

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Agriculture

The Executive Board approved a reorganization of the Department of Agriculture effective February 28, 2024.

The organization chart at 54 Pa.B. 1335 (March 16, 2024) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 24-344. Filed for public inspection March 15, 2024, 9:00 a.m.]

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of State

The Executive Board approved a reorganization of the Department of State effective February 28, 2024.

The organization chart at 54 Pa.B. 1337 (March 16, 2024) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 24-346. Filed for public inspection March 15, 2024, 9:00 a.m.]

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Community and Economic Development

The Executive Board approved a reorganization of the Department of Community and Economic Development effective February 28, 2024.

The organization chart at 54 Pa.B. 1336 (March 16, 2024) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 24-345. Filed for public inspection March 15, 2024, 9:00 a.m.]

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Office of Administration

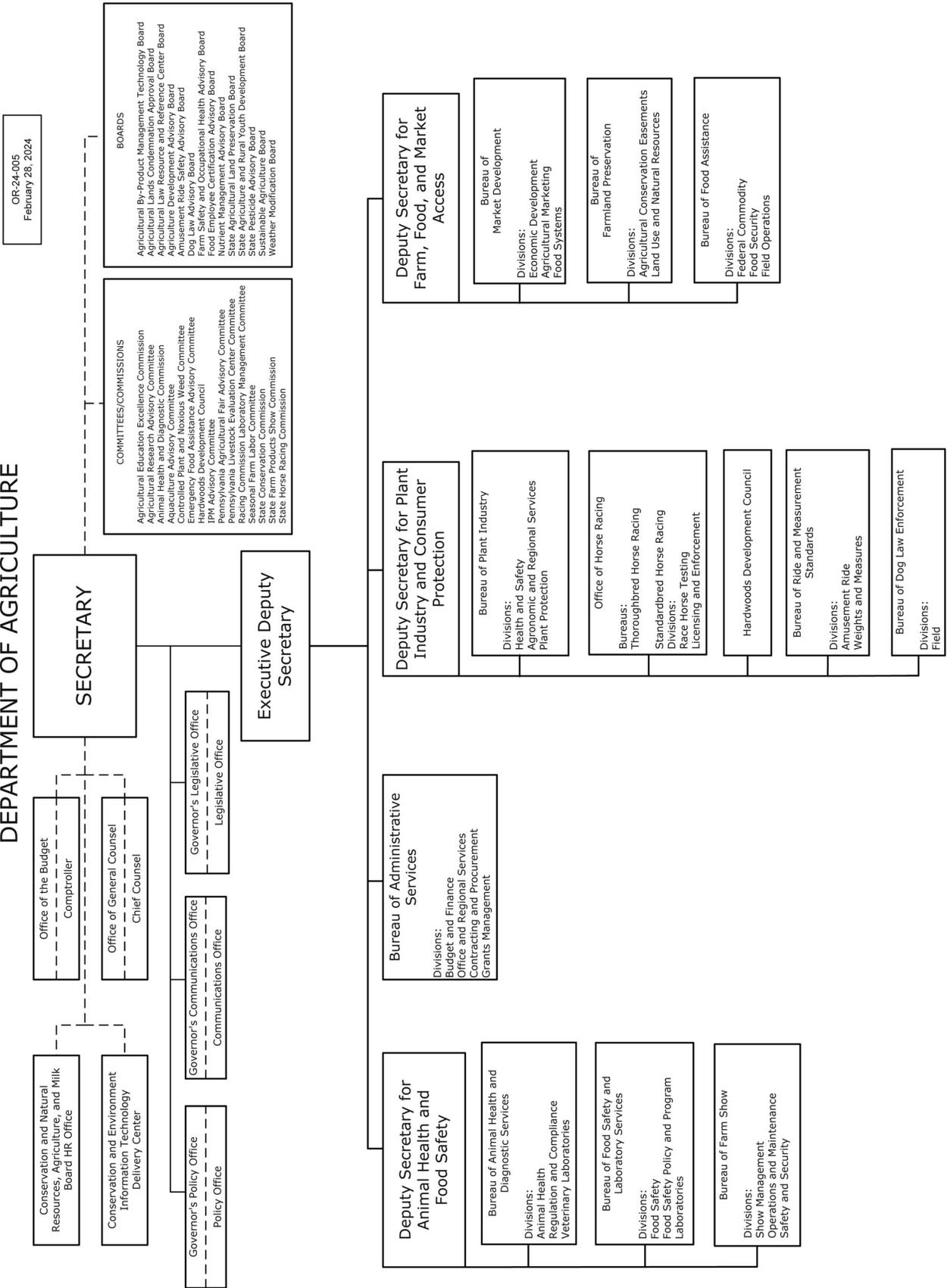
The Executive Board approved a reorganization of the Office of Administration effective February 28, 2024.

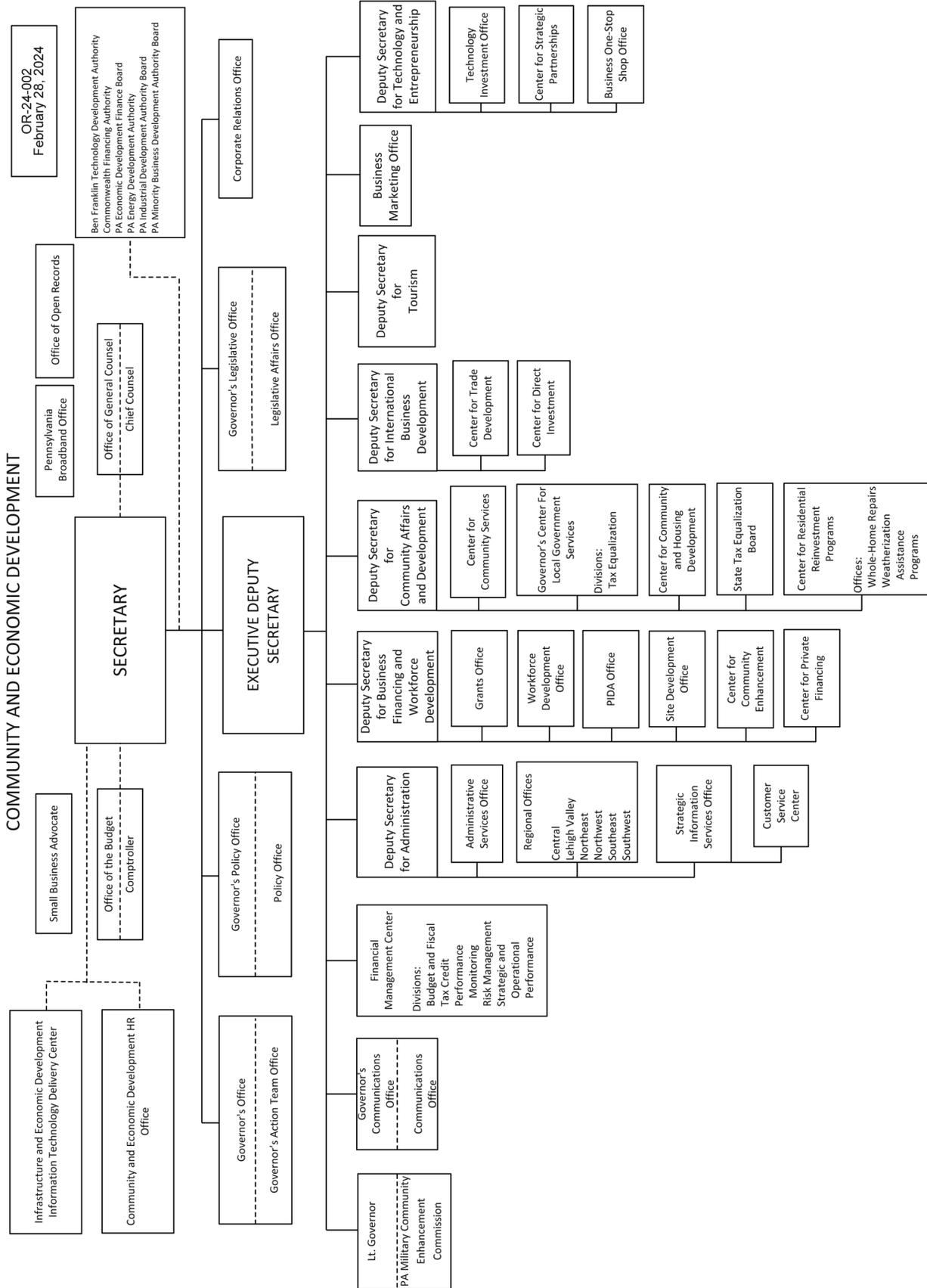
The organization chart at 54 Pa.B. 1338 (March 16, 2024) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 24-347. Filed for public inspection March 15, 2024, 9:00 a.m.]

