

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 696 Session of 2011

INTRODUCED BY WASHINGTON, HUGHES, FERLO, FONTANA, KITCHEN,
BREWSTER, STACK, YUDICHAK, FARNESE, COSTA, WILLIAMS, BLAKE
AND BOSCOLA, MAY 3, 2011

REFERRED TO STATE GOVERNMENT, MAY 3, 2011

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, further providing for definitions and for Statewide
3 bonding program; providing for mentor-protégé program, for
4 Small Business Reserve Program, for reciprocity of
5 certifications, for oversight and responsibility and for
6 prime contractors' performance; further providing for
7 contractors' and subcontractors' payment obligations; and
8 making appropriations.

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

11 Section 1. Section 2102 of Title 62 of the Pennsylvania
12 Consolidated Statutes is amended to read:

13 § 2102. Definitions.

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

18 "Commonwealth agency." The term shall include the following:

19 (1) Any office, department, authority, board, multistate
20 agency or commission of the executive branch, including:

1 (i) The Office of the Governor.

2 (ii) The Office of Attorney General, the Department
3 of the Auditor General and the Treasury Department.

4 (iii) The Pennsylvania State System of Higher
5 Education, consisting of the 14 State-owned universities
6 and the four State-related universities.

7 (iv) An organization established by the Constitution
8 of Pennsylvania or a statute or executive order that
9 performs or is intended to perform an essential
10 governmental function.

11 (2) The term shall not include a judicial or legislative
12 agency.

13 "Disadvantaged business." A small business which is owned or
14 controlled by a majority of persons, not limited to members of
15 minority groups, who have been deprived of the opportunity to
16 develop and maintain a competitive position in the economy
17 because of social disadvantages or who are veterans or service
18 disabled veterans.

19 "Governmental agency." A Commonwealth agency, local agency,
20 independent agency, State-affiliated entity or State-related
21 institution.

22 "Independent agency." Any board, commission or other agency
23 or officer of the Commonwealth that is not subject to the policy
24 supervision and control of the Governor. The term shall not
25 include a legislative agency or a judicial agency.

26 "Small business." A business in the United States which is
27 independently owned, is not dominant in its field of operation
28 and employs [100] 250 or fewer employees. The department shall
29 have the authority to review the employee limit and gross
30 revenue threshold of \$25,000,000 annually and make adjustments

1 to both or either to reflect changing industry norms and to
2 reflect the best interest of the Commonwealth.

3 Section 2. Section 2105 heading of Title 62 is amended and
4 the section is amended by adding subsections to read:

5 § 2105. [Bonding and progress payments] Bond Surety and
6 Guarantee Program.

7 * * *

8 (a.1) Establishment of program.--To enable small businesses
9 and disadvantaged businesses to build capacity and to
10 competitively bid on State and other public contracts, the
11 department shall establish the criteria and structure for a
12 Statewide bonding program for the purpose of assisting
13 disadvantaged businesses in competitively bidding on
14 Commonwealth contracts.

15 (a.2) Appropriation.--The sum of \$5,000,000, or as much
16 thereof as may be necessary, is appropriated annually to the
17 Department of Community of Economic Development for the fiscal
18 year July 1, 2011, to June 30, 2012, to carry out the purposes
19 of this section.

20 (a.3) Program administration.--All moneys in the fund shall
21 be used to finance guarantees to bonding companies against
22 percentages of losses sustained as a result of defaults by
23 qualified disadvantaged businesses on a contract or project.

24 * * *

25 Section 3. Title 62 is amended by adding sections to read:
26 § 2109. Mentor-protégé program.

27 (a) Establishment.--To foster long-term business
28 relationships between disadvantaged businesses and prime
29 contractors and to assist, support and enable disadvantaged
30 businesses to successfully compete for prime and subcontract

1 awards by partnering with large companies, which shall serve as
2 mentors, in State contracts.

3 (b) Consideration.--The mentor-protégé arrangement between a
4 prime contractor and disadvantaged business shall be an
5 important factor to be considered in the award of any
6 Commonwealth contract or award.

7 (c) Guidelines.--The mentor-protégé program must be approved
8 by the agency and may include management, financial, technical,
9 organizational and operational assistance to help the
10 disadvantaged business grow and compete for contracting and
11 subcontracting opportunities.

