

Small Diverse Business Participation Survey

ACT 13 OF 2012 FY 2018-19

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CURT TOPPER, SECRETARY OF GENERAL SERVICES

Background

This Annual Report for period of April 1, 2018 - March 31, 2019 (fiscal year 2018-19) 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 November 1, 2019, 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, 2018, and March 31, 2019.

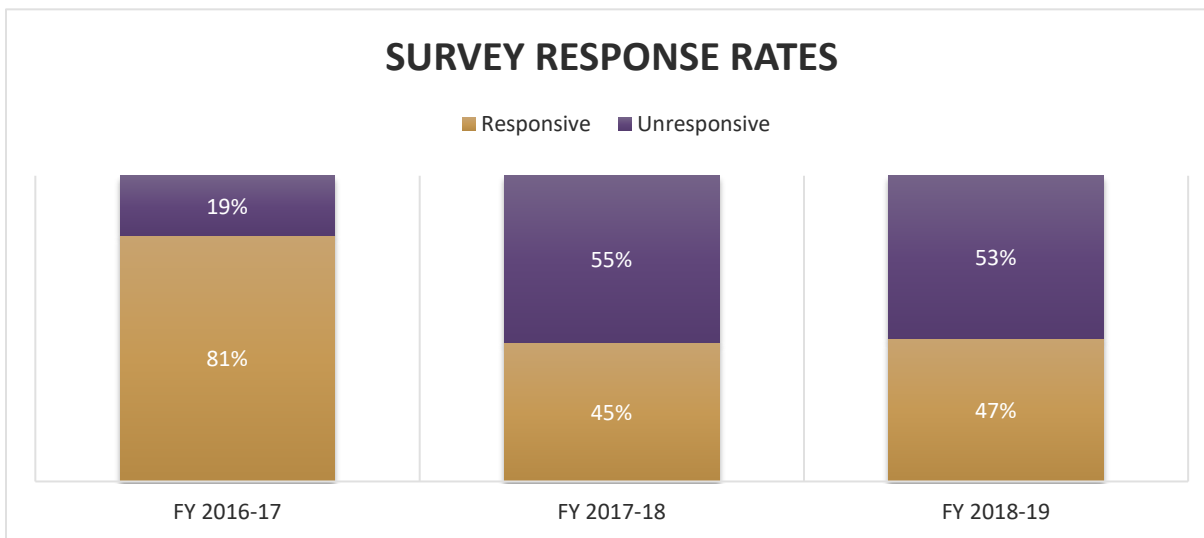
The Marcellus Shale Survey was conducted through SurveyMonkey, an online cloud-based survey service provider. To encourage a higher survey response rate, BDISBO sent four additional email reminders following the initial distribution. BDISBO also posted the survey link on its website, emailed PDF versions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