DEPARTMENT OF AGRICULTURE





OR-24-003
February 28, 2024

DEPARTMENT OF STATE

SECRETARY OF THE COMMONWEALTH

- Office of General Counsel
- Office of Chief Counsel Hearing Examiners
- Office of the Budget Comptroller
- Employment, Banking and Revenue Information Technology Delivery Center
- State HR Office

- Governor's Policy Office Office of Policy
- Governor's Communications Office Office of Communications and Press
- Governor's Legislative Office Office of Legislative Affairs

Executive Deputy Secretary

Deputy Secretary for Elections and Commissions

Bureau of Election Security and Technology
Divisions:
Statewide Uniform Registry of Electors (SURE)
Voting Technology and Security

Bureau of Elections and Notaries
Divisions:
Notaries and Certifications
Elections and Voter Registration

Bureau of Campaign Finance and Civic Engagement
Divisions:
Campaign Finance and Lobbying
Disclosure

Bureau of Finance and Procurement
Divisions:
Fiscal Management
Procurement

Bureau of Enforcement and Investigation
Regional Offices:
Harrisburg
Philadelphia
Pittsburgh
Scranton

Bureau of Professional and Occupational Affairs
Divisions:
Board Support*
Licensing, Operations, Services, and Support*

Bureau of Corporations and Charitable Organizations
Divisions:
Corporate Filings, UCC, and Certifications
Operations and Support

Pennsylvania State Athletic Commission
Regional Offices:
Philadelphia
Pittsburgh
Scranton

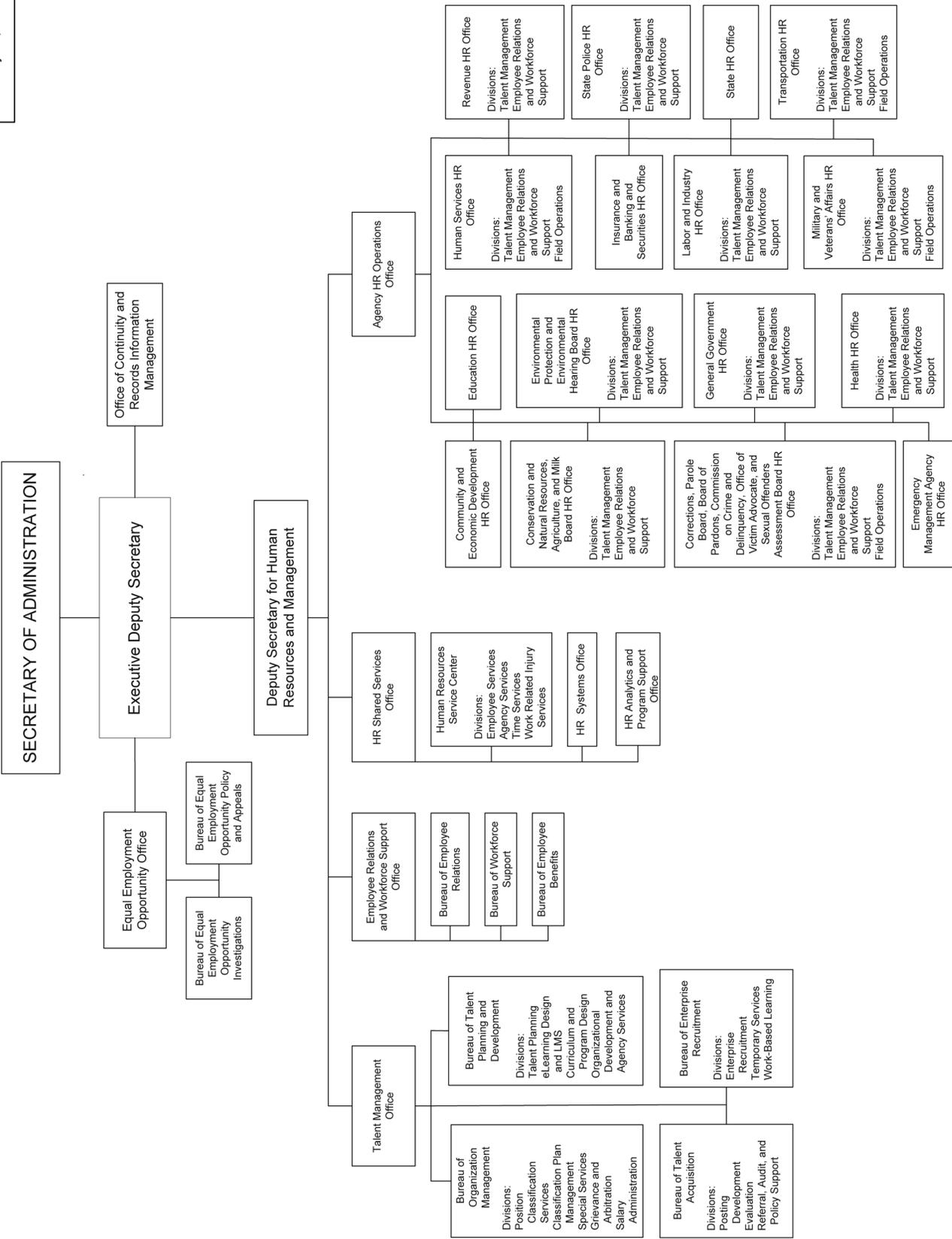
Medical Advisory Board

Advisory Committee

Deputy Secretary for Regulatory Programs

- *Divisions of Board Support and Licensing, Operations, Services and Support provide direct administrative support to the following Professional Licensing Boards and Commissions.
- State Board of Accountancy
 - State Architects Licensure Board
 - State Board of Architectural Examiners
 - State Board of Bar Examiners
 - State Board of Crane Operators
 - State Board of Chiropractic
 - State Board of Cosmetology
 - State Board of Dentistry
 - State Board of Funeral Directors
 - State Board of Landscape Architects
 - State Board of Medicine
 - State Board of Veterinary Medicine
 - State Board of Physical Therapy
 - State Board of Podiatry
 - State Board of Massage Therapy
 - Navigation Commission for the Delaware River and its Navigable Tributaries
 - State Board of Nursing
 - State Board of Examiners of Nursing Home Administrators
 - State Board of Occupational Therapy, Education and Licensure
 - State Board of Optometry
 - State Board of Osteopathic Medicine
 - State Board of Pharmacy
 - State Board of Physical Therapy
 - State Board of Podiatry
 - State Registration Board for Professional Engineers, Land Surveyors and Geologists
 - State Board of Psychology
 - State Board of Social Workers
 - State Board of Social Workers, Marriage and Family Therapists, and Professional Counselors
 - State Board of Examiners in Speech-Language and Hearing
 - State Board of Veterinary Medicine
 - State Board of Certified Real Estate Appraisers

GOVERNOR'S OFFICE OF ADMINISTRATION



Title 4—ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

[4 PA. CODE CHS. 58 AND 68]

Small Business, Small Diverse Business and Veteran Business Enterprise Programs—Statement of Policy

The Department of General Services amends Chapters 58 and 68 (relating to contract compliance) to read as set forth in Annex A. This statement of policy deletes Chapter 58, Subchapter D and adds Subchapter E (relating to small business, small diverse business and veteran business enterprise programs—statement of policy) and amends Chapter 68 by deleting § 68.102.

