

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2147 Session of 2010

INTRODUCED BY PAYTON, WHEATLEY, BUXTON, JOSEPHS, THOMAS, BROWN,
CALTAGIRONE, GOODMAN, HARKINS, JOHNSON, McCALL, PRESTON,
SHAPIRO, SIPTROTH, STEVENSON, STURLA, WATERS AND YOUNGBLOOD,
JANUARY 19, 2010

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 29, 2010

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, in small and disadvantaged businesses, providing
3 for small business reserve.

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

6 Section 1. Title 62 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 ~~§ 2109. Small business reserve.~~ ←

9 ~~(a) Small business reserve. Commonwealth agencies shall~~
10 ~~establish a small business reserve for the purpose of increasing~~
11 ~~economic opportunities for small and disadvantaged businesses~~
12 ~~and affording small and disadvantaged businesses the opportunity~~
13 ~~to bid on State government contracts without competing with~~
14 ~~larger businesses.~~

15 ~~(b) Set aside. Under section 2101 (relating to policy),~~
16 ~~each Commonwealth agency shall set 10% of its moneys available~~
17 ~~for procurement into a small business reserve for award to~~

~~qualified small and disadvantaged businesses. The amount set
aside shall be a minimum of \$25,000 up to a maximum of
\$5,000,000.~~

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

~~(d) Categories. The following tiers are established:~~

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

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

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

\$ 2109. SMALL BUSINESS RESERVE PROGRAM.

(A) SMALL BUSINESS RESERVE.--THE DEPARTMENT SHALL ESTABLISH
A SMALL BUSINESS RESERVE PROGRAM FOR THE PURPOSE OF INCREASING
ECONOMIC OPPORTUNITIES FOR SMALL AND DISADVANTAGED BUSINESSES
AND AFFORDING SMALL AND DISADVANTAGED BUSINESSES THE OPPORTUNITY
TO BID ON STATE GOVERNMENT CONTRACTS WITHOUT COMPETING WITH
LARGER BUSINESSES. ALL PROCUREMENT BY THE DEPARTMENT SHALL BE
ELIGIBLE FOR DESIGNATION FOR THE SMALL BUSINESS RESERVE PROGRAM,
AND SHALL BE PUBLISHED IN THE SAME MANNER AS REQUIRED FOR A
REQUEST FOR PROPOSAL OR AN INVITATION FOR BID.

(B) RESERVE ACCOUNT.--NOTWITHSTANDING ANY OTHER PROVISION OF
THIS TITLE TO THE CONTRARY, THE DEPARTMENT SHALL STRUCTURE ITS
PROCUREMENT PROCEDURES TO RESERVE UP TO 10% OF THE TOTAL DOLLAR

1 VALUE OF ITS PROCUREMENT CONTRACTS, INCLUDING PUBLIC WORKS,
2 CONSTRUCTION AND PROFESSIONAL SERVICES AND DESIGNED PROFESSIONAL
3 SERVICES CONTRACTS, TO BE MADE DIRECTLY TO QUALIFIED SMALL AND
4 DISADVANTAGED BUSINESSES. HOWEVER, THE TOTAL DOLLAR VALUE OF
5 PROCUREMENTS BY THE DEPARTMENT SHALL NOT INCLUDE THE VALUE OF
6 ANY CONTRACT TO WHICH THIS SUBSECTION WOULD NOT APPLY BECAUSE OF
7 A CONFLICT WITH FEDERAL LAW.

8 (C) AWARDS.--THE DEPARTMENT SHALL AWARD A PROCUREMENT
9 CONTRACT DESIGNATED FOR A SMALL BUSINESS RESERVE TO THE SMALL
10 AND DISADVANTAGED BUSINESS THAT SUBMITS A BID OR PROPOSAL THAT:

11 (1) IS THE LOWEST BID PRICE;

12 (2) IS THE LOWEST EVALUATED BID PRICE, IF THE INVITATION
13 FOR BID OR REQUEST FOR PROPOSAL SO PROVIDES; OR

14 (3) IS IN THE BEST INTEREST OF THE COMMONWEALTH.

