

# 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 (Department), under the authority of Executive Order No. 2011-09 (4 Pa. Code Chapter 1, Subchapter VV (relating to Small Business Procurement Initiative)) and Executive Order No. 2011-10 (4 Pa. Code Chapter 1, Subchapter XX (relating to Veteran-Owned Small Business Procurement Initiative)), adopts this statement of policy to amend internal guidelines and expand upon the Department's former minority and women-owned business program. Chapter 58, Subchapter C, which dealt with Minority Business Enterprise (MBE)/Woman Business Enterprise (WBE) certification, has been rescinded and replaced with Chapter 58, Subchapter D (relating to internal guidelines for Small Business Self-Certification and Small Diverse Business Verification—statement of policy). This statement of policy expands upon the Department's minority and women-owned business program, as authorized by Executive Order No. 2004-6 (4 Pa. Code Chapter 1, Subchapter LL (relating to minority and women business enterprise)).

The Small Business Procurement Initiative allows small businesses to self-certify through an online application and compete for prime contracting opportunities on a level playing field. Through the Small Diverse Business program, the Department reaches out to Veteran Business Enterprises (VBEs) and Service-Disabled Veteran Business Enterprises (SDVBEs) in addition to MBEs and WBEs. The verification of MBE, WBE, VBE and SDVBE status will be available to vendors in lieu of the former certification process.

#### *Fiscal Impact*

This statement of policy is fiscal neutral.

#### *Effective Date*

This statement of policy takes effect immediately upon publication in the *Pennsylvania Bulletin*.

#### *Contact Person*

Specific questions regarding information 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.

SHERI PHILLIPS,  
Secretary

*(Editor's Note: Title 4 of the Pennsylvania Code is amended by deleting the statements of policy in §§ 58.201—58.210 and by adding statements of policy in §§ 58.301—58.308 to read as set forth in Annex A.)*

**Fiscal Note:** 8-16. 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 C. (Reserved)

Sec.  
58.201—58.210. (Reserved).

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

Sec.  
58.301. Policy.  
58.302. Definitions.  
58.303. Self-certification of eligible small businesses.  
58.304. Verification of Small Diverse Businesses.  
58.305. Voluntary withdrawal.  
58.306. Decertification.  
58.307. Review of decertifications.  
58.308. Hearing.

#### § 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 streamlining the certification process into a more accessible and efficient experience for vendors seeking opportunities as prime contractors, subcontractors, suppliers and professional service providers.

(b) In addition to Executive Order No. 2004-06 (4 Pa. Code Chapter 1, Subchapter LL (relating to minority and women business enterprise)), Executive Order No. 2011-09 (4 Pa. Code Chapter 1, Subchapter VV (relating to Small Business Procurement Initiative)) and Executive Order No. 2011-10 (4 Pa. Code Chapter 1, Subchapter XX (relating to Veteran-Owned Small Business Procurement Initiative)), 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:

*Department*—The Department of General Services of the Commonwealth.

*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](http://www.smallbusiness.pa.gov).

*Small diverse business*—For purposes of this subchapter, this designation includes MBEs, WBEs, VBEs and SDVBEs.

*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 at [www.smallbusiness.pa.gov](http://www.smallbusiness.pa.gov). The SBPI enables eligible small businesses to compete for prime contracting opportunities with the Commonwealth against other eligible small businesses. Upon successful completion of the SBPI 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 small business.

(b) *Eligibility requirements.*

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

(i) The business shall be a for-profit United States business that is independently owned.

(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](http://www.smallbusiness.pa.gov).

(c) *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) *Scoring.* By verifying its status as MBE, WBE, VBE or SDVBE, a Small Diverse Business acquires an enhanced position within the context of Request for Proposal scoring.

(b) *Verification of VBE/SDVBEs.* The VBE/SDVBE shall submit correspondence from the United States Department of Veterans Affairs that the VBE/SDVBE has been verified and added to the veteran business database at [www.VetBiz.gov](http://www.VetBiz.gov). The verification will remain in effect for the period of time provided in the United States Department of Veterans Affairs [www.VetBiz.gov](http://www.VetBiz.gov) business database. The VBE/SDVBE shall maintain its certification to participate in the Small Diverse Business program. Depending on the circumstances, the Department may request information from out-of-State businesses on current VBE/SDVBE certification from the business' home state governmental certifying body and from other public jurisdictions.

(c) *Verification of MBEs and WBEs.* In lieu of the Department's former MBE/WBE certification process, the Department will verify MBE/WBE status through the verification of certification from the Unified Certification Program, National Minority Supplier Development Council, Women's Business Enterprise National Council and the United States Small Business Administration 8(a) Program. Applicants shall submit proof of certifications documented by a current certificate or letter from the certifying entity. The verification will remain in effect for the period of time provided in the alternate certification and the MBE/WBE shall maintain its third-party certification to participate in the Small Diverse Business

program. The Department reserves the right to request additional information and conduct further review as needed.

(d) *Existing certification transition.* The certifications of firms presently certified in good standing by the Department as MBE, WBE, VBE or SDVBE will be valid through January 11, 2013. However, firms presently certified in good standing as MBE, WBE, VBE or SDVBE who successfully complete the Commonwealth's SBPI application prior to January 11, 2013, will automatically have the Small Diverse Business certification extended to the same expiration date as the SBPI certification expiration. Verification of Small Diverse Business status will occur annually on the expiration date of the third-party certification. Accordingly, firms shall maintain their alternate certifications to maintain their Department certifications.

**§ 58.305. Voluntary withdrawal.**

(a) A small business 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 small business of its intent to withdraw.

(c) As of the date of withdrawal:

(1) The small business will not receive notifications related to or be able to bid on an SBPI procurement.

(2) The small business will not receive notifications related to the Small Diverse Business program or be considered an active, verified small diverse business.

(d) A small business 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.

**§ 58.306. Decertification.**

(a) The Department will ordinarily decertify businesses from SBPI or verified Small Diverse Business status, or both, for 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.

(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 Decertify that:

(1) Specifies the reasons for the proposed 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 decertification.

(3) Advises that, within 20 days after receipt of the notice, 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.

**§ 58.307. Review of decertifications.**

(a) The request for review of decertification shall be made in writing to the Secretary and recite 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 (more than 30 days after the date of the decertification letter) or insufficient (do not raise issues suggesting that the decertification is in error).

(c) The Secretary or a designee will consider the request for review and may seek additional information as necessary. In addition, the Department will respond with a determination within 60 days from receipt of the request for review.

(d) The Secretary or a designee may direct that a hearing be conducted.

**§ 58.308. 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 under § 58.307 (relating to review of decertifications).

(b) *Purpose.* The fact-finding hearing will be held to determine the operative facts forming the basis for the decertification action as delineated in the notice of 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 decertification is based are insufficient, incorrect or otherwise do not warrant 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 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. §§ 502—508 and 701—704 (relating to Administrative Agency Law). If the Department is the moving party, it has the burden of proof.

[Pa.B. Doc. No. 12-1996. Filed for public inspection October 12, 2012, 9:00 a.m.]