

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1128

Session of
1983

INTRODUCED BY IRVIS, KOWALYSHYN, HALUSKA, CIMINI, LETTERMAN,
BELFANTI, ANGSTADT, JAROLIN, GALLAGHER, F. E. TAYLOR, REBER,
BELOFF, OLIVER, LINTON, PISTELLA, FEE, LAUGHLIN, EVANS,
PRATT, CARN, CALTAGIRONE, MAIALE, AFFLERBACH, DEAL,
ALDERETTE, HARPER, WAMBACH, PRESTON, FATTAH, DeLUCA,
KOSINSKI, COLAFELLA, TELEK, BARBER, RICHARDSON, WIGGINS,
R. C. WRIGHT, WILLIAMS AND ZWIKL, MAY 24, 1983

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 2, 1984

AN ACT

1 Declaring a policy of the Commonwealth with regard to small
2 business concerns owned by economically disadvantaged
3 persons; creating the Economically Disadvantaged Owners Small
4 Business Procurement Committee; providing for the operation
5 of the committee; establishing a small business set-aside;
6 establishing a procedure for the solicitation of bids and a
7 broadening set-aside; and providing for an annual report to
8 the Governor and General Assembly.

9 TABLE OF CONTENTS

10 Section 1. Short title.
11 Section 2. Legislative intent.
12 Section 3. Definitions.
13 Section 4. Creation of Economically Disadvantaged Owners Small
14 Business Procurement Committee.
15 Section 5. Committee responsibilities.
16 SECTION 6. DEPARTMENT RESPONSIBILITIES. <—
17 Section ~~6~~ 7. Surety authorization. <—
18 Section ~~7~~ 8. Cash flow difficulties. <—

1 Section ~~8~~ 9. Creation of Economically Disadvantaged Small <—
2 Business Contract Bonding Special Account.
3 Section ~~9~~ 10. Solicitation of bids. <—
4 Section ~~10~~ 11. Small business set-asides; advertisement; <—
5 cancellation.
6 Section ~~11~~ 12. Annual report. <—
7 Section ~~12~~ 13. Penalties. <—
8 Section ~~13~~ 14. Sunset provisions. <—
9 Section ~~14~~ 15. Effective date. <—

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

12 Section 1. Short title.

13 This act shall be known and may be cited as the Economically
14 Disadvantaged Owners Small Business Procurement Act.

15 Section 2. Legislative intent.

16 It is hereby determined and declared as a matter of
17 legislative finding that:

18 (1) The promotion of economic development is a
19 legitimate and necessary governmental function.

20 (2) The existence of a healthy free enterprise system is
21 directly related to the well-being and strength of small
22 business concerns and their opportunities for free entry into
23 business and for growth and expansions.

24 (3) Recent studies have found that small businesses
25 create over 75% of the new jobs in the Nation and that the
26 Commonwealth wants to increase the number of jobs available
27 to residents of the Commonwealth.

28 (4) Experience in administering the equal opportunity
29 provisions of the law has shown that many discriminatory
30 practices of the past years have remained so deeply embedded

1 in basic institutions of society, industry and government
2 that these practices continue to have extremely unequal
3 effects on individuals and groups, even when those who make
4 the decisions have no conscious intent to discriminate.

5 (5) There currently exists in the Commonwealth a
6 situation where an inequitable small share of State contracts
7 are awarded to small businesses owned by economically
8 disadvantaged persons and that such conditions are chronic
9 and longstanding.

10 (6) Without remedial measures there is no prospect for
11 improvement.

12 (7) The present and prospective health, safety, morals
13 and general welfare of the Commonwealth require as a public
14 purpose the development and encouragement of small businesses
15 owned by economically disadvantaged persons furnishing
16 property and services to the Commonwealth.

17 Therefore, it is hereby declared to be a policy of the
18 Commonwealth to insure that a fair proportion of all the
19 Commonwealth's contracts for property and services be placed
20 with small business concerns owned by economically disadvantaged
21 persons. Such policy is hereby declared to be a public purpose.

22 Section 3. Definitions.

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

26 "Affiliate or subsidiary of a business dominant in its field
27 of operation." A business of which 20% or more is owned or of
28 which its controlling interest is controlled by a business
29 dominant in its field of operation, or is owned by partners,
30 officers, majority shareholders or their equivalent of a

1 business dominant in its field of operation.

2 "Business set-aside." The percentage of each State contract
3 or package of contracts, determined by the ~~committee~~ DEPARTMENT, <—
4 for which bids are to be solicited only from small businesses
5 owned by economically disadvantaged persons.

6 "Committee." Economically Disadvantaged Owners Small
7 Business Procurement Committee.

