

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1081 Session of
2011

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PETRARCA, READSHAW, K. SMITH, STABACK, WHEATLEY, WHITE AND
CLYMER, MARCH 17, 2011

REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY
PREPAREDNESS, MARCH 17, 2011

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.

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." A 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 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 a contract.

30 (2) Carries out the responsibility by actually

1 performing, managing or supervising the work involved.

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

4 (4) Does not further subcontract 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." An agreement to provide professional bond
14 services to the Commonwealth or an awarding department. The term
15 also includes an agreement to provide labor, services, material,
16 supplies or equipment in the performance of a contract,
17 franchise, concession or lease granted, let or awarded for and
18 on behalf of the Commonwealth.

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

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

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

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

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

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

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

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

28 Notwithstanding paragraphs (1), (2) and (3), after the death or
29 the certification of a permanent medical disability of a
30 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." A person or entity that has been
certified by an administering agency under this chapter and that
performs a commercially useful function in providing services or
goods that contribute to the fulfillment of contract
requirements.

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

(a) Required goals.--Notwithstanding any other provision of
law, an 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.--

(1) An 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

1 with service-disabled veteran-owned businesses.

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

6 § 7203. Bids for bond services.

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

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

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

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

22 § 7204. Monitoring.

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

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

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

§ 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.

1 (a) General rule.--Notwithstanding any other provision of
2 this chapter to the contrary, no bonds, contracts, notes or
3 other obligations issued by an awarding department to provide
4 for the payment of any contract subject to this chapter shall be
5 deemed invalid or unenforceable as a result of the failure of an
6 awarding department to meet its goals established under this
7 chapter.

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

14 § 7208. Information required in bid.

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

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

27 (2) The portion of work that will be performed by each
28 subcontractor under paragraph (1). Except in cases of
29 emergency where a contract is necessary for the immediate
30 preservation of the public health, welfare or safety or

1 protection of State property, a prime contractor shall list
2 only one subcontractor for each portion of work as defined by
3 the prime contractor in the bid or offer.

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

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

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

11 (2) Disseminate information on this chapter.

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

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

19 § 7210. Agency service-disabled veteran-owned business
20 advocates.

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

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

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

30 (3) Disseminate information to the awarding agency's

1 contract and procurement staff.

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

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

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

11 Section 3. This act shall apply to contracts entered into on
12 or after January 1, 2012.

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