

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1004 Session of
2011

INTRODUCED BY PIPPY, TOMLINSON, FONTANA, FARNESE, SOLOBAY,
SCHWANK, BLAKE, MENSCH, BREWSTER, COSTA, LEACH, KITCHEN AND
FERLO, APRIL 25, 2011

REFERRED TO STATE GOVERNMENT, APRIL 25, 2011

AN ACT

1 Providing for the establishment of the Surety Bond Guarantee
2 Fund Program; imposing duties on the Department of Community
3 and Economic Development; and establishing the Surety Bond
4 Guarantee Fund.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Surety Bond
9 Guarantee Fund Program Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Applicant." A disadvantaged business as defined in this
15 act.

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

18 "Disadvantaged business." A small business which is owned or

1 controlled by a majority of persons, not limited to members of
2 minority groups, who have been deprived of the opportunity to
3 develop and maintain a competitive position in the economy
4 because of social disadvantages.

5 "Fund." The Surety Bond Guarantee Fund established in this
6 act.

7 "Program." The Surety Bond Guarantee Fund Program
8 established in this act.

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

11 "Small business." A business in the United States which is
12 independently owned, is not dominant in its field of operation
13 and employs 250 or fewer employees.

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

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

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

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

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

28 Section 3. Establishment of program.

29 The Surety Bond Guarantee Fund Program is established in the
30 department. The purpose of the program is to assist

1 disadvantaged businesses to competitively bid for governmental
2 contracts.

3 Section 4. Surety Bond Guarantee Fund.

4 (a) Establishment.--The Surety Bond Guarantee Fund is
5 established within the State Treasury for the purpose of
6 assisting disadvantaged businesses to competitively bid for
7 certain Commonwealth contracts.

8 (b) Fund administration.--The fund shall be administered by
9 the department. All moneys in the fund shall be used to finance
10 guarantees to bonding companies against percentages of losses
11 sustained as a result of defaults by qualified disadvantaged
12 businesses on a contract or project.

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

16 Section 5. Contract eligible for guarantee.

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

20 (1) The bond is listed in the contract bonds section of
21 the Surety and Fidelity Association of America's, or its
22 successor's, "Manual of Rules, Procedures and
23 Classifications."

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

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

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

1 (b) Required provision; notice of cancellation.--

2 (1) No bond shall qualify or be eligible for a guarantee
3 under the program unless it contains a provision affirming
4 that the bond shall not be canceled for any cause unless
5 notice of intention to cancel is given to the department at
6 least 30 days before the day upon which cancellation shall
7 take effect.

8 (2) Cancellation of the bond shall not invalidate the
9 bond regarding the period of time it was in effect.

10 Section 6. Disadvantaged business participation.

11 (a) Application process.--

12 (1) A disadvantaged business may apply to participate in
13 the program by filing an application with the department.

14 (2) The department shall review the application to
15 determine if the applicant is eligible to participate in the
16 program within 30 days of receipt of the completed
17 application. The department may extend the review period for
18 an additional 30 days if it determines that additional time
19 is needed to complete the review process.

20 (3) The department shall notify the applicant in writing
21 of the extended period, including the date it will reach its
22 final decision.

23 (b) Investigation.--

24 (1) Upon receipt of a completed application, the
25 department may conduct an investigation of the applicant,
26 including an investigation of its owners, officers,
27 directors, principals or agents, in order to determine
28 whether the applicant is eligible to participate in the
29 program.

30 (2) If the investigation finds and the department

determines that an applicant is not eligible to participate in the program, it shall notify the applicant in writing that the applicant will not be approved for program participation. The notification of ineligibility shall include the reason the application was not approved and that the applicant has the right to appeal the department's determination to the secretary within 30 days of the date of the notice.

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

(1) The applicant is a disadvantaged business certified by the department.

(2) The applicant's business is in the construction or building trade industry.

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

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

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

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

(7) The applicant or one of its owners, officers, directors, principals or agents has not committed or been convicted of any of the activities set forth in section 7.

(8) The business meets any other program requirements that establish criteria for eligibility that the department shall adopt by regulation within 180 days of the effective date of this section.

1 Section 7. Criteria for denying program participation.

2 The department may not approve or may deny an application for
3 program participation if it determines that the applicant or one
4 of its owners, officers, directors, principals or agents
5 committed or has been convicted of the following:

6 (1) Made a material misstatement in the application or
7 any other document required to be submitted by the department
8 or under a provision of this act.

9 (2) Failed to comply with or violated any provision of
10 this act or any regulation, order or statement of policy
11 issued by the department under this act.

12 (3) Engaged in unfair or unethical conduct in connection
13 with the construction or building trade industry or in
14 violation of 62 Pa.C.S. Ch. 23 (relating to ethics in public
15 contracting).

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

20 (5) Notwithstanding any other provision of law to the
21 contrary, been convicted of or pleaded guilty or nolo
22 contendere to a crime of moral turpitude or to an offense
23 graded as a felony.

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

26 (7) Has had a license issued by the department or any
27 other Federal, state or local agency denied, not renewed,
28 suspended or revoked.

29 (8) Became the subject of a United States Postal Service
30 fraud order.

1 (9) Demonstrated negligence or incompetence in
2 performing an act for which the applicant is required to hold
3 a license under an act enacted by this Commonwealth.

4 (10) Has an outstanding debt to the Federal Government,
5 the Commonwealth or any Federal or Commonwealth agency or a
6 political subdivision of the Commonwealth or agency of a
7 political subdivision.

8 (11) Became insolvent at any time prior to the
9 application date, meaning that the liabilities of the
10 applicant exceeded the assets of the applicant or that the
11 applicant could not meet the obligations of the applicant as
12 they matured or was in such financial condition that the
13 applicant could not continue in business without jeopardizing
14 the health, safety and welfare of its customers.

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

22 Section 8. Duties of department.

23 (a) Technical assistance.--The department shall provide
24 technical assistance to enable disadvantaged businesses to
25 competitively bid on State and other governmental contracts.
26 Technical assistance shall include, but not be limited to,
27 assisting disadvantaged businesses in responding to bid
28 requests, strengthening financial condition and addressing other
29 concerns raised or likely to be raised by a bonding company.

30 (b) Monitoring program.--

1 (1) The department shall establish a monitoring program
2 to monitor the activities of disadvantaged businesses
3 participating in the program. The monitoring program shall
4 include inspections of projects approved for bond guarantees
5 to minimize the risk of calls on the fund.

6 (2) The department shall promptly advise the
7 disadvantaged business of any deficiencies identified during
8 an inspection.

9 (3) In the event the deficiencies noted in the report
10 are not promptly addressed by the disadvantaged business to
11 the satisfaction of the department, the department may give
12 the disadvantaged business a reasonable period to correct the
13 deficiencies or may report such deficiencies to the issuing
14 bond company.

15 Section 9. Regulations.

16 The department shall administer and enforce the provisions of
17 this act and shall adopt and promulgate regulations, guidelines
18 or policy statements necessary to carry out the provisions of
19 this act.

20 Section 10. Effective date.

21 This act shall take effect immediately.