

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 900 Session of
2021

INTRODUCED BY HUGHES, BARTOLOTTA, COMITTA, FONTANA, BREWSTER,
MUTH, ROBINSON, YUDICHAK, CAPPELLETTI, COSTA, J. WARD,
AUMENT, SCHWANK AND STREET, SEPTEMBER 28, 2021

REFERRED TO VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS,
SEPTEMBER 28, 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, 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 heading of chapter, for policy and for
10 definitions, providing for Small and Diverse Business Program
11 and for nonapplicability, further providing for regulations
12 and for duties of department, providing for request for full
13 or partial waiver and good-faith efforts, further providing
14 for bonding and progress payments and report to General
15 Assembly, providing for aspirational target, for disparity
16 study and for program review and expiration; and providing
17 for Program for Construction and Design Professional
18 Services.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. Section 9601 introductory paragraph of Title 51
22 of the Pennsylvania Consolidated Statutes is amended and the
23 section is amended by adding definitions to read:

24 § 9601. Definitions.

25 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 Statewide participation goal and aspirational target).

"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 there is a disparity between the availability and use of veteran business enterprises in Commonwealth procurement.

* * *

"Good-faith efforts." The practices or activities instituted by a bidder or offeror to promote and ensure participation by veteran business enterprises in an agency procurement in order to meet a contract-specific goal.

* * *

"Utilization schedule." A document, submitted by a bidder or offeror as part of a bid or proposal, in which a bidder or offeror commits to a level of veteran business enterprise participation for a contract. If required by the solicitation, a utilization schedule may also require a bidder or offeror to identify:

(1) The veteran business enterprises that will be utilized.

(2) Associated responsibilities and scopes of work.

(3) The dollar value or percentages of the work to be

1 performed.

2 * * *

3 "Veteran business enterprise." A veteran-owned small
4 business or service-disabled veteran-owned small business.

5 * * *

6 Section 2. Sections 9602(a) and (c), 9603, 9604, 9605, 9606
7 and 9607 of Title 51 are amended to read:

8 § 9602. [Regulations] Policy and regulations.

9 (a) Promulgation.--The Department of General Services shall
10 establish policy [in accordance with this subchapter] for
11 executive agencies and those independent agencies [and may, in
12 consultation with the department,] for which the Department of
13 General Services acts as a purchasing agency. The Department of
14 General Services in its discretion may promulgate regulations
15 [establishing detailed definitions of the words and phrases
16 defined in section 9601 (relating to definitions) using, in
17 addition to the criteria set forth in section 9601, other
18 criteria as it deems appropriate, including the number of
19 employees and the dollar volume of business.] to carry out and
20 enforce the provisions of this subchapter.

21 * * *

22 (c) Antifraud provisions.--The Department of General
23 Services shall establish policy and promulgate regulations
24 establishing antifraud provisions to deter and penalize
25 businesses that [are not owned by those who are service-disabled
26 or by veterans but who falsely claim that they are] falsely
27 claim the businesses are owned by service-disabled individuals
28 or veterans in order to receive any action authorized by this
29 subchapter.

30 * * *

1 § 9603. [Participation goal.] Statewide participation goal and
2 aspirational target.

3 A Statewide annual goal of not less than 3% participation by
4 [veteran-owned small businesses, including service-disabled
5 veteran-owned small businesses,] veteran business enterprises is
6 established. [The participation goal shall apply to the total
7 value of all contracts available to small businesses in each
8 fiscal year.] The Secretary of General Services may set a
9 Statewide aspirational target for veteran business enterprise
10 participation which may be reviewed and adjusted every five
11 years upon completion of a disparity study and which may not be
12 less than the Statewide annual goal.

13 § 9604. Duties of Department of General Services.

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

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

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

28 (2.1) Verify the current certification of businesses
29 claiming to be certified as veteran business enterprises.

30 (3) [Compile, maintain and make available source lists

1 of veteran-owned small businesses and service-disabled
2 veteran-owned small businesses] Develop and maintain a
3 directory of veteran business enterprises for the purpose of
4 encouraging procurement from [veteran-owned small businesses]
5 veteran business enterprises.

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

9 (5) Assure that [veteran-owned small businesses and
10 service-disabled veteran-owned small businesses are
11 solicited] purchasing agencies solicit veteran business
12 enterprises on procurements for which the businesses may be
13 suited.

