
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 291 Session of
2013

INTRODUCED BY WHEATLEY, BROWNLEE, YOUNGBLOOD, FRANKEL, KORTZ, V.
BROWN, FABRIZIO, GOODMAN, READSHAW, BISHOP, CALTAGIRONE,
MATZIE AND MCCARTER, JANUARY 23, 2013

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JANUARY 23, 2013

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, further providing for definitions; providing for
3 authority to waive employee limit, for alternative
4 certification, for contractor performance and general
5 conditions, for mentor-protégé program and for small business
6 reserve program; establishing a surety bond guarantee
7 program; and further providing for contractors' and
8 subcontractors' payment obligations.

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] Notwithstanding section 103 (relating to
15 definitions) and subject to section 2103 (relating to

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

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

20 (1) Any office, department, authority, board, multistate

1 agency or commission of the executive branch, including:

2 (i) The Office of the Governor.

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

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

9 (2) The term shall not include a judicial or legislative
10 agency.

11 "Disadvantaged business." A small business which is owned or
12 controlled by a majority of persons, not limited to members of
13 minority groups, who:

14 (1) have been deprived of the opportunity to develop and
15 maintain a competitive position in the economy because of
16 social disadvantages[.]; or

17 (2) are veterans, including service-disabled veterans.

18 "Governmental agency." A Commonwealth agency, local agency,
19 independent agency, State-affiliated entity or State-related
20 institution. The term shall not include any local library,
21 county library, library system, district library center or
22 Statewide library resource center as those terms are defined in
23 24 Pa.C.S. § 9302 (relating to definitions), or to any nonprofit
24 organization that performs or is intended to perform an
25 essential governmental function.

26 "Independent agency." Any board, commission or other agency
27 or officer of the Commonwealth that is not subject to the policy
28 supervision and control of the Governor. The term shall not
29 include a legislative agency or a judicial agency.

30 "Judicial agency." A court of the Commonwealth or any other

1 entity or office of the unified judicial system.

2 "Legislative agency." Any of the following:

3 (1) The Senate.

4 (2) The House of Representatives.

5 (3) The Capitol Preservation Committee.

6 (4) The Center for Rural Pennsylvania.

7 (5) The Joint Legislative Air and Water Pollution
8 Control and Conservation Committee.

9 (6) The Joint State Government Commission.

10 (7) The Legislative Budget and Finance Committee.

11 (8) The Legislative Data Processing Committee.

12 (9) The Independent Regulatory Review Commission.

13 (10) The Legislative Reference Bureau.

14 (11) The Local Government Commission.

15 (12) The Pennsylvania Commission on Sentencing.

16 (13) The Legislative Reapportionment Commission.

17 (14) The Independent Fiscal Office.

18 (15) The Legislative Audit Advisory Commission.

19 (16) Any other office, commission, committee or agency
20 of the General Assembly, or a caucus thereof, whose general
21 operation is funded separately through a General Fund
22 appropriation.

23 "Local agency." Any of the following:

24 (1) Any political subdivision, intermediate unit,
25 charter school, cyber charter school or public trade or
26 vocational school.

27 (2) Any local, intergovernmental, regional or municipal
28 agency, authority, council, board, commission or similar
29 governmental entity.

30 "Service-disabled veteran." A veteran who possesses either

1 an adjudication letter from the United States Veterans'
2 Administration establishing a service-connected disability
3 rating or a disability determination from the Department of
4 Defense.

5 "Small business." A business in the United States which is
6 independently owned, is not dominant in its field of operation
7 and employs 100 or fewer employees.

8 "State-affiliated entity." A Commonwealth authority or
9 Commonwealth entity. The term includes the Pennsylvania Higher
10 Education Assistance Agency and any entity established thereby,
11 the Pennsylvania Gaming Control Board, the Pennsylvania Game
12 Commission, the Pennsylvania Fish and Boat Commission, the
13 Pennsylvania Housing Finance Agency, the Pennsylvania Municipal
14 Retirement Board, the State System of Higher Education, a
15 community college, the Pennsylvania Turnpike Commission, the
16 Pennsylvania Public Utility Commission, the Pennsylvania
17 Infrastructure Investment Authority, the State Public School
18 Building Authority, the Pennsylvania Interscholastic Athletic
19 Association and the Pennsylvania Higher Educational Facilities
20 Authority. The term shall include a State-related institution.

21 "State-related institution." Includes:

- 22 (1) Temple University.
23 (2) The University of Pittsburgh.
24 (3) The Pennsylvania State University.
25 (4) Lincoln University.

26 "Veteran." An individual who:

- 27 (1) Served in the active United States military in any
28 of the four current branches and all previous branches,
29 including a reserve component or the National Guard.
30 (2) Was released or discharged from active military

1 service under conditions other than dishonorable.

