

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2140 Session of 2011

INTRODUCED BY WHEATLEY, CALTAGIRONE, HORNAMAN, PAYTON AND
YOUNGBLOOD, DECEMBER 20, 2011

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, DECEMBER 20, 2011

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, further providing for definitions; providing for
3 authority to waive employee limit, for alternative
4 certification, for contractor performance and general
5 conditions, for mentor-protégé program and for small business
6 reserve program; establishing a surety bond guarantee
7 program; and further providing for contractors' and
8 subcontractors' payment obligations.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 2102 of Title 62 of the Pennsylvania
12 Consolidated Statutes is amended to read:

13 § 2102. Definitions.

14 [Subject] Notwithstanding section 103 (relating to
15 definitions) and subject to section 2103 (relating to
16 regulations), the following words and phrases when used in this
17 chapter shall have the meanings given to them in this section
18 unless the context clearly indicates otherwise:

19 "Commonwealth agency." The term shall include the following:

20 (1) Any office, department, authority, board, multistate
21 agency or commission of the executive branch, including:

1 (i) The Office of the Governor.

2 (ii) The Office of Attorney General, the Department
3 of the Auditor General and the Treasury Department.

4 (iii) An organization established by the
5 Constitution of Pennsylvania or a statute or executive
6 order that performs or is intended to perform an
7 essential governmental function.

8 (2) The term shall not include a judicial or legislative
9 agency.

10 "Disadvantaged business." A small business which is owned or
11 controlled by a majority of persons, not limited to members of
12 minority groups, who:

13 (1) have been deprived of the opportunity to develop and
14 maintain a competitive position in the economy because of
15 social disadvantages[.]; or

16 (2) are veterans, including service-disabled veterans.

17 "Governmental agency." A Commonwealth agency, local agency,
18 independent agency, State-affiliated entity or State-related
19 institution. The term shall not include any local library,
20 county library, library system, district library center or
21 Statewide library resource center as those terms are defined in
22 the act of June 14, 1961 (P.L.324, No.188), known as The Library
23 Code, or to any nonprofit organization that performs or is
24 intended to perform an essential governmental function.

25 "Independent agency." Any board, commission or other agency
26 or officer of the Commonwealth that is not subject to the policy
27 supervision and control of the Governor. The term shall not
28 include a legislative agency or a judicial agency.

29 "Judicial agency." A court of the Commonwealth or any other
30 entity or office of the unified judicial system.

1 "Legislative agency." Any of the following:

2 (1) The Senate.

3 (2) The House of Representatives.

4 (3) The Capitol Preservation Committee.

5 (4) The Center for Rural Pennsylvania.

6 (5) The Joint Legislative Air and Water Pollution
7 Control and Conservation Committee.

8 (6) The Joint State Government Commission.

9 (7) The Legislative Budget and Finance Committee.

10 (8) The Legislative Data Processing Committee.

11 (9) The Independent Regulatory Review Commission.

12 (10) The Legislative Reference Bureau.

13 (11) The Local Government Commission.

14 (12) The Pennsylvania Commission on Sentencing.

15 (13) The Legislative Reapportionment Commission.

16 (14) The Independent Fiscal Office.

17 (15) The Legislative Audit Advisory Commission.

18 (16) Any other office, commission, committee or agency
19 of the General Assembly, or a caucus thereof, whose general
20 operation is funded separately through a General Fund
21 appropriation.

22 "Local agency." Any of the following:

23 (1) Any political subdivision, intermediate unit,
24 charter school, cyber charter school or public trade or
25 vocational school.

26 (2) Any local, intergovernmental, regional or municipal
27 agency, authority, council, board, commission or similar
28 governmental entity.

29 "Service-disabled veteran." A veteran who possesses either
30 an adjudication letter from the United States Veterans'

1 Administration establishing a service-connected disability
2 rating or a disability determination from the Department of
3 Defense.

4 "Small business." A business in the United States which is
5 independently owned, is not dominant in its field of operation
6 and employs 100 or fewer employees.

