

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2140 Session of 2010

INTRODUCED BY WHEATLEY, JOSEPHS, MUSTIO, THOMAS, BUXTON, PAYTON,
PRESTON, SIPTROTH, STURLA, WATERS, BROWN, McCALL AND
MIRABITO, JANUARY 19, 2010

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 19, 2010

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, in small and disadvantaged businesses, further
3 defining "small business," further providing for bonding and
4 progress payments and providing for mentor-protégé program,
5 for small business reserve, for reciprocity of
6 certifications, for agency oversight and responsibility and
7 for prime contractors' performance; in contracts for public
8 works, further providing for contractors' and subcontractors'
9 payment obligations; and making an appropriation.

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

12 Section 1. The definition of "small business" in section
13 2102 of Title 62 of the Pennsylvania Consolidated Statutes is
14 amended to read:

15 § 2102. Definitions.

16 Subject to section 2103 (relating to regulations), the
17 following words and phrases when used in this chapter shall have
18 the meanings given to them in this section unless the context
19 clearly indicates otherwise:

20 * * *

21 "Small business." A business in the United States which is

1 independently owned, is not dominant in its field of operation
2 and employs [100] 250 or fewer employees with up to \$45,000,000
3 in gross revenue.

4 Section 2. Section 2105 of Title 62 is amended by adding a
5 subsection to read:

6 § 2105. Bonding and progress payments.

7 * * *

8 (a.1) Statewide bonding program.--The department shall
9 establish the criteria and structure for a Statewide bonding
10 program based on best practices to enable small businesses and
11 disadvantaged businesses to build capacity and to competitively
12 bid on State and other public contracts.

13 * * *

14 Section 3. Title 62 is amended by adding sections to read:
15 § 2109. Mentor-protégé program.

16 (a) General rule.--Commonwealth agencies shall adopt and
17 institute, with the department's assistance, a mentor-protégé
18 program to assist, support and enable small businesses to
19 successfully compete for prime and subcontract awards by
20 partnering with large companies, which shall serve as mentors,
21 in State contracts.

22 (b) Factor to be considered.--The mentor-protégé arrangement
23 between a prime contractor and a minority-owned, women-owned or
24 disadvantaged subcontractor shall be an important factor to be
25 considered or weighed by the Commonwealth agency in awarding a
26 contract.

27 (c) Guidelines.--The department shall establish the
28 appropriate and applicable guidelines and criteria for firms to
29 participate in a mentor-protégé program.

30 § 2110. Small business reserve.

1 (a) Small business reserve.--Commonwealth agencies shall
2 establish a small business reserve 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.

7 (b) Set-aside.--Pursuant to section 2101 (relating to
8 policy), each Commonwealth agency shall set 10% of its moneys
9 available for procurement into a small business reserve for
10 award to qualified small and disadvantaged businesses. The
11 amount set aside shall be a minimum of \$25,000 up to a maximum
12 of \$5,000,000.

13 (c) Self-certification.--Bidders shall self-certify that
14 they are qualified small or disadvantaged businesses, and
15 verification of status shall be confirmed by the awarding agency
16 prior to award.

17 (d) Categories.--The following tiers are established:

18 (1) Tier 1: 0 to 100 employees with gross revenues not
19 exceeding \$25,000,000. Small businesses in this tier may bid
20 on any small business reserve contract.

21 (2) Tier 2: 100 to 200 employees with gross revenues not
22 exceeding \$35,000,000. Small businesses in this tier may only
23 compete for contracts valued at \$100,000 or more.

24 (3) Tier 3: 200 to 250 employees with gross revenues not
25 exceeding \$45,000,000. Small businesses in this tier may only
26 compete for contracts valued at \$250,000 or more.

27 § 2111. Reciprocity of certifications.

28 (a) Certification process.--In order to create greater
29 uniformity and consistency in the Commonwealth's certification
30 process, the department shall accept the certification of the

Pennsylvania Unified Certification Program. Certification of any minority-owned, women-owned or disadvantaged business enterprise by the department may be accepted by any governmental or public entity as being adequate certification for the purpose of bidding or participating on any governmental or public bid, contract or award.