This statement of policy is issued pursuant to Executive Order 2023-18, which was published at 53 Pa.B. 6034 (September 30, 2023) and codified in 4 Pa. Code §§ 1.921—1.927 (relating to improving State government contracting opportunities for Commonwealth small businesses and small and diverse businesses), and 62 Pa.C.S. §§ 301(a) and 311 (relating to procurement responsibility; and powers and duties).

Background and Purpose

As background, Governor Josh Shapiro, through Executive Order 2023-18, 4 Pa. Code §§ 1.921—1.927, improving State government contracting opportunities for Pennsylvania's small businesses and small diverse businesses, recognized that the majority of economic growth stems from the growth of small businesses (SB) and that the Commonwealth's economic development strategy must involve solutions that specifically address the needs of SBs, which include small diverse businesses (SDB) and veteran-owned businesses. As a result of the first-ever disparity study in 2017 showing a disparity between the availability of SDBs and veteran business enterprises (VBE) and the use of those SDBs and VBEs in Commonwealth procurement contracts, a goal-setting program was implemented to ensure the proper utilization of SDBs and VBEs in Commonwealth contracting.

The purpose of this statement of policy is to prevent discrimination against and ensure the proper utilization of self-certified SBs and verified SDBs and VBEs in State contracting, establish guidelines for the goal-setting system and establish guidelines for the Small Business Reserve (SBR) Program. This statement of policy requires the goal-setting program to set narrowly tailored, contract-specific goals for Commonwealth procurements. The SBR Program is a race-neutral and gender-neutral measure that is used to set aside procurements for award only to SBs whenever applicable and appropriate.

This statement of policy also recognizes that small business contractors should be paid on time and consistently. As a result, the Department has developed a 10-day prompt pay policy for nonconstruction contracts for goods and services that require contractors to pay small business subcontractors within 10 days of completed, acceptable deliverables and after receipt of payment from the Commonwealth.

Fiscal Impact and Paperwork Requirements

This statement of policy does not have a fiscal impact and imposes no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Contact

Specific questions relating to information provided in this statement of policy may be directed to the Director, Bureau of Diversity, Inclusion and Small Business Opportunities, Department of General Services, North Office Building, 401 North Street, Room 611, Harrisburg, PA 17120.

Effective Date

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

REGINALD B. McNEIL, II,
Secretary

(*Editor's Note:* Title 4 of the *Pennsylvania Code* is amended by deleting the statements of policy in §§ 58.301—58.308 and 68.102 and adding the statement of policy in Chapter 58, Subchapter E, §§ 58.401—58.419.)

Fiscal Note: 8-01. No fiscal impact; 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. [Reserved]

Sec.
58.301—58.308. [Reserved].

Subchapter E. SMALL BUSINESS, SMALL DIVERSE BUSINESS AND VETERAN BUSINESS ENTERPRISE PROGRAMS—STATEMENT OF POLICY

Sec.	Policy.
58.401.	Definitions.
58.402.	Self-certification of eligible small businesses.
58.403.	Verification of eligible small diverse businesses or veteran business enterprises.
58.404.	Voluntary withdrawal of small business self-certification or small diverse business or veteran business enterprise verification.
58.405.	Denial or decertification of small business, small diverse business or veteran business enterprise status.
58.406.	Review of denial or decertification of small business, small diverse business or veteran business enterprise status.
58.407.	Hearing.
58.408.	Agency liaison.
58.409.	Database of self-certified small businesses and verified small diverse businesses and veteran business enterprises.
58.410.	Small business reserve program.
58.411.	Small diverse business program.
58.412.	Construction and design professional services program.
58.413.	Veteran business enterprise program.
58.414.	Good faith efforts waiver.
58.415.	Amendment of commitments post-award.
58.416.	Compliance with SDB and VBE commitments.
58.417.	Ten-day prompt pay policy.
58.418.	Program review and expiration.
58.419.	

§ 58.401. Policy.

This subchapter establishes the criteria and processes for self-certification of small businesses and verification of small diverse business and veteran business enterprise status as well as the small business reserve, small diverse business and veteran business enterprise programs. 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.

§ 58.402. **Definitions.**

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

Agency liaison—An agency employee reporting directly to a Secretary, Deputy Secretary, agency head or equivalent responsible for assisting the Department on issues related to the SB programs.

Aspirational target—An annual target set by the Secretary for SB, SDB and VBE participation in Commonwealth contracting opportunities which shall be posted on the Department's web site.

BDISBO—The Department of General Services' Bureau of Diversity, Inclusion and Small Business Opportunities.

Bid or proposal—The documents and information submitted in response to a solicitation, including but not limited to a bid, proposal, quote or application.

Bidder, offeror or applicant—The person submitting documents and information in response to a solicitation, including but not limited to a bidder, offeror or applicant.

Commercially useful function—The performance of a distinct element of work required for the contract, with the requisite skill and expertise.

Contract-specific goal—A goal established by the Department in collaboration with the purchasing agency for use of SDBs or VBEs on a specific procurement.

Contractor—A person that has entered into a contract with a Commonwealth agency. This term includes but is not limited to a design professional.

DOBE—disability-owned business enterprise—An SB 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 activity and can be demonstrated by appropriate documentation from a licensed vocational rehabilitation specialist, an agency that issues disability benefits or a licensed medical professional.

Disparity study—A study completed by a third-party vendor to determine whether there is a disparity between the availability of SDBs and VBEs and the Commonwealth's utilization of SDBs and VBEs.

Good faith efforts waiver request—Documentation submitted by a bidder or offeror requesting a full or partial waiver of the SDB or VBE contract-specific goals demonstrating the good faith efforts taken by the bidder or offeror to achieve the contract-specific goals.

LGBTQBE—LGBTQ business enterprise—An SB which is at least 51% owned and controlled by one or more lesbian, gay, bisexual, transgender or queer (LGBTQ) persons. In the case of a corporation, at least 51% of the stock must be owned by one or more LGBTQ person.

Letter of Commitment—A document signed by both a bidder or offeror and SDB or VBE subcontractor, supplier or manufacturer acknowledging an understanding that the bidder or offeror, if awarded the contract, will utilize the SDB or VBE in the percentage and for the work set forth within the document. Unless otherwise specified

within the solicitation, a Letter of Commitment must identify, at a minimum, all of the following:

(i) The fixed numerical percentage of the commitment made to the SDB or VBE subcontractor, manufacturer or supplier based upon the Commonwealth spend or the total dollar value of the contract revenue received by the prime; or if specified by the solicitation, the total dollar value of the commitment made to the SDB or VBE subcontractor, manufacturer or supplier.

(ii) A description of the services or supplies the SDB or VBE will provide that are consistent with services or supplies the SDB or VBE is certified to provide.

(iii) The time frame during the original contract duration or the initial contract term and any extensions, options and renewals the SDB or VBE will perform or provide the services or supplies.

(iv) The name and telephone number of the bidder or offeror's point of contact for the SDB or VBE participation.

(v) The name and telephone number of the primary contact person for the SDB or VBE.

MBE—minority business enterprise—An SB 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.

Manufacturer—A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications.

Nonstocking supplier—A firm that does not carry inventory but orders materials from a manufacturer, manufacturer's representative or a stocking supplier. For a nonstocking supplier to receive credit, the nonstocking supplier shall perform a useful business function by engaging in meaningful work (that is, negotiating price, determining quality and quantity, ordering materials and paying for the materials). Industry practices and other relevant factors will be considered.

Participation submittal—A submittal that must be submitted by bidders or offerors for procurements with a contract-specific goal indicating whether the bidder or offeror intends to meet the contract-specific goal or is requesting a good faith efforts waiver, in whole or in part, of the contract-specific goal. A procurement may require an SDB participation submittal or a VBE participation submittal, or both.

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.

Race-neutral and gender-neutral measures—Methodologies that are or can be used to assist all businesses, notwithstanding the social, economic, racial or gender composition of those who own or control the business. Race-neutral and gender-neutral measures include but are not limited to the following:

(i) Outreach efforts to advise SBs of contracting opportunities within the Commonwealth in accordance with subdivisions (ii)—(iv) of the definition of race-neutral and gender-neutral measures.