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

Findings & Results

Overall Survey Responsiveness

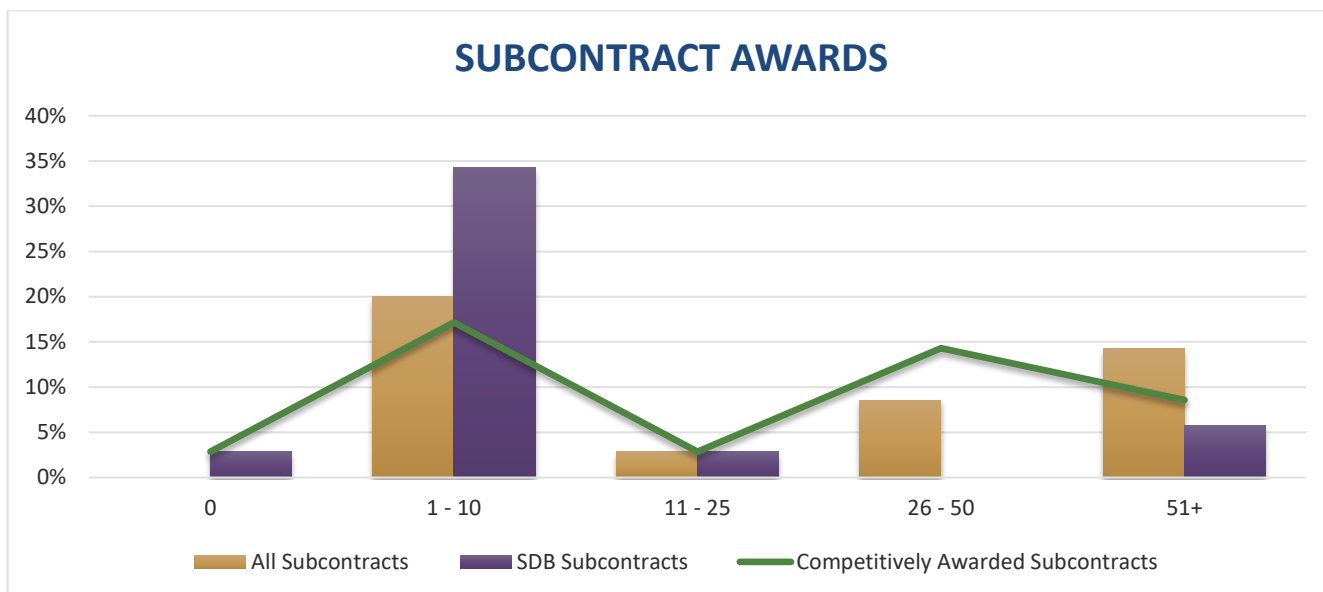
Survey responsiveness remained flat, rising only two percentage points to an unassuming 47% over the FY 2017-18 year. 39 of 86 Producers responded to last year's survey while 35 of 75 Producers responded this year.



Subcontracting Awards

For this survey period, 46% of responding Producers reported awarding subcontracts for services or supplies related to natural gas extraction, 43% reported awarding subcontracts on a competitive basis, and 43% reported awarding subcontracts to SDBs. These figures represent an overall decrease from the FY 2017-18 survey period during which 82% of responding producers reported awarding subcontracts, 69% reported awarding subcontracts on a competitive basis, and 49% reported awarding subcontracts to SDBs.

The chart below illustrates the distribution percentage of reported awards by total subcontract awards, SDB subcontract awards, and competitive subcontract awards for FY 2018-19.



As listed in Table 1 below, Producers reported, by designation, that they awarded 33 subcontracts to SDBs resulting in \$35.1 million in payments during the survey 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 11 Producer-awarded contracts that resulted in only \$491,059 paid to SDBs during the reporting period. Another \$536,429 was paid one Disability-Owned Business Enterprise (DOBE). Although a DGS-verified SDB, DOBE is not an SDB designation recognized within Act 13 of 2012. \$1.4 Million resulting from 9 subcontracts was paid to DGS-self-certified Small Businesses (SBs) which are part of the Commonwealth’s race and gender-neutral program. SB self-certification is a prerequisite for verification as an SDB by the Commonwealth of Pennsylvania.

Payments made to verified SDBs recognized within Act 13 of 2012 are only 1.4% of what the Producers reported as being spent on SDB subcontractors during the reporting period. If DOBE is included, the figure rises to nearly 2%.

