
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1887 Session of
2021

INTRODUCED BY LEWIS DELROSSO, WHEATLEY, HILL-EVANS, ROTHMAN,
SHUSTERMAN, KINSEY, KAIL, MERSKI, BOBACK, MIZGORSKI AND
WEBSTER, SEPTEMBER 21, 2021

REFERRED TO COMMITTEE ON STATE GOVERNMENT, SEPTEMBER 21, 2021

AN ACT

1 Amending Titles 51 (Military Affairs) and 62 (Procurement) of
2 the Pennsylvania Consolidated Statutes, in veteran-owned
3 small businesses, further providing for definitions, for
4 regulations, for participation goal, for duties of Department
5 of General Services and for bonding and progress payments,
6 providing for request for a full or partial waiver and good-
7 faith efforts, further providing for reports and providing
8 for disparity study; in small and disadvantaged businesses,
9 further providing for heading of chapter, for policy and for
10 definitions, providing for Small and Diverse Business Program
11 and for nonapplicability, further providing for regulations
12 and for duties of department, providing for request for a
13 full or partial waiver and good-faith efforts, further
14 providing for bonding and progress payments and for report to
15 General Assembly, providing for aspirational target, for
16 disparity study and for program review and expiration; and
17 providing for Program for Construction and Design
18 Professional Services.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. Section 9601 introductory paragraph of Title 51
22 of the Pennsylvania Consolidated Statutes is amended and the
23 section is amended by adding definitions to read:

24 § 9601. Definitions.

25 Subject to section 9602 (relating to policy and regulations),

1 the following words and phrases when used in this chapter shall
2 have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Aspirational target." A target established by the Secretary
5 of General Services under section 9603 (relating to Statewide
6 participation goal and aspirational target).

7 "Contract-specific goal." A goal established by the
8 Department of General Services in collaboration with the
9 purchasing agency for use of veteran business enterprises on a
10 specific procurement.

11 * * *

12 "Disparity study." A study conducted to determine whether
13 there is a disparity between the availability and use of veteran
14 business enterprises in Commonwealth procurement.

15 * * *

16 "Good-faith efforts." The practices or activities instituted
17 by a bidder or offeror to promote and ensure participation by
18 veteran business enterprises in an agency procurement in order
19 to meet a contract-specific goal.

20 * * *

21 "Utilization schedule." A document, submitted by a bidder or
22 offeror as part of a bid or proposal, in which a bidder or
23 offeror commits to a level of veteran business enterprise
24 participation for a contract. Identifies the dollar value or
25 percentages of the work to be performed.

26 * * *

27 "Veteran business enterprise." A veteran-owned small
28 business or service-disabled veteran-owned small business.

29 * * *

30 Section 2. Sections 9602(a) and (c), 9603, 9604, 9605, 9606

1 and 9607 of Title 51 are amended to read:

2 § 9602. [Regulations] Policy and regulations.

3 (a) Promulgation.--The Department of General Services shall
4 establish policy [in accordance with this subchapter] for
5 executive agencies and those independent agencies [and may, in
6 consultation with the department,] for which the Department of
7 General Services acts as a purchasing agency. The Department of
8 General Services in its discretion may promulgate regulations
9 [establishing detailed definitions of the words and phrases
10 defined in section 9601 (relating to definitions) using, in
11 addition to the criteria set forth in section 9601, other
12 criteria as it deems appropriate, including the number of
13 employees and the dollar volume of business.] to carry out and
14 enforce the provisions of this subchapter.

15 * * *

16 (c) Antifraud provisions.--The Department of General
17 Services shall establish policy and promulgate regulations
18 establishing antifraud provisions to deter and penalize
19 businesses that [are not owned by those who are service-disabled
20 or by veterans but who falsely claim that they are] falsely
21 claim the businesses are owned by service-disabled individuals
22 or veterans in order to receive any action authorized by this
23 subchapter.