8 ~~"Commonwealth contract." Any agreement, purchase order or~~ <—
9 ~~arrangement or modification thereof between the Commonwealth or~~
10 ~~any State contracting agency, and any person to be paid in whole~~
11 ~~or in part, directly or indirectly, by public funds, or in kind~~
12 ~~contributions from the Commonwealth.~~

13 ~~"Commonwealth contractor." Any contractor, supplier, vendor~~
14 ~~or other person who, through a contract or other arrangement,~~
15 ~~has received, is to receive or is receiving public funds or in~~
16 ~~kind contributions from the Commonwealth and shall include any~~
17 ~~subcontractor who performs under a State contract.~~

18 "Department." Any department, agency, commission, authority,
19 establishment or other instrumentality of the Commonwealth and
20 any wholly or partially owned government corporation which
21 enters into contracts EXCEPT FOR MUNICIPAL CORPORATIONS AND <—
22 SCHOOL DISTRICTS.

23 ~~"Dominate~~ DOMINANT in its field of operation." Exercising a <—
24 controlling or a major influence in a business activity in which
25 small businesses are competing.

26 "Economically disadvantaged business." A business that is
27 owned and positively controlled by one or more persons who are
28 economically disadvantaged in this Commonwealth. THE TERM SHALL <—
29 INCLUDE:

30 (1) A SOLE PROPRIETORSHIP LEGITIMATELY OWNED BY AN

1 INDIVIDUAL WHO IS AN ECONOMICALLY DISADVANTAGED PERSON.

2 (2) A PARTNERSHIP OR JOINT VENTURE POSITIVELY CONTROLLED
3 BY ECONOMICALLY DISADVANTAGED PERSONS AND IN WHICH AT LEAST
4 51% OF THE BENEFICIAL OWNERSHIP INTEREST LEGITIMATELY IS HELD
5 BY A PERSON WHO IS A MEMBER OF AN ECONOMICALLY DISADVANTAGED
6 GROUP.

7 (3) A CORPORATION OR OTHER ENTITY CONTROLLED BY
8 ECONOMICALLY DISADVANTAGED PERSONS IN WHICH AT LEAST 51% OF
9 THE VOTING INTEREST AND 51% OF THE BENEFICIAL INTEREST
10 LEGITIMATELY ARE HELD BY ECONOMICALLY DISADVANTAGED PERSONS.

11 "Economically disadvantaged person."

12 (1) A person who is a United States citizen, resides in
13 the Commonwealth and is a member of an economically
14 disadvantaged group including, but not limited to, the
15 following groups: Blacks, American Indians, Hispanics, Asian-
16 Americans, Orientals and Females.

17 (2) Other residents of the Commonwealth whose
18 participation in the free enterprise system is hampered due
19 to social or economic considerations beyond their personal
20 control, such as formal education, financial capacity,
21 geographic or regional economic distresses, social handicaps
22 such as physical ~~or mental~~ difficulties, all of which <—
23 restrict the individual from the opportunity to fully
24 participate in our economic system.

25 ~~"Owned." A business which is:~~ <—

26 ~~(1) A sole proprietorship legitimately owned by an~~
27 ~~individual who is an economically disadvantaged person.~~

28 ~~(2) A partnership or joint venture positively controlled~~
29 ~~by economically disadvantaged persons and in which at least~~
30 ~~51% of the beneficial ownership interest legitimately is held~~

1 ~~by a person who is a member of an economically disadvantaged~~
2 ~~group.~~

3 ~~(3) A corporation or other entity controlled by~~
4 ~~economically disadvantaged persons in which at least 51% of~~
5 ~~the voting interest and 51% of the beneficial interest~~
6 ~~legitimately are held by economically disadvantaged persons.~~

7 "Partial set-aside." Bids for a portion of the contract are
8 to be solicited only from small businesses owned by economically
9 disadvantaged persons.

10 "Person." Includes any natural person, corporation,
11 partnership, AND unincorporated association, ~~State or local~~ <—
12 ~~government and any agency, commission, authority, board or other~~
13 ~~instrumentality or political subdivision of a government.~~

14 "Positive control." The exclusive or ultimate and sole
15 control of the business including, but not limited to, capital
16 investment and all other financial matters, property
17 acquisition, contract negotiation, legal matters, officer-
18 director-employee selection and comprehensive hiring, operating
19 responsibility, cost-control matters, income and dividend
20 matters, financial transactions and rights of other shareholders
21 or joint partners.

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

24 "Small businesses." A business entity including a sole
25 proprietorship, partnership, corporation, joint venture,
26 association or cooperative which has its principal place of
27 business in this State and which is not dominant in its field of
28 operation and is not an affiliate or subsidiary of a business
29 dominant in its field of operation. In determining whether a
30 business qualifies under this definition the Economically

1 Disadvantaged Owners Small Business Procurement Committee,
2 created by this act, shall ensure that departments promulgate
3 rules according to guidelines established by the committee for
4 the determination of business size limitations. When computing
5 size status, annual sales and receipts of a business and all of
6 its affiliates, the maximum number of employees and the maximum
7 dollar volume which a small or female-owned minority business
8 may have under the rules promulgated by the committee may vary
9 from industry to industry to the extent necessary to reflect
10 differing characteristics of such industry, subject to the
11 following presumptions:

12 (1) No wholesale business is a small business if it
13 employs more than 50 persons and its annual sales when
14 averaged over a two-year period exceeds \$10,000,000.

