
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1110 Session of
1985

INTRODUCED BY EVANS, MANDERINO, KUKOVICH, SWEET, CALTAGIRONE,
BATTISTO, WAMBACH, COLE AND R. C. WRIGHT, MAY 1, 1985

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, MAY 1, 1985

AN ACT

1 Providing for awarding of contracts by the Commonwealth to
2 certain small businesses and businesses which employ
3 disadvantaged persons; creating the Job Creation and Small
4 Business Assistance Council and providing for its operation;
5 establishing a designated small business contract program and
6 a procedure for the solicitation of bids; and providing
7 penalties.

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2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Job Creation
6 and Small Business Assistance Act.

7 Section 2. Findings and declaration of policy.

8 (a) Legislative findings.--It is hereby determined and
9 declared as a matter of legislative finding that:

10 (1) The promotion of economic development and employment
11 opportunities are legitimate and necessary governmental
12 functions.

13 (2) Small businesses are the primary source of new
14 employment opportunities in this Commonwealth. Thus, the
15 growth and development of small businesses and businesses
16 which employ disadvantaged persons are directly related to
17 job creation and the existence of a healthy free enterprise
18 system.

19 (3) Greater access to State contracting opportunities
20 will aid the strength and development of small businesses and
21 businesses which employ disadvantaged persons.

22 (4) There currently exists in this Commonwealth a
23 situation where an inequitably small share of State contracts
24 are awarded to small business concerns and business concerns
25 which employ disadvantaged persons and these conditions are
26 chronic and of long standing.

27 (5) Without remedial measures there is no prospect for
28 improvement.

29 (6) The present and prospective health, safety, morals
30 and general welfare of this Commonwealth require as a public

1 purpose the development and encouragement of small businesses
2 and businesses which employ disadvantaged persons, furnishing
3 property and services to this Commonwealth.

4 (b) Policy.--It is hereby declared to be a policy of this
5 Commonwealth that contracts for property and services be placed
6 with small businesses and businesses which employ disadvantaged
7 persons. Such policy is hereby declared to be a public purpose.

8 Section 3. Definitions.

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

12 "Affiliate or subsidiary of a business dominant in its field
13 of operation." A business of which 20% or more is owned or of
14 which its controlling interest is controlled by a business
15 dominant in that field of operation or which is owned by
16 partners, officers, directors, majority shareholders, or their
17 equivalent, of a business dominant in that field of operation.

18 "Businesses which employ disadvantaged persons." Any
19 business entity which, as determined by the council, employs or
20 contracts to employ disadvantaged persons in connection with the
21 Commonwealth contract.

22 "Commonwealth contract." Any agreement or purchase order, or
23 arrangement or modification thereof, between the Commonwealth or
24 any State contracting agency and any person to be paid in whole
25 or in part, directly or indirectly, by public funds or in-kind
26 contributions from the Commonwealth.

27 "Commonwealth contractor." Any contractor, supplier, vendor
28 or other person who, through a contract or other arrangement,
29 has received, is to receive or is receiving public funds or in-
30 kind contributions from the Commonwealth. The term shall include

1 any subcontractor who performs under a State contract.

2 "Council." The Job Creation and Small Business Assistance
3 Council.

4 "Department." Any department, agency, commission, authority,
5 establishment or other instrumentality of the Commonwealth and
6 any wholly or partially owned government corporation which
7 enters into contracts.

8 "Designated small business contract." That contract or
9 percentage of each State contract or package of contracts, as
10 determined by the council, for which bids are to be solicited
11 only from small businesses and businesses which employ
12 disadvantaged persons.

13 "Disadvantaged person." A person:

14 (1) who has been unemployed for 26 or more calendar
15 weeks during the current or preceding calendar year;

16 (2) who has graduated or successfully completed a
17 federally funded jobs training program within the current or
18 preceding calendar year;

19 (3) who has received cash welfare payments from the
20 Department of Public Welfare within the current or preceding
21 calendar year;

22 (4) whose individual or family wages in the current or
23 preceding calendar year have not exceeded the poverty level
24 as established by the Bureau of Labor Statistics;

25 (5) who is a displaced homemaker;

26 (6) who is a veteran of the Vietnam Era as defined in 38
27 U.S.C. § 101 (relating to definitions);

28 (7) who, within the current or preceding calendar year,
29 was a client of the Pennsylvania Office of Vocational
30 Rehabilitation; or

(8) who is a handicapped person within the meaning of section 7(6) of the Rehabilitation Act of 1973 (Public Law 93-112, 29 U.S.C. § 706(6)).