7 "State-affiliated entity." A Commonwealth authority or
8 Commonwealth entity. The term includes the Pennsylvania Higher
9 Education Assistance Agency and any entity established thereby,
10 the Pennsylvania Gaming Control Board, the Pennsylvania Game
11 Commission, the Pennsylvania Fish and Boat Commission, the
12 Pennsylvania Housing Finance Agency, the Pennsylvania Municipal
13 Retirement Board, the State System of Higher Education, a
14 community college, the Pennsylvania Turnpike Commission, the
15 Pennsylvania Public Utility Commission, the Pennsylvania
16 Infrastructure Investment Authority, the State Public School
17 Building Authority, the Pennsylvania Interscholastic Athletic
18 Association and the Pennsylvania Higher Educational Facilities
19 Authority. The term shall include a State-related institution.

20 "State-related institution." Includes:

- 21 (1) Temple University.
22 (2) The University of Pittsburgh.
23 (3) The Pennsylvania State University.
24 (4) Lincoln University.

25 "Veteran." An individual who:

- 26 (1) Served in the active United States military in any
27 of the four current branches and all previous branches,
28 including a reserve component or the National Guard.
29 (2) Was released or discharged from active military
30 service under conditions other than dishonorable.

1 (3) Possesses a certificate of release or discharge from
2 active duty.

3 Section 2. Title 62 is amended by adding sections to read:

4 § 2104.1. Authority to waive employee limit.

5 (a) Authority to waive.--The department or a Commonwealth
6 agency may, at its discretion and where it is determined to be
7 in the best interest of this Commonwealth, waive the small
8 business employee limit requirement as established in the
9 definition of "small business" in section 2102 (relating to
10 definitions) in order to promote and create economic
11 opportunities for disadvantaged businesses.

12 (b) Inclusion of employee limit in bid document.--The
13 department or a Commonwealth agency shall inform prospective
14 bidders of the decision to waive the small business employee
15 limit for disadvantaged businesses by including notice of the
16 waiver in the invitation for bid, request for proposal or any
17 other document that is subject to an employee limit waiver,
18 prior to its release for bidding or solicitation purposes by the
19 department or a Commonwealth agency.

20 (c) Subsequent determination to waive notice.--If the
21 department or a Commonwealth agency determines that the small
22 business employee limit should be waived subsequent to the
23 release of an invitation for bid, request for proposal or any
24 other such document, the department or Commonwealth agency shall
25 take appropriate action to ensure the inclusion of disadvantaged
26 businesses in bidding requirements or solicitation of proposals
27 and provide prompt notice to all prospective bidders and
28 offerors of the determination to waive the small business
29 employee limit.

30 (d) Report.--The department shall include in its annual

1 report to the General Assembly information on its use of the
2 small business employee limit waiver authorized under this
3 section. The report shall include, but may not be limited to,
4 the following information for the preceding calendar year:

5 (1) The number of times the employee limit was waived
6 prior to the release of an invitation for bid, request for
7 proposal or other document and the reason for imposing the
8 waiver.

9 (2) The number of times the employee limit was waived
10 following the release of an invitation for bid, request for
11 proposal or other document and the reason for the subsequent
12 determination to waive the small business employee limit
13 requirement.

14 (3) The identity and geographic location of the
15 disadvantaged businesses subject to an employee limit waiver.

16 (4) The number of employees of each disadvantaged
17 business subject to an employee limit waiver.

18 (5) The dollar amount of each contract awarded which
19 included a small business employee limit waiver.

20 (e) Applicability.--The provisions of this section shall
21 apply to any eligible "disadvantaged business" as defined under
22 section 2102.

23 § 2109. Alternative certification.

24 (a) Acceptance of alternative certification authorized.--To
25 establish greater uniformity in the Commonwealth's disadvantaged
26 business certification process, the department may accept the
27 certification of any eligible disadvantaged business certified
28 under the Pennsylvania Unified Certification Program as
29 established by the department in accordance with the
30 requirements of 49 CFR Subtitle Pts. 23 (relating to

1 participation of disadvantaged business enterprise in airport
2 concessions) and 26 (relating to participation by disadvantaged
3 business enterprises in Department of Transportation financial
4 assistance programs). However, the department shall not certify
5 or accept any certification from an owner of a disadvantaged
6 business who is not a citizen or lawful permanent resident of
7 the United States.

8 (b) Reciprocity.--Notwithstanding any provision of law,
9 regulation, guideline or policy statement to the contrary, the
10 certification of any disadvantaged business enterprise by the
11 department in accordance with subsection (a) shall be accepted
12 and used by a governmental agency as adequate certification for
13 the purpose of bidding on or participating in any public bid,
14 contract or award, the execution of which involves the use of
15 Commonwealth funds.