15 (2) No retail business or business selling services is a
16 small business if it employs more than 100 persons and its
17 annual sales when averaged over a two-year period exceeds
18 \$10,000,000.

19 (3) No manufacturing business is a small business if it
20 employs more than 100 persons and its annual sales when
21 averaged over a two-year period exceeds \$10,000,000.

22 (4) No construction business is a small business if its
23 annual receipts when averaged over a ~~two-year~~ THREE-YEAR
24 period exceeds ~~\$10,000,000~~ \$2,000,000. NO CONSTRUCTION
25 SUBCONTRACTOR IS A SMALL BUSINESS IF ITS ANNUAL RECEIPTS,
26 WHEN AVERAGED OVER A THREE-YEAR PERIOD, EXCEED \$500,000.

27 The above limitations shall exclude the amount of any pending
28 bids in the determination of size. ~~This definition shall not~~
29 ~~prohibit the committee from developing guidelines which permit a~~
30 ~~department to promulgate rules and regulations, in compliance~~

1 ~~with this act, which define small business using criteria~~
2 ~~different from those contained in these definitions.~~

3 "Surety company." A company that is authorized by the
4 Insurance Commissioner of the Commonwealth to issue construction
5 contract bonds as security.

6 "Total set-aside." Bids for the entire contract are to be
7 solicited only from small businesses owned by economically
8 disadvantaged persons.

9 Section 4. Creation of Economically Disadvantaged Owners Small
10 Business Procurement Committee.

11 (a) Membership.--An Economically Disadvantaged Owners Small
12 Business Procurement Committee is hereby established in the
13 Department of Commerce. The committee shall have 15 members
14 consisting of: the Secretary of Commerce; Secretary of General
15 Services; Secretary of Transportation; four members appointed by
16 the Governor; four members of the House of Representatives, two
17 from each party; and four members from the Senate, two from each
18 party. ~~Any~~ EXCEPT FOR MEMBERS APPOINTED BY THE GOVERNOR, ANY <—
19 member may appoint a designee to serve in their stead. OF THE <—
20 FOUR MEMBERS APPOINTED BY THE GOVERNOR, ONE SHALL BE AN
21 ECONOMICALLY DISADVANTAGED CONSTRUCTION CONTRACTOR, ONE SHALL BE
22 A CONSTRUCTION CONTRACTOR INELIGIBLE FOR SET-ASIDES UNDER THIS
23 ACT, ONE SHALL BE AN ECONOMICALLY DISADVANTAGED NONCONSTRUCTION
24 VENDOR AND ONE SHALL BE A NONCONSTRUCTION VENDER INELIGIBLE FOR
25 SET-ASIDES UNDER THIS ACT.

26 (b) Compensation and expenses.--The committee members shall
27 receive no compensation for their services as members but shall
28 be entitled to reimbursement for all necessary AND REASONABLE <—
29 expenses incurred in connection with the performance of their
30 duties as members.

1 Section 5. Committee responsibilities.

2 ~~(a) Committee to designate a portion of purchases and~~ <—
3 ~~contracts as a business set aside. The committee shall have the~~
4 ~~responsibility to designate as a business set aside, a portion~~
5 ~~of all purchases and contracts made by each executive department~~
6 ~~including those services rendered and furnished by registered~~
7 ~~professionals including, but no limited to, accountants,~~
8 ~~attorneys, medical doctors, architects, dentists and engineers.~~

9 ~~(b) Operation of committee. The committee shall operate in~~
10 ~~accordance with the following:~~

11 ~~(1) Procurement shall be set aside for exclusive small~~
12 ~~businesses owned by the economically disadvantaged if it can~~
13 ~~be determined that there is a reasonable expectation that~~
14 ~~bids and offers will be obtained from a sufficient number of~~
15 ~~business concerns and that awards will be made at reasonable~~
16 ~~prices on a competitive basis. Partial set asides of total~~
17 ~~procurement requirements will be considered and applied where~~
18 ~~the criteria for total set asides is not met, but where the~~
19 ~~procurement is economically severable into two or more parts,~~
20 ~~and it is anticipated that one or more small firms has the~~
21 ~~technical competency and productive capacity to furnish a~~
22 ~~severable portion of the procurement at a reasonable price,~~
23 ~~there shall be a total set aside of the severable portion.~~
24 ~~When three or more qualified economically disadvantaged small~~
25 ~~businesses are on the bidder's list and upon their responding~~
26 ~~to a solicitation, indicate an intent to quote,~~
27 ~~noneconomically disadvantaged small business enterprise need~~
28 ~~not be solicited.~~