(ii) Agencies periodically conducting meetings with SBs, as appropriate, to advise of upcoming agency pro-

curement opportunities, which shall be coordinated with BDISBO and other agencies that make similar procurements.

(iii) BDISBO periodically convening seminars that include SBs and appropriate personnel of the various agencies, which shall include topics of interest to prospective or current SBs such as Commonwealth procurement procedures, SB self-certification and SDB and VBE verification, anticipated Commonwealth procurements and technical assistance to SBs relating to the procurement process.

(iv) Technical assistance and business development programs available to SBs.

(v) Contract-specific goals for use of VBEs.

(vi) SBR procurements, which shall be made in accordance with § 58.411 (relating to small business reserve program) and do not require contract-specific goals.

(vii) An evaluation of each potential contract to determine and, if practicable, abate any impediments to full and open competition with an emphasis on removing impediments that affect SDBs.

SB—small business—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 the definition of small business in 62 Pa.C.S. § 2102 (relating to definitions) and earns less than the revenue limit posted on www.dgs.pa.gov. The Secretary shall utilize the United States Small Business Administration's methodology to inform the Commonwealth's definition of a small business as it relates to the highest revenue limit, as established in § 1.922(b) (relating to responsibilities). The Department reserves the right to alter the revenue thresholds which can be viewed at www.dgs.pa.gov.

SBR—small business reserve—A race-neutral and gender-neutral measure program that enables SBs to compete among other SBs for designated or reserved government contract opportunities as prime contractors.

SDB—small diverse business—This designation includes MBEs, WBEs, DOBEs, LGBTQBEs, SDVBEs and other disadvantaged businesses that have been so certified by one of the Department's approved third-party certifying entities.

SDB program—small diverse business program—The Commonwealth's Small Diverse Business Program that enables small diverse businesses to participate in Commonwealth procurement opportunities.

SDVBE—service-disabled veteran business enterprise or total service-disabled veteran-owned—An SB 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.

Secretary—The Secretary of the Department.

Stocking supplier—A firm that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.

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 SDB or VBE participation for a contract, identifies the associated

responsibilities and scope of work, and identifies the dollar value or percentages, or both, of the work to be performed.

VBE—veteran business enterprise—This designation includes veteran-owned small business enterprises and service-disabled veteran-owned small business enterprises.

VBE program—The Commonwealth's veteran business enterprise program.

Veteran-owned small business enterprise—An SB 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) An individual who served in the United States Armed Forces, including a reserve component or the National Guard, and who was discharged or released from service under conditions other than dishonorable.

(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-owned business enterprise—An SB 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.

§ 58.403. Self-certification of eligible small businesses.

(a) **Online self-certification for SBs.** To participate in the SBR and the SDB or VBE programs, SBs shall self-certify through an online application process outlined at www.dgs.pa.gov. The SB self-certification enables eligible SBs to compete for prime contracting opportunities with the Commonwealth against other eligible SBs. Upon successful completion of the self-certification process, the SB will be issued a certificate. The self-certification will remain in effect for 2 years. The SB shall recertify every 2 years to maintain its status as a self-certified SB.

(b) **Eligibility requirements.** An SB shall meet the following requirements to self-certify as an SB with the Department:

(1) 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, 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 SB 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.

(2) The business may not be dominant in its field of operation.

(3) The business may not employ more than the maximum number of employees established by the definition of small business at 62 Pa.C.S. § 2102 (relating to definitions).

(4) The business shall earn less than the amounts designated by the Department.

(5) The Department reserves the right to adjust revenue limits in accordance with § 1.922(b) (relating to responsibilities). Changes will appear in the Department's guidelines at www.dgs.pa.gov.

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

(d) *Program auditing.* The Department reserves the right to audit SB status either randomly or based on allegations of non-eligibility. In addition to the decertification process set forth in this subsection, and subject to penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), anyone providing false information to the Commonwealth may be subject to any or all of the following:

- (1) Debarment or suspension.
- (2) Revocation of any SB, SDB or VBE status.
- (3) Exclusion from the SBR.
- (4) A determination that the bidder is not responsible under the Contractor Responsibility Program.

(5) A determination that a contract entered into is void or voidable under 62 Pa.C.S. § 1711.2 (relating to solicitations or awards contrary to law).

(6) Liability for any costs incurred by the Commonwealth in investigating potential violations relating to the validity of information submitted during the SB self-certification process.

(7) Criminal prosecution or other legal action permitted by law and deemed necessary to protect the Commonwealth's interest and ensure compliance with the laws of the Commonwealth.

§ 58.404. Verification of eligible small diverse businesses or veteran business enterprises.

(a) *Prerequisite.* To complete the verification process for consideration as an SDB or VBE, the business shall, as a prerequisite, complete the self-certification process in § 58.403 (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 SDB status.* The Department will verify MBE, WBE, DOBE, LGBTQBE, SDVBE or disadvantaged business 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) Disability:IN.

(5) The National LGBT Chamber of Commerce.

(6) The United States Small Business Administration 8(a) Program.

(7) The United States Small Business Administration Veteran Small Business Certification

(8) Additional entities as identified, approved and publicly posted by the Department on its web site at www.dgs.pa.gov.

(c) *Verification of VBE status.* The Department will verify VBE status through the verification of certification from one or more of the following approved third-party entities:

(1) The United States Small Business Administration Veteran Small Business Certification.

(2) Additional entities as identified, approved and publicly posted by the Department on its web site at www.dgs.pa.gov.

(d) *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.

(e) *Single expiration date.* Regardless of the expiration date of the approved third-party certification, the expiration date of the Department verification as an SDB or VBE is the same as the SB self-certification expiration date. To maintain status as an SDB or VBE, a firm shall provide an active third-party certification upon successfully recertifying as an SB.

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

§ 58.405. Voluntary withdrawal of small business self-certification or small diverse business or veteran business enterprise verification.

(a) An SB, SDB or VBE may voluntarily withdraw its self-certification or verification at any time for any reason.

(b) The date of withdrawal is the date on which the Department receives written notice from the SB, SDB or VBE of its intent to withdraw.

(c) As of the date of withdrawal:

(1) The Department will not send notifications to the SB, SDB or VBE regarding SBR procurements nor the SDB or VBE programs.

(2) The SB, SDB or VBE may not be considered an active, verified SB, SDB or VBE and may not bid on an active SBR procurement.

(d) An SB, SDB or VBE may return to self-certify or verify, or both, its status at any time so long as it still meets the eligibility requirements associated thereupon.

(e) If the SDB or VBE was included on a prime contractor's utilization schedule prior to its voluntary withdrawal or expiration of its SDB or VBE status, the prime contractor will still receive credit for utilizing the former SDB or VBE toward its SDB or VBE contract-specific goal as applicable.

§ 58.406. Denial or decertification of small business, small diverse business or veteran business enterprise status.

(a) The Department will deny or decertify businesses from certified SB status or verified SDB or VBE status, or all of those statuses, for any the following reasons:

(1) The business received certification by knowingly submitting false and misleading information.

(2) The business knowingly allowed the misuse of its certification status.

(3) The business failed to cooperate with or respond to a request for information from the Department or another Commonwealth agency or official.

(4) The alternate certifying entity decertifies the business.

(5) The Department issues a written notice of default or notice of termination, or both, under the terms and conditions of a contract issued as the result of an SBR procurement.

(6) For any other good cause as determined by the Department.

(b) The Department reserves the right to consider other causes that impact business status to be sufficient to warrant decertification.

(c) By certified mail, the Department will send the business a Notice of Proposal to Deny or Decertify that includes all of the following:

(1) Specifies the reasons for the proposed denial or decertification in terms that will place the business on notice of the conduct or transactions upon which the notice is based.

(2) States the grounds relied upon under subsection (a) for proposing denial or decertification.

(3) Advises that, within 20 calendar days after receipt of the Notice of Proposal to Deny or Decertify, the business may submit in person, in writing, or through a representative, information in opposition to the proposed decertification, including information that raises a genuine dispute over the material facts.