24 * * *

25 § 9603. [Participation goal.] Statewide participation goal and
26 aspirational target.

27 A Statewide annual goal of not less than 3% participation by
28 [veteran-owned small businesses, including service-disabled
29 veteran-owned small businesses,] veteran business enterprises is
30 established. [The participation goal shall apply to the total

1 value of all contracts available to small businesses in each
2 fiscal year.] The Secretary of General Services may set a
3 Statewide aspirational target for veteran business enterprise
4 participation which may be reviewed and adjusted every five
5 years upon completion of a disparity study and which may not be
6 less than the Statewide annual goal.

7 § 9604. Duties of Department of General Services.

8 The Department of General Services[, with the assistance of
9 the department,] shall have the following duties:

10 (1) If feasible, provide appropriate staff, who shall be
11 responsible to the Department of General Services and who
12 shall [serve within designated Commonwealth agencies to
13 assist veteran-owned small businesses and service-disabled
14 veteran-owned small businesses] assist veteran business
15 enterprises in this Commonwealth in learning how to do
16 business with Commonwealth agencies.

17 (2) Give special publicity to procurement procedures and
18 issue special publications designed to assist [veteran-owned
19 small businesses and service-disabled veteran-owned small
20 businesses] veteran business enterprises in learning how to
21 do business with Commonwealth agencies.

22 (2.1) Verify the current certification of businesses
23 claiming to be certified as veteran business enterprises.

24 (3) [Compile, maintain and make available source lists
25 of veteran-owned small businesses and service-disabled
26 veteran-owned small businesses] Develop and maintain a
27 directory of veteran business enterprises for the purpose of
28 encouraging procurement from [veteran-owned small businesses]
29 veteran business enterprises.

30 (4) Include [veteran-owned small businesses and service-

1 disabled veteran-owned small businesses] veteran business
2 enterprises on solicitation mailing lists.

3 (5) Assure that [veteran-owned small businesses and
4 service-disabled veteran-owned small businesses are
5 solicited] purchasing agencies solicit veteran business
6 enterprises on procurements for which the businesses may be
7 suited.

8 (6) Develop [special] training programs to assist
9 [veteran-owned small businesses and service-disabled veteran-
10 owned small businesses] veteran business enterprises in
11 learning how to do business with Commonwealth agencies.

12 [(7) Assure that participation by veteran-owned small
13 businesses and service-disabled veteran-owned small
14 businesses is, if appropriate, factored into the evaluation
15 of proposals for supplies, services or construction when a
16 purchasing agency uses the competitive sealed proposals
17 method under 62 Pa.C.S. § 513 (relating to competitive sealed
18 proposals).

19 (8) Verify the current certification of businesses
20 claiming to be certified as veteran-owned small businesses
21 and service-disabled veteran-owned small businesses.]

22 (9) Establish contract-specific goals for utilization of
23 veteran business enterprises, in collaboration with the
24 purchasing agency, based upon relevant factors, including the
25 availability of veteran business enterprises to provide the
26 supplies, materials and equipment or services required by the
27 scope of work of the procurement.

28 (10) In collaboration with the purchasing agency, review
29 utilization schedules, consider requests for waivers of
30 contract-specific goals based upon a showing of good-faith

1 efforts and evaluate the extent to which contract-specific
2 goals were achieved.

3 (11) Monitor contracts to evaluate compliance with
4 contract-specific goals and commitments.

5 (12) Cooperate with and provide assistance to
6 Commonwealth agencies to facilitate participation by veteran
7 business enterprises in procurements.

8 (13) Receive, review and act upon complaints and
9 suggestions concerning the utilization of veteran business
10 enterprises, with the assistance of the purchasing agency, as
11 appropriate.

12 (14) Monitor and evaluate the Commonwealth's use of
13 veteran business enterprises and the Commonwealth's progress
14 towards the aspirational target.

15 § 9605. Bonding and progress payments.