16 (c) Disadvantaged business utilization program.--

17 (1) Each governmental agency receiving Commonwealth
18 funds may establish a disadvantaged business utilization
19 program which encourages the participation and use of
20 disadvantaged businesses in the performance of Commonwealth-
21 funded contracts.

22 (2) A governmental agency that fails to establish a
23 disadvantaged business utilization program in accordance with
24 paragraph (1) shall adopt and implement the program
25 established by the department.

26 (d) Adoption of procurement practices.--The department shall
27 provide assistance to the Auditor General, the State Treasurer,
28 the Attorney General and appropriate officers in the legislative
29 and judicial agencies to develop best procurement practices
30 specific to the constitutional and statutory functions of each

office and agency and consistent with the provisions of this title and regulations related to procurement by disadvantaged businesses. To facilitate participation by disadvantaged businesses in procurement by constitutional offices and the judicial and legislative agencies, such constitutional officers and purchasing agents of any judicial agency or legislative agency may adopt the procurement practices and utilization program used by the department to promote participation by disadvantaged businesses in contracting, subcontracting and purchasing.

§ 2110. Contractor performance; general conditions.

Each Commonwealth agency taking bids in connection with the award of any contract shall provide in the general conditions, under which a bid will be received, that any person making a bid as a prime contractor shall, in his bid or offer, set forth the following information:

(1) The name and business address of the place of business of each subcontractor certified as a disadvantaged business that will perform work or labor or render service to the prime contractor in connection with the performance of the contract and that will be used by the prime contractor to fulfill disadvantaged business participation goals.

(2) The portion of the contract that will be performed by each subcontractor under paragraph (1). Except that, in the case of an emergency where a contract is necessary and essential for the immediate preservation of the public health, welfare or safety or the protection of State property, the prime contractor shall list only one subcontractor for each portion of the contract as is defined by the prime contractor in his bid or offer.

1 (3) A statement of the efforts made to negotiate with
2 disadvantaged businesses, including the name, address and
3 telephone number of any disadvantaged business contacted by
4 the prime contractor; the date the negotiations took place,
5 if any; and a description of the information provided to the
6 disadvantaged businesses regarding the plans, specifications
7 and requirements for the portion of the contract proposed to
8 be performed by the disadvantaged business.

9 (4) The bid or offer may also set forth any of the
10 following information:

11 (i) Whether the person or a representative of the
12 person attended any prebid or preproposal conferences.

13 (ii) A copy of any written notification of the bid
14 or offer to perform a contract sent by certified mail,
15 return receipt requested, or electronic mail, read
16 receipt, to disadvantaged businesses that perform the
17 type of work to be subcontracted in sufficient time to
18 allow the disadvantaged businesses to participate
19 effectively.

20 (iii) The specific work the person intends to
21 subcontract, that interest in the project is being
22 solicited and how to obtain information for the review
23 and inspection of the plans, specifications and
24 requirements of the invitation for bids or requests for
25 proposals.

26 (iv) A statement of whether economically feasible
27 portions of the contract will be performed by
28 disadvantaged businesses, including, where appropriate,
29 segmenting or combining elements of a contract into
30 economically feasible units.

1 (v) Information on whether the person or a
2 representative of the person consulted with the Bureau of
3 Minority and Women Business Opportunities to ensure
4 significant contracting, subcontracting and purchasing
5 opportunities for disadvantaged businesses.

6 (vi) Information on whether the person or a
7 representative of the person participated in any outreach
8 activities or events to increase disadvantaged business
9 interest and participation in contracting, subcontracting
10 and purchasing opportunities.

11 (vii) Information on use of the department's
12 Internet website to identify certified disadvantaged
13 businesses as prospects for contracting, subcontracting
14 and purchasing opportunities in connection with a bid or
15 offer.

16 (viii) Any solicitation of certified disadvantaged
17 businesses for contracting, subcontracting or purchasing
18 opportunities and inclusion of certified disadvantaged
19 businesses on solicitation lists.

20 (ix) Records of solicitations, including a bid
21 tabulation, showing the names of all disadvantaged
22 businesses solicited and the dollar amount of the bid,
23 quote or proposal, as well as copies of all bids, quotes
24 and proposals received.

