

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1070 Session of 2021

INTRODUCED BY WHEATLEY, HILL-EVANS, SANCHEZ, DELLOSO, KINSEY,
HARKINS AND MADDEN, APRIL 21, 2021

REFERRED TO COMMITTEE ON STATE GOVERNMENT, APRIL 21, 2021

AN ACT

1 Amending Titles 51 (Military Affairs) and 62 (Procurement) of
2 the Pennsylvania Consolidated Statutes, in veteran-owned
3 small businesses, further providing for definitions, for
4 regulations, for participation goal, for duties of Department
5 of General Services and for bonding and progress payments,
6 providing for request for full or partial waiver and good
7 faith efforts, further providing for reports and providing
8 for disparity study; in small and disadvantaged businesses,
9 further providing for policy, for definitions, providing for
10 small diverse business program, further providing for
11 regulations and for duties of department, providing for
12 request for full or partial waiver and good faith efforts,
13 for aspirational target and for disparity study, further
14 providing for bonding and progress payments, for report to
15 General Assembly, providing for program review and sunset,
16 for applicability, for definitions, for program, policy and
17 regulations, for duties of department, for request for full
18 or partial waiver and good faith efforts, for bonding and
19 progress payments, for aspirational target, for disparity
20 study, for compliance with Federal requirements and for
21 program review and sunset.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Sections 9601, 9602, 9603, 9604, 9605, 9606 and
25 9607 of Title 51 of the Pennsylvania Consolidated Statutes are
26 amended to read:

27 § 9601. Definitions.

Subject to section 9602 (relating to policy and regulations), the following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Aspirational target." A target established by the Secretary of General Services under section 9603 (relating to participation goal and aspirational target).

"Commonwealth agency." As defined in 62 Pa.C.S. § 103 (relating to definitions).

"Contract-specific goal." A goal established by the Department of General Services in collaboration with the purchasing agency for use of veteran business enterprises on a specific procurement.

"Disparity study." A study conducted to determine whether a disparity exists between the availability of veteran business enterprises and the Commonwealth's utilization of veteran business enterprises.

"Executive agency." As defined in 62 Pa.C.S. § 103 (relating to definitions).

"Good faith efforts." Efforts by a bidder or offeror to obtain participation by a veteran business enterprise in order to meet a contract-specific goal.

"Purchasing agency." As defined in 62 Pa.C.S. § 103 (relating to definitions).

"Service-disabled." Being in possession of:

(1) a disability rating letter issued by the United States Department of Veterans Affairs; or

(2) a disability determination from the United States Department of Defense.

"Service-disabled veteran-owned small business." A small

1 business owned and controlled by:

2 (1) a service-disabled veteran or veterans; or

3 (2) if approved by the Department of General Services, a
4 surviving spouse or permanent caregiver of a service-disabled
5 veteran.

6 "Small business." As defined in 62 Pa.C.S. § 2102 (relating
7 to definitions).

8 "State-affiliated entity." As defined in 62 Pa.C.S. § 103
9 (relating to definitions).

10 "Utilization schedule." A document, submitted by a bidder or
11 offeror as part of a bid or proposal, in which a bidder or
12 offeror commits to a level of veteran business enterprise
13 participation for a contract, identifies the associated
14 responsibilities and scope of work and identifies the dollar
15 value of percentages of the work to be performed.

16 "Veteran." An individual who served in the United States
17 Armed Forces, including a reserve component or the National
18 Guard, and who was discharged or released from service under
19 conditions other than dishonorable.

20 ["Veteran-owned small business." A small business owned and
21 controlled by a veteran or veterans.]

22 "Veteran business enterprise." A Veteran-owned small
23 business or service-disabled veteran-owned small business.

24 § 9602. [Regulations] Policy and regulations.

25 (a) Promulgation.--The Department of General Services shall
26 establish policy [in accordance with this subchapter] for
27 executive agencies and those independent agencies [and] for
28 which the Department of General Services acts as purchasing
29 agency. The Department of General Services may[, in consultation
30 with the department,] promulgate regulations [establishing] in

1 furtherance of this subchapter. The policy or regulations may
2 establish detailed definitions of the words and phrases defined
3 in section 9601 (relating to definitions) using, in addition to
4 the criteria set forth in section 9601, other criteria as it
5 deems appropriate, including the number of employees and the
6 dollar volume of business.

7 (b) Implementation.--State-affiliated entities shall
8 implement the policy for their procurement programs.