16 (a) Bonding.--Notwithstanding 62 Pa.C.S. Pt. I (relating to
17 Commonwealth Procurement Code) or any other law or regulation:

18 (1) Except as provided in paragraph (2), a purchasing
19 agency may reduce the [level] amount or change the types of
20 bonding normally required or accept alternative forms of
21 security to the extent reasonably necessary to encourage
22 procurement from [veteran-owned small businesses and service-
23 disabled veteran-owned small businesses] veteran business
24 enterprises.

25 (2) For contracts under \$25,000, [veteran-owned small
26 businesses and service-disabled veteran-owned small
27 businesses] veteran business enterprises shall be exempt from
28 any bonding requirements.

29 (b) Progress payments.--A purchasing agency may make special
30 provisions for progress payments as it deems reasonably

1 necessary to encourage procurement from [veteran-owned small
2 businesses and service-disabled veteran-owned small businesses]
3 veteran business enterprises.

4 § 9606. [(Reserved).] Request for a full or partial waiver and
5 good-faith efforts.

6 Notwithstanding any provision of this subchapter to the
7 contrary, bidders or offerors may request a partial or full
8 waiver of a contract-specific goal for veteran business
9 enterprise participation. A bidder or offeror requesting a
10 partial or full waiver shall submit, in writing, a report
11 detailing efforts to meet the contract-specific goal as required
12 by the solicitation. In reviewing a bidder's or offeror's
13 written request for a partial or full waiver of a contract
14 specific goal, the purchasing agency, based on the
15 recommendation of the Department of General Services, shall
16 determine if a bidder or offeror has made good-faith efforts to
17 meet the contract-specific goal and to what extent the waiver
18 request should be granted. In determining if a bidder or offeror
19 has made good-faith efforts, the purchasing agency and the
20 Department of General Services may consider levels of
21 participation by veteran business enterprises by other bidders
22 or offerors.

23 § 9607. Reports.

24 [(a) Report to Department of General Services.--By August
25 15, 2013, and each August 15 thereafter, each executive agency
26 and independent agency shall submit an annual report for the
27 period of July 1 to June 30 to the Department of General
28 Services on actual utilization of veteran-owned small businesses
29 and service-disabled veteran-owned small businesses as
30 contractors, subcontractors, suppliers and professional service

1 providers.

2 (b) Report to standing committees.--

3 (1) The Department of General Services and each State-
4 affiliated entity shall annually, before October 1, report in
5 writing to the Veterans Affairs and Emergency Preparedness
6 Committee of the Senate and the Veterans Affairs and
7 Emergency Preparedness Committee of the House of
8 Representatives the actual utilization, Statewide and by each
9 purchasing agency, of veteran-owned small businesses and
10 service-disabled veteran-owned small businesses during the
11 preceding fiscal year.

12 (2) The report shall include a list of all veteran-owned
13 small businesses and service-disabled veteran-owned small
14 businesses that participated as contractors, subcontractors,
15 suppliers and professional service providers during the
16 preceding fiscal year.

17 (3) Initial reports under this subsection shall be
18 submitted to the standing committees by October 1, 2013.]

19 The Department of General Services shall annually report in
20 writing to the Veterans Affairs and Emergency Preparedness
21 Committee of the Senate and the Veterans Affairs and Emergency
22 Preparedness Committee of the House of Representatives
23 concerning the awarding of contracts to veteran business
24 enterprises. The report shall include statistical information
25 regarding veteran business enterprises, including business
26 classification, location and industry. In preparing the report,
27 the Department of General Services shall verify if commitments
28 made to veteran business enterprises in the course of awarding
29 the contracts have been maintained or achieved.

30 Section 3. Title 51 is amended by adding a section to read:

1 § 9609. Disparity study.