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

18 [(7) Assure that participation by veteran-owned small
19 businesses and service-disabled veteran-owned small
20 businesses is, if appropriate, factored into the evaluation
21 of proposals for supplies, services or construction when a
22 purchasing agency uses the competitive sealed proposals
23 method under 62 Pa.C.S. § 513 (relating to competitive sealed
24 proposals).

25 (8) Verify the current certification of businesses
26 claiming to be certified as veteran-owned small businesses
27 and service-disabled veteran-owned small businesses.]

28 (9) Establish contract-specific goals for utilization of
29 veteran business enterprises, in collaboration with the
30 purchasing agency, based upon relevant factors, including the

1 availability of veteran business enterprises to provide the
2 supplies, materials and equipment or services required by the
3 scope of work of the procurement.

4 (10) In collaboration with the purchasing agency, review
5 utilization schedules, consider requests for waivers of
6 contract-specific goals based upon a showing of good-faith
7 efforts and evaluate the extent to which contract-specific
8 goals were achieved.

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

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

14 (13) Receive, review and act upon complaints and
15 suggestions concerning the utilization of veteran business
16 enterprises, with the assistance of the purchasing agency, as
17 appropriate.

18 (14) Monitor and evaluate the Commonwealth's use of
19 veteran business enterprises and the Commonwealth's progress
20 towards the aspirational target.

21 (15) Require that applications for veteran business
22 enterprises verification under this chapter shall be sworn
23 under oath.

24 § 9605. Bonding and progress payments.

25 (a) Bonding.--Notwithstanding 62 Pa.C.S. Pt. I (relating to
26 Commonwealth Procurement Code) or any other law or regulation:

27 (1) Except as provided in paragraph (2), a purchasing
28 agency may reduce the [level] amount or change the types of
29 bonding normally required or accept alternative forms of
30 security to the extent reasonably necessary to encourage

1 procurement from [veteran-owned small businesses and service-
2 disabled veteran-owned small businesses] veteran business
3 enterprises.

4 (2) For contracts under \$25,000, [veteran-owned small
5 businesses and service-disabled veteran-owned small
6 businesses] veteran business enterprises shall be exempt from
7 any bonding requirements.

8 (b) Progress payments.--A purchasing agency may make special
9 provisions for progress payments as it deems reasonably
10 necessary to encourage procurement from [veteran-owned small
11 businesses and service-disabled veteran-owned small businesses]
12 veteran business enterprises.

13 § 9606. [(Reserved).] Request for a full or partial waiver and
14 good-faith efforts.

15 Notwithstanding any provision of this subchapter to the
16 contrary, bidders or offerors may request a partial or full
17 waiver of a contract-specific goal for veteran business
18 enterprise participation. A bidder or offeror requesting a
19 partial or full waiver shall submit, in writing, a report
20 detailing efforts to meet the contract-specific goal as required
21 by the solicitation. In reviewing a bidder's or offeror's
22 written request for a partial or full waiver of a contract
23 specific goal, the purchasing agency, based on the
24 recommendation of the Department of General Services, shall
25 determine if a bidder or offeror has made good-faith efforts to
26 meet the contract-specific goal and to what extent the waiver
27 request should be granted. In determining if a bidder or offeror
28 has made good-faith efforts, the purchasing agency and the
29 Department of General Services may consider levels of
30 participation by veteran business enterprises by other bidders

1 or offerors.

2 § 9607. Reports.

3 [(a) Report to Department of General Services.--By August
4 15, 2013, and each August 15 thereafter, each executive agency
5 and independent agency shall submit an annual report for the
6 period of July 1 to June 30 to the Department of General
7 Services on actual utilization of veteran-owned small businesses
8 and service-disabled veteran-owned small businesses as
9 contractors, subcontractors, suppliers and professional service
10 providers.]

11 (b) Report to standing committees.--

12 (1) The Department of General Services and each State-
13 affiliated entity shall annually, before October 1, report in
14 writing to the Veterans Affairs and Emergency Preparedness
15 Committee of the Senate and the Veterans Affairs and
16 Emergency Preparedness Committee of the House of
17 Representatives the actual utilization, Statewide and by each
18 purchasing agency, of veteran-owned small businesses and
19 service-disabled veteran-owned small businesses during the
20 preceding fiscal year.