"Dominant in its field of operation." Exercising a controlling or a major influence in a business activity in which a number of businesses are engaged.

"Person." Any natural person, corporation, partnership, unincorporated association, State or local government and any State or local agency, commission, authority, board or other instrumentality or political subdivision.

"Procurement." The system and practice of soliciting bids on State contracts.

"Small business." A business entity, including a sole proprietorship, partnership, corporation, joint venture, association or cooperative, which has its principal place of business in this Commonwealth and which is not dominant in its field of operation and is not an affiliate or subsidiary of a business dominant in its field of operation.

Section 4. Establishment of the Job Creation and Small Business Assistance Council; powers and duties.

(a) Council established.--A Job Creation and Small Business Assistance Council is hereby established within the Executive Office of the Governor with the power to promulgate rules and regulations which are consistent with this act and which are necessary to carry out the stated policy of section 2(b). The council shall consist of 13 members:

(1) The Lieutenant Governor, who shall serve as chairperson.

(2) The President pro tempore of the Senate.

(3) The Speaker of the House of Representatives.

- 1 (4) The Secretary of Labor and Industry.
- 2 (5) The Secretary of General Services.
- 3 (6) The Secretary of Transportation.
- 4 (7) The Secretary of Commerce or the Director of the
- 5 Pennsylvania Minority Business Development Authority, or his
- 6 designee.
- 7 (8) The Director of the Governor's Small Business
- 8 Council.
- 9 (9) The Director of the Office of Minority Business
- 10 Enterprise.
- 11 (10) The Director of the Pennsylvania Human Relations
- 12 Commission.
- 13 (11) The Auditor General.
- 14 (12) The Attorney General.
- 15 (13) The State Treasurer.

16 (b) Members not to receive compensation.--The members of the
17 council shall receive no compensation for their services as
18 members but shall be entitled to reimbursement for all necessary
19 expenses incurred in connection with the performance of their
20 duties as members.

21 (c) Operating procedures.--The council shall operate in
22 accordance with the following:

- 23 (1) Procurements shall be designated for exclusive
- 24 participation by small businesses or businesses which employ
- 25 disadvantaged persons if it can be determined that there is a
- 26 reasonable expectation that bids and offers will be obtained
- 27 from a sufficient number of such businesses so that awards
- 28 will be made at reasonable prices on a competitive basis and
- 29 that the performance of the contracts shall be in, or have
- 30 impact on, geographic areas of either high unemployment or

1 urbanization. Also, partial designations of total procurement
2 requirements will be considered and applied where the
3 criterion for total designations is not met, but only where
4 the procurement is economically severable into two or more
5 parts, and where it is anticipated that one or more firms has
6 the technical competency and productive capacity to furnish a
7 severable portion of the procurement at a reasonable price.

8 (2) All designations of contracts, total or partial,
9 shall be made prior to the solicitation for bids and offers
10 as required by law. The solicitation shall identify the small
11 business size standard and require each bidder or offeror to
12 identify its size (large or small) pursuant to that standard,
13 its status as a business which employs disadvantaged persons,
14 and the number of previously unemployed persons to be hired.
15 If there is a conflict with other policies, this act and
16 rules promulgated under this act shall govern. Where Federal
17 money is used, Federal law shall apply.

18 (3) The council shall designate potential contractors
19 according to their status as businesses which employ
20 disadvantaged persons. The council may designate potential
21 contractors with regard to one or more contracts or types of
22 contracts, provided that such designations must be renewed at
23 least annually. In determining whether potential contractors
24 shall be designated as businesses which employ disadvantaged
25 persons, the council shall consider the type and size of the
26 businesses, the number of disadvantaged persons employed and
27 the percentage of such persons compared to the total number
28 of persons employed by the business.