2 Beginning no later than June 30, 2022, and every five years
3 thereafter, the Department of General Services may complete a
4 Statewide disparity study on the availability and use of veteran
5 business enterprises, the results of which may be used to set an
6 aspirational target under section 9603 (relating to Statewide
7 participation goal and aspirational target).

8 Section 4. The heading of Chapter 21 and sections 2101 and
9 2102 of Title 62 are amended to read:

10 CHAPTER 21

11 SMALL AND [DISADVANTAGED] DIVERSE BUSINESSES

12 § 2101. Policy.

13 The policy of this Commonwealth is to assist [small and
14 disadvantaged businesses] small businesses and small diverse
15 businesses in learning how to do business with Commonwealth
16 agencies. The department shall implement this policy in
17 accordance with [regulations promulgated by the department]
18 department regulations and policy.

19 § 2102. Definitions.

20 Subject to section 2103 (relating to policy and regulations),
21 the following words and phrases when used in this chapter shall
22 have the meanings given to them in this section unless the
23 context clearly indicates otherwise:

24 ["Disadvantaged business." A small business which is owned
25 or controlled by a majority of persons, not limited to members
26 of minority groups, who have been deprived of the opportunity to
27 develop and maintain a competitive position in the economy
28 because of social disadvantages.]

29 "Agency liaison." An agency employee reporting directly to a
30 secretary, deputy secretary, agency head or equivalent

1 responsible for assisting the department on issues related to
2 the program.

3 "Aspirational target." A target established by the Secretary
4 of General Services under section 2109 (relating to aspirational
5 target).

6 "Contract-specific goal." A goal established by the
7 department in collaboration with the purchasing agency for use
8 of small diverse businesses on a specific procurement.

9 "Disparity study." A study conducted to determine whether
10 there is a disparity between the availability of small diverse
11 businesses and the Commonwealth's utilization of small diverse
12 businesses.

13 "Good-faith efforts." The practices or activities instituted
14 by a bidder or offeror to promote and ensure participation by
15 small diverse businesses in order to meet a contract-specific
16 goal.

17 "Program." The Small Diverse Business Program established
18 under section 2102.1 (relating to Small Diverse Business
19 Program).

20 "Small business." A business in the United States which is
21 independently owned[,] and is not dominant in its field of
22 operation [and employs 100 or fewer employees].

23 "Small diverse business." A small business owned or
24 controlled by a majority of persons, not limited to members of
25 minority groups, that have been deprived of the opportunity to
26 develop and maintain a competitive position in the economy
27 because of economic and social disadvantages.

28 "Utilization schedule." A document, submitted by a bidder or
29 offeror as part of a bid or proposal, in which a bidder or
30 offeror commits to a level of small diverse business

1 participation for a contract, identifies the associated
2 responsibilities and scope of work and identifies the dollar
3 value or percentages of the work to be performed.

4 Section 5. Title 62 is amended by adding sections to read:

5 § 2102.1. Small Diverse Business Program.

6 The Small Diverse Business Program is established in the
7 department.

8 § 2102.2. Nonapplicability.

9 Beginning on and after the effective date of this section,
10 this chapter shall not apply to procurements for construction
11 and design professional services.

12 Section 6. Sections 2103 and 2104 of Title 62 are amended to
13 read:

14 § 2103. [**Regulations**] Policy and regulations.

15 [**The**] In order to implement the program, the department shall
16 establish policy for executive and those independent agencies
17 for which the department acts as purchasing agency and may
18 promulgate regulations [**establishing detailed definitions of the**
19 words and phrases defined in section 2102 (relating to
20 definitions) using, in addition to the criteria set forth in
21 section 2102, other criteria as it deems appropriate, including
22 the number of employees and the dollar volume of business.
23 State-affiliated entities shall implement the policy for their
24 procurement programs.] to carry out and enforce the provisions
25 of this chapter. State-affiliated entities shall implement the
26 policy for their procurement.

27 § 2104. Duties of department.