29 (A) OVERSIGHT RESPONSIBILITIES OF COMMITTEE.--THE COMMITTEE <—
30 SHALL HAVE THE RESPONSIBILITY TO INSURE THAT A FAIR PORTION OF

1 ALL PURCHASES AND CONTRACTS MADE BY EACH EXECUTIVE DEPARTMENT
2 SHALL BE PLACED WITH SMALL BUSINESS CONCERNS OWNED BY
3 ECONOMICALLY DISADVANTAGED PERSONS, INCLUDING THOSE SERVICES
4 RENDERED AND FURNISHED BY REGISTERED PROFESSIONALS, INCLUDING,
5 BUT NOT LIMITED TO, ACCOUNTANTS, ATTORNEYS, MEDICAL DOCTORS,
6 ARCHITECTS AND ENGINEERS. THE COMMITTEE SHALL REVIEW THE REPORTS
7 SUBMITTED BY EACH DEPARTMENT PURSUANT TO THIS SECTION AND
8 DETERMINE THE LIKELIHOOD OF THE DEPARTMENT'S ABILITY TO ACHIEVE
9 THE GOALS SET FORTH IN THIS ACT. IF THE COMMITTEE DETERMINES
10 THAT A DEPARTMENT HAS NOT DESIGNATED SIGNIFICANT ECONOMIC
11 DISADVANTAGED SMALL BUSINESS SET-ASIDES TO ACHIEVE THE GOALS SET
12 FORTH IN THIS ACT, THE COMMITTEE SHALL PROVIDE WRITTEN
13 NOTIFICATION TO THE DEPARTMENT OF ITS OBJECTIONS WITHIN 14 DAYS
14 OF THE RECEIPT OF THE REPORT, AND THE COMMITTEE SHALL RECOMMEND
15 APPROPRIATE CHANGES. NO DEPARTMENT WHICH HAS BEEN SO NOTIFIED
16 SHALL AUTHORIZE OR EXECUTE ANY CONTRACTS FOR PROCUREMENTS
17 COVERED BY THIS ACT UNTIL THIS REPORT IS APPROVED BY THE
18 COMMITTEE.

19 ~~(2)~~ (B) SET-ASIDE DESIGNATIONS.--All set-aside <—
20 designations, total or partial, shall be made prior to the
21 solicitation for bids and offers as required by law. The
22 solicitation shall identify the small business size standard
23 and require each bidder and offeror to identify his size,
24 large or small, pursuant to that standard. If there is a
25 conflict with other policies, this act and rules promulgated
26 under this act, shall govern. Where Federal money is used,
27 Federal law shall apply if acceptance of the money is
28 conditioned upon the utilization of small female-owned and
29 minority businesses. All procurement purchased by the State
30 using Federal funding shall be governed by the percentage of

1 the goal for female-owned and minority participation designed
2 by the Federal agency granting the funds. In the case of
3 construction contracts, the total value of subcontracts
4 awarded to and materials and services purchased from
5 economically disadvantaged businesses shall be at least 15%
6 of the total value of the contract, whenever possible. In the
7 case of all other subcontracts, the total value of contracts
8 awarded to certified economically disadvantaged businesses
9 for services shall equal at least 15% of the total value of
10 the contract.

11 ~~(3)~~ (C) BONDING.--The committee, when bonding is <—
12 required, shall set the amount of bonds or securities on a
13 business set-aside. No ~~agency or~~ department of the State <—
14 involved in purchasing goods or services may require bid
15 performance and payment bonds to be posted if the contract
16 price is less than \$25,000, unless such bonds are required by
17 Federal law or regulation, or as a condition to Federal
18 assistance. The amount of these bonds shall be:

19 ~~(i)~~ (1) A bid bond shall not be greater than 10% of <—
20 the total bid.

21 ~~(ii)~~ (2) A performance bond shall not be greater <—
22 than 50% of the total bid price of work.

23 ~~(iii)~~ (3) A labor and material bond may be for the <—
24 full amount of labor and materials.

25 ~~(4) The committee shall determine and certify~~ <—
26 ~~economically disadvantaged small businesses ownership in~~
27 ~~accordance with this act.~~

28 (D) BONDING EXEMPTIONS.--NOTWITHSTANDING THE PROVISIONS <—
29 OF THE ACT OF DECEMBER 20, 1967 (P.L.869, NO.385), KNOWN AS THE
30 PUBLIC WORKS CONTRACTORS' BOND LAW OF 1967, BONDING MAY BE

