

Part I Chapter 21 Small and Diverse Businesses

A. Definitions.

- 1. Small Business.** In order to be considered a small business, a business must meet ALL of the following criteria:
 - a. It must be a United States business.
 - b. It must be independently owned.
 - c. It cannot be dominant in its field of operation.
 - d. It cannot exceed 100 full-time or full-time equivalent employees.
 - e. It must earn less than \$20,000,000 in gross annual revenues (\$25,000,000 in gross annual revenues for those businesses in the information technology sales or service business).
 - f. It must meet criteria established by DGS regulation.
- 2. Diverse Business.** A Diverse Business is a DGS-certified minority-owned business, woman-owned business, service-disabled veteran-owned business or veteran-owned business, or United States Small Business Administration-certified 8(a) small disadvantaged business concern.
- 3. Small Diverse Business.** A Small Diverse Business is a diverse business that also qualifies as a small business.

B. Small Business Procurement Initiative (SBPI). Pursuant to Executive Order 2011-09, the purpose of the Department's Small Business Procurement Initiative (SBPI) is to provide DGS-certified small businesses with opportunities to compete against other DGS-certified small businesses for commonwealth agency and DGS statewide contracts.

- 1.** The goal of the SBPI is to foster opportunities for growth and advancement among DGS-certified small businesses. While the program aims to foster competitive procurement, it does not guarantee every properly certified small business will receive a contract.
- 2.** Participation in the SBPI is race and gender neutral. The SBPI website may contain optional links to assist Small Businesses interested in participating in other contracting programs, but self-certification in the SBPI is a separate and distinct process from the DGS certification process for minority, woman or veteran owned businesses.
- 3.** All commonwealth agencies under the governor's jurisdiction are required to identify and target contracts for DGS' SBPI pursuant to direction provided by DGS. Independent agencies are also encouraged to participate. Contracts to be included in the SBPI will be determined on a case by case basis utilizing the following criteria:

- a. Sufficient number of small businesses in the marketplace qualified to responsibly provide the goods or services required to generate competition.
- b. The small businesses are able to satisfactorily provide the scope of the goods or services required (e.g. distribute goods across the Commonwealth, provide a specific expertise).
- c. Contract value is less than the small business definition for gross annual revenue.
- d. Contract value is not increased by more than X% when compared to current contract. Current contract prices must not be more than one year old. The percentage will vary by procurement and agency budgets. It will be noted in the solicitation.
- e. Contracts for emergency or sole source procurements, regardless of dollar value, are not within the scope of the SBPI program.
- f. An incidental small business contract may be included in the agency's numbers towards meeting its agency goal. An incidental small business contract refers to a contract which was not specifically designated for small business participation, but a DGS-certified small business was able to successfully compete for and win the contract.

Note: Agencies are not limited to using only these factors in identifying contracts suitable for competition by, and award to, small businesses.

- 4. Under the SBPI, a business that satisfactorily completes the self-certification process will be deemed a "Small Business." Only Small Businesses will be eligible to bid on prime contracts issued within this program.
- 5. DGS reserves the right to modify the SBPI as necessary. Amended Guidelines will be posted on the DGS website with the changes highlighted for easy comparison to the prior version.

6. Certification Process.

- a. **Process** – The process for certification is a self-certification process detailed at the link on the DGS SBPI Program website: www.smallbusiness.pa.gov. The SBPI Certification Application will provide a step-by-step questionnaire to be completed by a duly authorized person representing the business.
- b. **Time Period Certification is Valid** – The Self-Certification shall be valid for a period of one (1) calendar year from the day the DGS SBPI certificate is issued.
- c. **Fluctuation of Data within the 1 year period** – The Small Business' gross annual revenue figure may fluctuate within that one (1) calendar year certification period so long as the figure was accurate at the time of the certification.

- d. **Re-certification** – The small business assumes responsibility for re-certifying before the lapse of the one (1) calendar year period. If the certification lapses, the business may not bid on or be awarded any SBPI contracts during the period it does not have an active certification. A DGS-certified business will be notified thirty (30) days prior to the expiration of its certification. A valid DGS SBPI certificate will be required as part of the bid/proposal in order to be deemed a responsive bidder. Any business without a valid certificate as of the bid/proposal due date may be rejected as non-responsive.¹

7. Procurement Process. The procurement processes documented in this Handbook will be utilized for all SBPI procurements, subject to the following exceptions:

- a. For those contracts identified for award to small businesses, agencies shall seek competition only from qualified DGS-certified small businesses and shall award contracts only to qualified DGS-certified small businesses.
- b. Only properly DGS self-certified small businesses will receive a notice of bid opportunities that are part of the SBPI. Notices will be issued through DGS' eMarketplace: <http://www.emarketplace.state.pa.us>.
- c. Any potential bidder who does not have a DGS SBPI certificate as of the bid/proposal due date will not be eligible to bid on opportunities that are part of the SBPI.
- d. Any bid/proposal submitted that does not contain a valid DGS SBPI certificate may be rejected as non-responsive.²
- e. The small business must self perform 60% of the work in house.
- f. DGS reserves the right to adjust the revenue requirements on an individual contract basis. For example, the Department may choose to limit bidders to a specific range of revenue, i.e., under \$1 million.
- g. An SBPI procurement may be canceled and re-issued as a solicitation open to all businesses when after solicitation the issuing agency determines that one of the conditions set forth in Subsections B.3.a.-d. above does not reasonably exist. Such determination shall not be invalidated and the procurement will not be required to be returned to the SBPI program regardless of the results of any such reissuance.

