11 - 25
- 26 - 50
- 51+

* 8. In aggregate, what is the total dollar value you paid to SDB subcontractors between **April 1, 2017 and March 31, 2018?**

* 9. How frequently did your company consult the Department of General Services' searchable online directory to identify DGS certified-verified SDBs prior to selecting subcontractors?

- Weekly
- Monthly
- Quarterly
- Annually
- Did not utilize the DGS searchable online directory within this reporting period

Please provide explanation if the directory was not utilized.

* 10. In an effort to provide maximum practicable contracting opportunities, which of the following methods did you use to engage Small Diverse Businesses? (Select all applicable answers)

- Network events
- Job Fairs
- Internet information on bidding opportunities
- Pre-bid/Post-bid meetings for subs and suppliers
- We did not engage in any public outreach/services related to small diverse businesses
- Other (please specify):



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Act 13 of 2012: Small Diverse Business Participation Survey

Small Diverse Business Participation Section

Using the questions below, record your company's small diverse business participation in contracting opportunities for the reporting period of April 1, 2017 through March 31, 2018. You may also report small diverse business utilization in lower tiers of supply or subcontracting (subcontractors to subcontractors as well as suppliers to contractors and subcontractors) provided that a small diverse business is not the initial subcontractor/supplier. Commitments to small diverse businesses cannot be double-counted regardless of tiers.

NOTE: If your company has greater than five (5) SDB participation, please email the additional list of participants to us at GS-BDISBO@pa.gov.

HELPFUL DEFINITIONS

SDB Designations

- *MBE (Minority Business Enterprise)*
- *WBE (Women Business Enterprise)*
- *MWBE (Minority Women Business Enterprise)*
- *VBE (Veteran Business Enterprise)*
- *SDVBE (Service Disabled Veteran Business Enterprise)*
- *DOBE (Disability-Owned Business Enterprises)*
- *LGBTBE (LGBT Business Enterprises)*

Certifying Entities

- *DGS Verified (Verified with the Commonwealth of Pennsylvania Department of General Services as SDB)*
- *NGLCC (National Gay & Lesbian Chamber of Commerce)*
- *NMSDC (National Minority Supplier Development Council)*
- *SBA 8(a) (United States Small Business Administration 8(A) Business Development Program)*
- *UCP (Unified Certification Program)*
- *USBLN (US Business Leadership Network)*
- *VetBiz (Vets First Verification Program)*
- *WBENC (Women's Business Enterprise National Council)*

* 11. Small Diverse Business Participation

Subcontractor or Supplier Name

Approximate Total Dollar Value of Subcontract(s)

* 12. Additional Information

	Small Diverse Business Designation	Certification Entity	Service/Good Provided
Select one from each drop-down:	<input type="text"/>	<input type="text"/>	<input type="text"/>

Other SDB Designation (please specify)

* 13. Did your company utilize **another** Small Diverse Business?

- YES
- NO



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Act 13 of 2012: Small Diverse Business Participation Survey

#2: Small Diverse Business Participation

* 14. Small Diverse Business Participation

Subcontractor or Supplier
Name

Approximate Total Dollar
Value of Subcontract(s)

* 15. Additional Information

	Small Diverse Business Designation	Certification Entity	Service/Good Provided
Select one from each dropdown:	<input type="text"/>	<input type="text"/>	<input type="text"/>

Other SDB Designation (please specify)

* 16. Did your company utilize **another** Small Diverse Business?

YES

NO



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Act 13 of 2012: Small Diverse Business Participation Survey

#3: Small Diverse Business Participation

* 17. Small Diverse Business Participation

Subcontractor or Supplier
Name

Approximate Total Dollar
Value of Subcontract(s)

* 18. Additional Information

	Small Diverse Business Designation	Certification Entity	Service/Good Provided
Select one from each dropdown:	<input type="text"/>	<input type="text"/>	<input type="text"/>
Other SDB Designation (please specify)	<input type="text"/>		

* 19. Did your company utilize **another** Small Diverse Business?

- YES
- NO



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Act 13 of 2012: Small Diverse Business Participation Survey

#4: Small Diverse Business Participation

* 20. Small Diverse Business Participation

Subcontractor or Supplier Name

Approximate Total Dollar Value of Subcontract(s)

* 21. Additional Information

	Small Diverse Business Designation	Certification Entity	Service/Good Provided
Select one from each dropdown:	<input type="text"/>	<input type="text"/>	<input type="text"/>

Other SDB Designation (please specify)

* 22. Did your company utilize **another** Small Diverse Business?

- YES
- NO



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Act 13 of 2012: Small Diverse Business Participation Survey

#5: Small Diverse Business Participation

* 23. Small Diverse Business Participation

Subcontractor or Supplier
Name

Approximate Total Dollar
Value of Subcontract(s)

* 24. Additional Information

Small Diverse
Business Designation

Certification Entity

Service/Good Provided

Select one
from each
dropdown:

Other SDB Designation (please specify)

* 25. Did your company utilize **another** Small Diverse Business?

YES

NO



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Act 13 of 2012: Small Diverse Business Participation Survey

Additional Questions

TO HELP US BETTER UNDERSTAND YOUR COMPANY, PLEASE ANSWER THESE ADDITIONAL QUESTIONS.

* 26. How likely are you to subcontract with or utilize a small diverse business (SDB) in the future?

- Extremely likely
- Very likely
- Moderately likely
- Slightly likely
- Not at all likely

* 27. When SDBs were utilized, how often did you have a written contract with each subcontractor?

- Always
- Often
- Rarely
- Never
- Did not use SDB subcontractor

* 28. Did the written contract indicate an estimated dollar value of what will be paid to the SDB subcontractor?

- YES
- NO

* 29. What could the PA Department of General Services Bureau of Diversity, Inclusion and Small Business Opportunities do to make it easier for you to increase your small diverse business participation?

THANK YOU FOR TAKING THE TIME TO COMPLETE OUR SURVEY!

EXHIBIT B: Act 13 of 2012 - Marcellus Shale Producer SDB Utilization

UTILIZATION OF DGS-VERIFIED SDBs BY SERVICE

Services	WBE	MWBE	SB	Grand Total
Accommodation, Recreation & Food Services			1	1
Agriculture Forestry & Conservation	1			1
Agriculture, Forestry, & Conservation			2	2
Construction & Building	1		2	3
Consumer Goods & Supplies	1		1	2
Legal Services	1			1
Machines, Electronics, & Equipment	1			1
Maintenance & Repair			2	2
Manufacturing & Machining			1	1
Mining, Drilling, Excavating, & Demolition	1		2	3
Professional Services		2	3	5
Scientific & Technical			1	1
Transportation & Vehicles	1			1
Waste, Recycling, & Remediation	1		1	2
Grand Total	8	2	16	26