1 EXEMPT FOR CONSTRUCTION CONTRACTS UNDER \$25,000. BONDING SHALL
2 BE REQUIRED FOR ALL OTHER CONSTRUCTION CONTRACTS IN ACCORDANCE
3 WITH THE PUBLIC WORKS CONTRACTORS' BOND LAW OF 1967. A BID BOND
4 SHOULD NOT BE GREATER THAN 10% NOR LESS THAN 5% OF THE TOTAL
5 CONTRACT BID. IF AN ECONOMICALLY DISADVANTAGED CONTRACTOR IS
6 UNABLE TO OBTAIN A CONSTRUCTION BOND, HE SHALL PROCEED IN
7 ACCORDANCE WITH THE PROVISIONS OF SECTION 7. ECONOMICALLY
8 DISADVANTAGED SUBCONTRACTORS' AWARDS OF SUBCONTRACTS UNDER THIS
9 ACT SHALL BE ELIGIBLE FOR BONDING IF OTHERWISE ELIGIBLE UNDER
10 SECTION 7.

11 (E) CERTIFICATION RESPONSIBILITIES OF COMMITTEE.--THE
12 COMMITTEE SHALL DETERMINE AND CERTIFY ON A REGULAR BASIS, BUT
13 NOT LESS THAN ANNUALLY, ECONOMICALLY DISADVANTAGED SMALL
14 BUSINESS OWNERSHIP IN ACCORDANCE WITH THIS ACT. THE
15 CERTIFICATION SHALL BE ISSUED BY THE COMMITTEE AND SHALL BE A
16 REQUISITE FOR ELIGIBILITY BEFORE SUBMISSION OF A BID ON A TOTAL
17 OR PARTIAL SET-ASIDE OR AS AN ECONOMICALLY DISADVANTAGED
18 SUBCONTRACTOR.

19 ~~(e)~~ (F) Organized support system may be established.--The <—
20 committee may establish an organized support system for
21 recommendation of legislation, for offering assistance to
22 economically disadvantaged small businesses to encompass
23 monitoring, reporting, delegation of responsibilities between
24 individuals and departments for sensitizing procurement
25 personnel to the needs of the businesses, for education for
26 prospective bidders, for legal enlightenment for economically
27 disadvantaged small businesses regarding the program and for
28 such other functions to encourage responsible participation in
29 the programs as the committee shall see fit.

30 ~~(d)~~ (G) Information to be made known to committee.--The <—

1 committee shall require that each department ~~or other~~ <—
2 ~~instrumentality of the Commonwealth~~ authorized to contract for
3 buildings, highways, commodities, equipment, supplies or
4 services make known and report to the committee all information
5 pertinent to anticipated procurement needs at the beginning of
6 each fiscal year and each fiscal quarter thereafter. Each
7 department ~~or instrumentality~~ shall submit this information to <—
8 the committee not less than 30 days after the beginning of the
9 fiscal year and not less than 15 days before the beginning of
10 each fiscal quarter. This procurement REPORT shall include, but <—
11 not be limited to, the total amount budgeted to contract for
12 securing goods and services, the nature and anticipated cost of
13 each contract and the payment account from which the payment
14 funds will be drawn such as Federal grants, the General Fund,
15 special appropriations, departmental allocations, etc. During <—
16 ~~the course of each operating year, the committee shall designate~~
17 ~~no less than 15% of the total dollar amount or number of such~~
18 ~~contracts as small economically disadvantaged business set~~
19 ~~asides unless it can be determined that this minimum percentage~~
20 ~~is unattainable due to unavailability of competent, responsible~~
21 ~~small economically disadvantaged businesses.~~ THE REPORT SHALL <—
22 ALSO STATE THE DOLLAR AMOUNT OF SUCH CONTRACTS THE DEPARTMENT
23 INTENDS TO DESIGNATE AS ECONOMICALLY DISADVANTAGED SMALL
24 BUSINESS SET-ASIDES, SEPARATE THE TOTAL SET-ASIDES INTO SPECIFIC
25 SET-ASIDES FOR BUSINESSES OWNED AND CONTROLLED BY FEMALES, BY
26 MINORITY PERSONS, AND BY OTHERS AND INCLUDE AN EXPLANATION WHERE
27 IT DETERMINES THAT THE MINIMUM PERCENTAGES SET FORTH IN THIS ACT
28 ARE UNOBTAINABLE DUE TO THE UNAVAILABILITY OF COMPETENT,
29 RESPONSIBLE, ECONOMICALLY DISADVANTAGED SMALL BUSINESSES.
30 SECTION 6. DEPARTMENT RESPONSIBILITIES.