(4) States the potential effect of the proposed decertification.

(5) Advises that the Secretary of the Department or a designee will make this decision.

(d) If the business is in fact decertified, the decision letter will also inform the decertified business of its rights of review.

(e) If the actions of the business are the subject of an indictment, information or other criminal charge, the Department may temporarily suspend the certification until the determination is made to decertify or reinstate. A review of this temporary suspension may be made by the Secretary or a designee.

§ 58.407. Review of denial or decertification of small business, small diverse business or veteran business enterprise status.

(a) The request for review of denial or decertification shall be made in writing to the Secretary and state the grounds upon which the request is based. Relevant documents, if available, should also be submitted with the request for review.

(b) The Secretary or a designee may reject requests that are untimely, received more than 30 calendar days

after the date of the denial/decertification letter, or insufficient and do not raise issues alleging that the denial/decertification is in error.

(c) The Secretary or a designee shall consider the request for review and any response or reply and may request and review additional documents or information they deem necessary to render a decision and may, at their sole discretion, conduct a hearing consistent with § 58.408 (relating to hearing).

(d) Upon completing an evaluation of the request for review of denial/decertification, the Secretary or a designee shall issue a written determination stating the reasons for the decision. The determination shall be issued within 60 days of the receipt of the request for review of denial or decertification unless extended by consent of the Secretary or a designee and the business that filed the request. The determination shall be the final order of the Department.

§ 58.408. Hearing.

(a) *Scope.* The Secretary may delegate to a designee the responsibility to conduct a fact-finding hearing and to prepare a report and recommendation. Fact-finding hearings will be held only when the business requests a review of its denial or decertification under § 58.407 (relating to review of denial or decertification of small business, small diverse business or veteran business enterprise status).

(b) *Purpose.* The fact-finding hearing will be held to determine the operative facts forming the basis for the denial or decertification action as delineated in the notice of denial/decertification provided to the business. The hearing will also determine the sufficiency of the grounds for the review. The fact-finding hearing affords the business an additional opportunity to demonstrate that the facts upon which the denial or decertification are based are insufficient, incorrect or otherwise do not warrant denial or decertification. The business may present information and arguments in accordance with the grounds stated in the request for review indicating why it should not be denied or decertified. Other information may be used by the designee to make a recommendation to the Secretary of the Department.

(c) *Conduct of the hearing.* If a hearing is warranted, it will be conducted under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to practice and procedure of Commonwealth agencies; and judicial review of Commonwealth agency action). If the Department is the moving party, it has the burden of proof.

§ 58.409. Agency liaison.

The head of each agency shall designate an employee to be an agency liaison in the administration of that agency's SB programs. The agency liaison shall be a high-level employee reporting directly to a Secretary or agency head who is knowledgeable of agency procurement activity and has the authority to collect, analyze and report agency spend data. The agency liaison is responsible for coordinating agency outreach efforts to the SB community, reviewing agency contracting procedures to ensure compliance with this policy, assisting in the resolution of contracting issues, and submitting required SB program reports or information.

§ 58.410. Database of self-certified small businesses and verified small diverse businesses and veteran business enterprises.

(a) The Department shall publish and maintain in an electronic format available to the general public an online, searchable database listing certified SBs and

verified SDBs and VBEs. The online, searchable database shall specify the type of supplies, services, construction or professional services primarily provided by the SB, SDB or VBE and the effective dates and expiration dates of self-certification for each SB and verification for each SDB and VBE. It shall include the address, phone number and contact person for the SB, SDB or VBE. It shall also include all of the following:

(1) Whether the SDB is an MBE, WBE, DOBE, LGBTBE or SDVBE.

(2) Whether the VBE is a veteran-owned small business enterprise or service-disabled veteran-owned small business enterprise.

(b) The online, searchable database may include other information the Department considers necessary or appropriate to encourage participation in the procurement process by SBs, SDBs and VBEs.

(c) The online, searchable database shall be updated at least monthly.

§ 58.411. Small business reserve program.

(a) *General.*

(1) The purpose of the Department's SBR program is to increase opportunities for SBs to compete for award of Commonwealth contracts as prime contractors. While the SBR program aims to foster competitive procurements, it does not guarantee every properly certified SB will receive a contract.

(2) Under the SBR program, a business that satisfactorily completes the Department's self-certification process will be deemed a "small business." Only SBs will be eligible to bid or propose as prime contractors for procurements issued under this program. A business is not eligible for an award of a contract issued as a result of an SBR procurement if the Department terminated their SB self-certification after submittal of the bid or proposal but prior to contract award. If the Department terminates an SB's self-certification during the initial contract term, the agency is not required to cancel the contract; however, the agency shall not exercise any contract renewals or options.

(3) Certification and participation in the Department's SBR program is race and gender neutral. However, because SDBs and VBEs must meet the requirements for self-certification as an SB, they will also be eligible to participate in the SBR program. Therefore, for purposes of the SBR program, all references to "small business" shall also include SDBs and VBEs.

(4) The Department reserves the right to issue guidelines as necessary with additional details on the operation of the SBR program, which shall be posted on the Department's web site.

(b) *Eligibility for SBR procurements and exclusions.*

(1) Prior to considering a procurement for the SBR program, agencies must determine whether the goods or services should be procured under 62 Pa.C.S. § 520 (relating to supplies manufactured and services performed by persons with disabilities).

(2) Agencies shall determine whether to include a procurement in the SBR program on a contract-by-contract basis utilizing all of the following criteria:

(i) A minimum of three SBs must exist in the appropriate geographical area that are qualified to responsibly provide the goods or services required to generate competition.

(ii) The SBs must be able to satisfactorily provide the scope of the supplies or services required (that is, distribute goods across this Commonwealth, provide a specific expertise).

(iii) The contract value for the initial contract term must be less than the SB threshold for gross annual revenue.

(iv) Any other factors that an agency deems relevant in determining whether a procurement is suitable for competition by, and award to, SBs.

(3) Agencies shall consider the practical severability of all contracts and may not bundle contracts for the purpose of precluding or limiting inclusion in the SBR program.

(4) Independent agencies shall utilize the criteria in this subsection to determine whether a procurement for supplies that has been delegated by the Department shall be included in the SBR program.

(5) Agencies shall document in writing their determination as to whether a procurement shall be included in the SBR program and shall maintain a copy of the written determination in the official contract file.

(6) Contracts for small, no-bid, emergency or sole-source procurements—regardless of dollar value—are exempt from the requirements of the SBR program. However, agencies are encouraged to utilize SBs whenever possible for small, no-bid, emergency and sole-source procurements.

(c) *Procurement processes.*

(1) Agencies shall utilize the procurement processes documented in the Procurement Handbook found at www.dgs.pa.gov for all SBR procurements, subject to all of the following:

(i) For SBR procurements, agencies shall only seek competition from and shall only award contracts to those businesses possessing a valid Department-issued SB certification as of the bid or proposal due date and time, unless otherwise set forth in the procurement.

(ii) Notices of SBR procurements shall be issued through the Department's publicly accessible Internet web site consistent with 62 Pa.C.S. § 106.1(b) (relating to public access to procurement records). The public notice of an invitation for bids or requests for proposals shall indicate that the procurement is being issued as part of the SBR program.

(iii) Agencies shall reject as nonresponsive any bid or proposal submitted by an entity that is not a Department self-certified SB as of the bid or proposal due date and time, unless otherwise set forth in the procurement.

(2) The selected SB must self-perform at least 51% of the work.

(3) An SBR procurement may be canceled and reissued as a procurement open to all businesses when, after issuing the SBR-designated solicitation, the issuing agency determines that one of the conditions set forth in subsection (b)(2) does not reasonably exist. The decision to cancel and reissue a procurement shall be made in accordance with 62 Pa.C.S. § 521 (relating to cancellation of invitations for bids or requests for proposals) and shall be deemed final. The re-issued procurement may be, but is not required to be, considered for the setting of SDB and VBE participation goals.

