

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 62

Session of
2007

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JANUARY 30, 2007

REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY
PREPAREDNESS, JANUARY 30, 2007

AN ACT

1 Amending Title 51 (Military Affairs) of the Pennsylvania
2 Consolidated Statutes, providing for service-disabled
3 veteran-owned business participation goals.

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

6 Section 1. Title 51 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 72

9 SERVICE-DISABLED VETERAN-OWNED BUSINESS

10 PARTICIPATION GOALS

11 Sec.

12 7201. Definitions.

13 7202. Service-disabled veteran-owned business participation
14 goals.

15 7203. Bids for bond services.

16 7204. Monitoring.

1 7205. Cooperation.

2 7206. Reporting requirements.

3 7207. Validity of bonds.

4 7208. Information required in bid.

5 7209. Appointment of State service-disabled veteran-owned
6 business coordinator.

7 7210. Agency service-disabled veteran-owned business advocates.

8 § 7201. Definitions.

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

12 "Administering agency." The State Treasurer in the case of
13 contracts for professional bond services and the Department of
14 General Services in the case of all other contracts.

15 "Awarding department." Any Commonwealth agency, department,
16 governmental entity or other officer or entity empowered by law
17 to issue bonds or enter into contracts on behalf of the
18 Commonwealth, including a school district when it expends
19 Commonwealth funds for construction, professional services,
20 materials, supplies, equipment, alterations, repairs or
21 improvements.

22 "Bonds." Bonds, notes, warrants, certificates of
23 participation and other evidences of indebtedness issued by or
24 on the behalf of the Commonwealth.

25 "Commercially useful function." A person or entity performs
26 a commercially useful function if the person or entity does all
27 of the following:

28 (1) Is responsible for the execution of a distinct
29 element of the work of the contract.

30 (2) Carries out the obligation by actually performing,

1 managing or supervising the work involved.

2 (3) Performs work that is normal for its business
3 services and functions.

4 (4) Is not further subcontracting a portion of the work
5 that is greater than that expected to be subcontracted by
6 normal industry practices.

7 A contractor, subcontractor or supplier shall not be considered
8 to perform a commercially useful function if the contractor's,
9 subcontractor's or supplier's role is limited to that of an
10 extra participant in a transaction, contract or project through
11 which funds are passed in order to obtain the appearance of
12 service-disabled veteran-owned business participation.

13 "Contract." Any agreement to provide professional bond
14 services to the Commonwealth or an awarding department. The term
15 also includes any agreement to provide labor, services,
16 material, supplies or equipment in the performance of a
17 contract, franchise, concession or lease granted, let or awarded
18 for and on behalf of the Commonwealth.

19 "Contractor." Any person or any sole proprietorship,
20 partnership, joint venture, corporation or combination thereof
21 who submits a bid and enters into a contract with a
22 representative of a Commonwealth agency, department,
23 governmental entity or other officer empowered by law to enter
24 into contracts on behalf of the Commonwealth. The term includes
25 any provider of professional bond services who enters into a
26 contract with an awarding department.

27 "Goal." A numerically expressed objective that awarding
28 departments and contractors are required to make efforts to
29 achieve.

30 "Management and control." Effective and demonstrable

1 management of the business entity.

2 "Service-disabled veteran." A veteran of the armed forces of
3 the United States who has at least a 10% service-related
4 disability and who is domiciled in this Commonwealth.

5 "Service-disabled veteran-owned business." A sole
6 proprietorship, corporation or partnership certified by the
7 administering agency as meeting all of the following
8 requirements:

9 (1) Its home office is located in the United States and
10 it is not a branch or subsidiary of a foreign corporation,
11 foreign firm or other foreign-based business.

12 (2) In the case of a sole proprietorship, not less than
13 51% of the business is owned by one or more disabled
14 veterans; in the case of a publicly owned business, not less
15 than 51% of its stock is owned by one or more disabled
16 veterans; in the case of a subsidiary that is wholly owned by
17 a parent corporation, not less than 51% of the voting stock
18 of the parent corporation is owned by one or more disabled
19 veterans; or in the case of a joint venture, not less than
20 51% of the joint venture's management, control and earnings
21 are held by one or more disabled veterans. Status as a
22 service-disabled veteran-owned business concern shall be
23 determined in accordance with 13 CFR Pt. 125 (relating to
24 government contracting programs).

25 (3) Daily business operations are managed and controlled
26 by one or more disabled veterans. The disabled veterans who
27 exercise management and control are not required to be the
28 same disabled veterans as the owners of the business.

29 Notwithstanding paragraphs (1), (2) and (3), after the death or
30 the certification of a permanent medical disability of a

disabled veteran who is a majority owner of a business that
qualified as a service-disabled veteran-owned business prior to
that death or certification, and solely for purposes of any
contract entered into before the death or certification, the
business shall be deemed to be a service-disabled veteran-owned
business for a period of not more than three years after the
date of death or certification of a permanent medical disability
if the business is inherited or controlled by the spouse or
child of the majority owner or by both of those persons.

"Service-disabled veteran-owned business contractor,
subcontractor or supplier." Any person or entity that has been
certified by the administering agency pursuant to this chapter
and that performs a commercially useful function in providing
services or goods that contribute to the fulfillment of the
contract requirements.

§ 7202. Service-disabled veteran-owned business participation
goals.

(a) Required goals.--Notwithstanding any other provision of
law, each awarding department shall have annual Statewide
participation goals of not less than 5% for service-disabled
veteran-owned businesses for all contracts entered into by the
awarding department during the year. The goal shall apply to the
overall dollar amount expended by the awarding department with
respect to the contracts.