It is possible that many of the subcontractors may meet the requirements to be considered SDB but have not completed DGS’s self-certification and verification process. Although 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 – Producer Reports SDBs

Table 2 – DGS-Verified SDBs

Producer Reported Designation	Awarded Contracts	Amount Paid	%	DGS-Verified Designation	Awarded Contracts	Amount Paid	%
MBE	1	\$147,585	0.42%	WBE	11	\$491,059	19.97%
WBE	19	\$2,850,240	8.12%				
SDVBE	1	\$536,429	1.53%	DOBE*	1	\$536,429	21.82%
VBE	7	\$ 4,091,661	11.66%				
SDB	Unknown	\$27,336,982	77.90%	SB	9	\$1,431,145	58.21%
Unknown	5	\$130,250	0.37%				
Grand Total	33	\$35,093,147	100.00%	Grand Total	21	\$2,458,633	100.00%

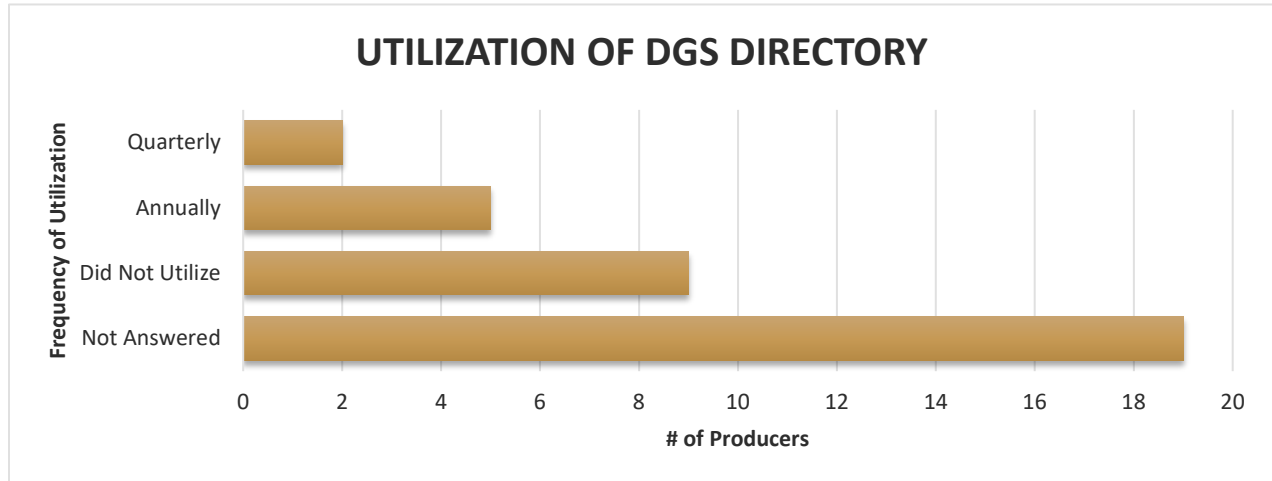
Individual SDBs can be awarded subcontracts by multiple producers.