25 (x) Any quarterly reports or other report provided
26 to the Bureau of Minority and Women Business
27 Opportunities depicting disadvantaged business
28 utilization.

29 (xi) Evidence demonstrating any good faith effort in
30 the oversight of and timely payment, as provided under

1 Subchapter D of Chapter 39 (relating to prompt payment
2 schedules), to disadvantaged businesses and to maintain
3 the commitment made to any disadvantaged business that
4 served as a subcontractor at the time the subcontract was
5 awarded, and thereafter.

6 § 2111. Mentor-protégé program.

7 (a) Establishment and purpose of program.--

8 (1) The department shall establish a mentor-protégé
9 program to assist disadvantaged businesses in enhancing their
10 capabilities to compete for and perform prime contracts and
11 subcontracts awarded by a Commonwealth agency.

12 (2) The purpose of the mentor-protégé program is to
13 foster long-term business relationships between disadvantaged
14 businesses and prime contractors in order to facilitate their
15 growth and development and increase their prime contracting
16 and subcontracting opportunities with Commonwealth agencies.

17 (b) General rule.--A prime contractor that is approved as a
18 mentor by the department may enter into a written agreement with
19 a disadvantaged business to provide developmental assistance to
20 enhance the disadvantaged business's contracting and
21 subcontracting capabilities. Developmental assistance provided
22 by a mentor prime contractor to its protégé disadvantaged
23 business may include, but not be limited to, the following:

24 (1) Management assistance, including financial
25 management, organizational management, business management
26 and planning and business development.

27 (2) Technical assistance.

28 (3) Financial assistance.

29 (4) Temporary employee assistance.

30 (5) Use of facilities, equipment or property without

1 charge.

2 (6) Any other type of developmental assistance as
3 approved by the department.

4 (c) Factor to be considered.--Notwithstanding any other
5 provision of this title to the contrary, the mentor-protégé
6 arrangement between a prime contractor and a disadvantaged
7 business whereby the disadvantaged business serves as a joint
8 venture partner or subcontractor to the prime contractor shall
9 be an important factor to be considered or weighed by a
10 Commonwealth agency in awarding a contract under sections 513
11 (relating to competitive sealed proposals), 517 (relating to
12 multiple awards), 518 (relating to competitive selection
13 procedures for certain services) and 519 (relating to selection
14 procedure for insurance and notary bonds).

15 (d) Guidelines.--The department shall adopt and publish
16 guidelines to enforce and carry out the requirements of this
17 section. The guidelines shall be published in the Pennsylvania
18 Bulletin and shall include, but may not be limited to, the
19 following:

20 (1) Selection criteria for mentor and protégé
21 businesses.

22 (2) An application process, including an application
23 form to be used by prime contractors seeking to participate
24 in the mentor-protégé program and time frame for review.

25 (3) Criteria for measuring program impact and success.

26 (4) The required contents of a mentor-protégé written
27 agreement. Each written agreement shall specify the type of
28 developmental assistance that will be provided by the mentor
29 to the protégé disadvantaged business.

30 § 2112. Small business reserve program.

1 (a) Small business reserve.--The department shall establish
2 a small business reserve program for the purpose of increasing
3 economic opportunities for small and disadvantaged businesses
4 and affording small and disadvantaged businesses the opportunity
5 to bid on State government contracts without competing with
6 larger businesses. All procurement by the department shall be
7 eligible for designation for the small business reserve program
8 and shall be published in the same manner as required for a
9 request for proposal or an invitation for bid.

10 (b) Reserve account.--Notwithstanding any other provision of
11 this title to the contrary, the department shall structure its
12 procurement procedures to reserve up to 10% of the total dollar
13 value of its procurement contracts, including public works,
14 construction and professional services and designed professional
15 services contracts, to be made directly to qualified small and
16 disadvantaged businesses. However, the total dollar value of
17 procurements by the department shall not include the value of
18 any contract to which this subsection would not apply because of
19 a conflict with Federal law.

20 (c) Awards.--The department shall award a procurement
21 contract designated for a small business reserve to the small
22 and disadvantaged business that submits a bid or proposal that:

23 (1) is the lowest bid price;

24 (2) is the lowest evaluated bid price, if the invitation
25 for bid or request for proposal so provides; or

26 (3) is in the best interest of the Commonwealth.