29 (4) The council, when bonding is required, shall set the
30 amount of bonds or securities on designated small business

1 contracts. No agency or department of the Commonwealth
2 involved in purchasing goods or services on designated
3 contracts may require bid, performance and payment bonds to
4 be posted if the contract price is less than \$25,000, unless
5 the bonds are required by Federal law or regulations or as a
6 condition of Federal assistance. The amount of these bonds
7 shall not be greater than:

8 (i) Bid bond - 10% of the total bid.

9 (ii) Performance bond - 50% of the total bid price
10 of work.

11 (iii) Labor and material bond - the full amount of
12 labor and materials.

13 (5) The council, with the explicit approval of the
14 department or other instrumentality of the Commonwealth
15 involved, may waive all bond requirements for a particular
16 designated contract.

17 (6) The council shall have the responsibility to assign
18 as designated contracts a portion of all purchases and
19 contracts made by each executive department, including those
20 services rendered and furnished by registered professionals,
21 such as, but not limited to, accountants, attorneys, medical
22 doctors, architects, dentists and engineers.

23 Section 5. Guidelines and presumptions.

24 All departments shall promulgate rules according to
25 guidelines established by the council for the determination of
26 business size limitations. When computing size status, the
27 annual sales and receipts of a business and all of its
28 affiliates, the maximum number of employees and the maximum
29 dollar volume which a small business may have under the
30 guidelines developed by the council may vary from industry to

1 industry to the extent necessary to reflect differing
2 characteristics of the industry, subject to the following
3 presumptions:

4 (1) No wholesale business is a small business if it
5 employs more than 20 persons and its annual sales and
6 receipts for its most recently completed fiscal year exceed
7 \$4,000,000.

8 (2) No retail business or business selling services is a
9 small business if it employs more than 40 persons and its
10 annual sales and receipts exceed \$1,000,000.

11 (3) No manufacturing business is a small business if it
12 employs more than 60 persons and its annual sales and
13 receipts exceed \$4,000,000.

14 (4) No construction business is a small business if its
15 annual receipts exceed \$2,000,000.

16 The above limitations shall exclude the amount of any pending
17 bids in the determination of size. The presumptions shall not
18 prohibit the council from developing guidelines using criteria
19 different from those contained in this section.

20 Section 6. Support organization for council.

21 The Office of Minority Business Enterprise, presently housed
22 in the Department of Commerce, will be the support organization
23 for the council. The office will offer assistance regarding the
24 program to small businesses and businesses which employ
25 disadvantaged persons to encompass monitoring, reporting,
26 delegation of responsibilities between individuals and
27 departments, sensitizing procurement personnel to the needs of
28 the businesses, education for prospective bidders, legal
29 enlightenment, and certification of small businesses and
30 businesses which employ disadvantaged persons, and any other

1 functions to encourage responsible participation in the program
2 as the council shall see fit.

3 Section 7. Designated contracts; advertisement; cancellation.

4 (a) Designated contracts.--Each department or other
5 instrumentality of the Commonwealth authorized to contract for
6 buildings, highways, commodities, equipment, supplies or
7 services, shall, upon assignment of a designated contract as
8 determined by the council, include the designation in the
9 advertisement for bids in the Pennsylvania Bulletin and other
10 media used to solicit bids.

11 (b) Invitations to bid to be confined.--In the case of
12 designated contracts, invitations to bid shall be confined to
13 small businesses and businesses which employ disadvantaged
14 persons and bids from other businesses shall be rejected. The
15 contract shall be awarded to the lowest responsible bidder among
16 the businesses in accordance with the rules and regulations for
17 purchasing outlined in subsection (c) and those promulgated by
18 the council. Awarding of contracts to businesses under this act
19 is subject to all other statutes governing State procurement and
20 all rules promulgated thereunder, including 16 Pa. Code Ch. 49
21 (relating to contract compliance), except to the extent they are
22 inconsistent with this act and the regulations promulgated
23 thereunder.

24 (c) Designated contract awards.--

25 (1) Contracts shall be awarded to the lowest responsible
26 bidder in accordance with the practice of the Commonwealth
27 except when the second lowest bid:

28 (i) Is within 5% of the lowest bid on contracts up
29 to \$99,999.

30 (ii) Is within 1% of the lowest bid on contracts

1 from \$100,000 to \$499,999.

2 (iii) Is within 0.5% of the lowest bid on contracts
3 from \$500,000 to \$1,000,000.