21 (2) The report shall include a list of all veteran-owned
22 small businesses and service-disabled veteran-owned small
23 businesses that participated as contractors, subcontractors,
24 suppliers and professional service providers during the
25 preceding fiscal year.

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

28 The Department of General Services shall annually report in
29 writing to the Veterans Affairs and Emergency Preparedness
30 Committee of the Senate and the Veterans Affairs and Emergency

Preparedness Committee of the House of Representatives
concerning the awarding of contracts to veteran business
enterprises. The report shall include statistical information
regarding veteran business enterprises, including business
classification, location and industry. In preparing the report,
the Department of General Services shall verify if commitments
made to veteran business enterprises in the course of awarding
the contracts have been maintained or achieved.

Section 3. Title 51 is amended by adding a section to read:
§ 9609. Disparity study.

Beginning no later than June 30, 2022, and every five years
thereafter, the Department of General Services may complete a
Statewide disparity study on the availability and use of veteran
business enterprises, the results of which may be used to set an
aspirational target under section 9603 (relating to Statewide
participation goal and aspirational target).

Section 4. The heading of Chapter 21 and sections 2101 and
2102 of Title 62 are amended to read:

CHAPTER 21

SMALL AND [DISADVANTAGED] DIVERSE BUSINESSES

§ 2101. Policy.

The policy of this Commonwealth is [to assist small and
disadvantaged businesses in learning how to do business with
Commonwealth agencies. The department shall implement this
policy in accordance with regulations promulgated by the
department.] to provide equitable opportunities in its
procurements to small businesses and small diverse businesses,
both as prime contractors and subcontractors, and to assist
small businesses and small diverse businesses in learning how to
do business with Commonwealth agencies. The department shall

1 implement this policy in accordance with department regulations
2 and policy.

3 § 2102. Definitions.

4 Subject to section 2103 (relating to policy and regulations),
5 the following words and phrases when used in this chapter shall
6 have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 ["Disadvantaged business." A small business which is owned
9 or controlled by a majority of persons, not limited to members
10 of minority groups, who have been deprived of the opportunity to
11 develop and maintain a competitive position in the economy
12 because of social disadvantages.]

13 "Agency liaison." An agency employee reporting directly to a
14 secretary, agency head or equivalent responsible for assisting
15 the agency on issues related to the program.

16 "Aspirational target." A target established by the Secretary
17 of General Services under section 2109 (relating to aspirational
18 target).

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

22 "Disparity study." A study conducted to determine whether
23 there is a disparity between the availability and use of small
24 diverse businesses in Commonwealth procurement.

25 "Good-faith efforts." The practices or activities instituted
26 by a bidder or offeror to promote and ensure participation by
27 small diverse businesses in an agency procurement in order to
28 meet a contract-specific goal.

29 "Program." The Small Diverse Business Program established
30 under section 2102.1 (relating to Small Diverse Business

1 Program).

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

5 "Small diverse business." A small business owned or
6 controlled by a majority of persons, not limited to members of
7 minority groups, that have been deprived of the opportunity to
8 develop and maintain a competitive position in the economy
9 because of economic and social disadvantages.

10 "Race- and gender-neutral measures." Methodologies that are
11 or can be used to assist businesses, notwithstanding the social,
12 economic, racial or gender composition of the individuals that
13 own or control the business.

14 "Utilization schedule." A document, submitted by a bidder or
15 offeror as part of a bid or proposal, in which a bidder or
16 offeror commits to a level of small diverse business
17 participation for a contract. If required by the solicitation, a
18 utilization schedule may also require a bidder or offeror to
19 identify:

20 (1) The small diverse businesses that will be utilized.

21 (2) Associated responsibilities and scopes of work.

22 (3) The dollar value or percentages of the work to be
23 performed.

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

25 § 2102.1. Small Diverse Business Program.

26 The Small Diverse Business Program is established in the
27 department.

28 § 2102.2. Nonapplicability.

29 Beginning on and after the effective date of this section,
30 this chapter shall not apply to procurements for construction

1 and design professional services.

2 Section 6. Sections 2103 and 2104 of Title 62 are amended to
3 read:

4 § 2103. [~~Regulations~~] Policy and regulations.

