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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1140 Session of  
2022

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INTRODUCED BY BARTOLOTTA AND HUGHES, MARCH 9, 2022

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REFERRED TO STATE GOVERNMENT, MARCH 9, 2022

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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 policy and for definitions, providing  
10 for Small and Diverse Business Program and for  
11 nonapplicability, further providing for regulations and for  
12 duties of department, providing for request for full or  
13 partial waiver and good-faith efforts, further providing for  
14 bonding and progress payments and report to General Assembly  
15 and providing for aspirational target, for disparity study  
16 and for program review and expiration; providing for Program  
17 for Construction and Design Professional Services; and making  
18 editorial changes.

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),  
26 the following words and phrases when used in this chapter shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

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

6 \* \* \*

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

11 \* \* \*

12 "Disparity study." A study conducted to determine whether  
13 there is a disparity between the availability and use of veteran  
14 business enterprises in Commonwealth procurement.

15 \* \* \*

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

20 \* \* \*

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

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

29 (2) Associated responsibilities and scopes of work.

30 (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 good-faith efforts to meet the contract-specific goal  
21 as required by the solicitation. In reviewing a bidder's or  
22 offeror's written request for a partial or full waiver of a  
23 contract-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



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

9 Section 3. Title 51 is amended by adding a section to read:  
10 § 9609. Disparity study.

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

17 Section 4. The heading of Chapter 21 and sections 2101 and  
18 2102 of Title 62 are amended to read:

19 CHAPTER 21

20 SMALL AND [DISADVANTAGED] DIVERSE BUSINESSES

21 § 2101. Policy.

22 The policy of this Commonwealth is [to assist small and  
23 disadvantaged businesses in learning how to do business with  
24 Commonwealth agencies. The department shall implement this  
25 policy in accordance with regulations promulgated by the  
26 department.] to provide equitable opportunities in its  
27 procurements to small businesses and small diverse businesses,  
28 both as prime contractors and subcontractors, and to assist  
29 small businesses and small diverse businesses in learning how to  
30 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 "Race- and gender-neutral measures." Methodologies that are  
3 or can be used to assist businesses, notwithstanding the social,  
4 economic, racial or gender composition of the individuals that  
5 own or control the business.

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

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

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 self-certified 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 servicing as 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 small businesses to carry out the  
10 provisions of 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 good-faith efforts to meet the contract-specific  
2 goal as 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 "Race- and gender-neutral measures." Methodologies that are  
3 or can be used to assist businesses, notwithstanding the social,  
4 economic, racial or gender composition of individuals that own  
5 or control the business.

6 "Small business." A business in the United States which is  
7 independently owned and is not dominant in its field of  
8 operation.

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

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

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

14 § 21A07. Bonding and progress payments.

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

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

24 § 21A08. Report to General Assembly.

25 The department shall annually report in writing to the  
26 General Assembly regarding the awarding of contracts and  
27 subcontracts to small businesses and small diverse businesses  
28 during the preceding fiscal year. The report shall include  
29 statistical data from the program, including business  
30 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 disparity study shall  
15 be used to set an aspirational target under section 21A09  
16 (relating to aspirational target). The Secretary of General  
17 Services shall transmit notification to the Legislative  
18 Reference Bureau for publication in the Pennsylvania Bulletin  
19 whether or not the disparity study shows a statistically  
20 significant disparity in the utilization of small diverse  
21 businesses.

22 § 21A11. Compliance with Federal requirements.

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

28 § 21A12. Review and expiration.

29 (a) Review.--Upon completion of the disparity study  
30 conducted under section 21A10 (relating to disparity study), the

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

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

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