9 (c) Antifraud provisions.--The Department of General
10 Services shall establish policy and promulgate regulations
11 establishing antifraud provisions to deter and penalize
12 businesses that [are not owned by those who] falsely claim they
13 are service-disabled or [by] veterans [but who falsely claim
14 that they are] in order to receive any [action] status
15 authorized by this subchapter.

16 (d) Notice.--Notice of the antifraud provisions and an e-
17 mail address and telephone number to report violations of the
18 antifraud provisions to the Department of General Services shall
19 be included, if feasible, in any application to be certified or
20 to be included in any source list authorized by this subchapter.
21 The Department of General Services shall include in its annual
22 reports to the General Assembly information about the number of
23 businesses penalized for violating antifraud provisions.

24 § 9603. Participation goal and aspirational target.

25 A Statewide annual goal of not less than 3% participation by
26 [veteran-owned small businesses, including service-disabled
27 veteran-owned small businesses,] veteran business enterprises is
28 established. [The participation goal shall apply to the total
29 value of all contracts available to small businesses in each
30 fiscal year.] The Secretary of General Services shall set a

Statewide aspirational target, which shall be reviewed and adjusted every five years upon completion of a disparity study and which shall not be less than the Statewide annual goal.

§ 9604. Duties of Department of General Services.

The Department of General Services[, with the assistance of the department,] shall have the following duties:

(1) If feasible, provide appropriate staff, who shall be responsible to the Department of General Services and who shall [serve within designated Commonwealth agencies to assist veteran-owned small businesses and service-disabled veteran-owned small businesses] assist veteran business enterprises in this Commonwealth in learning how to do business with Commonwealth agencies.

(2) Give special publicity to procurement procedures and issue special publications designed to assist [veteran-owned small businesses and service-disabled veteran-owned small businesses] veteran business enterprises in learning how to do business with Commonwealth agencies.

(2.1) Verify the current certification of businesses claiming to qualify as veteran business enterprises.

(3) Compile, maintain and make available source lists of [veteran-owned small businesses and service-disabled veteran-owned small businesses] veteran business enterprises for the purpose of encouraging procurement from [veteran-owned small businesses] veteran business enterprises.

(4) Include [veteran-owned small businesses and service-disabled veteran-owned small businesses] veteran business enterprises on solicitation mailing lists.

(5) Assure that [veteran-owned small businesses and service-disabled veteran-owned small businesses are

1 solicited] purchasing agents solicit veteran business
2 enterprises on procurements for which the businesses may be
3 suited.

4 (6) Develop [special] training programs to assist
5 [veteran-owned small businesses and service-disabled veteran-
6 owned small businesses] veteran business enterprises in
7 learning how to do business with Commonwealth agencies.

8 [(7) Assure that participation by veteran-owned small
9 businesses and service-disabled veteran-owned small
10 businesses is, if appropriate, factored into the evaluation
11 of proposals for supplies, services or construction when a
12 purchasing agency uses the competitive sealed proposals
13 method under 62 Pa.C.S. § 513 (relating to competitive sealed
14 proposals).

15 (8) Verify the current certification of businesses
16 claiming to be certified as veteran-owned small businesses
17 and service-disabled veteran-owned small businesses.]

18 (9) Establish contract-specific goals for utilization of
19 veteran business enterprises, in collaboration with the
20 purchasing agency, based upon relevant factors, including,
21 but not limited to, the availability of veteran business
22 enterprises to provide the supplies, materials and equipment
23 or services required by the scope of work of the procurement.

24 (10) In collaboration with the purchasing agency, review
25 utilization schedules, consider requests for waivers of
26 contract-specific goals based upon a showing of good faith
27 efforts and evaluate the extent to which contract-specific
28 goals were achieved.

29 (11) Monitor contracts to evaluate compliance with
30 contract-specific goals and commitments.

1 (12) Cooperate with and provide assistance to
2 Commonwealth agencies to facilitate participation by veteran
3 business enterprises in procurements.

4 (13) Receive, review and act upon complaints and
5 suggestions concerning the utilization of veteran business
6 enterprises.

7 (14) Monitor and evaluate the Commonwealth's use of
8 veteran business enterprises and the Commonwealth's progress
9 toward the aspirational target.

10 § 9605. Bonding and progress payments.