28 [**The department shall have the following duties**] The
29 department shall administer the program. The department's duties
30 shall include:

1 (1) [Where feasible, provide appropriate staff who shall
2 be responsible to the department and who shall serve within
3 designated Commonwealth agencies to assist small and
4 disadvantaged businesses in this Commonwealth in learning how
5 to do business with Commonwealth agencies.] Formulating,
6 proposing and implementing policy and regulations for the
7 development, implementation and monitoring of the program and
8 the process and criteria for certification, verification,
9 recertification and decertification of small businesses and
10 small diverse businesses.

11 (2) [Give special publicity to procurement procedures
12 and issue special publications designed to assist small and
13 disadvantaged businesses in learning how to do business with
14 Commonwealth agencies.] Developing and using impartiality
15 measures to facilitate the participation of all firms in
16 Commonwealth procurement activities, including, but not
17 limited to, the implementation of a program to reserve
18 procurements for award to small businesses only.

19 (3) [Compile, maintain and make available source lists
20 of small and disadvantaged businesses for the purpose of
21 encouraging procurement from small and disadvantaged
22 businesses.] Maintaining a directory of small businesses and
23 small diverse businesses.

24 (4) [Include small and disadvantaged businesses on
25 solicitation mailing lists.] Providing information and
26 assistance to small businesses and small diverse businesses
27 relating to the program, including special training programs
28 to assist small businesses and small diverse businesses in
29 learning how to do business with Commonwealth agencies and
30 servng as a liaison to community, contractors, professionals

1 and supplier groups, associations and organizations.

2 (5) [Assure that small and disadvantaged businesses are
3 solicited on each procurement for which the businesses may be
4 suited.] Cooperating with and providing information and
5 assistance to Commonwealth agencies to facilitate
6 participation by small businesses and small diverse
7 businesses in procurements.

8 (6) [Develop special training programs to assist small
9 and disadvantaged businesses in learning how to do business
10 with Commonwealth agencies.] Establishing thresholds for
11 procurements which require the setting of contract-specific
12 goals.

13 (7) Ensuring that small diverse businesses are solicited
14 on procurements for which the businesses may be suited.

15 (8) Establishing contract-specific goals, in
16 collaboration with the purchasing agency, based upon relevant
17 factors, including, but not limited to, the availability of
18 small diverse businesses to provide the supplies, materials
19 and equipment or services required by the scope of work of
20 the procurement.

21 (9) In collaboration with the purchasing agency,
22 reviewing utilization schedules, considering requests for
23 waivers of contract-specific goals based upon a showing of
24 good-faith efforts and evaluating the extent to which
25 contract-specific goals were achieved.

26 (10) Monitoring contracts to evaluate compliance with
27 contract specific goals and commitments.

28 (11) Receiving, reviewing and acting upon complaints and
29 suggestions concerning the program.

30 (12) Coordinating with agency liaisons on agency issues

1 related to the program.

2 (13) Evaluating the effectiveness and utility of the
3 program.

4 (14) Monitoring the program and the Commonwealth's
5 progress towards the aspirational target.

6 (15) Establishing business assistance offices throughout
7 this Commonwealth to assist and carry out the provisions of
8 the program.

9 Section 7. Title 62 is amended by adding a section to read:
10 § 2104.1. Request for a full or partial waiver and good-faith
11 efforts.

12 Notwithstanding any provision of this chapter to the
13 contrary, bidders or offerors may request a partial or full
14 waiver of a contract-specific goal for small diverse business
15 participation. A bidder or offeror requesting a partial or full
16 waiver shall submit, in writing, a report detailing the bidder's
17 or offeror's efforts to meet the contract-specific goal as
18 required by the solicitation. In reviewing a bidder's or
19 offeror's written request for a partial or full waiver of a
20 contract-specific goal, the purchasing agency, based on the
21 recommendation of the department, shall determine if a bidder or
22 offeror has made good-faith efforts to meet the contract-
23 specific goal and to what extent the waiver request should be
24 granted. In determining if a bidder or offeror has made good-
25 faith efforts, the purchasing agency and the department may
26 consider levels of participation by small diverse businesses by
27 other bidders or offerors.

