



SMALL DIVERSE BUSINESS PARTICIPATION SURVEY ACT 13 OF 2012



pennsylvania

DEPARTMENT OF GENERAL SERVICES

Tom Wolf
Governor

Curt Topper
Secretary of General Services

Fiscal Year 2014

BACKGROUND

This Annual Report for period of April 1, 2014 - March 31, 2015 (fiscal year 2014) is presented to the State Government Committees of the General Assembly to provide information relative to the utilization of Small Diverse Businesses (SDBs) as prime contractors, subcontractors, and suppliers by unconventional natural gas producers (hereafter Producers) as required by Section 2316 of Act 13 of 2012.

Act 13 of 2012 requires the Pennsylvania Department of General Services (DGS) to survey all producers, to collect data and to report on producers' efforts to provide maximum practicable contracting opportunities to small diverse businesses (hereafter 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. Act 13 requires Producers to use the department's internet database to identify small diverse businesses as potential contractors, subcontractors and suppliers. Finally, Act 13 requires producers to respond to the DGS annual survey within ninety (90) days of receipt.

On December 19, 2014, the DGS Bureau of Small Business Opportunities (BSBO) sent correspondence reminding Producers of their obligations under Section 2316 of the Act and indicating that surveys would be distributed in early March 2015. This correspondence also clarified that the survey would require producers to report both the frequency of opportunities provided to SDBs and the frequency of actual SDB utilization.

On March 2, 2015, DGS distributed the survey to 78 Producers identified by member organizations and/or the Pennsylvania Department of Environmental Protection as subject to the requirements of Act 13. A copy of the survey is attached as Exhibit A. Producers were required to provide data related to the period between April 1, 2014 and March 31, 2015. Responses were required within 90 days.

FINDINGS AND RESULTS

Overall Survey Responsiveness

Just twenty-four (24) Producers responded to the survey for an overall response rate of approximately thirty percent (30%). Of these, three (3) Producers responded that they were no longer operating in Pennsylvania and provided no further information.

Fifty-four (54) Producers, or approximately seventy percent (70%), failed to respond to the survey as required by statute.

Use of the DGS Online Searchable Directory

Eleven (11) Producers, or approximately forty-five percent (45%), answered "no" when asked if their company utilized the DGS searchable online directory to identify SDBs as required by statute. Reasons cited for these Producers' failure to utilize the DGS online searchable

directory included:

- subcontractors/suppliers previously selected (6 responses), and
- geographical limitations (3 responses)

Small Diverse Business Utilization

Of the twenty-one (21) Producers who did complete the survey, eight (8) Producers, or thirty-eight percent (38%) reported no utilization of SDBs during this reporting period.

Thirteen (13) producers provided lists of SDBs utilized during the period. These lists include ninety-nine (99) unique SDBs, of which only twenty-eight (28) or twenty-eight percent (28%) are DGS-verified Pennsylvania-based businesses.

Reported SDB utilizations break down into subcategories as follows:

Designation	SDBs	Percentage
MBE	24	24%
WBE	48	48%
MWBE	1	1%
VBE	4	4%
SDVBE	21	21%
None Selected	1	1%
Totals	99	100%

Designation	DGS Verified SDBs	Percentage
MBE	6	21%
WBE	17	61%
MWBE	1	4%
VBE	2	7%
SDVBE	2	7%
Totals	28*	100%

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

Producer Outreach Efforts

Of the twenty-one (21) producers that responded to the survey, nine (9) or forty-three (43%) said “no” when asked, “Did you participate in, or provide networking events, outreach efforts or job fairs for SDBs?”

For those producers that answered, “yes,” their outreach efforts included networking events; job fairs; internet information on bidding opportunities; pre-bid/post-bid meetings for subcontractors and suppliers; attendance at various community events; seminars; panels; and memberships in diverse organizations.

CONCLUSION AND RECOMMENDATIONS

Producer Compliance with the requirements of Act 13

Despite DGS efforts aimed at increasing Producer's survey responsiveness and utilization of small diverse businesses, the department remains concerned at the overall survey response rate, the inconsistency of the producers in providing outreach and opportunities to the SDB community, and the use of the DGS online directory of SDBs. DGS is unable to confirm that a majority of Producers have met their statutory obligations based on the responses received overall. Seventy-nine percent (79%) of Producers either failed to respond to the survey or reported no SDB utilization whatsoever.