2 (3) Possesses a certificate of release or discharge from
3 active duty.

4 Section 2. Title 62 is amended by adding sections to read:

5 § 2104.1. Authority to waive employee limit.

6 (a) Authority to waive.--The department or a Commonwealth
7 agency may, at its discretion and where it is determined to be
8 in the best interest of this Commonwealth, waive the small
9 business employee limit requirement as established in the
10 definition of "small business" in section 2102 (relating to
11 definitions) in order to promote and create economic
12 opportunities for disadvantaged businesses.

13 (b) Inclusion of employee limit in bid document.--The
14 department or a Commonwealth agency shall inform prospective
15 bidders of the decision to waive the small business employee
16 limit for disadvantaged businesses by including notice of the
17 waiver in the invitation for bid, request for proposal or any
18 other document that is subject to an employee limit waiver,
19 prior to its release for bidding or solicitation purposes by the
20 department or a Commonwealth agency.

21 (c) Subsequent determination to waive notice.--If the
22 department or a Commonwealth agency determines that the small
23 business employee limit should be waived subsequent to the
24 release of an invitation for bid, request for proposal or any
25 other such document, the department or Commonwealth agency shall
26 take appropriate action to ensure the inclusion of disadvantaged
27 businesses in bidding requirements or solicitation of proposals
28 and provide prompt notice to all prospective bidders and
29 offerors of the determination to waive the small business
30 employee limit.

1 (d) Report.--The department shall include in its annual
2 report to the General Assembly information on its use of the
3 small business employee limit waiver authorized under this
4 section. The report shall include, but may not be limited to,
5 the following information for the preceding calendar year:

6 (1) The number of times the employee limit was waived
7 prior to the release of an invitation for bid, request for
8 proposal or other document and the reason for imposing the
9 waiver.

10 (2) The number of times the employee limit was waived
11 following the release of an invitation for bid, request for
12 proposal or other document and the reason for the subsequent
13 determination to waive the small business employee limit
14 requirement.

15 (3) The identity and geographic location of the
16 disadvantaged businesses subject to an employee limit waiver.

17 (4) The number of employees of each disadvantaged
18 business subject to an employee limit waiver.

19 (5) The dollar amount of each contract awarded which
20 included a small business employee limit waiver.

21 (e) Applicability.--The provisions of this section shall
22 apply to any eligible "disadvantaged business" as defined under
23 section 2102.

24 § 2109. Alternative certification.

25 (a) Acceptance of alternative certification authorized.--To
26 establish greater uniformity in the Commonwealth's disadvantaged
27 business certification process, the department may accept the
28 certification of any eligible disadvantaged business certified
29 under the Pennsylvania Unified Certification Program as
30 established by the department in accordance with the

1 requirements of 49 CFR Subtitle Pts. 23 (relating to
2 participation of disadvantaged business enterprise in airport
3 concessions) and 26 (relating to participation by disadvantaged
4 business enterprises in Department of Transportation financial
5 assistance programs). However, the department shall not certify
6 or accept any certification from an owner of a disadvantaged
7 business who is not a citizen or lawful permanent resident of
8 the United States.

9 (b) Reciprocity.--Notwithstanding any provision of law,
10 regulation, guideline or policy statement to the contrary, the
11 certification of any disadvantaged business enterprise by the
12 department in accordance with subsection (a) shall be accepted
13 and used by a governmental agency as adequate certification for
14 the purpose of bidding on or participating in any public bid,
15 contract or award, the execution of which involves the use of
16 Commonwealth funds.

17 (c) Disadvantaged business utilization program.--

18 (1) Each governmental agency receiving Commonwealth
19 funds may establish a disadvantaged business utilization
20 program which encourages the participation and use of
21 disadvantaged businesses in the performance of Commonwealth-
22 funded contracts.

23 (2) A governmental agency that fails to establish a
24 disadvantaged business utilization program in accordance with
25 paragraph (1) shall adopt and implement the program
26 established by the department.

27 (d) Adoption of procurement practices.--The department shall
28 provide assistance to the Auditor General, the State Treasurer,
29 the Attorney General and appropriate officers in the legislative
30 and judicial agencies to develop best procurement practices

1 specific to the constitutional and statutory functions of each
2 office and agency and consistent with the provisions of this
3 title and regulations related to procurement by disadvantaged
4 businesses. To facilitate participation by disadvantaged
5 businesses in procurement by constitutional offices and the
6 judicial and legislative agencies, such constitutional officers
7 and purchasing agents of any judicial agency or legislative
8 agency may adopt the procurement practices and utilization
9 program used by the department to promote participation by
10 disadvantaged businesses in contracting, subcontracting and
11 purchasing.

12 § 2110. Contractor performance; general conditions.