(A) PROCUREMENT RESPONSIBILITIES.--

(1) PROCUREMENT SHALL BE SET ASIDE FOR EXCLUSIVE SMALL BUSINESSES OWNED BY THE ECONOMICALLY DISADVANTAGED IF IT CAN BE DETERMINED THAT THERE IS A REASONABLE EXPECTATION THAT BIDS, OFFERS OR PROPOSALS WILL BE OBTAINED FROM A SUFFICIENT NUMBER OF BUSINESS CONCERNS AND THAT, IN THE CASE OF BIDS AND OFFERS, AWARDS WILL BE MADE AT REASONABLE PRICES ON A COMPETITIVE BASIS. PARTIAL SET-ASIDES OF TOTAL PROCUREMENT REQUIREMENTS NOT INVOLVING CONSTRUCTION SUBJECT TO THE ACT OF MAY 1, 1913 (P.L.155, NO.104), ENTITLED "AN ACT REGULATING THE LETTING OF CERTAIN CONTRACTS FOR THE ERECTION, CONSTRUCTION, AND ALTERATION OF PUBLIC BUILDINGS," WILL BE CONSIDERED AND APPLIED WHERE THE CRITERIA FOR TOTAL SET-ASIDES IS NOT MET, BUT WHERE THE PROCUREMENT IS ECONOMICALLY SEVERABLE INTO TWO OR MORE PARTS, AND IT IS ANTICIPATED THAT ONE OR MORE SMALL FIRMS HAS THE TECHNICAL COMPETENCY AND PRODUCTIVE CAPACITY TO FURNISH A SEVERABLE PORTION OF THE PROCUREMENT AT A REASONABLE PRICE, THERE SHALL BE A TOTAL SET-ASIDE OF THE SEVERABLE PORTION.

(2) ALL SET-ASIDES FOR CONSTRUCTION CONTRACTS SUBJECT TO THE ACT OF MAY 1, 1913 (P.L.155, NO.104) SHALL BE TOTAL SET-ASIDES.

(B) SET-ASIDE RESPONSIBILITIES.--ALL SET-ASIDE DESIGNATIONS, TOTAL OR PARTIAL, SHALL BE MADE PRIOR TO THE SOLICITATION FOR BIDS AND OFFERS AS REQUIRED BY LAW. THE SOLICITATION SHALL IDENTIFY THE SMALL BUSINESS SIZE STANDARD AND REQUIRE EACH BIDDER OR OFFEROR TO IDENTIFY HIS SIZE, LARGE OR SMALL, PURSUANT TO THAT STANDARD. IF THERE IS A CONFLICT WITH OTHER POLICIES, THIS ACT AND RULES PROMULGATED UNDER THIS ACT, SHALL GOVERN. WHERE FEDERAL MONEY IS USED, FEDERAL LAW SHALL APPLY IF

1 ACCEPTANCE OF THE MONEY IS CONDITIONED UPON THE UTILIZATION OF
2 SMALL FEMALE-OWNED AND MINORITY BUSINESSES. THE SET-ASIDE
3 REQUIREMENTS FOR ALL PROCUREMENTS PURCHASED BY THE STATE USING
4 FEDERAL FUNDING SHALL BE GOVERNED BY THE FEDERAL AGENCY GRANTING
5 THE FUNDS. DURING THE COURSE OF EACH OPERATING YEAR, EACH
6 DEPARTMENT SHALL DESIGNATE NO LESS THAN 15% OF THE TOTAL DOLLAR
7 AMOUNT OF ITS CONTRACTS AS SMALL ECONOMICALLY DISADVANTAGED
8 BUSINESS SET-ASIDES UNLESS IT CAN BE DETERMINED THAT THIS
9 MINIMUM PERCENTAGE IS UNOBTAINABLE DUE TO UNAVAILABILITY OF
10 COMPETENT, RESPONSIBLE SMALL ECONOMICALLY DISADVANTAGED
11 BUSINESSES. IN THE CASE OF CONSTRUCTION CONTRACTS SUBJECT TO THE
12 ACT OF MAY 1, 1913 (P.L.155, NO.104), THERE SHALL BE NO
13 REQUIREMENT THAT SUBCONTRACTS BE AWARDED TO OR THAT MATERIALS
14 AND SUPPLIES BE PURCHASED FROM ECONOMICALLY DISADVANTAGED
15 BUSINESSES. IN THE CASE OF OTHER CONSTRUCTION CONTRACTS, THE
16 TOTAL VALUE OF SUBCONTRACTS AWARDED TO AND MATERIALS AND
17 SERVICES PURCHASED FROM ECONOMICALLY DISADVANTAGED BUSINESSES
18 SHALL BE AT LEAST 15% OF THE TOTAL VALUE OF THE CONTRACT
19 WHENEVER POSSIBLE. IN THE CASE OF ALL OTHER SUBCONTRACTS, THE
20 TOTAL VALUE OF CONTRACTS AWARDED TO CERTIFIED ECONOMICALLY
21 DISADVANTAGED BUSINESSES FOR SERVICES SHALL EQUAL AT LEAST 15%
22 OF THE TOTAL VALUE OF THE CONTRACT. IN THE CASE OF PROCUREMENT
23 OF PROFESSIONAL SERVICES INCLUDING, BUT NOT LIMITED TO,
24 ACCOUNTANTS, ATTORNEYS, MEDICAL DOCTORS, ARCHITECTS, DENTISTS,
25 SURVEYORS AND ENGINEERS, CONTRACTS MAY BE AWARDED AFTER
26 SELECTION THROUGH NEGOTIATION, OR BY OTHER APPROPRIATE MEANS,
27 BUT IN NO EVENT SHALL THE VALUE OF THE CONTRACTS AWARDED TO
28 ECONOMICALLY DISADVANTAGED BUSINESSES BE LESS THAN 15% OF THE
29 TOTAL VALUE OF SUCH CONTRACTS. UNDER NO CIRCUMSTANCES SHALL AN
30 ECONOMICALLY DISADVANTAGED BUSINESS BE ELIGIBLE FOR A SET-ASIDE