(b) Cocounsel, joint-venture and subcontracting
relationships.--Each awarding department shall support a program
for assigning representative portions of contracts for the
purpose of meeting the goals established under subsection (a).
An awarding department shall consider establishing cocounsel,
joint-venture and subcontracting relationships with service-

disabled veteran-owned businesses. Nothing in this chapter shall preclude the awarding department from achieving the goals set forth in this section without requiring joint ventures, cocounsel or subcontracting arrangements.

§ 7203. Bids for bond services.

Notwithstanding the provisions of section 7202 (relating to service-disabled veteran-owned business participation goals), if a contract for professional bond services is to be obtained by competitive bid, the awarding department shall, at a minimum, take all of the following actions:

(1) Deliver the notice of sale or other notification of intention to issue the bonds to all service-disabled veteran-owned businesses that have listed their names with the awarding department.

(2) State in all notices of sale and other notifications of intention to issue bonds that service-disabled veteran-owned businesses are encouraged to respond.

(3) Require all submitting bidders to certify their awareness of the goals of the awarding department in accordance with this chapter.

§ 7204. Monitoring.

The administering agency and awarding department shall establish a method of monitoring achievement of the goals specified in section 7202 (relating to service-disabled veteran-owned business participation goals). Each contractor shall report to the administering agency upon the completion of any sale of bonds. An awarding department shall not credit toward the department's goal funds expended on a contract with a service-disabled veteran-owned business that does not meet and maintain the certification requirements.

1 § 7205. Cooperation.

2 In implementing this chapter, the awarding department shall
3 utilize existing resources available through the Department of
4 Military and Veterans Affairs, the United States Department of
5 Veterans Affairs and the United States Small Business
6 Administration.

7 § 7206. Reporting requirements.

8 (a) Reports of awarding departments.--On July 1 of each year,
9 each awarding department shall report to the Governor, the
10 General Assembly, the Department of General Services and the
11 Department of Military and Veterans Affairs on the participation
12 by service-disabled veteran-owned businesses in contracts for
13 the previous fiscal year. If an awarding department has not met
14 its established goal for the previous fiscal year, the awarding
15 department shall identify the reasons for the awarding
16 department's shortfall and the steps the awarding department
17 will take to achieve its goal.

18 (b) Reports by Department of General Services.--On September
19 1 of each year, the Department of General Services shall present
20 to the Governor, the General Assembly and the Department of
21 Veterans Affairs a Statewide statistical summary detailing each
22 awarding department's goal achievement and a Statewide total of
23 the goals.

24 § 7207. Validity of bonds.

25 (a) General rule.--Notwithstanding anything in this chapter
26 to the contrary, no bonds, contracts, notes or other obligations
27 issued by an awarding department to provide for the payment of
28 any contract under this chapter shall be deemed invalid or
29 unenforceable as a result of the failure of an awarding
30 department to meet its goals established under this chapter.

1 (b) Actions prohibited.--No action may be maintained to
2 enjoin the issuance of any bonds to which this chapter applies
3 or the enforcement of any contract for professional bond
4 services based on an awarding department's failure to meet the
5 goals set forth in section 7202 (relating to service-disabled
6 veteran-owned business participation goals).
7 § 7208. Information required in bid.

8 An awarding department taking bids in connection with the
9 award of a contract shall provide, in the general conditions
10 under which bids will be received, that any person making a bid
11 or offer to perform a contract shall, in the bid or offer, set
12 forth the following information:

13 (1) The name and the location of the place of business
14 of each subcontractor certified as a service-disabled
15 veteran-owned business that will perform work or labor or
16 render service to the prime contractor in connection with the
17 performance of the contract and who will be used by the prime
18 contractor to fulfill service-disabled veteran-owned business
19 participation goals.

20 (2) The portion of work that will be performed by each
21 subcontractor under paragraph (1). Except in cases of
22 emergency where a contract is necessary for the immediate
23 preservation of the public health, welfare or safety or
24 protection of State property, a prime contractor shall list
25 only one subcontractor for each portion of work as is defined
26 by the prime contractor in the bid or offer.

27 § 7209. Appointment of State service-disabled veteran-owned
28 business coordinator.

29 The Department of Military and Veterans Affairs shall appoint
30 a State service-disabled veteran-owned business coordinator to

1 do all of the following:

2 (1) Oversee, promote and coordinate efforts to
3 facilitate implementation of this chapter.

4 (2) Disseminate information on this chapter.

5 (3) Coordinate reports pursuant to section 7206
6 (relating to reporting requirements).

7 (4) Coordinate with administering agencies and existing
8 and potential service-disabled veteran-owned businesses to
9 achieve the participation goals set forth under section 7202
10 (relating to service-disabled veteran-owned business
11 participation goals).

12 § 7210. Agency service-disabled veteran-owned business
13 advocates.

14 Each awarding department shall appoint an agency service-
15 disabled veteran-owned business advocate. A service-disabled
16 veteran-owned business advocate shall do all of the following:

17 (1) Assist certified service-disabled veteran-owned
18 businesses in participating in the agency's contracting
19 process.

20 (2) Assist contract officers in seeking service-disabled
21 veteran-owned businesses to participate in the agency's
22 contract and procurement activities.

23 (3) Disseminate information to the agency's contract and
24 procurement staff.

25 (4) Serve as an advocate for service-disabled veteran-
26 owned businesses that are utilized as the agency's
27 contractors and subcontractors.

28 (5) Coordinate with the State service-disabled veteran-
29 owned business coordinator to achieve the participation goals
30 set forth under section 7202 (relating to service-disabled

1 veteran-owned business participation goals).

2 Section 2. The Department of Military and Veterans Affairs
3 may promulgate rules and regulations to administer this act.

4 Section 3. This act shall apply to contracts entered into on
5 or after January 1, 2008.

6 Section 4. This act shall take effect in 60 days.