28 Section 8. Sections 2105 and 2107 of Title 62 are amended to
29 read:

30 § 2105. Bonding and progress payments.

1 (a) Bonding.--Notwithstanding [other provisions of this
2 part] any provisions of law to the contrary, a purchasing agency
3 may reduce the [level] amount or change the types of bonding
4 normally required or accept alternative forms of security to the
5 extent reasonably necessary to encourage procurement from [small
6 and disadvantaged businesses] small businesses and small diverse
7 businesses.

8 (b) Progress payments.--A purchasing agency may make special
9 provisions for progress payments as it deems reasonably
10 necessary to encourage procurement from [small and disadvantaged
11 businesses] small businesses and small diverse businesses.

12 § 2107. Report to General Assembly.

13 The department shall annually[, before October 1,] report in
14 writing to the General Assembly concerning the awarding of
15 contracts [to small and disadvantaged businesses] and
16 subcontracts to small businesses and small diverse businesses
17 during the preceding fiscal year. The report shall include [a
18 list of all small and disadvantaged businesses that participated
19 as contractors, subcontractors or suppliers during the preceding
20 fiscal year for contracts if the number of contractors under a
21 previously existing contract for the same supply or service is
22 reduced to a single contractor or reduced by more than 50% of
23 the number existing on September 30, 2003.] statistical
24 information regarding the program and information regarding
25 small businesses and small diverse businesses, including
26 business classification, location and industry. In preparing the
27 report, the department shall verify whether commitments made to
28 small [and disadvantaged] diverse businesses in the course of
29 awarding these contracts have been maintained or achieved.

30 Section 9. Title 62 is amended by adding sections to read:

1 § 2109. Aspirational target.

2 The Secretary of General Services shall set an aspirational
3 target for small diverse business participation by the
4 Commonwealth, which shall be reviewed and adjusted every five
5 years upon completion of a disparity study.

6 § 2110. Disparity study.

7 Beginning no later than June 30, 2022, and at least once
8 every five years thereafter, the department shall complete a
9 Statewide disparity study on the availability and use of small
10 diverse businesses, the results of which shall be used to set an
11 aspirational target under section 2109 (relating to aspirational
12 target).

13 § 2111. Program review and expiration.

14 (a) Review.--Upon completion of the disparity study
15 conducted under section 2110 (relating to disparity study), the
16 department shall review the operation of and evidentiary basis
17 for the program in order to determine whether the Commonwealth
18 has a continuing compelling interest in remedying discrimination
19 against small diverse businesses in its marketplace and the
20 permissible scope of any narrowly tailored remedies to redress
21 discrimination against small diverse businesses so that the
22 Commonwealth will not function as a passive participant in a
23 discriminatory marketplace.

24 (b) Expiration.--This chapter shall expire January 1, 2028,
25 unless the disparity study completed under section 2110 shows a
26 statistically significant disparity in the utilization of small
27 diverse businesses. If the disparity study shows a statistically
28 significant disparity, the program shall renew for an additional
29 five years with the review and expiration under this section
30 each occurring every five years thereafter until the disparity

1 study shows no statistically significant disparity in the
2 utilization of small diverse businesses.

3 Section 10. Title 62 is amended by adding a chapter to read:

4 CHAPTER 21A
5 PROGRAM FOR CONSTRUCTION AND
6 DESIGN PROFESSIONAL SERVICES

7 Sec.

8 21A01. Definitions.

9 21A02. Program for Construction and Design Professional
10 Services.

11 21A03. Applicability.

12 21A04. Policy and regulations.

13 21A05. Duties of department.

14 21A06. Request for full or partial waiver and good-faith
15 efforts.

16 21A07. Bonding and progress payments.