(4) The Department will develop and maintain an internal data dashboard and reporting mechanisms to

provide regularly updated information on agencies' procurement spending levels and percentages, including data on the agencies' SB, SDB and VBE programs.

§ 58.412. Small diverse business program.

(a) *Scope.* The provisions of this subchapter shall apply to all procurements within the scope of this policy except for procurements for construction and design professional services.

(b) *Purpose.* To attain the SDB aspirational target, BDISBO, with the cooperation of the issuing agency, shall attempt to set, where required, contract-specific goals for SDB participation. Each contract-specific goal shall be expressed within the solicitation as a percentage of the dollar value of the contract.

(c) *Waivers.* Bidders or offerors may in all instances request a partial waiver or full waiver of a contract-specific goal for SDB participation, as set forth in § 58.415 (relating to good faith efforts waiver).

(d) *Contract-specific goal setting.*

(1) The BDISBO, with the cooperation of the issuing agency, shall assess the potential for an SDB prime contractor and subcontractor participation in each procurement and estimate the amount of participation if any before the solicitation is issued.

(2) In setting a contract-specific goal, the BDISBO and agencies:

(i) May not set a goal that solely relies on the Commonwealth's overall aspirational target or any other jurisdiction's overall percentage goal.

(ii) Must incorporate an analysis of all of the following:

(A) The potential subcontract opportunities available in the procurement, which shall include the provision of supplies or services.

(B) The availability percentages for those subcontract opportunities as derived from the Commonwealth's most recent disparity study.

(C) The number of SDBs listed in the online searchable database of SDBs or otherwise identified as being certified to provide those subcontract opportunities.

(D) The availability of SDBs to respond competitively to the potential subcontract opportunities including geographical proximity, when relevant, and desired work location of SDBs identified under clause (C) to the location of the work to be performed.

(E) The feasibility of subcontracting opportunities given the nature and extent of the proposed contract.

(F) Participation of SDBs on past contracts of similar size, scope and location.

(G) Other factors that contribute to constitutional goal setting.

(e) *Solicitation documentation.*

(1) Each solicitation containing contract-specific goals for SDB participation shall contain those terms, conditions and forms related to SDB participation as required by the Department.

(2) When a contract-specific goal for SDB participation is set for a procurement, a bidder or offeror shall submit with its bid or proposal a completed SDB participation submittal. A bidder or offeror must indicate one of the following on the SDB participation submittal:

(i) Agreement to meet the contract-specific goal for SDB participation in full. In this instance, a bidder or

offeror must provide an SDB utilization schedule which identifies how the bidder or offeror will meet the contract-specific goal.

(ii) Agreement to meet a portion of the contract-specific goal for SDB participation and request a partial waiver for the remainder of the contract-specific goal. In this instance, a bidder or offeror must provide an SDB utilization schedule which identifies how the bidder or offeror will meet a portion of the contract-specific goal and also provide documentation of the bidder or offeror's good faith efforts waiver to meet the unmet portion of the contract-specific goal as set forth in § 58.415.

(iii) Request for a good faith efforts waiver from all of the contract-specific goals. In this instance, a bidder or offeror must provide documentation of the bidder or offeror's good faith efforts to meet the contract-specific goals for SDB participation as set forth in § 58.415.

(3) The failure to complete and submit the SDB participation submittal and additional required documentation as set forth in the solicitation documents may result in a determination that the bid or proposal is not responsive.

(f) *SDB subcontracting provisions.*

(1) A bidder or offeror that is an SDB may satisfy a contract-specific goal for SDB participation through their own self-performance.

(2) When an SDB performs as a participant in a joint venture, the Commonwealth may count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the SDB performs with its own forces toward fulfilling the SDB participation goal, subject to the requirements of paragraph (4).

(3) Because the contract-specific goal for SDB participation is independent of any contract-specific goal for VBE participation, work performed by an SDB that is also a VBE can be used to meet both a contract-specific goal for SDB participation and a contract-specific goal for VBE participation through the same work.

(4) A contractor may only count dollar amounts actually paid to an SDB for performance of a commercially useful function towards satisfying its SDB participation commitments. In addition, the SDB subcontractor, through its own employees, must perform at least 50% of the amount of the subcontract.

(g) *Contract requirements.*

(1) A prime contractor's commitments to meet contract-specific goals and to utilize SDBs listed within the SDB utilization schedule shall become contractual obligations of the prime contractor. A prime contractor's failure to meet the SDB commitments may result in the imposition of sanctions as set forth in § 58.417(d) (relating to compliance with SDB and VBE commitments), 62 Pa.C.S. § 531 (relating to debarment or suspension) and any additional sanctions available under the contract.

(2) Solicitation documents completed and submitted by the selected bidder or offeror in connection with its SDB participation commitments including the SDB participation submittal, SDB utilization schedule and, if applicable, any documentation supporting a request for a good faith efforts waiver shall be made part of the contract.

(h) *Subcontract requirements.*

(1) The selected bidder or offeror and the SDBs that will be used to satisfy the selected bidder or offeror's SDB commitments must enter a final, definitive subcontract agreement signed by the selected bidder or offeror and

the SDB within the time frame specified in the solicitation document. The subcontract agreement must contain those items as specified in the solicitation document.

(2) If a subcontract agreement is required by the solicitation document but the selected bidder or offeror and the SDB listed on the SDB utilization schedule cannot agree upon a definitive subcontract within the required time frame specified in the solicitation, the selected bidder or offeror must provide written notification to the issuing agency and the BDISBO to assist with resolution.

(3) The prime contractor must provide a copy of any required subcontract with an SDB to the BDISBO or the agency within 10 business days of receiving the request.

§ 58.413. Construction and design professional services program.

(a) *Scope.* The provisions in this section shall apply to all procurements for construction and design professional services.

(b) *Purpose.* To attain the SDB aspirational target, the BDISBO, with the cooperation of the issuing agency, shall attempt to set, where required, contract-specific goals for SDB participation. Each contract-specific goal shall be expressed within the solicitation as a percentage of the dollar value of the contract.

(c) *Waivers.* Bidders or offerors may in all instances request a partial waiver or full waiver of a contract-specific goal for SDB participation as set forth in § 58.415 (relating to good faith efforts waiver).

(d) *Contract-specific goal setting.*

(1) The BDISBO, with the cooperation of the issuing agency, shall assess the potential for SDB participation in each procurement and estimate the amount of participation, if any, before the solicitation is issued.

(2) In setting a contract-specific goal, the BDISBO and agencies:

(i) May not set a goal that solely relies on the Commonwealth's overall aspirational target or any other jurisdiction's overall percentage goal.

(ii) Must incorporate an analysis of all of the following:

(A) The potential subcontract opportunities available in the prime contract, which shall include the provision of supplies or services.

(B) The availability percentages for those subcontract opportunities as derived from the Commonwealth's most recent disparity study;

(C) The number of SDBs listed in the online searchable database of SDBs or otherwise identified as being certified to provide those subcontract opportunities.

(D) The availability of SDBs to respond competitively to the potential subcontract opportunities, including geographical proximity when relevant and desired work location of SDBs identified under clause (C) to the location of the work to be performed.

(E) The feasibility of subcontracting opportunities given the nature and extent of the proposed contract.

(F) Participation of SDBs on past contracts of similar size, scope and location.

(G) Other factors that contribute to constitutional goal setting.

(e) *Solicitation documentation.*

(1) Each solicitation containing contract-specific goals for SDB participation shall contain those terms, conditions and forms related to SDB participation as required by the Department.

(2) When a contract-specific goal for SDB participation is set for a procurement, a bidder or offeror shall submit with its bid or proposal a completed SDB participation submittal. A bidder or offeror must indicate one of the following on the SDB participation submittal:

(i) Agreement to meet the contract-specific goal for SDB participation in full. In this instance, a bidder or offeror must provide an SDB utilization schedule which identifies how the bidder or offeror will meet the contract-specific goal.