8. Withdrawal from the Program.

- a. A Small Business may withdraw from the Program at any time for any reason.

¹ 01-24-2014: Wording changed from will be rejected.

² 01-24-2014: Wording changed from will be rejected.

- e. Subject to the provisions of the Unsworn Falsifications to Authorities Act (18 P.S. § 4904), anyone providing false information to the Commonwealth of Pennsylvania in connection with obtaining or attempting to obtain certification, re-certification or a contract under the SBPI will be subject to the following:
 - (1) A determination by the Contracting Officer that the business and/or person is not responsible;
 - (2) A determination that a contract entered into is void or voidable under § 1711.2 of the Commonwealth Procurement Code;
 - (3) Liability for any costs incurred by the Commonwealth in investigating potential violations relating to the validity of information submitted during the self-certification process;
 - (4) Suspension and/or debarment under §531 of the Commonwealth Procurement Code;
 - (5) Criminal prosecution for procurement fraud, perjury, or other applicable crimes;
 - (6) An entry in the Commonwealth's Contractor Responsibility Program System; and
 - (7) All other actions permitted by law deemed necessary to protect the Commonwealth's interest and ensure compliance with the laws of the Commonwealth.

11. Monitoring and Reporting System to Measure Effectiveness of Program. Pursuant to Paragraph 2(e) of the Governor's Executive Order, DGS will measure the effectiveness of the Small Business Procurement Initiative by monitoring the following data on a yearly basis:

- a. Increase/Decrease in the number of businesses attempting and/or successfully completing the self-certification process; and
- b. Increase/Decrease in the number of contracts awarded to Small Businesses.
- c. For each individual Small Business:
 - (1) Number and dollar value of contracts awarded and/or completed; and the
 - (2) Increase/decrease in gross annual sales compared to:
 - (a) the prior year; and
 - (b) the original sales figure on the self-certification certificate; and

- (c) comparison of business' activity for sales growth and work orders for similarly categorized firms within the database.

C. Small Diverse Business Program. With RFPs for materials and services, one of the criteria for evaluation of proposals will be small diverse business (SDB) participation. This criterion must be included in all RFPs regardless of the amount of the procurement. The Commonwealth encourages participation in requests for proposals (RFPs) by small diverse businesses (SDBs) as prime contractors. The Commonwealth also encourages all prime contractors to make a significant commitment to use SDBs as subcontractors and suppliers.

1. Evaluation of proposals will be in accordance with the relative weights set forth in the issued solicitation and the formulas at the following webpage: http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_overview/20124.
2. The standard weight for the SDB participation criterion for RFPs is 20% of the total points available (or 200 points in a typical 1000 total point scale).
3. SDB participation submittals are scored by the Department of General Services (Department), Bureau of Small Business Opportunity (BSBO). Each SDB participation submittal will be rated for its approach to enhancing the utilization of SDBs in accordance with the below-listed priority ranking and subject to the following requirements:
 - a. A business submitting a proposal as a prime contractor must perform 60% of the total contract value to receive points for this criterion under any priority ranking.
 - b. To receive credit for an SDB subcontracting commitment, the SDB subcontractor must perform at least fifty percent (50%) of the work subcontracted to it.
 - c. A significant commitment is a minimum of five percent (5%) of the total contract value (or other pre-defined contract cost component), but may be adjusted by the Department for particular procurements based on the type of project and available SDBs.
 - d. A commitment less than five percent (5%) of the total contract value (or other pre-defined contract cost component) is considered nominal and will receive reduced or no additional SDB points depending on the priority ranking.

(1) Priority Rank 1: Proposals submitted by SDBs as prime offerors will receive 150 points. In addition, SDB offerors that have significant subcontracting commitments to additional SDBs may receive up to an additional 50 points (200 points total available). Additional subcontracting commitments to SDBs are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total

percentage SDB subcontracting commitment within this ranking. See formula below.