Recommendations

In light of the findings reported above, DGS recommends that the General Assembly review Act 13 and consider potential amendments to Section 2316, such as:

Add sanctions against Producers for non-compliance with the duties as outlined in the Act.

Today, the department has no mechanism beyond continual reminders and follow-up to ensure an adequate response rate to the survey or to remediate non-use of the online database of *verified* small diverse businesses available for utilization. Amending the language to include sanctions for non-response and non-compliance would send a firm message to the Marcellus shale producers of the importance of providing opportunities for small diverse businesses to work as subcontractors and suppliers.

Allow the department to audit producers for compliance with the Act. Beyond sanctions, the Act as written contains no provisions for DGS to audit the producers' compliance with the Act. To date, we have no assurance that producers are complying with the requirement to maintain policies prohibiting discrimination in employment or contracting, nor are we able to confirm the utilization and payment to small diverse businesses acting as subcontractors and suppliers.

Require proactive reporting with regard to utilization of small diverse businesses, in addition to after-the-fact reporting on utilization. All efforts reported under Section 2316 are after-the-fact reporting; meaning, the department has no mechanism to review producers' plans for SDB utilization for the upcoming year. Allowing the department to have visibility on the producers' future plans would enable DGS to provide assistance in identifying SDBs ready, willing and able to perform as subcontractors and suppliers.

Consider establishing goals for SDB participation in activities related to unconventional natural gas extraction, and provide incentives for Producers to meet and exceed them. The Act currently lacks incentives for Producers to include SDBs in business opportunities.

As always, the department is available to answer any questions from members of the General Assembly regarding the information presented above.

Exhibit A

Act 13 of 2012 – Small Diverse Business Participation Survey

Q1 Producer Company Name: _____

Q2 Producer Company Address: _____

_____ City _____ State _____ Zip _____

Q3 Producer Contact First Name: _____ Last Name: _____

Q4 Survey Preparer First Name (if different from above): _____ Last Name: _____

Q5 Producer Contact Email Address: _____

Q6 Producer Contact Telephone: _____

Q7 Does your company maintain a policy prohibiting discrimination in employment and contracting based on gender, race, creed or color? YES NO

Q8 If your company's policy is maintained publicly, please include a link to the policy. (Optional) _____

Q9 Does your company use the database available on the Internet website of the Department of General Services to identify certified/verified small diverse 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? YES NO

Q10 If you selected No to Q9, please indicate why you did not use the database available to identify certified small diverse businesses by selecting or entering reasons here:

- 100% Self-performed contracts
- Subcontractors/suppliers already selected
- Geographical limitations of available subcontractors
- Other, please identify:

Q11 Use the chart on the next page to record your company's small diverse business participation in contracting opportunities for the reporting period of April 1, 2014 through March 31, 2015. 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.

Q12 As part of your efforts to provide maximum practicable contracting opportunities for small diverse businesses, have you conducted public outreach via networking events, job fairs, or provided other services such as publicly accessible bidding opportunities? YES NO

If you answered Yes to Q12, please indicate the types of outreach or services provided by selecting or entering text below.

Network events Internet information on bidding opportunities Other - please specify below:
Job Fairs Pre-bid/Post-bid meetings for subs and suppliers

Q13 By signing this survey, I certify that the information entered here is true and correct. _____
(Type in name of preparer)

The survey responses are due on or before **June 1, 2015** and must be provided via email to gnuppnau@pa.gov.

If you have any questions, please contact Gayle Nuppnau at 717-346-8105.

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EXHIBIT B

Marcellus Shale Act 13 of 2012 Marcellus Shale Producer SDB Utilization

Services	Fiscal Year 2014					
	MBE	WBE	VBE	MWBE	SDVB	Total
Accelerometers MFG						0
Accommodation						0
Agriculture		1				1
Casework						0
Chemical & Environmental						0
Construction & Bldg.	2	1				3
Consumer Goods	1	3		1		5
Drywall						0
Event Coordination						0
Health & Social Asst.		1				1
IT Services						0
Legal Services						0
Machines & Electronics						0
Maintenance Repair and Operations (MRO)		1			1	2
Manufacturing & Machining		1				1
Mining & Drilling		2				2
Office Furniture						0
Pipe Installation						0
Plumbing & Sprinkler						0
Portable Restrooms						0
Project Mgmt.						0
Professional Services	3	5	1		1	10
Scientific & Technical			1			1
Staffing						0
Security						0
Transportation and Vehicles		2				2
Warehousing & Shipping						0
Waste & Recycling						0
Total:	6	17	2	1	2	28