5 [~~The~~] In order to implement the program, the department shall
6 establish policy for executive and those independent agencies
7 for which the department acts as purchasing agency and may
8 promulgate regulations [~~establishing detailed definitions of the~~
9 ~~words and phrases defined in section 2102 (relating to~~
10 ~~definitions) using, in addition to the criteria set forth in~~
11 ~~section 2102, other criteria as it deems appropriate, including~~
12 ~~the number of employees and the dollar volume of business.~~
13 ~~State-affiliated entities shall implement the policy for their~~
14 ~~procurement programs.] to carry out and enforce the provisions
15 of this chapter. State-affiliated entities shall implement the
16 policy for their procurement.~~

17 § 2104. Duties of department.

18 [~~The department shall have the following duties~~] The
19 department shall administer the program. The department's duties
20 shall include:

21 (1) [~~Where feasible, provide appropriate staff who shall~~
22 ~~be responsible to the department and who shall serve within~~
23 ~~designated Commonwealth agencies to assist small and~~
24 ~~disadvantaged businesses in this Commonwealth in learning how~~
25 ~~to do business with Commonwealth agencies.] Formulating,
26 proposing and implementing policy and regulations for the
27 development, implementation and monitoring of the program,
28 including the process or procedures to govern the following:~~

29 (i) The process and criteria for certification,
30 verification, recertification and decertification of

1 small businesses and small diverse businesses.

2 (ii) The setting of contract-specific goals.

3 (iii) Changes to solicitation and contract language,
4 requirements and forms.

5 (iv) Monitoring and tracking contract commitments
6 and utilization of small diverse businesses.

7 (v) Mentor-protégé programs.

8 (vi) Program-related education, training, networking
9 and outreach.

10 (vii) Any other processes or procedures the
11 department deems necessary to implement the program.

12 (2) [Give special publicity to procurement procedures
13 and issue special publications designed to assist small and
14 disadvantaged businesses in learning how to do business with
15 Commonwealth agencies.] Developing, using and assisting
16 purchasing agencies in using race- and gender-neutral
17 measures to facilitate the participation of all firms in
18 Commonwealth procurement activities, including the
19 implementation of a program to reserve procurements for award
20 to small businesses only.

21 (3) [Compile, maintain and make available source lists
22 of small and disadvantaged businesses for the purpose of
23 encouraging procurement from small and disadvantaged
24 businesses.] Developing and maintaining a directory of small
25 businesses and small diverse businesses.

26 (4) [Include small and disadvantaged businesses on
27 solicitation mailing lists.] Providing information and
28 assistance to small businesses and small diverse businesses
29 relating to the program, including special training programs
30 to assist small businesses and small diverse businesses in

1 learning how to do business with Commonwealth agencies and
2 serving as a liaison to community, contractors, professionals
3 and supplier groups, associations and organizations.

4 (5) [Assure that small and disadvantaged businesses are
5 solicited on each procurement for which the businesses may be
6 suited.] Collaborating with and providing information and
7 assistance to Commonwealth agencies to facilitate
8 participation by small businesses and small diverse
9 businesses in procurements.

10 (6) [Develop special training programs to assist small
11 and disadvantaged businesses in learning how to do business
12 with Commonwealth agencies.] Establishing thresholds for
13 procurements which require the setting of contract-specific
14 goals.

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

17 (8) Establishing contract-specific goals, in
18 collaboration with the purchasing agency, based upon relevant
19 factors, including the availability of small diverse
20 businesses to provide the supplies, materials and equipment
21 or services required by the scope of work of 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, with the assistance of

1 the purchasing agency, as appropriate.

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

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

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

8 (15) Establishing business assistance offices throughout
9 this Commonwealth to assist and carry out the provisions of
10 the program.

11 (16) Requiring that all applications for small
12 businesses and small diverse businesses verification under
13 this chapter shall be sworn under oath.

14 (17) Identifying barriers to equitable participation by
15 small diverse businesses in Commonwealth procurement.

16 (18) Designating staff to assist small businesses and
17 small diverse businesses in learning how to participate in
18 Commonwealth procurement in accordance with this act.

19 (19) Developing the conditions under which a contract-
20 specific goal may be waived, either partially or fully, upon
21 request of a bidder or offeror in accordance with section
22 2105.