1 IF IT IS NOT A SMALL BUSINESS.

2 Section 6 7. Surety authorization. <—

3 (a) Committee as surety.--The committee as surety may
4 exercise all rights and powers authorized by the Insurance
5 Commissioner to execute construction contract bonds as surety
6 but shall not be subject to any requirements of the surety
7 company.

8 (b) Committee to make rules and establish procedures.--The
9 committee shall make rules, establish procedures for application
10 for construction contract bonds by minority contractors and
11 review in accordance with the following:

12 (1) The rules of the committee shall provide that an
13 economically disadvantaged contractor shall have been denied
14 a bond by two surety companies in order to make an
15 application for a bond to the board.

16 (2) The rules established by the committee shall require
17 a contractor to pay a premium for a bond to be established by
18 the committee, WHICH PREMIUM SHALL BE APPROXIMATELY EQUAL TO <—
19 PREMIUMS CHARGED OTHER CONTRACTORS BY SURETY COMPANIES, but
20 it shall not exceed 2% of the penal sum of the bond. All
21 premiums collected shall be paid into the Economically
22 Disadvantaged Small Business Contract Bonding Special
23 Account.

24 (3) The Insurance Commissioner shall provide technical
25 and professional assistance to the committee ~~is~~ AS <—
26 appropriate.

27 Section 7 8. Cash flow difficulties. <—

28 To alleviate the cash flow difficulties that arise from
29 present payment practices which penalize those small businesses
30 owned by economically disadvantaged persons firms whose cash

1 flow is negatively affected by extended payment or receivables,
2 the committee shall be empowered to require and enforce the
3 following payment practices:

4 (1) Once a contract has been let through the provisions
5 of this act, and the delivery pursuant thereto, of goods and
6 services made, the ~~purchasing entity~~ DEPARTMENT shall make or <—
7 authorize the immediate payment of 15% of the total dollar
8 value of such contract. THE CONTRACTOR SHALL MAKE OR <—
9 AUTHORIZE THE SAME PAYMENT SCHEDULE FOR ITS SUBCONTRACTORS.

10 (2) When the delivery of goods and services are to
11 extend beyond the 30-day period, the ~~purchasing entity~~ <—
12 DEPARTMENT shall devise payment schedules that will allow for <—
13 immediate payment of 15% of the total contract price upon
14 completion of 15% of the contracted goods LESS ANY RETAINAGE <—
15 WITHHELD. THE CONTRACTOR SHALL MAKE OR AUTHORIZE THE SAME
16 PAYMENT SCHEDULE FOR ITS SUBCONTRACTORS.

17 (3) The above payment practices will take effect only
18 after it has been determined that such goods and services
19 have been provided in accordance with the provisions of the
20 contract and to the satisfaction of the ~~purchasing entity~~ <—
21 DEPARTMENT. <—

22 Section 8 9. Creation of Economically Disadvantaged Small <—
23 Business Contract Bonding Special Account.

24 (a) Account established.--An Economically Disadvantaged
25 Small Business Contract Bonding Special Account is established
26 in the State Special Revenue Fund, which will consist of moneys
27 deposited or credited as follows:

28 (1) All premiums charged and collected, all moneys
29 recovered following defaults and any other moneys obtained
30 shall be administered by the committee.

1 (2) All moneys in the fund shall be held by the
2 committee in trust.

3 (b) Special account established.--An Economically
4 Disadvantaged Small Business Contract Bonding Program
5 Administrative Special Account is established in the State
6 Special Revenue Fund, consisting of all moneys appropriated to
7 the account. All expenses of the committee in carrying out the
8 purpose of this section shall be paid from this account.