12 § 2110. Small Business Reserve Program.

13 (a) General rule.--The department shall establish a Small
14 Business Reserve Program for the purpose of increasing economic
15 opportunities for small and disadvantaged businesses and
16 affording small businesses, including disadvantaged businesses,
17 the opportunity to bid on State government contracts without
18 competing with larger businesses. All procurement, including
19 construction and professional services, shall be eligible for
20 designation for the Small Business Reserve Program Program and
21 shall be published in the same manner as required for a request
22 for proposal or an invitation for bid.

23 (b) Reserve account.--Pursuant to section 2101 (relating to
24 policy), the department shall structure its procurement
25 procedures to reserve up to 10% of the total dollar value of its
26 procurement contracts, including public works, construction,
27 professional services and design professional services contracts
28 into its Small Business Reserve Program for award to qualified
29 small businesses.

30 (c) Self-certification.--Under the Small Business Reserve

Program only, bidders shall self-certify that they are qualified small businesses and verification of status shall be confirmed by the awarding agency

§ 2111. Alternative certification.

In order to create greater uniformity and consistency in the Commonwealth's certification process, the department shall accept the certification of the Pennsylvania Unified Certification Program (PA UCP). Certification of any minority-owned business, women-owned business 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 in any governmental or public bid, contract or award.

§ 2112. Oversight and responsibility.

(a) General rule.--The department 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.

(b) Aspirational targets.--The department shall establish an overall aspirational target of awarding 25% of procurement and construction dollars to disadvantaged businesses in all State contracts and grants, including, but not limited to, procurement of goods and services, construction, professional services, consulting, insurance, investment management, bond work, real estate transactions and energy savings contracts. The aspirational targets shall also apply to sole source contracts. A contract with an optional renewal clause that did not have initial disadvantaged business requirements at award time shall

1 be subject to disadvantaged business review and inclusion
2 requirements prior to the renewal of the contract.

3 (c) Best practices.--Duties of the department shall include
4 the following best practices standards:

5 (1) Ensure that disadvantaged business participation is
6 included as part of an agency's strategic priorities through
7 identification of measurable goals and objectives.

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

11 (3) Establish a comprehensive quarterly and annual
12 reporting process, which includes the award amounts and
13 actual spending for contractors, subcontractors and
14 suppliers.

15 (4) Designate a single point-of-contact to implement,
16 monitor and report work force utilization and agency
17 contractor participation.

18 (5) Create a cross-agency small business support
19 services system to provide training, consulting information
20 management, business management and technical assistance to
21 disadvantaged businesses to develop the proficiency to
22 compete with majority contractors, vendors and consultants.

23 (6) Identify uniform monitoring, enforcement, tracking
24 and reporting guidelines and practices.

25 (7) Expand ability to measure and quantify the
26 effectiveness of disadvantaged business programs.

27 (8) Review the department's e-marketplace system for
28 potential expansion to all State agencies.

29 (9) Continue to connect disadvantaged businesses to
30 other entities, such as small business development centers,

minority business enterprise centers and professional technical assistance centers, for financial and technical assistance.

(d) Reports.--All Commonwealth agencies, independent agencies, State-affiliated agencies, quasi-independent agencies, boards, commissions, colleges and universities shall track and report quarterly on the award of contracts and grants to disadvantaged businesses and on their utilization of and spending with disadvantaged businesses to the chairman of the Appropriations Committee of the Senate and the chairman of the Appropriations Committee of the House of Representatives.

(e) Monitoring and enforcement.--

(1) The department and other State agencies shall institute and implement all necessary monitoring and enforcement of the provisions contained in this section.

(2) A contractor that fails to make good faith efforts in oversight and timely payment as defined under Subchapter D of Chapter 39 (relating to prompt payment schedules) to a disadvantaged business may be subject to the following penalties at the discretion of the agency issuing the contract:

(i) Withholding of payments to the contractor.

(ii) Prohibition from contracting with the Commonwealth for no less than 12 months and no more than 36 months.

§ 2113. Prime contractors' performance.

