

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

[4 PA. CODE CH. 58]

Small Business Self-Certification and Small Diverse Business Verification

The Department of General Services amends Chapter 58, Subchapter D (relating to internal guidelines for Small Business Self-Certification and Small Diverse Business Verification—statement of policy) to read as set forth in Annex A. The definition of “Small Diverse Business” is expanded to include Disability-Owned Business Enterprises (DOBE) and LGBT Business Enterprises (LGBTBE). The United States Business Leadership Network and the National Gay and Lesbian Chamber of Commerce, which respectively serve as the third-party certifying entities for DOBEs and LGBTBEs, are also added. New provisions are offered to elaborate upon the concepts of “independent ownership” and “home-state certified” status to provide clarity to the vending community seeking contracting opportunities with the Commonwealth.

The two-step process to participate in the Small Diverse Business Program remains intact. First, the vendor self-certifies as a Small Business and then submits proof of active certification from an approved third-party entity to get verified as a Small Diverse Business.

Contact Person

Specific questions regarding information provided in this statement of policy may be directed to the Department of General Services, Office of Chief Counsel, 603 North Office Building, 401 North Street, Harrisburg, PA 17120.

Fiscal Impact

This amended statement of policy is fiscal neutral.

Effective Date

This amended statement of policy is effective upon publication in the *Pennsylvania Bulletin*.

CURTIS M. TOPPER,
Secretary

(Editor’s Note: Title 4 of the Pennsylvania Code is amended by amending statements of policy in §§ 58.301—58.304 to read as set forth in Annex A.)

Fiscal Note: 8-28. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART III. DEPARTMENT OF GENERAL SERVICES

Subpart C. CONSTRUCTION AND PROCUREMENT

ARTICLE I. GENERAL

CHAPTER 58. CONTRACT COMPLIANCE

Subchapter D. INTERNAL GUIDELINES FOR SMALL BUSINESS SELF-CERTIFICATION AND SMALL DIVERSE BUSINESS VERIFICATION—STATEMENT OF POLICY

§ 58.301. Policy.

(a) This subchapter establishes the criteria and processes for self-certification of small business status and

verification of Small Diverse Business status. The Commonwealth is committed to promoting the economic growth and success of small businesses. The underlying purpose of this subchapter is to increase small business participation in Commonwealth contracts by extending the Department’s programs into new segments of State contracting and improving the experience for vendors seeking opportunities as prime contractors, subcontractors, suppliers and professional service providers.

(b) In addition to Executive Order No. 2011-09 (4 Pa. Code Chapter 1, Subchapter VV (relating to Small Business Procurement Initiative)), Executive Order No. 2011-10 (4 Pa. Code Chapter 1, Subchapter XX (relating to Veteran-Owned Small Business Procurement Initiative)) and Executive Order No. 2015-11 (4 Pa. Code Chapter 1, Subchapter DDD (relating to Diversity, Inclusion and Small Business Opportunities in Commonwealth Procurement and in Pennsylvania’s Economy)), 62 Pa.C.S. Part I (relating to Commonwealth Procurement Code) authorizes the Department to oversee the management and development of small business participation together with the formulation of general procurement policy under 62 Pa.C.S. § 301 (relating to procurement responsibility).

§ 58.302. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

DOBE—Disability-Owned Business Enterprise—A small for-profit business which is at least 51% owned and controlled by one or more persons with disabilities. In the case of a corporation, at least 51% of the stock shall be owned by one or more persons with disabilities.

Department—The Department of General Services of the Commonwealth.

Disability—Physical or mental impairment, or both, that substantially limits one or more major life activities and can be demonstrated by appropriate documentation from a licensed vocational rehabilitation specialist, an agency that issues disability benefits or a licensed medical professional.

LGBTBE—LGBT Business Enterprise—A small for-profit business which is at least 51% owned and controlled by one or more lesbian, gay, bisexual or transgender (LGBT) persons. In the case of a corporation, at least 51% of the stock must be owned by one or more LGBT persons.

MBE—Minority Business Enterprise—A small for-profit business which is at least 51% owned and controlled by one or more minorities. In the case of a corporation, at least 51% of the stock must be owned by one or more minorities.

Permanent caregiver—The spouse, or an individual who is at least 18 years of age, who is legally designated, in writing, to undertake responsibility for managing the well-being of the service-disabled veteran with permanent and severe disability. See 13 CFR 125.8(c) (relating to what definitions are important in the Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) Program).

SBPI—The Small Business Procurement Initiative.

SDVBE—Service-Disabled Veteran-Owned Small Business Enterprise—A small for-profit business which is at

least 51% owned and controlled by one or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of a veteran). See 13 CFR 125.10(a) (relating to who does SBA consider to control an SDVO SBC).

Secretary—The Secretary of the Department.

Service-disabled veteran—A veteran who possesses either a disability rating letter issued by the United States Department of Veterans Affairs or a disability determination from the United States Department of Defense.

