

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1004 Session of
2011

INTRODUCED BY PIPPY, TOMLINSON, FONTANA, FARNESE, SOLOBAY,
SCHWANK, BLAKE, MENSCH, BREWSTER, COSTA, LEACH, KITCHEN,
FERLO, HUGHES AND BROWNE, APRIL 25, 2011

SENATOR MCILHINNEY, STATE GOVERNMENT, AS AMENDED, OCTOBER 25,
2011

AN ACT

1 Providing for the establishment of the Surety Bond Guarantee
2 Fund Program; imposing duties on the Department of Community
3 and Economic Development; and establishing the Surety Bond
4 Guarantee Fund.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Surety Bond
9 Guarantee Fund Program Act.

10 Section 2. Definitions.

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

14 "Applicant." A disadvantaged business as defined in this
15 act.

16 "Department." The Department of Community and Economic
17 Development of the Commonwealth.

18 "Disadvantaged business." A small business which is owned or

1 controlled by a majority of persons, not limited to members of
2 minority groups, who have been deprived of the opportunity to
3 develop and maintain a competitive position in the economy
4 because of social disadvantages.

5 "Fund." The Surety Bond Guarantee Fund established in this
6 act.

7 "Program." The Surety Bond Guarantee Fund Program
8 established in this act.

9 "Secretary." The Secretary of Community and Economic
10 Development of the Commonwealth.

11 "Small business." A business in the United States which is
12 independently owned, is not dominant in its field of operation
13 and employs 250 or fewer employees.

14 "Surety bond." A guarantee in which the surety guarantees
15 that the contractor or principal in the bond will perform the
16 obligation stated in the bond. The term shall include the
17 following types of bonds:

18 (1) Bid bonds that guarantee the bidder will enter into
19 a contract and furnish the required payment and performance
20 bonds.

21 (2) Payment bonds that guarantee payment from the
22 contractor to parties who furnish labor, materials, equipment
23 and supplies.

24 (3) Performance bonds that guarantee the contractor will
25 fulfill the contract in accordance with terms and conditions.

26 (4) Ancillary bonds which may be incidental and
27 essential to the performance of the contract.

28 Section 3. Establishment of program.

29 The Surety Bond Guarantee Fund Program is established in the
30 department. The purpose of the program is to assist

1 disadvantaged businesses to competitively bid for governmental
2 contracts.

3 Section 4. Surety Bond Guarantee Fund.

4 (a) Establishment.--The Surety Bond Guarantee Fund is
5 established within the State Treasury for the purpose of
6 assisting disadvantaged businesses to competitively bid for
7 certain Commonwealth contracts.

8 (b) Fund administration.--The fund shall be administered by
9 the department. All moneys in the fund shall be used to finance
10 guarantees to bonding companies against percentages of losses
11 sustained as a result of defaults by qualified disadvantaged
12 businesses on a contract or project.

13 ~~(c) Payments from fund. Surety bond guarantees made with~~ ←
14 ~~payments from the fund under the program shall not exceed the~~
15 ~~sum of \$1,000,000 for any one disadvantaged business.~~

16 (C) AUTHORITY OF THE FUND TO ISSUE GUARANTEE.--ANY GUARANTEE ←
17 OR AGREEMENT TO INDEMNIFY THE SURETY SHALL NOT EXCEED 80% OF THE
18 LOSS INCURRED AND PAID BY THE SURETY ON ANY QUALIFIED CONTRACT.

19 Section 5. Contract AND BONDS eligible for guarantee. ←

20 (a) Eligibility.--A bond guaranteeing the performance of a
21 contract shall be qualified and eligible for a surety bond
22 guarantee under the program if:

23 (1) The bond is listed in the contract bonds section of
24 the Surety and Fidelity Association of America's, or its
25 successor's, "Manual of Rules, Procedures and
26 Classifications."

27 (2) The bond is required by the contract, invitation for
28 bid or request for proposal.

29 (3) The bond is executed by a surety company that is
30 ~~acceptable to the Treasury Department and qualified by the~~ ←

department.

~~(4) The bond meets any other requirements established by the department.~~

~~(b) Required provision; notice of cancellation.~~

~~(1) No bond shall qualify or be eligible for a guarantee under the program unless it contains a provision affirming that the bond shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect.~~

~~(2) Cancellation of the bond shall not invalidate the bond regarding the period of time it was in effect.~~ LICENSED
AND IN GOOD STANDING WITH THE INSURANCE DEPARTMENT.

(B) ELIGIBILITY OF CONTRACTS.--NO SURETY BOND GUARANTEE
UNDER THE PROGRAM MAY BE ISSUED UNLESS:

(1) THE PERSON WHO WOULD BE THE PRINCIPAL ON THE BOND
HAS BEEN FOUND ELIGIBLE UNDER SECTION 6(C).

(2) THE TOTAL AMOUNT OF THE CONTRACT AT THE TIME OF
EXECUTION OF THE BOND IS LESS THAN \$1,000,000.

Section 6. Disadvantaged business participation.

(a) Application process.--

(1) A disadvantaged business may apply to participate in
the program by filing an application with the department.

(2) The department shall review the application to
determine if the applicant is eligible to participate in the
program within 30 days of receipt of the completed
application. The department may extend the review period for
an additional 30 days if it determines that additional time
is needed to complete the review process.

(3) The department shall notify the applicant in writing

1 of the extended period, including the date it will reach its
2 final decision.

3 (b) Investigation.--

4 (1) Upon receipt of a completed application, the
5 department may conduct an investigation of the applicant,
6 including an investigation of its owners, officers,
7 directors, principals or agents, in order to determine
8 whether the applicant is eligible to participate in the
9 program.