**Not identified as a small diverse business by Act 13 of 2012.*

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

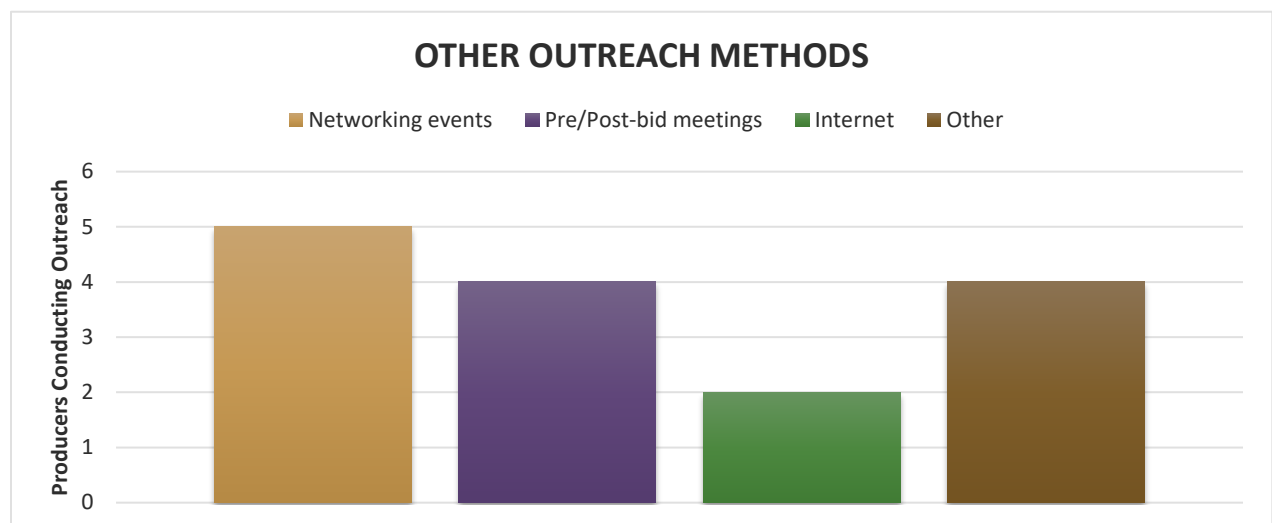
Producer Outreach Efforts

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, nine, or 26%, indicated that they did not utilize the online directory, while just 20% used the database within the reporting period. Nineteen Producers did not respond to this question. Again, the Act does not provide a mechanism or give BDSIBO 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. One Producer maintained its own supplier registry to identify prospective subcontractors. 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 industry groups, other third-party certifiers, or SDBs with whom they’ve previously worked. Others utilized various supplier registries, associates, or word of mouth 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.

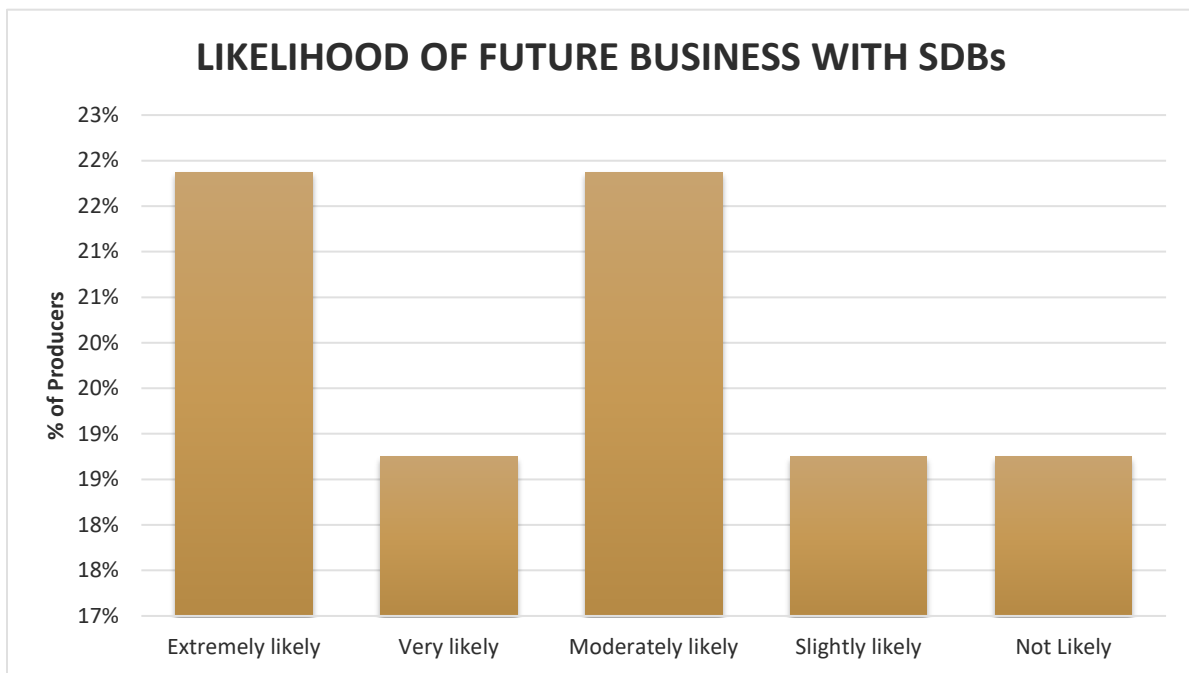


How can we help?