13 Each Commonwealth agency taking bids in connection with the
14 award of any contract shall provide in the general conditions,
15 under which a bid will be received, that any person making a bid
16 as a prime contractor shall, in his bid or offer, set forth the
17 following information:

18 (1) The name and business address of the place of
19 business of each subcontractor certified as a disadvantaged
20 business that will perform work or labor or render service to
21 the prime contractor in connection with the performance of
22 the contract and that will be used by the prime contractor to
23 fulfill disadvantaged business participation goals.

24 (2) The portion of the contract that will be performed
25 by each subcontractor under paragraph (1). Except that, in
26 the case of an emergency where a contract is necessary and
27 essential for the immediate preservation of the public
28 health, welfare or safety or the protection of State
29 property, the prime contractor shall list only one
30 subcontractor for each portion of the contract as is defined

1 by the prime contractor in his bid or offer.

2 (3) A statement of the efforts made to negotiate with
3 disadvantaged businesses, including the name, address and
4 telephone number of any disadvantaged business contacted by
5 the prime contractor; the date the negotiations took place,
6 if any; and a description of the information provided to the
7 disadvantaged businesses regarding the plans, specifications
8 and requirements for the portion of the contract proposed to
9 be performed by the disadvantaged business.

10 (4) The bid or offer may also set forth any of the
11 following information:

12 (i) Whether the person or a representative of the
13 person attended any prebid or preproposal conferences.

14 (ii) A copy of any written notification of the bid
15 or offer to perform a contract sent by certified mail,
16 return receipt requested, or electronic mail, read
17 receipt, to disadvantaged businesses that perform the
18 type of work to be subcontracted in sufficient time to
19 allow the disadvantaged businesses to participate
20 effectively.

21 (iii) The specific work the person intends to
22 subcontract, that interest in the project is being
23 solicited and how to obtain information for the review
24 and inspection of the plans, specifications and
25 requirements of the invitation for bids or requests for
26 proposals.

27 (iv) A statement of whether economically feasible
28 portions of the contract will be performed by
29 disadvantaged businesses, including, where appropriate,
30 segmenting or combining elements of a contract into

1 economically feasible units.

2 (v) Information on whether the person or a
3 representative of the person consulted with the Bureau of
4 Minority and Women Business Opportunities to ensure
5 significant contracting, subcontracting and purchasing
6 opportunities for disadvantaged businesses.

7 (vi) Information on whether the person or a
8 representative of the person participated in any outreach
9 activities or events to increase disadvantaged business
10 interest and participation in contracting, subcontracting
11 and purchasing opportunities.

12 (vii) Information on use of the department's
13 Internet website to identify certified disadvantaged
14 businesses as prospects for contracting, subcontracting
15 and purchasing opportunities in connection with a bid or
16 offer.

17 (viii) Any solicitation of certified disadvantaged
18 businesses for contracting, subcontracting or purchasing
19 opportunities and inclusion of certified disadvantaged
20 businesses on solicitation lists.

21 (ix) Records of solicitations, including a bid
22 tabulation, showing the names of all disadvantaged
23 businesses solicited and the dollar amount of the bid,
24 quote or proposal, as well as copies of all bids, quotes
25 and proposals received.

26 (x) Any quarterly reports or other report provided
27 to the Bureau of Minority and Women Business
28 Opportunities depicting disadvantaged business
29 utilization.

30 (xi) Evidence demonstrating any good faith effort in

1 the oversight of and timely payment, as provided under
2 Subchapter D of Chapter 39 (relating to prompt payment
3 schedules), to disadvantaged businesses and to maintain
4 the commitment made to any disadvantaged business that
5 served as a subcontractor at the time the subcontract was
6 awarded, and thereafter.

7 § 2111. Mentor-protégé program.

8 (a) Establishment and purpose of program.--

9 (1) The department shall establish a mentor-protégé
10 program to assist disadvantaged businesses in enhancing their
11 capabilities to compete for and perform prime contracts and
12 subcontracts awarded by a Commonwealth agency.

13 (2) The purpose of the mentor-protégé program is to
14 foster long-term business relationships between disadvantaged
15 businesses and prime contractors in order to facilitate their
16 growth and development and increase their prime contracting
17 and subcontracting opportunities with Commonwealth agencies.

18 (b) General rule.--A prime contractor that is approved as a
19 mentor by the department may enter into a written agreement with
20 a disadvantaged business to provide developmental assistance to
21 enhance the disadvantaged business's contracting and
22 subcontracting capabilities. Developmental assistance provided
23 by a mentor prime contractor to its protégé disadvantaged
24 business may include, but not be limited to, the following:

25 (1) Management assistance, including financial
26 management, organizational management, business management
27 and planning and business development.

28 (2) Technical assistance.