(ii) Agreement to meet a portion of the contract-specific goal for SDB participation and request a partial waiver for the remainder of the contract-specific goal. In this instance, a bidder or offeror must provide an SDB utilization schedule which identifies how the bidder or offeror will meet a portion of the contract-specific goal and also provide documentation of the bidder or offeror's good faith efforts waiver to meet the unmet portion of the contract-specific goal as set forth in § 58.415.

(iii) Request for a good faith efforts waiver from all of the contract-specific goals. In this instance, a bidder or offeror must provide documentation of the bidder or offeror's good faith efforts to meet the contract-specific goals for SDB participation as set forth in § 58.415.

(3) The failure to complete and submit the SDB participation submittal and additional required documentation as set forth in the solicitation documents may result in a determination of nonresponsiveness.

(f) *SDB subcontracting provisions.*

(1) A bidder or offeror that is an SDB may satisfy a contract-specific goal for SDB participation through their own self-performance.

(2) When an SDB performs as a participant in a joint venture, the Commonwealth may count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the SDB performs with its own forces toward fulfilling the SDB participation goal subject to the subcontracting category and crediting set forth in paragraph (4).

(3) Because the contract-specific goal for SDB participation is independent of any contract-specific goal for VBE participation, work performed by an SDB that is also a VBE can be used to meet both a contract-specific goal for SDB participation and a contract-specific goal for VBE participation through the same work.

(4) Contractors may satisfy a contract-specific goal for SDB participation through the use of SDB subcontractors, manufacturers or suppliers in accordance with the following chart, unless otherwise specified in the procurement documents:

<i>SDB Subcontracting Category</i>	<i>% of Credit</i>
<i>Subcontractors:</i> The SDB subcontractor, through its own employees, shall perform at least 50% of the amount of the subcontract, unless the SDB subcontractor is performing one of the functions listed elsewhere in this chart.	Count 100% of the subcontract amount.
<i>Manufacturer</i>	Count 100% of the total cost of the materials or supplies purchased from the SDB manufacturer.
<i>Stocking supplier</i>	Count 60% of the total cost of the materials or supplies purchased from the SDB stocking supplier.
<i>Nonstocking supplier</i>	Count only the amount of the fee or commission charged by the SDB nonstocking supplier for assistance in the procurement of the materials and supplies provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services and as further defined in the solicitation.

(g) *Contract requirements.*

(1) A prime contractor’s commitments to meet contract-specific goals and to utilize SDBs listed within the SDB utilization schedule shall become contractual obligations of the prime contractor. A prime contractor’s failure to meet the SDB commitments may result in the imposition of sanctions as set forth in § 58.417(d) (relating to compliance with SDB and VBE commitments), 62 Pa.C.S. § 531 (relating to debarment or suspension) and any additional sanctions available under the contract.

(2) Solicitation documents completed and submitted by the selected bidder or offeror in connection with its SDB participation commitments, including the SDB participation submittal, SDB utilization schedule and, if applicable, any documentation supporting a request for a good faith efforts waiver shall be made part of the contract.

(h) *Subcontract requirements.*

(1) The selected bidder or offeror and the SDBs that will be used to satisfy the selected bidder or offeror’s SDB commitments must enter into a final, definitive subcontract agreement signed by the selected bidder or offeror and the SDB within the time frame specified in the solicitation document.

(2) If a subcontract agreement is required by the solicitation document but the selected bidder or offeror and an SDB listed on the SDB utilization schedule cannot agree upon a definitive subcontract within the required time frame specified in the solicitation, the selected bidder or offeror must provide written notification to the issuing agency and the BDISBO.

(3) The prime contractor must provide a copy of any required subcontract with an SDB to a BDISBO or the agency within 10 business days of receiving such a request.

(4) The subcontract requirements set forth in this subsection apply to contracts between a design professional and its consultants.

§ 58.414. Veteran business enterprise program.

(a) *Scope.* The provisions of this subchapter shall apply to all procurements within the scope of this policy.

(b) *Purpose.* To attain the VBE aspirational target, the BDISBO, with the cooperation of the issuing agency, shall attempt to set, where required, contract-specific goals for VBE participation. Each contract-specific goal shall be expressed within the solicitation as a percentage of the dollar value of the contract.

(c) *Waivers.* Bidders or offerors may in all instances request a partial waiver or full waiver of a contract-specific goal for VBE participation as set forth in § 58.415 (relating to good faith efforts waiver).

(d) *Contract specific goal setting.*

(1) The BDISBO, with the cooperation of the issuing agency, shall assess the potential for VBE participation in each procurement and estimate the amount of participation if any before the solicitation is issued.

(2) In setting a contract-specific goal, the BDISBO and agencies shall follow the minimum requirement as set forth in 51 Pa.C.S. § 9603 (relating to participation goal) and all of the following:

(i) May not set a contract-specific goal that solely relies on the Commonwealth’s overall aspirational target or any other jurisdiction’s overall percentage goal.

(ii) May incorporate an analysis of all of the following:

(A) The potential subcontract opportunities available in the prime contract, which shall include the provision of supplies or services.

(B) The number of VBEs listed in the online searchable database of VBEs or otherwise identified as being certified to provide those subcontract opportunities.

(C) The availability of VBEs to respond competitively to the potential subcontract opportunities, including geographical proximity when relevant and desired work location of VBEs identified under clause (B) to the location of the work to be performed.

(D) The feasibility of subcontracting opportunities given the nature and extent of the proposed contract.

(E) Participation of VBEs on past contracts of similar size, scope and location.

(F) Other factors that contribute to constitutional goal setting.

(e) *Solicitation documentation.*

(1) Each solicitation containing contract-specific goals for VBE participation shall contain those terms, conditions and forms related to VBE participation as required by the Department.

(2) When a contract-specific goal for VBE participation is set for a procurement, a bidder or offeror shall submit with its bid or proposal a completed VBE participation submittal. A bidder or offeror must indicate one of the following on the VBE participation submittal:

(i) Agreement to meet the contract-specific goal for VBE participation in full. In this instance, a bidder or offeror must provide a VBE utilization schedule which identifies how the bidder or offeror will meet the contract-specific goal.

(ii) Agreement to meet a portion of the contract-specific goal for VBE participation and request a partial waiver for the remainder of the contract-specific goal. In this instance, a bidder or offeror must provide a VBE utilization schedule which identifies how the bidder or offeror will meet a portion of the contract-specific goal and also provide documentation of the bidder or offeror's good faith efforts waiver to meet the unmet portion of the contract-specific goal for VBE participation. The documentation and determination process for good faith efforts waiver requests for contract-specific goals for VBE participation shall be consistent with the documentation and determination process for good faith efforts waiver requests for contract-specific goals for SDB participation set forth in § 58.415.

(iii) Request for a good faith efforts waiver from all of the contract-specific goals. In this instance, a bidder or offeror must provide documentation of the bidder or offeror's good faith efforts to meet the contract-specific goals for VBE participation. The documentation and determination process for good faith efforts waiver requests for contract-specific goals for VBE participation shall be consistent with the documentation and determination process for good faith efforts waiver requests for contract-specific goals for SDB participation set forth in § 58.415.

(3) The failure to complete and submit the VBE participation submittal and additional required documentation as set forth in the solicitation documents may result in a determination that the bid or proposal is not responsive.

(f) *VBE subcontracting provisions.*

(1) A bidder or offeror that is a VBE may satisfy a contract-specific goal for VBE participation through their own self-performance.

(2) When a VBE performs as a participant in a joint venture, the Commonwealth may count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the VBE performs with its own forces toward fulfilling the VBE participation goal, subject to the provisions of paragraph (4).

(3) Because the contract-specific goal for VBE participation is independent of any contract-specific goal for SDB participation, work performed by a VBE that is also an SDB can be used to meet both a contract-specific goal for VBE participation and a contract-specific goal for SDB participation through the same work.

(4) For procurements subject to the VBE program, prime contractors may satisfy a contract-specific goal for VBE participation through the use of VBEs in accordance with § 58.412 (relating to small diverse business program) unless otherwise specified in the procurement documents. For procurements subject to the program for construction and design professional services, prime contractors may satisfy a contract-specific goal for VBE participation through the use of VBE subcontractors, manufacturers or suppliers in accordance with § 58.413 (relating to construction and design professional services program) unless otherwise specified in the procurement documents.