11 (a) Bonding.--Notwithstanding 62 Pa.C.S. Pt. I (relating to
12 Commonwealth Procurement Code):

13 (1) Except as provided in paragraph (2), a purchasing
14 agency may reduce the level or change the types of bonding
15 normally required or accept alternative forms of security to
16 the extent reasonably necessary to encourage procurement from
17 [veteran-owned small businesses and service-disabled veteran-
18 owned small businesses] veteran business enterprises.

19 (2) For contracts under \$25,000, [veteran-owned small
20 businesses and service-disabled veteran-owned small
21 businesses] veteran business enterprises shall be exempt from
22 any bonding requirements.

23 (b) Progress payments.--A purchasing agency may make special
24 provisions for progress payments as it deems reasonably
25 necessary to encourage procurement from [veteran-owned small
26 businesses and service-disabled veteran-owned small businesses]
27 veteran business enterprises.

28 § 9606. [(Reserved).] Request for full or partial waiver and
29 good faith efforts.

30 Bidders or offerors may request a partial or full waiver of a

contract-specific goal for veteran business enterprise participation. A bidder or offeror requesting a partial or full waiver shall submit, in writing, a report detailing any efforts to meet the contract-specific goal as required by the solicitation. In reviewing a bidder's or offeror's written request for a partial or full waiver of a contract-specific goal, the purchasing agency based on the recommendation of the Department of General Services shall determine whether a bidder or offeror has made good faith efforts to meet the contract-specific goal and to what extent the waiver request should be granted. In determining whether a bidder or offeror has made good faith efforts, the purchasing agency and the Department of General Services may consider levels of participation by veteran business enterprises by other bidders or offerors.

§ 9607. Reports.

[(a) Report to Department of General Services.--By August 15, 2013, and each August 15 thereafter, each executive agency and independent agency shall submit an annual report for the period of July 1 to June 30 to the Department of General Services on actual utilization of veteran-owned small businesses and service-disabled veteran-owned small businesses as contractors, subcontractors, suppliers and professional service providers.

(b) Report to standing committees.--

(1) The Department of General Services and each State-affiliated entity shall annually, before October 1, report in writing to the Veterans Affairs and Emergency Preparedness Committee of the Senate and the Veterans Affairs and Emergency Preparedness Committee of the House of Representatives the actual utilization, Statewide and by each

1 purchasing agency, of veteran-owned small businesses and
2 service-disabled veteran-owned small businesses during the
3 preceding fiscal year.

4 (2) The report shall include a list of all veteran-owned
5 small businesses and service-disabled veteran-owned small
6 businesses that participated as contractors, subcontractors,
7 suppliers and professional service providers during the
8 preceding fiscal year.

9 (3) Initial reports under this subsection shall be
10 submitted to the standing committees by October 1, 2013.]

11 The Department of General Services shall annually report in
12 writing to the Veterans Affairs and Emergency Preparedness
13 Committee of the Senate and the Veterans Affairs and Emergency
14 Preparedness Committee of the House of Representatives
15 concerning the awarding of contracts to veteran business
16 enterprises. The report shall include statistical information
17 regarding veteran business enterprises, including business
18 classification, location and industry. In preparing the report,
19 the Department of General Services shall verify whether
20 commitments made to veteran business enterprises in the course
21 of awarding contracts have been maintained or achieved.

22 Section 2. Title 51 is amended by adding a section to read:
23 § 9609. Disparity study.

24 On January 1, 2022, and every five years thereafter, the
25 Department of General Services shall complete a Statewide
26 disparity study on the availability and use of veteran business
27 enterprises, the results of which shall be used to set an
28 aspirational target under section 9603 (relating to
29 participation goal and aspirational target).

30 Section 3. The title of Chapter 21 of Title 62 is amended

1 and the chapter is amended by adding a subchapter heading
2 immediately preceding section 2101 to read:

3 CHAPTER 21

4 SMALL AND [DISADVANTAGED] DIVERSE BUSINESSES

5 SUBCHAPTER A

6 GENERAL PROCUREMENT

7 Section 4. Sections 2101 and 2102 of Title 62 are amended to
8 read:

9 § 2101. Policy.

10 The policy of this Commonwealth is to assist [small and
11 disadvantaged businesses] small businesses and small diverse
12 businesses in learning how to do business with Commonwealth
13 agencies. The department shall implement this policy in
14 accordance with [regulations promulgated by the department]
15 department regulations and policies.

16 § 2102. Definitions.