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, 56% often or always had written subcontract agreements, up from the 51% reported last year.
- Subcontracts often did not indicate an estimated dollar value that the Producer agreed to pay to the subcontractor, 66% of Producers selecting "No" when asked the question. However, for those Producers that often or always had written subcontract agreements with their SDBs, 67% indicated that the agreements specified an estimated dollar amount to be paid to SDBs.
- 81% of Producers said they would be *Slightly likely* to *Extremely likely* to utilize SDBs in the future, which is nearly level with last year's value of 84%.



CONCLUSION AND RECOMMENDATIONS

Producer Compliance with the requirements of Act 13

As noted in the background at the beginning of this report, among the duties assigned to Producers by Act 13, Producers are required to 1) respond to the annual Act 13 of 2012 survey disseminated by the Department of General Services, 2) Use the online DGS directory to identify minority, woman, and veteran-owned businesses, and 3) Maintain policies prohibiting discrimination in employment and contracting based on gender, race, creed, or color. Analysis of FY 2018-19 survey results reveals that fewer than half of Producers contacted, 47%, responded to this year's Act 13 survey, and of those that responded, only 20% indicated using the online directory at least once per year.

Several Producers are utilizing other methods to find minority, woman, and veteran-owned businesses to engage when they require additional materials or services related to natural gas extraction. One Producer is a member of and sponsors several diversity counsels within Pennsylvania. Another appropriated contacts with business associates and consultants to find their subcontractors. Several contacted DGS prior to the survey's release to update the department with their organization's Marcellus Shale Producers.

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. 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

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 2018-19 analysis reflects that most 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 Producers report subcontracting to SDBs, only a fraction 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.
6. **Expanding the Act to be inclusive of all Small and Small Diverse Business certifications as recognized by DGS.** Although § 2316 of the act covers "Small business participation", it currently recognizes participation that is restricted to minority, woman, and veteran-owned businesses. The Act is not inclusive of participation by DGS self-certified Small Businesses or verified Disability or LGBT-owned Small Diverse Businesses.

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 2018-19

Scope and Purpose

Section 2316 of 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) defined by the Act as minority, woman, and 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. Data collection is for activity occurring during the reporting period between April 1, 2018 and March 31, 2019. Act 13 requires producers to respond to the DGS survey within 90 days of receipt.

*** 1. Producer Company Name**

*** 2. Producer Company Location**

Company Address	<input style="width: 95%; height: 20px;" type="text"/>
Company City	<input style="width: 95%; height: 20px;" type="text"/>
Company State	<input style="width: 95%; height: 20px;" type="text"/>
Company Zip	<input style="width: 95%; height: 20px;" type="text"/>

*** 3. Contact Information**

Producer Contact Name	<input style="width: 95%; height: 20px;" type="text"/>
Survey Preparer Name (if different from above)	<input style="width: 95%; height: 20px;" type="text"/>
Producer Contact Email Address	<input style="width: 95%; height: 20px;" type="text"/>
Producer Contact Telephone	<input style="width: 95%; height: 20px;" type="text"/>

* 4. During the reporting period, did your company utilize a subcontractor?

YES

NO

* 5. Were any of the subcontractors utilized during the reporting period Small Diverse Businesses?

YES

NO



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Initial Questions

* 6. Subcontracts

	0	1 - 10	11 - 25	26 - 50	51+
How many subcontracts did your company award during the reporting period?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Of the total subcontracts awarded, how many were solicited and awarded competitively?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Of the total subcontracts awarded, how many were awarded to Small Diverse Businesses (SDBs)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Of the total subcontracts awarded to SDBs, how many were awarded to SDBs located in Pennsylvania?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 7. In aggregate, what is the total dollar value you paid to SDB subcontractors between April 1, 2018 and March 31, 2019?