4 (2) In the instances described in paragraph (1), the
5 following point system shall be applied to determine contract
6 award:

7 (i) Three points for the lowest bid.

8 (ii) Three points for businesses operating in
9 Pennsylvania.

10 (iii) Two points for small business status.

11 (iv) Three points for business concerns which employ
12 disadvantaged persons.

13 (v) One point for each disadvantaged Pennsylvanian
14 hired.

15 (vi) Two points for businesses operating in areas of
16 high unemployment.

17 (3) In the event of identical scores, the award shall be
18 made according to guidelines developed by council.

19 (d) Cancellations.--In the event the department or other
20 instrumentality of the Commonwealth soliciting a bid feels that
21 responsible competitive bids at reasonable prices were not
22 obtained as a result of the contract designation solicitation or
23 that bids were received only from firms demonstrated to be not
24 responsible or prequalified, the designated contracts may be
25 canceled by the council and may be readvertised on an
26 unrestricted basis.

27 Section 8. Solicitation of bids.

28 The department or other instrumentality of the Commonwealth
29 referred to in section 7 shall be responsible for carrying out
30 the policies of this act and, to the extent consistent with the

1 best interests of the Commonwealth:

2 (1) Attempt to locate additional qualified small
3 business suppliers which employ disadvantaged persons by all
4 appropriate methods, particularly where only a limited number
5 of small businesses and businesses which employ disadvantaged
6 persons are on bidders' lists.

7 (2) Give wide publicity to Commonwealth purchasing
8 procedures.

9 (3) Publicize proposed procurements by use of advance
10 notices or other appropriate methods.

11 (4) Include all established and qualified potential
12 suppliers on the bidders' mailing lists.

13 (5) Send solicitations to all firms on the appropriate
14 list. Where less than a complete list is to be used, at least
15 a pro rata number of the firms solicited shall be small
16 businesses and businesses which employ disadvantaged persons.

17 (6) Where feasible, divide proposed procurement of
18 supplies and services so as to:

19 (i) Permit bidding on quantities relative to the
20 capacity of the qualified business entrepreneur.

21 (ii) Permit the maximum time practicable for
22 preparation and submission of bids, proposals or
23 quotations.

24 (iii) Permit and establish delivery schedules and
25 payment procedures which will encourage qualified
26 business participation.

27 Section 9. Annual report.

28 The council shall make an annual report of operations to the
29 General Assembly and the Governor within 90 days after the end
30 of each fiscal year. It is intended that the report indicate the

1 progress being made toward achieving the objectives of this act,
2 particularly by an evaluation of the implementation during the
3 preceding fiscal year of the Commonwealth procurement policies
4 regarding small businesses and businesses which employ
5 disadvantaged persons. The council's report shall recommend any
6 amendments to this act which, in its opinion, the council finds
7 necessary and proper to fulfill the original legislative intent
8 of this act. The report shall identify businesses within this
9 Commonwealth which have done business or which have expressed
10 interest in doing business or are capable of doing business with
11 the Commonwealth for the preceding fiscal year according to:

12 (1) The number of jobs created.

13 (2) The types of goods purchased, services provided and
14 construction and maintenance contracts awarded.

15 (3) The number of businesses within each category
16 determined to be a small business and a business dominant in
17 its field of operation and the criteria used to determine a
18 business as a small business or a business dominant in its
19 field within each category.

20 (4) The number of businesses within each category which
21 employ disadvantaged persons.

22 (5) Figures quantifying contract awards to firms which
23 resulted from designated contracts, both total and partial,
24 and the number of defaults or failures experienced by the
25 firms which were awarded contracts under this act.

26 Section 10. Penalties.

27 The council is empowered to seek an order from the
28 Commonwealth Court to enforce compliance with this act. Any
29 person who intentionally violates this act by providing false or
30 misleading information commits a misdemeanor of the first degree

1 and, upon conviction, shall be sentenced to imprisonment not
2 exceeding five years or a fine not exceeding \$10,000, or both.
3 Five hundred dollars of any fine shall be paid to the credit of
4 the council.

5 Section 11. Expiration.

6 This act expires ten years from the effective date of this
7 act unless specifically extended by statute.

8 Section 12. Effective date.

9 This act shall take effect in 60 days.