17 Subject to section 2103 (relating to regulations), the
18 following words and phrases when used in this [chapter]
19 subchapter shall have the meanings given to them in this section
20 unless the context clearly indicates otherwise:

21 "Agency liaison." An agency employee reporting directly to a
22 secretary, deputy secretary, agency head or equivalent official
23 responsible for assisting the department on issues related to
24 the program.

25 "Aspirational target." A target established by the secretary
26 under section 2104.2 (relating to aspirational target).

27 "Contract-specific goal." A goal established by the
28 department in collaboration with the purchasing agency for use
29 of small diverse businesses on a specific procurement.

30 ["Disadvantaged business." A small business which is owned

1 or controlled by a majority of persons, not limited to members
2 of minority groups, who have been deprived of the opportunity to
3 develop and maintain a competitive position in the economy
4 because of social disadvantages.]

5 "Disparity study." A study conducted to determine whether
6 there is a disparity between the availability of small diverse
7 businesses and the Commonwealth's utilization of small diverse
8 businesses.

9 "Good faith efforts." Efforts by a bidder or offeror to
10 obtain participation by small diverse businesses in order to
11 meet a contract-specific goal.

12 "Program." The Commonwealth's Small Diverse Business Program
13 established under this subchapter.

14 "Secretary." The Secretary of General Services.

15 "Small business." A business in the United States which is
16 independently owned[,] and is not dominant in its field of
17 operation [and employs 100 or fewer employees].

18 "Small diverse business." A small business owned or
19 controlled by a majority of individuals, not limited to members
20 of minority groups, who have been deprived of the opportunity to
21 develop and maintain a competitive position in the economy
22 because of social disadvantages.

23 "Race-and-gender-neutral measures." Methodologies that are
24 or can be used to assist all businesses, notwithstanding the
25 social, economic, racial or sexual composition of those who own
26 or control the business.

27 "Utilization schedule." A document, submitted by a bidder or
28 offeror as part of a bid or proposal, in which a bidder or
29 offeror commits to a level of small diverse business
30 participation for a contract, identifies the associated

1 responsibilities and scope of work and identifies the dollar
2 value or percentages of the work to be performed.

3 Section 4.1. Title 62 is amended by adding a section to
4 read:

5 § 2102.1. Small Diverse Business Program.

6 The Small Diverse Business Program is established within the
7 department to assist small diverse businesses in accordance with
8 this subchapter.

9 Section 4.2. Sections 2103 and 2104 of Title 62 are amended
10 to read:

11 § 2103. Regulations.

12 ~~[The]~~ In order to implement the program, the department shall
13 establish policy for executive and those independent agencies
14 for which the department acts as purchasing agency and may
15 promulgate regulations ~~[establishing]~~. The policy or regulations
16 may establish detailed definitions of the words and phrases
17 defined in section 2102 (relating to definitions) using, in
18 addition to the criteria set forth in section 2102, other
19 criteria as it deems appropriate, including the number of
20 employees and the dollar volume of business. State-affiliated
21 entities shall implement the policy for their procurement
22 programs.

23 § 2104. Duties of department.

24 ~~[The department shall have the following duties:~~

25 (1) Where feasible, provide appropriate staff who shall
26 be responsible to the department and who shall serve within
27 designated Commonwealth agencies to assist small and
28 disadvantaged businesses in this Commonwealth in learning how
29 to do business with Commonwealth agencies.

30 (2) Give special publicity to procurement procedures and

1 issue special publications designed to assist small and
2 disadvantaged businesses in learning how to do business with
3 Commonwealth agencies.

4 (3) Compile, maintain and make available source lists of
5 small and disadvantaged businesses for the purpose of
6 encouraging procurement from small and disadvantaged
7 businesses.

8 (4) Include small and disadvantaged businesses on
9 solicitation mailing lists.

10 (5) Assure that small and disadvantaged businesses are
11 solicited on each procurement for which the businesses may be
12 suited.

13 (6) Develop special training programs to assist small
14 and disadvantaged businesses in learning how to do business
15 with Commonwealth agencies.]

16 The department shall administer the program. The department's
17 duties shall include:

18 (1) Formulating, proposing and implementing policy and
19 regulations for the development, implementation and
20 monitoring of the program and the process and criteria for
21 certification, verification, recertification and
22 decertification of small businesses and small diverse
23 businesses.