(b) Diversity program.--Any governmental or public entity, including colleges and universities, receiving Commonwealth funds of any amount shall implement a minority-owned, women-owned and disadvantaged business enterprise diversity program that is subject to review by the department. If a governmental or public entity, including colleges and universities, does not have a minority-owned, women-owned or disadvantaged business enterprise program, the Commonwealth's program under the Bureau of Minority and Women Business Opportunities within the department shall be applied to any contract, grant or project funded with State moneys to ensure compliance with all requirements.

§ 2112. Agency oversight and responsibility.

Each Commonwealth agency shall identify best practices to significantly increase contracting opportunities for disadvantaged businesses. A Commonwealth agency awarding contracts or grant funding shall develop and implement uniform templates, best practices and procedures to increase oversight, transparency and accountability in overseeing, administering, monitoring and enforcing requirements to ensure increased and sustained contracting opportunities for disadvantaged businesses and shall include the following:

(1) Aspirational targets. Commonwealth agencies shall establish an overall aspirational target of 25% of

procurement and construction moneys to be dedicated to
disadvantaged businesses in State contracts and grants,
including, but not limited to, procurement of goods and
services, construction, professional services, consulting,
insurance, investment brokers and managers, bond work, real
estate transactions and energy savings contracts. This
paragraph shall also apply to sole source contracts.
Contracts with optional renewal clauses that lacked initial
disadvantaged business requirements at award time shall be
subject to disadvantaged business review and inclusion
requirements prior to the renewal of the contract. An agency
shall monitor, track, enforce and report on the award of any
contract or grant quarterly and annually on its utilization
and spend with disadvantaged businesses to the Appropriations
Committee of the Senate and the Appropriations Committee of
the House of Representatives.

(2) Best practices. The department shall:

(i) Ensure that disadvantaged business participation
is included as part of agencies' strategic priorities
through identification of measurable goals and
objectives.

(ii) Develop a best practices manual for uniform
implementation of policies, practices, programs and
participation goals for disadvantaged businesses.

(iii) Establish a comprehensive quarterly and annual
reporting process, which includes award amount and actual
spending, for contractors, subcontractors and suppliers.

(iv) Designate single point of contact to implement,
monitor and report work force utilization and agency
contractor participation.

1 (v) Create a coordinated cross-agency, integrated
2 small business support services system to provide
3 training, consulting information management, business
4 management and technical assistance to disadvantaged
5 businesses to acquire the proficiency to compete on an
6 equal basis with majority contractors, vendors and
7 consultants.

8 (vi) Identify uniform monitoring, enforcement,
9 tracking and reporting and guideline practices.

10 (vii) Expand ability to quantify and measure the
11 effectiveness of agency programs.

12 (viii) Review the department's e-marketplace system
13 for potential expansion to all Commonwealth agencies.

14 (ix) Continue to connect disadvantaged businesses to
15 other entities, such as the Small Business Development
16 Centers, Minority Business Enterprise Centers and
17 Professional Technical Assistance Centers for financial
18 and technical assistance.

19 (3) Monitoring and enforcement. The following apply:

20 (i) Pursuant to its authority under State contract
21 compliance laws, policies and requirements, the
22 department and other Commonwealth agencies shall
23 institute and implement all necessary monitoring and
24 enforcement of provisions of this section as to the
25 Commonwealth's disadvantaged business program and shall
26 implement and follow all contract compliance
27 requirements, policies, guidelines and regulations and
28 applicable laws pertaining to minority-owned, women-
29 owned, small and disadvantaged businesses.

30 (ii) Each Commonwealth agency shall provide

1 mandatory quarterly and annual reports on utilization of
2 disadvantaged businesses on contracts. An evaluation of
3 the prime contractor's performance on contracts shall
4 include a review of good faith efforts in the oversight,
5 timely payment as provided under Ch. 39, Subch. D
6 (relating to prompt payment schedules) and continued
7 commitment to disadvantaged subcontractors. Sanctions for
8 failure to demonstrate good faith efforts in the
9 oversight, timely payment and commitment to disadvantaged
10 subcontractors shall include withholding of payments to
11 the prime contractor and suspension or debarment from
12 doing work for the Commonwealth for no less than 12
13 months and up to 36 months. The department and any other
14 Commonwealth agency may also institute any appropriate
15 and necessary administrative, legal, judicial and other
16 proceedings after inquiry, review or investigation, if it
17 finds that any person, contractor or grantee has failed
18 to comply with or has violated any requirement or action
19 set forth in this section.