15 (D) OTHER COMMONWEALTH AGENCIES.--

16 (1) A COMMONWEALTH AGENCY MAY COLLABORATE WITH THE
17 DEPARTMENT TO STRUCTURE ITS PROCUREMENT PROCEDURES TO PROVIDE
18 FOR A SMALL BUSINESS RESERVE PROGRAM WHICH SHALL BE SUBJECT
19 TO THE REQUIREMENTS OF THIS ACT.

20 (2) UPON REQUEST, THE DEPARTMENT SHALL ASSIST THE
21 PROCUREMENT UNIT OF A COMMONWEALTH AGENCY WITH THE
22 DEVELOPMENT AND IMPLEMENTATION OF A SMALL BUSINESS RESERVE.

23 (E) CONSTRUCTION AND APPLICATION.--

24 (1) THE PROVISIONS OF THIS SECTION SHALL NOT BE
25 CONSTRUED TO PRECLUDE ANY SMALL AND DISADVANTAGED BUSINESS
26 FROM COMPETING FOR ANY OTHER CONTRACT THAT IS NOT
27 SPECIFICALLY DESIGNATED FOR THE SMALL BUSINESS RESERVE
28 PROGRAM.

29 (2) THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY
30 ELIGIBLE "SMALL BUSINESS" AS DEFINED UNDER 62 PA.C.S. § 2102

1 (RELATING TO DEFINITIONS).

2 (F) REGULATIONS.--THE DEPARTMENT SHALL ADOPT AND PROMULGATE
3 REGULATIONS TO GOVERN THE PROVISIONS OF THIS SECTION. THE
4 REGULATIONS SHALL:

5 (1) ESTABLISH A COMPREHENSIVE BIDDER'S LIST OF ELIGIBLE
6 SMALL AND DISADVANTAGED BUSINESSES.

7 (2) PROVIDE PROCEDURES FOR MAINTAINING THE LIST IN
8 PARAGRAPH (1).

9 (3) INCLUDE ANY OTHER INFORMATION THE DEPARTMENT
10 DETERMINES NECESSARY AND APPROPRIATE TO CARRY OUT THE
11 PROVISIONS OF THIS ACT.

12 (G) REPORTS.--ON OR BEFORE DECEMBER 31, 2012, AND ON OR
13 BEFORE EACH DECEMBER 31 THEREAFTER, THE DEPARTMENT SHALL SUBMIT
14 A REPORT TO THE CHIEF CLERK OF THE SENATE AND THE CHIEF CLERK OF
15 THE HOUSE OF REPRESENTATIVES ON THE OPERATION AND EFFECTIVENESS
16 OF THE SMALL BUSINESS RESERVE PROGRAM. THE REPORT SHALL INCLUDE
17 THE FOLLOWING:

18 (1) THE TOTAL NUMBER AND DOLLAR VALUE OF PAYMENTS THE
19 DEPARTMENT MADE TO SMALL AND DISADVANTAGED BUSINESSES
20 PURSUANT TO DESIGNATED SMALL BUSINESS RESERVE CONTRACTS.

21 (2) THE TOTAL NUMBER AND DOLLAR VALUE OF PAYMENTS THE
22 DEPARTMENT MADE TO SMALL AND DISADVANTAGED BUSINESSES THAT
23 WERE NOT DESIGNATED AS SMALL BUSINESS RESERVE CONTRACTS.

24 (3) THE TOTAL DOLLAR VALUE OF PAYMENTS MADE BY THE
25 DEPARTMENT UNDER PROCUREMENT CONTRACTS.

26 (4) INFORMATION ON ANY COMMONWEALTH AGENCY THAT HAS
27 IMPLEMENTED A SMALL BUSINESS RESERVE PROGRAM, INCLUDING
28 INFORMATION REQUIRED UNDER PARAGRAPHS (1), (2) AND (3).

29 (5) ANY OTHER INFORMATION OR RECOMMENDATION THE
30 DEPARTMENT DETERMINES NECESSARY.

1 Section 2. This act shall take effect immediately.