17 21A08. Report to General Assembly.

18 21A09. Aspirational target.

19 21A10. Disparity study.

20 21A11. Compliance with Federal requirements.

21 21A12. Review and expiration.

22 § 21A01. Definitions.

23 The following words and phrases when used in this chapter
24 shall have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

26 "Aspirational target." A target established by the Secretary
27 of General Services under section 21A09 (relating to
28 aspirational target).

29 "Contract-specific goal." A goal established by the
30 department in collaboration with the purchasing agency for use

1 of small diverse businesses on a specific procurement.

2 "Disparity study." A study conducted to determine whether
3 there is a disparity between the availability and use of small
4 diverse businesses in Commonwealth procurement for construction
5 and design professional services.

6 "Good-faith efforts." The practices or activities instituted
7 by a bidder or offeror to promote and ensure participation by
8 small diverse businesses in agency procurements for construction
9 and design professional services in order to meet a contract-
10 specific goal.

11 "Program." The Program for Construction and Design
12 Professional Services established under section 21A02 (relating
13 to Program for Construction and Design Professional Services).

14 "Small business." A business in the United States which is
15 independently owned and is not dominant in its field of
16 operation.

17 "Small diverse business." A small business owned or
18 controlled by a majority of persons, not limited to members of
19 minority groups, who have been deprived of the opportunity to
20 develop and maintain a competitive position in the economy
21 because of economic and social disadvantages.

22 "Utilization schedule." A document, submitted by a bidder or
23 offeror as part of a bid or proposal, in which a bidder or
24 offeror commits to a level of small diverse business
25 participation for a contract, identifies the associated
26 responsibilities and scope of work and identifies the dollar
27 value or percentages of the work to be performed.

28 § 21A02. Program for Construction and Design Professional
29 Services.

30 The Program for Construction and Design Professional Services

1 is established in the department.

2 § 21A03. Applicability.

3 This chapter shall apply to procurements for construction and
4 design professional services.

5 § 21A04. Policy and regulations.

6 In order to implement the program, the department shall
7 establish policy for executive and independent agencies for
8 which the department acts as a purchasing agency and may
9 promulgate regulations to carry out and enforce the provisions
10 of this chapter. State-affiliated entities shall implement the
11 policy for their procurement programs.

12 § 21A05. Duties of department.

13 The department shall administer the program. The department's
14 duties shall include:

15 (1) Formulating, proposing and implementing policy and
16 regulations for the development, implementation and
17 monitoring of the program.

18 (2) Developing, using and assisting purchasing agencies
19 impartiality measures to facilitate the participation of
20 firms in Commonwealth procurement activities, including the
21 implementation of a program to reserve procurements for award
22 to small businesses only.

23 (3) Providing information and assistance to small
24 businesses and small diverse businesses relating to the
25 program, including special training programs to assist small
26 businesses and small diverse businesses in learning how to do
27 business with Commonwealth agencies and serving as a liaison
28 to community, contractors, professionals and supplier groups,
29 associations and organizations.

30 (4) Establishing thresholds for construction and design

1 professional services procurements which require the setting
2 of contract-specific goals.

3 (5) Ensuring that small diverse businesses are solicited
4 on procurements for which the businesses may be suited.

5 (6) Establishing contract-specific goals, in
6 collaboration with the purchasing agency, based upon relevant
7 factors, including the availability of small diverse
8 businesses to provide the supplies, materials and equipment
9 or services required by the scope of work of the procurement.

10 (7) In collaboration with the purchasing agency,
11 reviewing utilization schedules, considering requests for
12 waivers of contract-specific goals based upon a showing of
13 good-faith efforts and evaluating the extent to which
14 contract-specific goals were achieved.

15 (8) Monitoring contracts to evaluate compliance with
16 contract-specific goals and commitments.

17 (9) Receiving, reviewing and acting upon complaints and
18 suggestions concerning the program.