9 Section 9 10. Solicitation of bids. <—

10 Each department ~~or other instrumentality of the Commonwealth~~ <—
11 shall be responsible for carrying out the policies of this act
12 and to the extent consistent with the best interests of the
13 Commonwealth:

14 (1) attempt to locate additional qualified small
15 economically disadvantaged business suppliers by all
16 appropriate methods, particularly where only a limited number
17 of small economically disadvantaged business concerns are on
18 bidder's lists;

19 (2) give wide publicity to Commonwealth purchasing
20 procedures;

21 (3) publicize proposed procurements by use of advance
22 notices or other appropriate methods;

23 ~~(4) include all established and qualified potential~~ <—
24 ~~business suppliers on the bidder's lists;~~

25 ~~(5)~~ (4) send solicitation to all firms on the
26 appropriate list, except that where less than a complete list
27 is to be used, at least a pro rata number of small
28 economically disadvantaged concerns shall be solicited; and

29 ~~(6)~~ (5) where feasible, divide proposed procurement of <—
30 supplies and services as to:

(i) permit bidding on quantities relative to the capability and capacity of the qualified business entrepreneur;

(ii) permit the maximum time practicable for preparation and submission of bids, proposals or quotations; and

(iii) permit and establish delivery schedules and payment procedures which will encourage qualified business participation.

Section ~~10~~ 11. Small business set-asides; advertisement; cancellation.

(a) Designation to be advertised.--Each department ~~or other instrumentality of the Commonwealth~~ authorized to contract for buildings, highways, commodities, equipment, supplies or services shall, upon designation of a business set-aside, as determined by the ~~committee~~ DEPARTMENT, include that designation in the advertisement for bids in the Pennsylvania Bulletin and other media used to solicit bids.

(b) Invitations to bid shall be confined to certain businesses.--In the case of contracts designated as a business set-aside, invitations to bid shall be confined to small economically disadvantaged businesses and bids from other businesses shall be rejected. The contract shall be awarded to the lowest responsible bidder among such businesses in accordance with the rules and regulations for purchasing promulgated by the committee. Awarding of contracts to businesses under this act is subject to the other statutes governing State procurement and all rules promulgated thereunder, including 16 Pa. Code Ch. 49 (relating to contract compliance), except as altered by this act and the regulations

1 promulgated ~~in its administration~~ THEREUNDER.

<—

2 (c) Set-aside may be cancelled.--In the event the department
3 or other instrumentality of the Commonwealth soliciting a bid
4 finds, in conjunction with the committee, that responsive
5 competitive bids at reasonable prices were not obtained as a
6 result of the business set-aside solicitation, or that bids
7 thereof were received only from firms demonstrated not to be
8 responsible or prequalified, the set-aside may be cancelled by
9 the ~~committee~~ DEPARTMENT, IN ACCORDANCE WITH PROCEDURES
10 ESTABLISHED BY THE COMMITTEE, and may be readvertised on an
11 unrestricted basis.

<—

12 Section ~~11~~ 12. Annual report.

<—

13 The committee shall make an annual report of operations to
14 the General Assembly and the Governor within 90 days after the
15 end of each fiscal year. It is intended that the report indicate
16 the progress being done toward achieving the objectives of this
17 act, particularly an evaluation of the implementation of the
18 State economically disadvantaged small business procurement
19 policies during the preceding fiscal year. The committee's
20 report shall recommend any amendments to this act which, in
21 their opinion, the committee finds necessary and proper to
22 fulfill the original legislative intent of this act. The report
23 shall identify businesses within this State which have done
24 business, have expressed interest in doing business or are
25 capable of doing business with the State for the preceding
26 fiscal year according to:

27 (1) the types of goods purchased, services provided and
28 construction and maintenance contracts awarded;

29 (2) the number of businesses within each category
30 determined to be a small business and a business dominant in

1 its field of operation and the criteria used to determine a
2 business as a small business or a business dominant in its
3 field within each category;

4 (3) the number of small economically disadvantaged
5 businesses within each category of which more than 50% of the
6 voting share or interest is held by individuals, the majority
7 of whom are economically disadvantaged; and

8 (4) the reporting data shall also include figures
9 qualifying contract awards to small firms which resulted from
10 business set-asides, both total and partial, and the number
11 of defaults or failures experienced by such which were
12 awarded set-asides under this act.

13 Section ~~12~~ 13. Penalties. <—

14 If any department or individual fails to comply with the
15 provisions of this act or with the regulations of the committee,
16 the committee is empowered to petition the Commonwealth Court
17 for a judicial order to enforce compliance. Intentional
18 violations of this act or regulations developed hereunder shall
19 subject the violators to a fine maximum of which is \$5,000
20 payable to the special accounts created in section 8. <—

21 Section ~~13~~ 14. Sunset provisions. <—

22 The provisions of this act shall expire five years after the
23 effective date hereof unless extended by specific reenactment of
24 the General Assembly. The report shall be used to determine the
25 degree to which the Commonwealth has made progress to correct
26 the disparages between other businesses and those owned by
27 economically disadvantaged persons. It should use this report to
28 determine if the goal has been accomplished or to recommend
29 termination of this act.

30 Section ~~14~~ 15. Effective date. <—

1 This act shall take effect ~~immediately.~~ IN 120 DAYS.

<—