24 (2) Developing and using race-and-gender-neutral
25 measures to facilitate the participation of all businesses in
26 Commonwealth procurement activities, including, but not
27 limited to, the implementation of a program to reserve
28 procurements for awarding to small businesses only.

29 (3) Maintaining a directory of small businesses and
30 small diverse businesses.

1 (4) Providing information and assistance to small
2 businesses and small diverse businesses relating to the
3 program, including special training programs to assist small
4 businesses and small diverse businesses in learning how to do
5 business with Commonwealth agencies, and serving as a liaison
6 to community, contractor, professional and supplier groups,
7 associations and organizations.

8 (5) Cooperating with and providing information and
9 assistance to Commonwealth agencies to facilitate
10 participation by small businesses and small diverse
11 businesses in procurements.

12 (6) Establishing thresholds for procurements that
13 require the setting of contract-specific goals.

14 (7) Ensuring that small diverse businesses are solicited
15 on procurements for which the businesses may be suited.

16 (8) Establishing contract-specific goals, in
17 collaboration with the purchasing agency, based upon relevant
18 factors, including, but not limited to, the availability of
19 small diverse businesses to provide the supplies, materials
20 and equipment or services required by the scope of work of
21 the procurement.

22 (9) In collaboration with the purchasing agency,
23 reviewing utilization schedules, considering requests for
24 waivers of contract-specific goals based upon a showing of
25 good faith efforts and evaluating the extent to which
26 contract-specific goals were achieved.

27 (10) Monitoring contracts to evaluate compliance with
28 contract-specific goals and commitments.

29 (11) Receiving, reviewing and acting upon complaints and
30 suggestions concerning the program.

1 (12) Coordinating with agency liaisons on agency issues
2 related to the program.

3 (13) Evaluating the effectiveness and utility of the
4 program.

5 (14) Monitoring the program and the Commonwealth's
6 progress towards the aspirational target.

7 (15) Establishing, as the department deems appropriate,
8 business assistance offices throughout this Commonwealth to
9 assist and carry out the provisions of the program.

10 Section 5. Title 62 is amended by adding sections to read:

11 § 2104.1. Request for full or partial waiver; good faith
12 efforts.

13 Bidders or offerors may request a partial or full waiver of a
14 contract-specific goal for small diverse business participation.
15 A bidder or offeror requesting a partial or full waiver shall
16 submit, in writing, a report detailing efforts to meet the
17 contract-specific goal as required by the solicitation. In
18 reviewing a bidder's or offeror's written request for a partial
19 or full waiver of a contract-specific goal, the purchasing
20 agency based on the recommendation of the department shall
21 determine whether a bidder or offeror has made good faith
22 efforts to meet the contract-specific goal and to what extent
23 the waiver request should be granted. In determining whether a
24 bidder or offeror has made good faith efforts, the purchasing
25 agency and the department may consider levels of participation
26 by small diverse businesses by other bidders or offerors.

27 § 2104.2. Aspirational target.

28 The Secretary shall set an aspirational target for small
29 diverse business participation by the Commonwealth, which shall
30 be reviewed and adjusted every five years upon completion of a

1 disparity study.

2 § 2104.3. Disparity study.

3 Beginning January 1, 2022, and at least once every five years
4 thereafter, the Commonwealth shall complete a Statewide
5 disparity study on the availability and use of small diverse
6 businesses, the results of which shall be used to set an
7 aspirational target under section 2104.2 (relating to
8 aspirational target).

9 Section 6. Sections 2105 and 2107 of Title 62 are amended to
10 read:

11 § 2105. Bonding and progress payments.

12 (a) Bonding.--Notwithstanding other provisions of this part,
13 a purchasing agency may reduce the level or change the types of
14 bonding normally required or accept alternative forms of
15 security to the extent reasonably necessary to encourage
16 procurement from small [and disadvantaged] businesses and small
17 diverse businesses.

18 (b) Progress payments.--A purchasing agency may make special
19 provisions for progress payments as it deems reasonably
20 necessary to encourage procurement from small [and
21 disadvantaged] businesses and small diverse businesses.

22 § 2107. Report to General Assembly.