27 (d) Other Commonwealth agencies.--

28 (1) A Commonwealth agency may collaborate with the
29 department to structure its procurement procedures to provide
30 for a small business reserve program which shall be subject

1 to the requirements of this section.

2 (2) Upon request, the department shall assist the
3 procurement unit of a Commonwealth agency with the
4 development and implementation of a small business reserve.

5 (e) Construction and application.--

6 (1) The provisions of this section shall not be
7 construed to preclude any small and disadvantaged business
8 from competing for any other contracts that is not
9 specifically designated for the small business reserve
10 program.

11 (2) The provisions of this section shall apply to any
12 eligible small business as defined under section 2102
13 (relating to definitions).

14 (f) Regulations.--The department shall adopt and promulgate
15 regulations to govern the provisions of this section. The
16 regulations shall:

17 (1) Establish a comprehensive bidder's list of eligible
18 small and disadvantaged businesses.

19 (2) Provide procedures for maintaining the list in
20 paragraph (1).

21 (3) Include any other information the department
22 determines necessary and appropriate to carry out the
23 provisions of this section.

24 (g) Reports.--On or before December 31, 2014, and on or
25 before each December 31 thereafter, the department shall submit
26 a report to the Chief Clerk of the Senate and the Chief Clerk of
27 the House of Representatives on the operation and effectiveness
28 of the small business reserve program. The department may submit
29 the report electronically. The report shall include the
30 following:

1 (1) The total number and dollar value of payments the
2 department made to small and disadvantaged businesses
3 pursuant to designated small business reserve contracts.

4 (2) The total number and dollar value of payments the
5 department made to small and disadvantaged businesses that
6 were not designated as small business reserve contracts.

7 (3) The total dollar value of payments made by the
8 department under procurement contracts.

9 (4) Information on any Commonwealth agency that has
10 implemented a small business reserve program, including
11 information required under paragraphs (1), (2) and (3).

12 (5) Any other information or recommendations the
13 department determines necessary.

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

15 CHAPTER 21-A

16 SURETY BOND GUARANTEE PROGRAM

17 Sec.

18 2101-A. Definitions.

19 2102-A. Establishment of program.

20 2103-A. Surety Bond Guarantee Fund.

21 2104-A. Contract eligible for guarantee.

22 2105-A. Disadvantaged business participation.

23 2106-A. Criteria for denying program participation.

24 2107-A. Duties of department.

25 2108-A. Regulations.

26 § 2101-A. Definitions.

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

30 "Applicant." A disadvantaged business as defined in this

chapter.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Disadvantaged business." A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. The term shall include a small business which is owned or controlled by a majority of persons who are veterans, including service-disabled veterans.

"Fund." The Surety Bond Guarantee Fund established in section 2103-A (relating to Surety Bond Guarantee Fund).

"Program." The Surety Bond Guarantee Fund Program established in this chapter.

"Secretary." The Secretary of Community and Economic Development of the Commonwealth.

"Service-disabled veteran." A veteran who possesses either an adjudication letter from the Department of Veterans' Affairs establishing a service-connected disability rating or a disability determination from the Department of Defense.

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

"Surety bond." A guarantee in which the surety guarantees that the contractor or principal in the bond will perform the obligation stated in the bond. The term shall include the following types of bonds:

(1) Bid bonds that guarantee the bidder will enter into a contract and furnish the required payment and performance bonds.

1 (2) Payment bonds that guarantee payment from the
2 contractor to parties who furnish labor, materials, equipment
3 and supplies.

4 (3) Performance bonds that guarantee the contractor will
5 fulfill the contract in accordance with terms and conditions.

6 (4) Ancillary bonds which may be incidental and
7 essential to the performance of the contract.

8 "Veteran." An individual who:

9 (1) Served in the active United States military in any
10 of the four current branches and all previous branches,
11 including a reserve component or the National Guard.

12 (2) Was released or discharged from active military
13 service under conditions other than dishonorable.

14 (3) Possesses a certificate of release or discharge from
15 active duty.

16 § 2102-A. Establishment of program.

17 The Surety Bond Guarantee Fund Program is established, to the
18 extent funds are appropriated specifically for the purposes of
19 this act, in the department. The purpose of the program is to
20 assist disadvantaged businesses to competitively bid for
21 governmental contracts.

22 § 2103-A. Surety Bond Guarantee Fund.