(g) *Contract requirements.*

(1) A prime contractor's commitments to meet contract-specific goals and to utilize VBEs listed within the VBE utilization schedule shall become contractual obligations of the prime contractor. A prime contractor's failure to meet the VBE commitments may result in the imposition of sanctions as set forth in § 58.417(d) (relating to compliance with SDB and VBE commitments), 62 Pa.C.S. § 531 (relating to debarment or suspension) and any additional sanctions available under the contract.

(2) Solicitation documents completed and submitted by the selected bidder or offeror in connection with its VBE participation commitments including the VBE participation submittal, VBE utilization schedule and, if applicable, any documentation supporting a request for a good faith efforts waiver shall be made part of the contract.

(h) *Subcontract requirements.* For procurements subject to the SDB program, the subcontract requirements of § 58.412 apply to the prime contractor commitments to VBEs in the same manner as they apply to commitments to SDBs. For procurements subject to the program for construction and design professional services, the subcontract requirements of § 58.413 apply to the prime contractor commitments to VBEs in the same manner as they apply to the commitments to VBEs.

§ 58.415. Good faith efforts waiver.

(a) If a bidder or offeror believes they will be unable to achieve the contract-specific goal, they may in all instances request a full or partial good faith efforts waiver from the contract-specific goal. A request for a good faith efforts waiver may include all of the following supporting documentation as set forth in the good faith efforts documentation to support the waiver request:

(1) A detailed statement of the efforts made to select portions of the work proposed to be performed by SDBs or VBEs as applicable to increase the likelihood of achieving the stated goals.

(2) A detailed statement of the efforts made to contact and negotiate with SDBs or VBEs as applicable, including all of the following:

(i) The names, addresses, dates, telephone numbers and classification of SDBs or VBEs as applicable that were contacted.

(ii) A copy of the information provided to SDBs or VBEs as applicable regarding the plans, specifications and anticipated time schedule for portions of the work to be performed.

(3) As to each SDB or VBE as applicable that placed a subcontract quotation or offer that the bidder or offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion with supporting documentation.

(4) A list of SDBs or VBEs as applicable found to be unavailable, which shall be accompanied by an unavailability verification form signed by the SDB or the VBE as applicable, or a statement from the bidder or offeror that the SDB or the VBE as applicable refused or failed to give the written verification.

(5) The record of the bidder's or offeror's compliance with the outreach efforts as set forth within the solicitation documentation.

(b) A good faith efforts waiver of a contract-specific goal may be granted only upon a reasonable demonstration by a bidder or offeror that the contract-specific goal was unable to be achieved, or was unable to be achieved at a

reasonable price, and if the head of the issuing agency or their designee based on the recommendation of the BDISBO determines that the public interest is served by a good faith efforts waiver. In making a determination under this section, the head of the issuing agency or their designee and the BDISBO may consider engineering estimates, catalogue prices, general market availability and availability of SDBs or VBEs as applicable in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between an SDB and a non-SDB or a VBE and a non-VBE as applicable to the cost of participation and their impact on the overall cost of the contract to the Commonwealth, and any other relevant factor. The issuing agency shall provide written notice of the denial of a good faith efforts waiver request with a copy provided to the BDISBO.

(c) A bidder or offeror's failure to meet the contract-specific goal in full and their failure to demonstrate that they made good faith efforts to meet any unmet portion of the contract-specific goal will result in a determination that the bid or proposal is not responsive.

(d) The good faith efforts waiver request including any supporting documentation, the good faith efforts waiver determination and the reasons for the determination shall be maintained in the official contract file.

§ 58.416. Amendment of commitments post-award.

(a) The selected bidder or offeror cannot alter its overall SDB or VBE commitments or commitments made to individual SDBs or VBEs without written approval from the issuing office and the BDISBO.

(b) The selected bidder or offeror shall notify the contracting officer of the issuing office and the BDISBO when circumstances arise that may negatively impact the selected bidder's or offeror's ability to comply with SDB or VBE commitments.

(c) The selected bidder or offeror may not terminate or otherwise cancel a subcontract with a firm listed on the utilization schedule without showing good cause why the subcontract should be terminated or cancelled, providing a corrective action plan and receiving written approval from the issuing office and the BDISBO.

(d) Both the overall percentage of SDB or VBE commitments and individual SDB or VBE commitments must be maintained in the event the contract is assigned to another prime contractor.

(e) An agency reserves the right to require SDB or VBE participation on change orders or amendments for additional work not already subject to an SDB or a VBE commitment as further described in the solicitation documents.

§ 58.417. Compliance with SDB and VBE commitments.

(a) To ensure compliance with a prime contractor's SDB and VBE commitments, the BDISBO shall do all of the following:

(1) Verify that the firms listed in the utilization schedule are actually performing work and receiving compensation as set forth in the utilization schedule.

(2) Monitor and collect data on contractor compliance with the prime contractor's SDB or VBE, or both, participation commitments.

(b) The prime contractor shall do all of the following:

(1) Permit the BDISBO and the contracting agency to inspect any relevant matter, including records and the jobsite and to interview subcontractors and workers.

(2) Ensure that SDBs or VBEs are paid any undisputed amount to which the SDB or the VBE is entitled within 14 calendar days for construction and design professional work and 10 calendar days for goods and services of the prime contractor's receipt of payment from the Commonwealth for this work.

(3) Submit to the BDISBO, in the format required by the BDISBO, within the time frame set forth within the solicitation document, a utilization report listing payments made to each SDB or VBE. This information will be used to track and confirm the actual dollar amount paid to SDBs and VBEs and will serve as a record of fulfillment of the contractual commitments. If there was no activity the form must be completed by stating "No activity" and the BDISBO has the authority to impose a fine for noncompliance as stated in the contract with the prime contractor.

(c) Upon the BDISBO notifying the contracting agency that a prime contractor did not comply with their SDB or VBE commitments, the contracting agency or the BDISBO shall notify the prime contractor in writing of its findings and shall specify what corrective actions are required. The prime contractor is required to develop and submit a corrective action plan within 10 business days and complete the terms of the corrective action plan within the time specified by the contracting agency.

(d) If a contracting agency determines that material noncompliance with SDB or VBE contract provisions exists and that the prime contractor refuses or fails to take the corrective action required by the contracting agency, the contracting agency, in consultation with the BDISBO, may impose any and all sanctions and remedies available under the contract as it deems appropriate. These sanctions or remedies include, but are not limited to, any of the following:

(1) Termination of the contract.

(2) Revocation of the prime contractor's SB, SDB or VBE status.

(3) Any actions under the Commonwealth's Contractor Responsibility Program, up to and including suspension or debarment from future contracting opportunities with the Commonwealth.

§ 58.418. Ten-day prompt pay policy.

A prime contractor that has a contract for nonconstruction goods and services shall pay to SB subcontractors the invoiced amount due for work completed or services provided under the subcontract within 10 days after receipt of payment from the Commonwealth.

§ 58.419. Program review and expiration.

Within 5 years after the effective date of this policy, the Department will review the operation of an evidentiary basis for the SDB program and the program for construction and design professional services to determine whether the Commonwealth has a continuing compelling interest in remedying discrimination against SDBs in its marketplace and the permissive scope of any narrowly tailored remedies to redress discrimination against SDBs so that the Commonwealth will not function as a passive participant in a discriminatory marketplace. This policy shall expire on or before January 1, 2028, unless a disparity study completed by the Commonwealth prior to that date shows a statistically significant disparity in the

utilization of SDBs. In that case, the policy shall renew for an additional 5 years, with the review and expiration set forth in this section, each occurring every 5 years thereafter until the disparity study shows no statistically significant disparity in the utilization of SDBs.

ARTICLE III. PROCUREMENT

CHAPTER 68. CONTRACT COMPLIANCE

Subchapter B. [Reserved]

§ 68.102. [Reserved].

[Pa.B. Doc. No. 24-348. Filed for public inspection March 15, 2024, 9:00 a.m.]
