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CHAPTER 58. CONTRACT COMPLIANCE

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Subchapter C. (Reserved)

Sec.

Source
The provisions of this Subchapter C adopted September 16, 2005, effective September 17, 2005, 35 Pa.B. 5129; reserved October 12, 2012, effective October 13, 2012, 42 Pa.B. 6544, unless otherwise noted. Immediately preceding text appears at serial pages (313179) to (313188).


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

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Source
The provisions of this Subchapter D adopted October 12, 2012, effective October 13, 2012, 42 Pa.B. 6544, unless otherwise noted.

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

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

Source
The provisions of this § 58.301 amended July 8, 2016, effective July 9, 2016, 46 Pa.B. 3660. Immediately preceding text appears at serial pages (366097) to (366098).

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

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

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

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

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

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

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

SDVBE—Service-Disabled Veteran-Owned Small Business Enterprise—A small for-profit business which is at least 51% owned and controlled by one or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of a veteran). See 13 CFR 125.10(a) (relating to who does SBA consider to control an SDVO SBC).

Secretary—The Secretary of the Department.

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

Small business—

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

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

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

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

Veteran—One of the following:

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

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

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

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

Source

The provisions of this § 58.302 amended July 8, 2016, effective July 9, 2016, 46 Pa.B. 3660. Immediately preceding text appears at serial pages (366098) and (374633).

Cross References

This section cited in 58 Pa. Code § 481a.3 (relating to diversity participation).
§ 58.303. Self-certification of eligible small businesses.

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

(b) Eligibility requirements.

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

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

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

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

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

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

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

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

Source


Cross References

This section cited in 4 Pa. Code § 58.304 (relating to verification of Small Diverse Businesses).
§ 58.304. Verification of Small Diverse Businesses.

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

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

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

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

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

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

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

Source


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

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.

(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.


(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.

Cross References
This section cited in 4 Pa. Code § 58.308 (relating to hearing).

§ 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.