23 (a) Fund established.--There is established the Surety Bond
24 Guarantee Fund within the State Treasury for the purpose of
25 assisting disadvantaged businesses to competitively bid for
26 certain Commonwealth contracts.

27 (b) Fund administration.--The fund shall be administered by
28 the department. All moneys in the fund shall be used to finance
29 guarantees to bonding companies against percentages of losses
30 sustained as a result of defaults by qualified disadvantaged

businesses on a contract or project.

(c) Payments from fund.--Surety bond guarantees made with payments from the fund under the program shall not exceed the sum of \$1,000,000 for any one disadvantaged business.

§ 2104-A. Contract eligible for guarantee.

(a) Eligibility.--A bond guaranteeing the performance of a contract or project shall be qualified and eligible for a surety bond guarantee under the program if:

(1) The bond is listed in the contract bonds section of the Surety Association of America's "Manual of Rules, Procedures and Classifications."

(2) The bond is required by the contract, invitation for bid or request for proposal.

(3) The bond is executed by a surety company that is acceptable to the Treasury Department and qualified by the department.

(4) The bond meets any other requirements established by the department.

(b) Required provision; notice of cancellation.--No bond shall qualify or be eligible for a guarantee under the program unless it contains a provision affirming that the bond shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect. Cancellation of the bond shall not invalidate the bond regarding the period of time it was in effect.

§ 2105-A. Disadvantaged business participation.

(a) Application process.--A disadvantaged business may apply to participate in the program by filing an application with the department. The department shall review the application to

1 determine if the applicant is eligible to participate in the
2 program within 30 days of receipt of the completed application.
3 The department may extend the review period for an additional 30
4 days if it determines that additional time is needed to complete
5 the review process. The department shall notify the applicant in
6 writing of the extended period, including the date it will reach
7 its final decision.

8 (b) Investigation.--Upon receipt of a completed application,
9 the department may conduct an investigation of the applicant,
10 including an investigation of its owners, officers, directors,
11 principals or agents, in order to determine whether the
12 applicant is eligible to participate in the program. If the
13 investigation finds and the department determines that an
14 applicant is not eligible to participate in the program, it
15 shall notify the applicant in writing that the applicant will
16 not be approved for program participation. The notification of
17 ineligibility shall include the reason the application was not
18 approved and that the applicant has the right to appeal the
19 department's determination to the secretary within 30 days of
20 the date of the notice.

21 (c) Criteria for determining eligibility.--An applicant
22 shall be deemed eligible to participate in the program if the
23 department determines that an applicant meets all of the
24 following qualifications:

25 (1) The applicant is a disadvantaged business certified
26 by the Department of General Services.

27 (2) The applicant is in the construction or building
28 trade industry.

29 (3) The applicant has been actively operating its
30 business for at least one year prior to the application date.

1 (4) The applicant has the experience and financial
2 fitness appropriate to a qualified contract.

3 (5) The applicant has agreed to subcontract no more than
4 75% of the work to be performed under a qualified contract or
5 project.

6 (6) The applicant has demonstrated an inability to
7 secure bonding under normal market conditions.

8 (7) The applicant or one of its owners, officers,
9 directors, principals or agents has not committed or been
10 convicted of any of the activities set forth in section 2106-
11 A (relating to criteria for denying program participation).

12 (8) The applicant meets any other program requirements
13 that establish criteria for eligibility that the department
14 shall adopt by regulation, guideline or statement of policy
15 within 180 days of the effective date of this chapter.

16 § 2106-A. Criteria for denying program participation.

17 The department may not approve an application for program
18 participation if it determines that the applicant or one of its
19 owners, officers, directors, principals or agents committed or
20 has been convicted of the following:

21 (1) Made a material misstatement in the application or
22 any other document required to be submitted by the
23 department, under a provision of this chapter or by the
24 Department of General Services under the provisions of this
25 title.

26 (2) Failed to comply with or violated any provision of
27 this chapter or any regulation, order or statement of policy
28 issued by the department under this chapter or any
29 regulation, order or statement of policy issued by the
30 Department of General Services under this title.

1 (3) Engaged in unfair or unethical conduct in connection
2 with the construction or building trade industry or in
3 violation of Chapter 23 (relating to ethics in public
4 contracting).

5 (4) Does not possess the financial fitness, character,
6 reputation, integrity and general fitness sufficient to
7 warrant reasonable belief that the applicant's business will
8 be conducted lawfully, honestly and in the public interest.

