

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 676 Session of
2013

INTRODUCED BY K. BOYLE, B. BOYLE, HESS, FRANKEL, COHEN, BOBACK,
SWANGER, BROWNLEE, D. COSTA, CALTAGIRONE, READSHAW, KORTZ,
MATZIE, MURT, KINSEY AND FREEMAN, FEBRUARY 12, 2013

REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY
PREPAREDNESS, FEBRUARY 12, 2013

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 Statutes
7 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.

17 7205. Cooperation.

1 7206. Reporting requirements.

2 7207. Validity of bonds.

3 7208. Information required in bid.

4 7209. Appointment of State service-disabled veteran-owned
5 business coordinator.

6 7210. Agency service-disabled veteran-owned business advocates.

7 § 7201. Definitions.

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

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

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

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

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

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

29 (2) Carries out the responsibility by actually
30 performing, managing or supervising the work involved.

1 (3) Performs work that is normal for the person's or
2 entity's business services and functions.

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

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

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

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

26 "Goal." A numerically expressed objective that an awarding
27 department or contractor is required to make efforts to achieve.

28 "Management and control." Effective and demonstrable
29 management of a business entity.

30 "Service-disabled veteran." A veteran of the armed forces of

1 the United States who has at least a 10% service-related
2 disability and who is domiciled in this Commonwealth.

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

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

10 (2) In the case of a sole proprietorship, not less than
11 51% of the business is owned by one or more disabled
12 veterans; in the case of a publicly owned business, not less
13 than 51% of its stock is owned by one or more disabled
14 veterans; in the case of a subsidiary that is wholly owned by
15 a parent corporation, not less than 51% of the voting stock
16 of the parent corporation is owned by one or more disabled
17 veterans; or, in the case of a joint venture, not less than
18 51% of the joint venture's management, control and earnings
19 are held by one or more disabled veterans. Status as a
20 service-disabled veteran-owned business concern shall be
21 determined in accordance with 13 CFR Pt. 125 (relating to
22 government contracting programs).

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

27 Notwithstanding paragraphs (1), (2) and (3), after the death or
28 the certification of a permanent medical disability of a
29 disabled veteran who is a majority owner of a business that
30 qualified as a service-disabled veteran-owned business prior to

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

8 "Service-disabled veteran-owned business contractor,
9 subcontractor or supplier." A person or entity that has been
10 certified by an administering agency under this chapter and that
11 performs a commercially useful function in providing services or
12 goods that contribute to the fulfillment of contract
13 requirements.

14 § 7202. Service-disabled veteran-owned business participation
15 goals.

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

23 (b) Cocounsel, joint-venture and subcontracting
24 relationships.--

25 (1) An awarding department shall support a program for
26 assigning representative portions of contracts for the
27 purpose of meeting the goals established under subsection
28 (a). An awarding department shall consider establishing
29 cocounsel, joint-venture and subcontracting relationships
30 with service-disabled veteran-owned businesses.

1 (2) Nothing in this chapter may be construed to preclude
2 an awarding department from achieving the goals set forth in
3 this section without requiring joint ventures, cocounsel or
4 subcontracting arrangements.

5 § 7203. Bids for bond services.

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

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

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

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

21 § 7204. Monitoring.

22 (a) General rule.--An administering agency and awarding
23 department shall establish a method of monitoring achievement of
24 the goals specified in section 7202 (relating to service-
25 disabled veteran-owned business participation goals).

26 (b) Contractor reporting.--A contractor shall report to the
27 administering agency or awarding department upon the completion
28 of any sale of bonds.

29 (c) Certain contracts not to be included toward goal.--An
30 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.

§ 7205. Cooperation.

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

§ 7206. Reporting requirements.

(a) Reports of awarding departments.--

(1) On July 1 of each year, each awarding department
shall report to the Governor, the General Assembly, the
Department of General Services and the Department of Military
and Veterans Affairs on the participation by service-disabled
veteran-owned businesses in contracts for the previous fiscal
year.

(2) If an awarding department has not met its
established goal for the previous fiscal year, the awarding
department shall identify the reasons for the awarding
department's shortfall and the steps the awarding department
will take to achieve its goal.

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

§ 7207. Validity of bonds.

(a) General rule.--Notwithstanding any other provision of

this chapter to the contrary, no bonds, contracts, notes or other obligations issued by an awarding department to provide for the payment of any contract subject to this chapter may be deemed invalid or unenforceable as a result of the failure of an awarding department to meet its goals established under this chapter.

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

§ 7208. Information required in bid.

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

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

(2) The portion of work that will be performed by each subcontractor under paragraph (1). Except in cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare or safety or protection of State property, a prime contractor shall list

only one subcontractor for each portion of work as defined by
the prime contractor in the bid or offer.

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

The Department of Military and Veterans Affairs shall appoint
a State service-disabled veteran-owned business coordinator to
do all of the following:

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

(2) Disseminate information on this chapter.

(3) Coordinate reports under section 7206 (relating to
reporting requirements).

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

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

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

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

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

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

1 (4) Serve as an advocate for service-disabled veteran-
2 owned businesses that are utilized as the awarding agency's
3 contractors and subcontractors.

4 (5) Coordinate with the State service-disabled veteran-
5 owned business coordinator to achieve the participation goals
6 set forth under section 7202 (relating to service-disabled
7 veteran-owned business participation goals).

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

10 Section 3. This act shall apply to contracts entered into on
11 or after January 1, 2014.

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