- (2) **Priority Rank 2:** Proposals submitted by SDBs as prime contractors, with no or nominal subcontracting commitments to additional SDBs, will receive 150 points.
- (3) **Priority Rank 3:** Proposals submitted by non-small diverse businesses as prime contractors, with significant subcontracting commitments to SDBs, will receive up to 100 points. Proposals submitted with nominal subcontracting commitments to SDBs will receive points equal to the percentage level of their total SDB subcontracting commitment. SDB subcontracting commitments are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. See formula below.
- (4) **Priority Rank 4:** Proposals by non-small diverse businesses as prime contractors with no SDB subcontracting commitments shall receive no points under this criterion.

e. To the extent that there are multiple SDB Participation submittals in Priority Rank 1 and/or Priority Rank 3 that offer significant subcontracting commitments to SDBs, the proposal offering the highest total percentage SDB subcontracting commitment shall receive the highest score (or additional points) available in that Priority Rank category and the other proposal(s) in that category shall be scored in proportion to the highest total percentage SDB subcontracting commitment. Proportional scoring is determined by applying the following formula:

$$\frac{\text{SDB \% Being Scored}}{\text{Highest \% SDB Commitment}} \times \frac{\text{Points/Additional}}{\text{Points Available}^*} = \frac{\text{Awarded/Additional}}{\text{SDB Points}}$$

Priority Rank 1 = 50 Additional Points Available
 Priority Rank 3 = 100 Total Points Available

The following chart is for illustrative purposes to show scoring based on a hypothetical situation in which the Commonwealth receives proposals for each Priority Rank:

Priority Rank	PRIME CONTRACTOR STATUS	% SUB CONTRACTING COMMITMENTS TO SDBs	SDB POINTS	Additional Points	Total SDB Points Awarded
1	SDB	40	150	50	200
1	SDB	30	150	37.50	187.50
1	SDB	20	150	25	175
1	SDB	5	150	6.25	156.25
2	SDB	4*	150	0	150
2	SDB	0	150	0	150
3	NON SDB	15	100	0	100

3	NON SDB	6	40	0	40
3	NON SDB	4*	4	0	4
4	NON SDB	0	0	0	0

*These commitments are nominal.

D. Duties of the Department of General Services (DGS).

1. **Assistance Within State Agencies.** Where feasible, DGS shall provide appropriate staff who shall be responsible to the department and who shall serve within designated Commonwealth Agencies to assist small and diverse businesses in this Commonwealth in learning how to do business with Commonwealth Agencies.
2. **Assist Agencies in:**
 - a. Identifying goals for contracting with small businesses.
 - b. Identifying procurement contracts suitable for competition by, and award to, small businesses.
 - c. Identifying qualified small and diverse businesses to solicit for procurement contracts.
 - d. Training agency personnel with respect to contracting with small and diverse businesses.
3. **Special Publications.** DGS shall give special publicity to procurement procedures and issue special publications designed to assist small and diverse businesses in learning how to do business with Commonwealth Agencies.
4. **Source Lists.** DGS shall compile, maintain, and make available source lists of small and diverse businesses for the purpose of encouraging procurement from small and diverse businesses.
5. **Solicitation Mailing Lists.** DGS shall include small and diverse businesses on solicitation mailing lists.
6. **Solicitation of Small and Diverse Businesses.** DGS shall assure that small and diverse businesses are solicited on each procurement for which the businesses may be suited.
7. **Training Programs.** DGS shall develop special training programs to assist small and diverse businesses in learning how to do business with Commonwealth agencies.
8. **Qualifications.** DGS shall develop appropriate standards for qualification for small and diverse businesses, including the number of employees and dollar volume of business.
9. **Goals.** DGS shall establish agency goals for contracting with small businesses.

10. **Guidelines.** DGS shall develop specific guidelines for competition for those commonwealth procurement contracts identified for award to small businesses.
11. **Bonding/Progress Payments.** DGS shall develop policy that will provide for alternative and reduced bonding requirements and make special provisions for progress payments.
12. **Monitoring and Reporting.** DGS shall develop and implement monitoring and reporting systems to measure the effectiveness of all small business procurement initiatives.
13. **Enforcement.** DGS shall implement enforcement measures to verify the eligibility of competitors and to investigate allegations of non-eligibility;
14. **Business Assistance Offices.** DGS shall establish, as it deems appropriate, business assistance offices throughout the Commonwealth to assist and carry out the provisions of *Act 57* relating to small and diverse businesses.
15. **Report to General Assembly.** DGS is required to provide a written report annually (prior to October 1st) to the General Assembly concerning the awarding of contracts to small and diverse businesses during the preceding fiscal year.

E. Duties of Purchasing Agencies.

1. **Bonding.** Notwithstanding other provisions of *Act 57*, 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 and diverse businesses.
 2. **Progress Payments.** A purchasing Agency may make special provisions for progress payments, as it deems reasonably necessary, to encourage procurement from small and diverse businesses.
 3. **Small Business Contracting.**
 - a. Purchasing Agencies shall identify contracts for award to small businesses, pursuant to direction provided by the Department of General Services.
 - b. For those contracts identified for award to small businesses, Purchasing Agencies shall seek competition only from qualified small businesses and shall award contracts only to qualified small businesses.
 - c. Purchasing Agencies shall promote agency goals for small business contracting.
 4. **Reporting.** Purchasing Agencies shall prepare and submit reports to DGS on forms and at intervals specified concerning the agency's small and diverse business contracting activities.
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References:

1. www.smallbusiness.pa.gov
2. <http://www.emarketplace.state.pa.us>
3. http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_overview/20124