23 Section 7. Title 62 is amended by adding a section to read:

24 § 2104.1. Request for a full or partial waiver and good-faith
25 efforts.

26 Notwithstanding any provision of this chapter to the
27 contrary, bidders or offerors may request a partial or full
28 waiver of a contract-specific goal for small diverse business
29 participation. A bidder or offeror requesting a partial or full
30 waiver shall submit, in writing, a report detailing the bidder's

1 or offeror's efforts to meet the contract-specific goal as
2 required by the solicitation. In reviewing a bidder's or
3 offeror's written request for a partial or full waiver of a
4 contract-specific goal, the purchasing agency, based on the
5 recommendation of the department, shall determine if a bidder or
6 offeror has made good-faith efforts to meet the contract-
7 specific goal and to what extent the waiver request should be
8 granted. In determining if a bidder or offeror has made good-
9 faith efforts, the purchasing agency and the department may
10 consider levels of participation by small diverse businesses by
11 other bidders or offerors.

12 Section 8. Sections 2105 and 2107 of Title 62 are amended to
13 read:

14 § 2105. Bonding and progress payments.

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

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

26 § 2107. Report to General Assembly.

27 The department shall annually[, before October 1,] report in
28 writing to the General Assembly concerning the awarding of
29 contracts [to small and disadvantaged businesses] and
30 subcontracts to small businesses and small diverse businesses

1 during the preceding fiscal year. The report shall include [a
2 list of all small and disadvantaged businesses that participated
3 as contractors, subcontractors or suppliers during the preceding
4 fiscal year for contracts if the number of contractors under a
5 previously existing contract for the same supply or service is
6 reduced to a single contractor or reduced by more than 50% of
7 the number existing on September 30, 2003.] statistical
8 information regarding the program and information regarding
9 small businesses and small diverse businesses, including
10 business classification, location and industry. In preparing the
11 report, the department shall verify whether commitments made to
12 small [and disadvantaged] diverse businesses in the course of
13 awarding these contracts have been maintained or achieved.

14 Section 9. Title 62 is amended by adding sections to read:
15 § 2109. Aspirational target.

16 The Secretary of General Services shall set an aspirational
17 target for small diverse business participation by the
18 Commonwealth, which shall be reviewed and adjusted every five
19 years upon completion of a disparity study.

20 § 2110. Disparity study.

21 Beginning no later than June 30, 2022, and at least once
22 every five years thereafter, the department shall complete a
23 Statewide disparity study on the availability and use of small
24 diverse businesses, the results of which shall be used to set an
25 aspirational target under section 2109 (relating to aspirational
26 target). The Secretary of General Services shall transmit
27 notification to the Legislative Reference Bureau for publication
28 in the Pennsylvania Bulletin whether or not the disparity study
29 shows a statistically significant disparity.

30 § 2111. Program review and expiration.

1 (a) Review.--Upon completion of the disparity study
2 conducted under section 2110 (relating to disparity study), the
3 department shall review the results and recommendations of the
4 disparity study and the operation of and evidentiary basis for
5 the program in order to determine whether the Commonwealth has a
6 continuing compelling interest in remedying discrimination
7 against small diverse businesses in its marketplace and the
8 permissible scope of any narrowly tailored remedies to redress
9 discrimination against small diverse businesses so that the
10 Commonwealth will not function as a passive participant in a
11 discriminatory marketplace.

12 (b) Expiration.--This chapter shall expire January 1, 2028,
13 unless the disparity study completed under section 2110 shows a
14 statistically significant disparity in the utilization of small
15 diverse businesses. If the disparity study shows a statistically
16 significant disparity, the program shall renew for an additional
17 five years with the review and expiration under this section
18 each occurring every five years thereafter until the disparity
19 study shows no statistically significant disparity in the
20 utilization of small diverse businesses.

21 Section 10. Title 62 is amended by adding a chapter to read:

22 CHAPTER 21A

23 PROGRAM FOR CONSTRUCTION AND

24 DESIGN PROFESSIONAL SERVICES

25 Sec.

26 21A01. Definitions.

27 21A02. Program for Construction and Design Professional
28 Services.

29 21A03. Applicability.

30 21A04. Policy and regulations.