10 (2) If the investigation finds and the department
11 determines that an applicant is not eligible to participate
12 in the program, it shall notify the applicant in writing that
13 the applicant will not be approved for program participation.
14 The notification of ineligibility shall include the reason
15 the application was not approved and that the applicant has
16 the right to appeal the department's determination to the
17 secretary within 30 days of the date of the notice.

18 (c) Criteria for determining eligibility.--An applicant
19 shall be deemed eligible to participate in the program if the
20 department determines that an applicant meets all of the
21 following qualifications:

22 (1) The applicant is a disadvantaged business certified
23 by the ~~department~~ DEPARTMENT OF GENERAL SERVICES. ←

24 (2) The applicant's business is in the construction or
25 building trade industry.

26 (3) The applicant has been actively operating its
27 business for at least one year prior to the application date.

28 (4) The applicant has the experience and financial
29 fitness appropriate to a qualified contract.

30 (5) The applicant has agreed to subcontract no more than

75% of the work to be performed under a qualified contract.

~~(6) The applicant has demonstrated an inability to
secure bonding under normal market conditions.~~

(6) THE APPLICANT WHO WOULD BE THE PRINCIPAL ON THE BOND
IS UNABLE TO OBTAIN THE BOND ON REASONABLE TERMS AND
CONDITIONS WITHOUT A GUARANTEE.

(7) THERE IS A REASONABLE EXPECTATION THAT THE PRINCIPAL
WILL PERFORM THE COVENANTS AND CONDITIONS OF THE CONTRACT
WITH RESPECT TO WHICH THE BOND IS REQUIRED AND THE TERMS AND
CONDITIONS OF THE BOND ARE REASONABLE IN THE LIGHT OF THE
RISKS INVOLVED AND THE EXTENT OF THE SURETY'S PARTICIPATE.

~~(7)~~ (8) The applicant or one of its owners, officers,
directors, principals or agents has not committed or been
convicted of any of the activities ~~set forth~~ SPECIFIED in
section 7.

~~(8)~~ (9) The business meets any other program
requirements that establish criteria for eligibility that the
department shall adopt by regulation within 180 days of the
effective date of this section.

Section 7. Criteria for denying program participation.

The department may not approve or may deny an application for
program participation if it determines that the applicant or one
of its owners, officers, directors, principals or agents
committed or has been convicted of the following:

(1) Made a material misstatement in the application or
any other document required to be submitted by the department
or under a provision of this act.

(2) Failed to comply with or violated any provision of
this act or any regulation, order or statement of policy
issued by the department under this act.

1 (3) Engaged in unfair or unethical conduct in connection
2 with the construction or building trade industry or in
3 violation of 62 Pa.C.S. Ch. 23 (relating to ethics in public
4 contracting).

5 (4) Does not possess the financial fitness, character,
6 reputation, integrity and general fitness sufficient to
7 warrant reasonable belief that the applicant's business will
8 be conducted lawfully, honestly and in the public interest.

9 (5) Notwithstanding any other provision of law to the
10 contrary, been convicted of or pleaded guilty or nolo
11 contendere to a crime of moral turpitude or to an offense
12 graded as a felony.

13 (6) Been enjoined by a court of competent jurisdiction
14 from engaging in the construction or building trade industry.

15 (7) Has had a license issued by the department or any
16 other Federal, state or local agency denied, not renewed,
17 suspended or revoked.

18 (8) Became the subject of a United States Postal Service
19 fraud order.

20 (9) Demonstrated negligence or incompetence in
21 performing an act for which the applicant is required to hold
22 a license under an act enacted by this Commonwealth.

23 (10) Has an outstanding debt to the Federal Government,
24 the Commonwealth or any Federal or Commonwealth agency or a
25 political subdivision of the Commonwealth or agency of a
26 political subdivision.

27 (11) Became insolvent at any time prior to the
28 application date, meaning that the liabilities of the
29 applicant exceeded the assets of the applicant or that the
30 applicant could not meet the obligations of the applicant as

1 they matured or was in such financial condition that the
2 applicant could not continue in business without jeopardizing
3 the health, safety and welfare of its customers.

4 (12) At any time prior to application, has failed to
5 disburse payments to subcontractors in a timely manner as
6 agreed to under a contract for any reason other than the
7 owner's failure to make the agreed-to payments to the
8 applicant or because such disbursement would constitute a
9 violation of applicable law or an order issued by a court or
10 administrative body of competent jurisdiction.

11 Section 8. Duties of department.

12 (a) Technical assistance.--The department shall provide
13 technical assistance to enable disadvantaged businesses to
14 competitively bid on State and other governmental contracts.
15 Technical assistance shall include, but not be limited to,
16 assisting disadvantaged businesses in responding to bid
17 requests, strengthening financial condition and addressing other
18 concerns raised or likely to be raised by a bonding company.

19 (b) Monitoring program.--

20 (1) The department shall establish a monitoring program
21 to monitor the activities of disadvantaged businesses
22 participating in the program. The monitoring program shall
23 include inspections of projects approved for bond guarantees
24 to minimize the risk of calls on the fund.

25 (2) The department shall promptly advise the
26 disadvantaged business of any deficiencies identified during
27 an inspection.

28 (3) In the event the deficiencies noted in the report
29 are not promptly addressed by the disadvantaged business to
30 the satisfaction of the department, the department may give

1 the disadvantaged business a reasonable period to correct the
2 deficiencies or may report such deficiencies to the issuing
3 bond company.

4 Section 9. Regulations.

5 The department shall administer and enforce the provisions of
6 this act and shall adopt and promulgate regulations, guidelines
7 or policy statements necessary to carry out the provisions of
8 this act.

9 Section 10. Effective date.

10 This act shall take effect immediately.