9 (5) Notwithstanding any other provision of law to the
10 contrary, been convicted of or pleaded guilty or nolo
11 contendere to a crime of moral turpitude or to an offense
12 graded as a felony.

13 (6) Been enjoined by a court of competent jurisdiction
14 from engaging in the construction or building trade industry.

15 (7) Has had a license issued by the department or any
16 other Federal, State or local agency denied, not renewed,
17 suspended or revoked.

18 (8) Has had the certification as a disadvantaged
19 business issued by the Department of General Services
20 revoked.

21 (9) Became the subject of a United States Postal Service
22 fraud order.

23 (10) Demonstrated negligence or incompetence in
24 performing, or failure to perform, an act for which the
25 applicant is required to hold a license under any law of
26 this Commonwealth.

27 (11) Has an outstanding debt to the Federal Government,
28 the Commonwealth or any Federal or Commonwealth agency or a
29 political subdivision of the Commonwealth or agency of a
30 political subdivision.

1 (12) Became insolvent at any time prior to the
2 application date, meaning that the liabilities of the
3 applicant exceeded the assets of the applicant or that the
4 applicant could not meet the obligations of the applicant as
5 they matured or was in such financial condition that the
6 applicant could not continue in business without jeopardizing
7 the health, safety and welfare of its customers and
8 employees.

9 (13) At any time prior to application, has failed to
10 disburse payments to subcontractors in a timely manner as
11 agreed to under a contract for any reason other than the
12 owner's failure to make the agreed-to payments to the
13 applicant or because such disbursement would constitute a
14 violation of applicable law or an order issued by a court or
15 administrative body of competent jurisdiction.

16 § 2107-A. Duties of department.

17 (a) Technical assistance.--The department, in consultation
18 with the Department of General Services, shall provide technical
19 assistance to enable disadvantaged businesses to competitively
20 bid on State and other governmental contracts. Technical
21 assistance shall include, but not be limited to, assisting
22 disadvantaged businesses in responding to bid requests,
23 strengthening financial condition and addressing other concerns
24 raised or likely to be raised by a bonding company.

25 (b) Monitoring program.--The department shall establish a
26 monitoring program to monitor the activities of disadvantaged
27 businesses participating in the program. The monitoring program
28 shall include inspections of projects approved for bond
29 guarantees to minimize the risk of calls on the fund. The
30 department shall promptly advise the disadvantaged business of

any deficiencies identified during an inspection. In the event the deficiencies noted in the report are not promptly addressed by the disadvantaged business to the satisfaction of the department, the department may give the disadvantaged business a reasonable period to correct the deficiencies or may report such deficiencies to the issuing bond company.

§ 2108-A. Regulations.

(a) Adoption of regulations.--The department shall administer and enforce the provisions of this chapter and shall adopt and promulgate regulations, guidelines or policy statements necessary to carry out the provisions of this chapter.

(b) Department of General Services.--The department shall consult or collaborate with the Department of General Services to carry out the provisions of this chapter. The Department of General Services shall from time to time provide any technical or staff assistance as may be required to assist the department in carrying out the provisions of this chapter.

Section 4. Section 3933(c) of Title 62 is amended to read:

§ 3933. Contractors' and subcontractors' payment obligations.

* * *

(c) Payment.--When a subcontractor has performed in accordance with the provisions of the contract, a contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportional amount received for each such subcontractor's work and material, based on work completed or services provided under the subcontract, [14] seven days after receipt of a progress payment. Payment shall be made under this section unless it is being withheld under section 3934 (relating to withholding of payment for good

1 faith claims).

2 * * *

3 Section 5. The provisions of this act are severable. If any
4 provision of this act or its application to any person or
5 circumstance is held invalid, the invalidity shall not affect
6 other provisions or applications of this act which can be given
7 effect without the invalid provision or application.

8 Section 6. This act shall take effect as follows:

9 (1) The following provisions shall take effect
10 immediately:

11 (i) The amendment of 62 Pa.C.S. § 3933(c).

12 (ii) This section.

13 (2) The addition of 62 Pa.C.S. Ch. 21-A shall take
14 effect upon publication by the department in the Pennsylvania
15 Bulletin of the appropriation referenced in section 2102-A.

16 (3) The remainder of this act shall take effect in 60
17 days.