19 (10) Evaluating the effectiveness and utility of the
20 program.

21 (11) Monitoring the program and the Commonwealth's
22 progress towards the aspirational target.

23 § 21A06. Request for full or partial waiver and good-faith
24 efforts.

25 Notwithstanding any provision of law to the contrary, bidders
26 or offerors may request a partial or full waiver of a contract-
27 specific goal for small diverse business participation. A bidder
28 or offeror requesting a partial or full waiver shall submit, in
29 writing, a report detailing the bidder's or offeror's efforts to
30 meet the contract-specific goal as required by the solicitation.

1 In reviewing a bidder's or offeror's written request for a
2 partial or full waiver of a contract-specific goal, the
3 purchasing agency, based on the recommendation of the
4 department, shall determine if a bidder or offeror has made
5 good-faith efforts to meet the contract-specific goal and to
6 what extent the waiver request should be granted. In determining
7 if a bidder or offeror has made good-faith efforts, the
8 purchasing agency and the department may consider levels of
9 participation by small diverse businesses by other bidders or
10 offerors.

11 § 21A07. Bonding and progress payments.

12 (a) Bonding.--Notwithstanding other provisions of law to the
13 contrary, a purchasing agency may reduce the level or change the
14 types of bonding normally required or accept alternative forms
15 of security to the extent reasonably necessary to encourage
16 procurement from small businesses and small diverse businesses.

17 (b) Progress payments.--A purchasing agency may make special
18 provisions for progress payments as it deems reasonably
19 necessary to encourage procurement from small businesses and
20 small diverse businesses.

21 § 21A08. Report to General Assembly.

22 The department shall annually report in writing to the
23 General Assembly regarding the awarding of contracts and
24 subcontracts to small businesses and small diverse businesses
25 during the preceding fiscal year. The report shall include
26 statistical data from the program, including business
27 classification, location and industry. In preparing the report,
28 the department shall verify if the commitments made in the
29 awarding of contracts were maintained or achieved.

30 § 21A09. Aspirational target.

1 The Secretary of General Services shall set an aspirational
2 target for small diverse business participation by the
3 Commonwealth on procurements subject to this chapter, which
4 shall be reviewed and adjusted every five years upon completion
5 of a disparity study.

6 § 21A10. Disparity study.

7 Beginning no later than June 30, 2022, and at least once
8 every five years thereafter, the department shall complete a
9 Statewide disparity study on the availability and use of small
10 diverse businesses in Commonwealth construction and design
11 professional services. The results of the study shall be used to
12 set an aspirational target under section 21A09 (relating to
13 aspirational target).

14 § 21A11. Compliance with Federal requirements.

15 If a procurement involves the expenditure of Federal
16 assistance or contract money, the purchasing agency shall comply
17 with Federal law and authorized regulations which are
18 mandatorily applicable and which are not presently reflected in
19 this part.

20 § 21A12. Review and expiration.

21 (a) Review.--Upon completion of the disparity study
22 conducted under section 21A10 (relating to disparity study), the
23 department shall review the operation of and evidentiary basis
24 for the program in order to determine whether the Commonwealth
25 has a continuing compelling interest in remedying discrimination
26 against small diverse businesses in its marketplace, and the
27 permissible scope of any narrowly tailored remedies to redress
28 discrimination against small diverse businesses so that the
29 Commonwealth will not function as a passive participant in a
30 discriminatory marketplace.

1 (b) Expiration.--This chapter shall expire January 1, 2028,
2 unless the disparity study completed under section 21A10 shows a
3 statistically significant disparity in the utilization of small
4 diverse businesses. If the disparity study shows a statistically
5 significant disparity, the program shall renew for an additional
6 five years with the review and expiration under this section
7 each occurring every five years thereafter until the disparity
8 study shows no statistically significant disparity in the
9 utilization of small diverse businesses.

10 Section 11. This act shall take effect in 60 days.