20 § 2113. Prime contractors' performance.

21 The department shall develop concise and detailed good faith
22 effort requirements for its prime contractors to ensure their
23 genuine attempt at meeting the State's disadvantaged business
24 subcontractor participation requirements. Contractors and
25 grantees doing business with the Commonwealth shall make
26 reasonable and good faith efforts to provide maximum practicable
27 opportunities for small disadvantaged businesses to participate
28 as contractors, professional service providers, subcontractors
29 and suppliers and to keep the contractual commitment made to
30 disadvantaged business subcontractors. Documentation of a good

faith effort shall include, but is not limited to, the following:

(1) Attendance at prebid or preproposal conferences.

(2) Copies of written notification sent to all disadvantaged businesses that perform the type of work to be subcontracted in sufficient time to allow the businesses to participate effectively.

(3) Advisement to the disadvantaged businesses of the specific work the prime contractor intends to subcontract, that their interest in the project is being solicited and how to obtain information for the review and inspection of the plans, specifications and requirements of the bid.

(4) A written statement that economically feasible portions of work were selected to be performed by disadvantaged businesses, including, where appropriate, segmenting or combining elements of work into economically feasible units.

(5) A statement of the efforts made to negotiate with disadvantaged businesses, including the name, address and telephone number of any disadvantaged business that was contacted; the date the negotiations took place; and a description of the information provided to the disadvantaged businesses regarding the plans, specifications and requirements for the portion of the work to be performed.

(6) Consulting with the Bureau of Minority and Women Business Opportunities to ensure significant contracting, professional service, subcontracting and purchasing opportunities for disadvantaged businesses unless the department agrees that contractor or grantee participation in outreach activities will satisfy this requirement.

1 (7) Participating in outreach activities and events to
2 increase small and disadvantaged business interest and
3 participation in contracting, professional service,
4 subcontracting and purchasing opportunities. The extent of
5 the contractor's or grantee's commitment to participate in
6 outreach participation shall be a consideration in the award
7 of any contract or grant.

8 (8) Using the department's Internet website to identify
9 certified disadvantaged businesses as potential sources for
10 professional service, subcontracting, purchasing,
11 construction, equipment, services and supplies.

12 (9) Soliciting certified disadvantaged businesses for
13 all contracting, professional service agreements,
14 subcontracting and purchasing opportunities.

15 (10) Including certified disadvantaged businesses on
16 solicitation lists.

17 (11) Preparing and retaining records of solicitations,
18 including a bid tabulation, showing names of all firms
19 solicited and the dollar amount of the bid, quote or
20 proposal, as well as copies of all bids, quotes and proposals
21 received.

22 (12) Providing quarterly reports to the Bureau of
23 Minority and Women Business Opportunities on small
24 disadvantaged business utilization.

25 (13) Demonstrating good faith efforts in the oversight
26 and timely payment, as provided under Ch. 39, Subch. D
27 (relating to prompt payment schedules), to disadvantaged
28 businesses and commitment to maintain the disadvantaged
29 subcontractor commitment made at the time of the award or
30 thereafter.

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

2 § 3933. Contractors' and subcontractors' payment obligations.

3 * * *

4 (c) Payment.--When a subcontractor has performed in
5 accordance with the provisions of the contract, a contractor
6 shall pay to the subcontractor, and each subcontractor shall in
7 turn pay to its subcontractors, the full or proportional amount
8 received for each such subcontractor's work and material, based
9 on work completed or services provided under the subcontract,
10 [14] five days after receipt of a progress payment. Payment
11 shall be made under this section unless it is being withheld
12 under section 3934 (relating to withholding of payment for good
13 faith claims).

14 * * *

15 Section 5. The sum of \$6,000,000, or as much thereof as may
16 be necessary, is hereby appropriated to the Department of
17 General Services for the fiscal year July 1, 2009, to June 30,
18 2010, to be allocated as follows:

19 (1) The sum of \$5,000,000 to carry out the purposes of 62
20 Pa.C.S. § 2105(a.1).

21 (2) The sum of \$1,000,000 to obtain a customized software
22 program for monitoring, tracking and reporting on
23 disadvantaged business participation levels, including, but
24 not limited to, percentages, dollar amount, ethnicity, gender
25 and geographical representation under 62 Pa.C.S. § 2112(3).

26 Section 6. This act shall take effect immediately.