The department shall develop concise and detailed good faith effort requirements for its prime contractors to ensure their genuine attempt at meeting the Commonwealth's disadvantaged business subcontractor participation requirements. Contractors

1 and grantees doing business with the Commonwealth shall make
2 reasonable and good faith efforts to provide maximum practicable
3 opportunities for small businesses and disadvantaged businesses
4 to participate as contractors, professional service providers,
5 subcontractors and suppliers, including the following:

6 (1) Attend prebid or preproposal conferences.

7 (2) Notify in writing about subcontracting opportunities
8 to disadvantaged businesses that perform the type of work to
9 be subcontracted in sufficient time to allow the businesses
10 to participate.

11 (3) Advise small businesses or disadvantaged businesses
12 of the specific work the prime contractor intends to
13 subcontract, that their interest in the project is being
14 solicited and how to obtain information for the review and
15 inspection of the plans, specifications and requirements of
16 the bid.

17 (4) Provide a written statement that economically
18 feasible portions of work were selected to be performed by
19 small businesses or disadvantaged businesses, including,
20 where appropriate, segmenting or combining elements of work
21 into economically feasible units.

22 (5) Provide a statement of the efforts made to negotiate
23 with small businesses or disadvantaged businesses, including
24 the name, address and telephone number of the small
25 businesses or disadvantaged businesses that were contacted,
26 the date the negotiations took place and a description of the
27 information provided to the small businesses or disadvantaged
28 businesses regarding the plans, specifications and
29 requirements for the portion of the work to be performed.

30 (6) Consult with the Bureau of Minority and Women

1 Business Opportunities to ensure significant contracting,
2 professional service, subcontracting and purchasing
3 opportunities for small businesses or disadvantaged
4 businesses unless the department agrees that contractor or
5 grantee participation in outreach activities will satisfy
6 this requirement.

7 (7) Participate in outreach activities and events to
8 increase small business and disadvantaged business interest
9 and participation in contracting, professional service,
10 subcontracting and purchasing opportunities and the extent of
11 the contractor's or grantee's commitment to participate in
12 outreach participation shall be a consideration in the award
13 of any contract or grant.

14 (8) Use the department's Internet website to identify
15 certified small businesses or disadvantaged businesses as
16 potential sources for professional service, subcontracting,
17 purchasing, construction, equipment, services and supplies.

18 (9) Solicit certified small businesses or disadvantaged
19 businesses for all contracting, subcontracting, professional
20 service agreements and purchasing opportunities.

21 (10) Include certified small businesses or disadvantaged
22 businesses on solicitation lists.

23 (11) Prepare and keep records of solicitations,
24 including a bid tabulation, showing names of all firms
25 solicited and the dollar amount of the bid, quote or
26 proposal, as well as copies of all bids, quotes and proposals
27 received.

28 (12) Provide quarterly reports to the department on
29 small business and disadvantaged business utilization.

30 (13) Demonstrate good faith efforts in oversight and

1 timely payment, as defined under Subchapter D of Chapter 39
2 (relating to prompt payment schedules) to small businesses or
3 disadvantaged businesses and compliance with the
4 disadvantaged subcontractor commitment made at the time of
5 the award or thereafter.

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

7 § 3933. Contractors' and subcontractors' payment obligations.

8 * * *

9 (c) Payment.--When a subcontractor has performed in
10 accordance with the provisions of the contract, a contractor
11 shall pay to the subcontractor, and each subcontractor shall in
12 turn pay to its subcontractors, the full or proportional amount
13 received for each such subcontractor's work and material, based
14 on work completed or services provided under the subcontract,
15 [14] five days after receipt of a progress payment. Payment
16 shall be made under this section unless it is being withheld
17 under section 3934 (relating to withholding of payment for good
18 faith claims).

19 * * *

20 Section 5. It is the intent of the General Assembly that the
21 additions and amendments to 62 Pa.C.S. Ch. 21 shall be enacted
22 and enforced in their entirety. Should any portion or provision
23 of the amendments or additions to 62 Pa.C.S. Ch. 21 be declared
24 unconstitutional, the remaining amendments or additions to 62
25 Pa.C.S. Ch. 21 shall remain in effect and be enforceable.

26 Section 6. The provisions of this act are severable. If any
27 provision of this act or its application to any person or
28 circumstance is held invalid, the invalidity shall not affect
29 other provisions or applications of this act which can be given
30 effect without the invalid provision or application.

1 Section 7. This act shall take effect in 60 days.