* 8. During this reporting period, 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

Please provide an explanation if the directory was not utilized.

* 9. 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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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, 2018 through March 31, 2019. 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)*

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)*
- *Disability:IN (formerly US Business Leadership Network [USBLN])*
- *VetBiz (Vets First Verification Program)*
- *WBENC (Women's Business Enterprise National Council)*

* 10. Small Diverse Business Participation

Full Subcontractor or
Supplier Name

Approximate Total Dollar
Value of Subcontract(s)

* 11. Additional Information

	Small Diverse Business Designation	Certification Entity	Service/Good Provided
Select one from each drop- down:	<input type="text" value="SDB Not Used"/>	<input type="text" value="SDB Not Used"/>	<input type="text" value="SDB Not Used"/>

Other SDB Designation (please specify)

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

- YES
 NO



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Act 13 of 2012: Small Diverse Business Participation Survey 2018-19

#2: Small Diverse Business Participation

* 13. Small Diverse Business Participation

Full Subcontractor or
Supplier Name

Approximate Total Dollar
Value of Subcontract(s)

* 14. Additional Information

	Small Diverse Business Designation	Certification Entity	Service/Good Provided
Select one from each dropdown:	<input type="text" value="SDB Not Used"/>	<input type="text" value="SDB Not Used"/>	<input type="text" value="SDB Not Used"/>

Other SDB Designation (please specify)

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

YES

NO



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Act 13 of 2012: Small Diverse Business Participation Survey 2018-19

#3: Small Diverse Business Participation

* 16. Small Diverse Business Participation

Full Subcontractor or
Supplier Name

Approximate Total Dollar
Value of Subcontract(s)

* 17. Additional Information

Small Diverse
Business Designation

Certification Entity

Service/Good Provided

Select one
from each
dropdown:

SDB Not Used

SDB Not Used

SDB Not Used

Other SDB Designation (please specify)

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

YES

NO



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Act 13 of 2012: Small Diverse Business Participation Survey 2018-19

#4: Small Diverse Business Participation

* 19. Small Diverse Business Participation

Full Subcontractor or
Supplier Name

Approximate Total Dollar
Value of Subcontract(s)

* 20. Additional Information

	Small Diverse Business Designation	Certification Entity	Service/Good Provided
Select one from each dropdown:	<input type="text" value="SDB Not Used"/>	<input type="text" value="SDB Not Used"/>	<input type="text" value="SDB Not Used"/>

Other SDB Designation (please specify)

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

YES

NO



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#5: Small Diverse Business Participation

* 22. Small Diverse Business Participation

Full Subcontractor or
Supplier Name

Approximate Total Dollar
Value of Subcontract(s)

* 23. Additional Information

Small Diverse
Business Designation

Certification Entity

Service/Good Provided

Select one
from each
dropdown:

SDB Not Used

SDB Not Used

SDB Not Used

Other SDB Designation (please specify)

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

YES

NO



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Additional Questions

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

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

Extremely likely Very likely Moderately likely Slightly likely Not Likely

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

Always

Often

Rarely

Never

SDB Subcontractor Not

Used

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

YES

NO

* 28. 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	DOBE	SB	Grand Total
Agriculture, Forestry, & Conservation	1		2	3
Construction & Building	2		3	5
Consumer Goods & Supplies	1			1
Machines, Electronics, & Equipment	1		1	2
Maintenance & Repair			1	1
Mining, Drilling, Excavating, & Demolition			1	1
Professional Services	1			1
Scientific & Technical	1		1	2
SDB Not Used	1			1
Staffing & Labor Support		1		1
Transportation & Vehicles	1			1
Waste, Recycling, & Remediation	2			2
Grand Total	11	1	9	21

SDBs may be utilized by more than one Producer for multiple services and, thus, may be counted more than once.