

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

[4 PA. CODE CH. 58]

Contract Compliance

The Department of General Services (Department), under the authority of Executive Order No. 2015-11 (4 Pa. Code Chapter 1, Subchapter DDD (relating to Advisory Council on Diversity, Inclusion and Small Business Opportunities)); 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. 2004-06 As Amended (4 Pa. Code Chapter 1, Subchapter LL (relating to Minority and Women Business Enterprise)), amends 4 Pa. Code 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.

These changes extend what was formerly a 1-year Small Business self-certification time frame to 2 years, which is consistent with the Department's current practice. Because the expiration date of the Department's verification of a business as a Small Diverse Business is tied to the Small Business self-certification expiration date per § 58.304(d) (relating to verification of Small Diverse Businesses) of the statement of policy, this change also extends the verification date for Small Diverse Businesses to 2 years.

This extension of time eases an administrative burden on Small Businesses and Small Diverse Businesses by lengthening the total time in which a Small Business self-certification or Small Diverse Business verification is valid so that they will only need to renew their Small Business self-certification or Small Diverse Business verification every 2 years. These changes are consistent with the policy of the Commonwealth to encourage greater participation from small businesses and small diverse businesses.

These changes also provide additional guidance regarding the requirement that a business be "independently owned." The added language is intended to prevent a business from creating additional entities in order to circumvent the size or revenue thresholds, or both. It adds additional factors for consideration as to whether a business is "independently owned" including an examination of whether the business controls its own operations and management (as opposed to being controlled by another entity) and considers whether resources are shared by other firms. In addition, it provides that a business that is a subsidiary of another business or is owned by another business, trust, or an employee stock ownership plan is not independently owned and therefore does not meet the requirements of a Small Business or Small Diverse Business, with a carve out for those businesses that are subsidiaries only because of tax, capitalization or other purposes consistent with industry practice.

Finally, these changes also remove the provision regarding Pennsylvania home-state certification which has been superseded through the adoption of Chapter 22 of

the Procurement Code (62 Pa.C.S. §§ 2201-2202 (relating to diverse and disadvantaged businesses)) which includes a process to verify a diverse or disadvantaged business as Pennsylvania home-state certified for the purpose of other state or National disadvantaged business programs.

Fiscal Impact

This statement of policy is fiscal neutral.

Paperwork Requirements

This statement of policy will not result in an increase in paperwork for any individuals or entities.

Effective Date

This amended statement of policy is effective immediately.

Contact Person

Specific questions regarding information in this statement of policy may be directed to Mary W. Fox, Department of General Services, Office of Chief Counsel, 603 North Office Building, 401 North Street, Harrisburg, PA 17120, (717) 787-6789.

CURTIS M. TOPPER,
Secretary

Fiscal Note: 8-30. 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

§ 58.303. 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] **2 years**. The small business shall recertify [on an annual basis] **every 2 years** 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 **operational and managerial control**, personnel, facilities, equipment, financial support [and], exclusive dealings, **and the extent to**

which resources are shared with other firms. A business that is a subsidiary of another business or is owned principally by another business entity or by a trust (including an employee stock ownership plan [ESOP]) does not meet this requirement. However, if a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, in turn owns and controls an operating subsidiary, the subsidiary may be considered independently owned if it otherwise meets all small business eligibility requirements. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(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.

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§ 58.304. Verification of Small Diverse Businesses.

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(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)] (e) *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.

[Pa.B. Doc. No. 19-521. Filed for public inspection April 12, 2019, 9:00 a.m.]