- 1 21A05. Duties of department.
- 2 21A06. Request for full or partial waiver and good-faith
3 efforts.
- 4 21A07. Bonding and progress payments.
- 5 21A08. Report to General Assembly.
- 6 21A09. Aspirational target.
- 7 21A10. Disparity study.
- 8 21A11. Compliance with Federal requirements.
- 9 21A12. Review and expiration.

10 § 21A01. Definitions.

11 The following words and phrases when used in this chapter
12 shall have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Aspirational target." A target established by the Secretary
15 of General Services under section 21A09 (relating to
16 aspirational target).

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

20 "Disparity study." A study conducted to determine whether
21 there is a disparity between the availability and use of small
22 diverse businesses in Commonwealth procurement for construction
23 and design professional services.

24 "Good-faith efforts." The practices or activities instituted
25 by a bidder or offeror to promote and ensure participation by
26 small diverse businesses in agency procurements for construction
27 and design professional services in order to meet a contract-
28 specific goal.

29 "Program." The Program for Construction and Design
30 Professional Services established under section 21A02 (relating

1 to Program for Construction and Design Professional Services).

2 "Small business." A business in the United States which is
3 independently owned and is not dominant in its field of
4 operation.

5 "Small diverse business." A small business owned or
6 controlled by a majority of persons, not limited to members of
7 minority groups, who have been deprived of the opportunity to
8 develop and maintain a competitive position in the economy
9 because of economic and social disadvantages.

10 "Race- and gender-neutral measures." Methodologies that are
11 or can be used to assist businesses, notwithstanding the social,
12 economic, racial or gender composition of individuals that own
13 or control the business.

14 "Utilization schedule." A document, submitted by a bidder or
15 offeror as part of a bid or proposal, in which a bidder or
16 offeror commits to a level of small diverse business
17 participation for a contract. If required by the solicitation, a
18 utilization schedule may also require a bidder or offeror to
19 identify:

20 (1) The small diverse businesses that will be utilized.

21 (2) Associated responsibilities and scope of work.

22 (3) The dollar value or percentages of the work to be
23 performed.

24 § 21A02. Program for Construction and Design Professional
25 Services.

26 The Program for Construction and Design Professional Services
27 is established in the department.

28 § 21A03. Applicability.

29 This chapter shall apply to procurements for construction and
30 design professional services.

1 § 21A04. Policy and regulations.

2 In order to implement the program, the department shall
3 establish policy for executive and independent agencies for
4 which the department acts as a purchasing agency and may
5 promulgate regulations to carry out and enforce the provisions
6 of this chapter. State-affiliated entities shall implement the
7 policy for their procurement programs.

8 § 21A05. Duties of department.

9 The department shall administer the program. The department's
10 duties shall include:

11 (1) Formulating, proposing and implementing policy and
12 regulations for the development, implementation and
13 monitoring of the program, which shall include processes or
14 procedures to govern the following:

15 (i) The process and criteria for certification,
16 verification, recertification and decertification of
17 small businesses and small diverse businesses.

18 (ii) The setting of contract-specific goals.

19 (iii) Changes to solicitation and contract language,
20 requirements and forms.

21 (iv) Monitoring and tracking contract commitments
22 and utilization of small diverse businesses.

23 (v) Mentor-protégé programs.

24 (vi) Program-related education, training, networking
25 and outreach.

26 (vii) Any other processes or procedures the
27 department deems necessary to implement the program for
28 construction and design professional services.

29 (2) Developing, using and assisting purchasing agencies
30 in using race- and gender-neutral measures to facilitate the

1 participation of firms in Commonwealth procurement
2 activities, including the implementation of a program to
3 reserve procurements for award to small businesses only.

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

11 (4) Establishing thresholds for construction and design
12 professional services procurements which require the setting
13 of contract-specific goals.

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

16 (6) Establishing contract-specific goals, in
17 collaboration with the purchasing agency, based upon relevant
18 factors, including the availability of small diverse
19 businesses to provide the supplies, materials and equipment
20 or services required by the scope of work of the procurement.

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

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

28 (9) Receiving, reviewing and acting upon complaints and
29 suggestions concerning the program, with the assistance of
30 the purchasing agency, as appropriate.

1 (10) Evaluating the effectiveness and utility of the
2 program.