23 The department shall annually[, before October 1,] report in
24 writing to the General Assembly concerning the awarding of
25 contracts and subcontracts to small [and disadvantaged]
26 businesses and small diverse businesses during the preceding
27 fiscal year. The report shall include [a list of all small and
28 disadvantaged businesses that participated as contractors,
29 subcontractors or suppliers during the preceding fiscal year for
30 contracts if the number of contractors under a previously

1 existing contract for the same supply or service is reduced to a
2 single contractor or reduced by more than 50% of the number
3 existing on September 30, 2003.] statistical information
4 regarding the program and information regarding small businesses
5 and small diverse businesses, including business classification,
6 location and industry. In preparing the report, the department
7 shall verify whether commitments made to small [and
8 disadvantaged] businesses and small diverse businesses in the
9 course of awarding these contracts have been maintained or
10 achieved.

11 Section 7. Title 62 is amended by adding a section to read:
12 § 2109. Program review and sunset.

13 No later than five years after the effective date of this
14 section, the department shall review the operation of and
15 evidentiary basis for the program in order to determine whether
16 the Commonwealth has a continuing compelling interest in
17 remedying discrimination against small diverse businesses in the
18 Commonwealth's marketplace and the permissible scope of any
19 narrowly tailored remedies to redress discrimination against
20 small diverse businesses to ensure that the Commonwealth will
21 not function as a passive participant in a discriminatory
22 marketplace. This chapter shall sunset on or before December 31,
23 2027, unless the disparity study completed pursuant to section
24 2104.2 (relating to disparity study) shows a statistically
25 significant disparity in the utilization of small diverse
26 businesses or the General Assembly elects to extend the length
27 of time this Chapter remains in effect.

28 Section 8. Chapter 21 of Title 62 is amended by adding a
29 subchapter to read:

30 SUBCHAPTER B

1 COMMONWEALTH OF PENNSYLVANIA PARTICIPATION PROGRAM FOR
2 CONSTRUCTION AND DESIGN PROFESSIONAL SERVICES

3 § 2122. Applicability.

4 This subchapter shall apply to procurements for construction
5 and design professional services.

6 § 2123. Definitions.

7 Subject to section 2124 (relating to regulations and policy),
8 the following words and phrases when used in this subchapter
9 shall have the meaning given to them in this section unless the
10 context clearly indicates otherwise:

11 "Aspirational target." A target established by the secretary
12 under section 2128 (relating to aspirational target).

13 "Contract-specific goal." A goal established by the
14 department in collaboration with the purchasing agency for use
15 of small diverse businesses on a specific procurement.

16 "Disparity study." A study conducted to determine whether
17 there is a disparity between the availability of small diverse
18 businesses and the Commonwealth's utilization of small diverse
19 businesses in public works contracts.

20 "Good faith efforts." Efforts by a bidder or offeror to
21 obtain participation by small diverse businesses in order to
22 meet a contract-specific goal.

23 "Program." The Participation Program for Construction and
24 Design Professional Services established under this subchapter.

25 "Small business." A business in the United States which is
26 independently owned and is not dominant in its field of
27 operation.

28 "Small diverse business." A small business owned or
29 controlled by a majority of individuals, not limited to members
30 of minority groups, who have been deprived of the opportunity to

1 develop and maintain a competitive position in the economy
2 because of social disadvantages.

3 "Race-and-gender-neutral measures." Methodologies that are
4 or can be used to assist all businesses, notwithstanding the
5 social, economic, racial, or sexual composition of those who own
6 or control the business.

7 "Secretary." The Secretary of General Services.

8 "Utilization schedule." A document, submitted by a bidder or
9 offeror as part of a bid or proposal, in which a bidder or
10 offeror commits to a level of small diverse business
11 participation for a contract, identifies the associated
12 responsibilities and scope of work and identifies the dollar
13 value or percentages of the work to be performed.

14 § 2124. Program, policy and regulations.

15 The Participation Program for Construction and Design
16 Professional Services is established within the department. In
17 order to implement the program, the department shall establish
18 policies for executive agencies and those independent agencies
19 for which the department acts as purchasing agency and may
20 promulgate regulations. The policies and regulations may
21 establish detailed definitions of the words and phrases defined
22 in section 2123 (relating to definitions), using, in addition to
23 the criteria under section 2123, other criteria as it deems
24 appropriate, including the number of employees and the dollar
25 volume of business.

26 § 2125. Duties of department.

27 The department shall administer the program. The department's
28 duties shall include:

29 (1) Formulating, proposing and implementing policy and
30 regulations for the development, implementation and

1 monitoring of the program.

2 (2) Developing, using and assisting purchasing agencies
3 in using race-and-gender-neutral measures to facilitate the
4 participation of all firms in Commonwealth procurement
5 activities, including, but not limited to, the implementation
6 of a program to reserve procurements for awards to small
7 businesses only.