Small business—

(i) A for-profit business in the United States which is independently owned, is not dominant in its field of operation, employs no more than the maximum number of employees established by 62 Pa.C.S. § 2102 (relating to definitions) and earns less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or information technology service business and \$7 million in gross annual revenues for those businesses performing building design services).

(ii) The Department reserves the right to alter revenue limits in the future, and any changes will appear in the Department's guidelines at www.smallbusiness.pa.gov.

Small Diverse Business—For purposes of this subchapter, this designation includes MBEs, WBEs, VBEs and SDVBEs, DOBEs and LGBTBEs.

VBE—Veteran-Owned Small Business Enterprise—A small for-profit business which is at least 51% owned and controlled by one or more veterans. In the case of a corporation, at least 51% of the stock must be owned by one or more veterans.

Veteran—One of the following:

(i) A person who served on active duty in the United States Armed Forces, including the Reserve and National Guard, who was discharged or released from service under honorable conditions.

(ii) A Reservist or member of the National Guard who completed an initial term of enlistment or qualifying period of service.

(iii) A Reservist or member of the National Guard who was disabled in the line of duty during training.

WBE—Woman Business Enterprise—A small for-profit business which is at least 51% owned and controlled by one or more women. In the case of a corporation, at least 51% of the stock must be owned by one or more women.

§ 58.303. Self-certification of eligible small businesses.

(a) *Online self-certification for small businesses.* To participate in the SBPI and the Small Diverse Business Program, small businesses shall self-certify through an online application process outlined at www.dgs.pa.gov. The small business self-certification enables eligible small businesses to compete for prime contracting opportunities with the Commonwealth against other eligible small businesses. Upon successful completion of the self-certification process, the small business will be issued a certificate. The self-certification will remain in effect for 1 year. The small business shall recertify on an annual basis to maintain its status as a self-certified small business.

(b) *Eligibility requirements.*

(1) A small business shall meet the following requirements to participate in the SBPI:

(i) The business must be a for-profit United States business that is independently owned. Factors that determine independent ownership include the date the business was established together with its relationship with other firms in terms of personnel, facilities, equipment, financial support and exclusive dealings.

(ii) The business may not be dominant in its field of operation nor a subsidiary of another business.

(iii) The business may not employ more than 100 full-time equivalent employees.

(iv) The business shall earn less than the amounts designated by the Department, that is, \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or information technology service business and \$7 million in gross annual revenues for those businesses performing building design services).

(2) The Department reserves the right to alter revenue limits. Changes will appear in the Department's guidelines at www.smallbusiness.pa.gov.

(c) *Disclaimer.* The Department's self-certification process, as set forth in this section, is limited to small business status and should not be construed as an endorsement of the small business expertise.

(d) *Program auditing.* The Department reserves the right to audit small business status either randomly or based on allegations of noneligibility. An applicant providing false information to the Commonwealth in connection with self-certification or as part of the bidding process is subject to debarment or suspension, exclusion from the SBPI, a determination that the bidder is not responsible under the Contractor Responsibility Program and criminal prosecution or other legal action.

§ 58.304. Verification of Small Diverse Businesses.

(a) *Prerequisite.* To complete the verification process for consideration as a Small Diverse Business, the business shall, as a prerequisite, complete the self-certification process in § 58.303 (relating to self-certification of eligible small businesses) and shall hold the resultant certificate in support of the verification process in this section.

(b) *Verification of Small Diverse Business status.* The Department will verify MBE, WBE, VBE, SDVBE, DOBE and LGBTBE status through the verification of certification from one or more of the following approved third-party entities:

- (1) The Unified Certification Program.
- (2) The National Minority Supplier Development Council.
- (3) The Women's Business Enterprise National Council.
- (4) The United States Small Business Administration 8(a) Program.
- (5) The United States Department of Veteran Affairs through the www.VetBiz.gov business database.
- (6) The United States Business Leadership Network.
- (7) The National Gay and Lesbian Chamber of Commerce.
- (8) Additional entities as identified, approved and publicly posted by the Department on its web site at www.dgs.pa.gov.

(c) *Documentation.* Applicants shall submit proof of active certifications from approved third parties in accordance with the requirements outlined on the Department's web site. The Department reserves the right to request additional information and conduct further review or auditing as needed.

(d) *Single expiration date.* Regardless of the expiration date of the approved third-party certification, the expiration date of the Department verification as a Small Diverse Business is the same as the SBPI self-certification expiration date. To maintain status as a Small Diverse Business, a firm shall provide an active third-party certification upon successfully recertifying as a small business.

(e) *Pennsylvania home-state certified.* The Department considers a Pennsylvania-based firm that has received a certification from an approved third-party certifying entity to be Pennsylvania home-state certified without regard to the size and revenue limitations on participation in the Small Diverse Business Program.

(f) *Disclaimer.* The Department's verification process, as set forth in this section, is limited to Small Diverse Business status and should not be construed as an endorsement of Small Diverse Business expertise.

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