3 (11) Monitoring the program and the Commonwealth's
4 progress towards the aspirational target.

5 (12) Identifying barriers to equitable participation by
6 small diverse businesses in Commonwealth procurements for
7 construction and design and professional services.

8 (13) Designating staff to assist small businesses and
9 small diverse businesses in learning how to participate in
10 Commonwealth procurement in accordance with this act.

11 (14) Developing and maintaining a directory of small
12 businesses and small diverse businesses.

13 (15) Requiring that all applications for small business
14 certification and small diverse business verification under
15 this chapter shall be sworn under oath.

16 (16) Collaborating with and providing information and
17 assistance to Commonwealth agencies to facilitate
18 participation by small businesses and small diverse
19 businesses in construction and design professional services
20 procurements.

21 (17) Developing the conditions under which a contract-
22 specific goal may be waived, either partially or fully, upon
23 request of a bidder or offeror in accordance with section
24 21A06 (relating to request for full or partial waiver and
25 good-faith efforts).

26 § 21A06. Request for full or partial waiver and good-faith
27 efforts.

28 Notwithstanding any provision of law to the contrary, bidders
29 or offerors may request a partial or full waiver of a contract-
30 specific goal for small diverse business participation. A bidder

or offeror requesting a partial or full waiver shall submit, in writing, a report detailing the bidder's or offeror's 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, shall determine if 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 if a bidder or offeror has made good-faith efforts, the purchasing agency and the department may consider levels of participation by small diverse businesses by other bidders or offerors.

§ 21A07. Bonding and progress payments.

(a) Bonding.--Notwithstanding other provisions of law to the contrary, a purchasing agency may reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent reasonably necessary to encourage procurement from small businesses and small diverse businesses.

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

§ 21A08. Report to General Assembly.

The department shall annually report in writing to the General Assembly regarding the awarding of contracts and subcontracts to small businesses and small diverse businesses during the preceding fiscal year. The report shall include statistical data from the program, including business classification, location and industry. In preparing the report,

1 the department shall verify if the commitments made in the
2 awarding of contracts were maintained or achieved.

3 § 21A09. Aspirational target.

4 The Secretary of General Services shall set an aspirational
5 target for small diverse business participation by the
6 Commonwealth on procurements subject to this chapter, which
7 shall be reviewed and adjusted every five years upon completion
8 of a disparity study.

9 § 21A10. Disparity study.

10 Beginning no later than June 30, 2022, and at least once
11 every five years thereafter, the department shall complete a
12 Statewide disparity study on the availability and use of small
13 diverse businesses in Commonwealth construction and design
14 professional services. The results of the study shall be used to
15 set an aspirational target under section 21A09 (relating to
16 aspirational target). The Secretary of General Services shall
17 transmit notification to the Legislative Reference Bureau for
18 publication in the Pennsylvania Bulletin whether or not the
19 disparity study shows a statistically significant disparity in
20 the utilization of small diverse businesses.

21 § 21A11. Compliance with Federal requirements.

22 If a procurement involves the expenditure of Federal
23 assistance or contract money, the purchasing agency shall comply
24 with Federal law and authorized regulations which are
25 mandatorily applicable and which are not presently reflected in
26 this part.

27 § 21A12. Review and expiration.

28 (a) Review.--Upon completion of the disparity study
29 conducted under section 21A10 (relating to disparity study), the
30 department shall review the results and recommendations of the

1 disparity study and the operation of and evidentiary basis for
2 the program in order to determine whether the Commonwealth has a
3 continuing compelling interest in remedying discrimination
4 against small diverse businesses in its marketplace, and the
5 permissible scope of any narrowly tailored remedies to redress
6 discrimination against small diverse businesses so that the
7 Commonwealth will not function as a passive participant in a
8 discriminatory marketplace.

9 (b) Expiration.--This chapter shall expire January 1, 2028,
10 unless the disparity study completed under section 21A10 shows a
11 statistically significant disparity in the utilization of small
12 diverse businesses. If the disparity study shows a statistically
13 significant disparity, the program shall renew for an additional
14 five years with the review and expiration under this section
15 each occurring every five years thereafter until the disparity
16 study shows no statistically significant disparity in the
17 utilization of small diverse businesses.

18 Section 11. This act shall take effect in 60 days.