8 (3) Providing information and assistance to small
9 businesses and small diverse businesses relating to the
10 program, including special training programs to assist small
11 businesses and small diverse businesses in learning how to do
12 business with Commonwealth agencies and serving as a liaison
13 to community, contractor, professional and supplier groups,
14 and associations and organizations.

15 (4) Establishing thresholds for construction and design
16 professional services procurements that require the setting
17 of contract-specific goals.

18 (5) Ensuring that small diverse businesses are solicited
19 on procurements for which the businesses may be suited.

20 (6) Establishing contract-specific goals, in
21 collaboration with the purchasing agency, based upon relevant
22 factors, including, but not limited to, the availability of
23 small diverse businesses to provide the supplies, materials
24 and equipment or services required by the scope of work of
25 the procurement.

26 (7) In collaboration with the purchasing agency,
27 reviewing utilization schedules, considering requests for
28 waivers of contract-specific goals based upon a showing of
29 good faith efforts and evaluating the extent to which
30 contract-specific goals were achieved.

1 (8) Monitoring contracts to evaluate compliance with
2 contract-specific goals and commitments.

3 (9) Receiving, reviewing and acting upon complaints and
4 suggestions concerning the program.

5 (10) Evaluating the effectiveness and utility of the
6 program.

7 (11) Monitoring the program and the Commonwealth's
8 progress toward the aspirational target.

9 § 2126. Request for full or partial waiver; good faith efforts.

10 Bidders or offerors may request a partial or full waiver of a
11 contract-specific goal for small diverse business participation.

12 A bidder or offeror requesting a partial or full waiver shall
13 submit, in writing, a report detailing efforts to meet the
14 contract-specific goal as required by the solicitation. In
15 reviewing a bidder's or offeror's written request for a partial
16 or full waiver of a contract-specific goal, the purchasing
17 agency based on the recommendation of the department shall
18 determine whether a bidder or offeror has made good faith
19 efforts to meet the contract-specific goal and to what extent
20 the waiver request should be granted. In determining whether a
21 bidder or offeror has made good faith efforts, the purchasing
22 agency and the department may consider levels of participation
23 by small diverse businesses by other bidders or offerors.

24 § 2127. Bonding and progress payments.

25 (a) Bonding.--Notwithstanding other provisions of this
26 subchapter, a purchasing agency may reduce the level or change
27 the types of bonding normally required or accept alternative
28 forms of security to the extent reasonably necessary to
29 encourage procurement from small businesses and small diverse
30 businesses.

1 (b) Progress payments.--A purchasing agency may make special
2 provisions for progress payments as the agency deems reasonably
3 necessary to encourage procurement from small businesses and
4 small diverse businesses.

5 § 2128. Aspirational target.

6 The secretary shall set an aspirational target for small
7 diverse business participation by the Commonwealth on
8 procurements subject to this subsection, which shall be reviewed
9 and adjusted every five years upon completion of a disparity
10 study.

11 § 2129. Disparity study.

12 On January 1, 2022, and at least every five years thereafter,
13 the Commonwealth shall conduct a Statewide disparity study on
14 the availability and use of small diverse businesses in
15 Commonwealth public works contracts, the results of which shall
16 be used to set an aspirational target under section 2128
17 (relating to aspirational target).

18 § 2130. Compliance with Federal requirements.

19 If a procurement involves the expenditure of Federal
20 assistance or contract funds, the purchasing agency shall comply
21 with Federal law and regulations that are mandatorily applicable
22 and that are not included under this subchapter.

23 § 2131. Program review and sunset.

24 Within five years after the effective date of this section,
25 the department shall review the operation of and evidentiary
26 basis for the program in order to determine whether the
27 Commonwealth has a continuing compelling interest in remedying
28 discrimination against small diverse businesses in the
29 Commonwealth's marketplace and the permissible scope of any
30 narrowly tailored remedies to redress discrimination against

1 small diverse businesses to ensure the Commonwealth will not
2 function as a passive participant in a discriminatory
3 marketplace. This subchapter shall sunset on or before December
4 31, 2027, unless the disparity study under section 2129
5 (relating to disparity study) shows a statistically significant
6 disparity in the utilization of small diverse businesses or the
7 General Assembly elects to extend the length of time this
8 subchapter remains in effect.

9 Section 9. This act shall take effect in 60 days.