29 (3) Financial assistance.

30 (4) Temporary employee assistance.

1 (5) Use of facilities, equipment or property without
2 charge.

3 (6) Any other type of developmental assistance as
4 approved by the department.

5 (c) Factor to be considered.--Notwithstanding any other
6 provision of this title to the contrary, the mentor-protégé
7 arrangement between a prime contractor and a disadvantaged
8 business whereby the disadvantaged business serves as a joint
9 venture partner or subcontractor to the prime contractor shall
10 be an important factor to be considered or weighed by a
11 Commonwealth agency in awarding a contract under sections 513
12 (relating to competitive sealed proposals), 517 (relating to
13 multiple awards), 518 (relating to competitive selection
14 procedures for certain services) and 519 (relating to selection
15 procedure for insurance and notary bonds).

16 (d) Guidelines.--The department shall adopt and publish
17 guidelines to enforce and carry out the requirements of this
18 section. The guidelines shall be published in the Pennsylvania
19 Bulletin and shall include, but may not be limited to, the
20 following:

21 (1) Selection criteria for mentor and protégé
22 businesses.

23 (2) An application process, including an application
24 form to be used by prime contractors seeking to participate
25 in the mentor-protégé program and time frame for review.

26 (3) Criteria for measuring program impact and success.

27 (4) The required contents of a mentor-protégé written
28 agreement. Each written agreement shall specify the type of
29 developmental assistance that will be provided by the mentor
30 to the protégé disadvantaged business.

1 § 2112. Small business reserve program.

2 (a) Small business reserve.--The department shall establish
3 a small business reserve program for the purpose of increasing
4 economic opportunities for small and disadvantaged businesses
5 and affording small and disadvantaged businesses the opportunity
6 to bid on State government contracts without competing with
7 larger businesses. All procurement by the department shall be
8 eligible for designation for the small business reserve program
9 and shall be published in the same manner as required for a
10 request for proposal or an invitation for bid.

11 (b) Reserve account.--Notwithstanding any other provision of
12 this title to the contrary, the department shall structure its
13 procurement procedures to reserve up to 10% of the total dollar
14 value of its procurement contracts, including public works,
15 construction and professional services and designed professional
16 services contracts, to be made directly to qualified small and
17 disadvantaged businesses. However, the total dollar value of
18 procurements by the department shall not include the value of
19 any contract to which this subsection would not apply because of
20 a conflict with Federal law.

21 (c) Awards.--The department shall award a procurement
22 contract designated for a small business reserve to the small
23 and disadvantaged business that submits a bid or proposal that:

- 24 (1) is the lowest bid price;
25 (2) is the lowest evaluated bid price, if the invitation
26 for bid or request for proposal so provides; or
27 (3) is in the best interest of the Commonwealth.

28 (d) Other Commonwealth agencies.--

- 29 (1) A Commonwealth agency may collaborate with the
30 department to structure its procurement procedures to provide

1 for a small business reserve program which shall be subject
2 to the requirements of this section.

3 (2) Upon request, the department shall assist the
4 procurement unit of a Commonwealth agency with the
5 development and implementation of a small business reserve.

6 (e) Construction and application.--

7 (1) The provisions of this section shall not be
8 construed to preclude any small and disadvantaged business
9 from competing for any other contracts that is not
10 specifically designated for the small business reserve
11 program.

12 (2) The provisions of this section shall apply to any
13 eligible small business as defined under section 2102
14 (relating to definitions).

15 (f) Regulations.--The department shall adopt and promulgate
16 regulations to govern the provisions of this section. The
17 regulations shall:

18 (1) Establish a comprehensive bidder's list of eligible
19 small and disadvantaged businesses.

20 (2) Provide procedures for maintaining the list in
21 paragraph (1).

22 (3) Include any other information the department
23 determines necessary and appropriate to carry out the
24 provisions of this section.

25 (g) Reports.--On or before December 31, 2014, and on or
26 before each December 31 thereafter, the department shall submit
27 a report to the Chief Clerk of the Senate and the Chief Clerk of
28 the House of Representatives on the operation and effectiveness
29 of the small business reserve program. The department may submit
30 the report electronically. The report shall include the

1 following:

2 (1) The total number and dollar value of payments the
3 department made to small and disadvantaged businesses
4 pursuant to designated small business reserve contracts.

5 (2) The total number and dollar value of payments the
6 department made to small and disadvantaged businesses that
7 were not designated as small business reserve contracts.

8 (3) The total dollar value of payments made by the
9 department under procurement contracts.

10 (4) Information on any Commonwealth agency that has
11 implemented a small business reserve program, including
12 information required under paragraphs (1), (2) and (3).

13 (5) Any other information or recommendations the
14 department determines necessary.

15 Section 3. Title 62 is amended by adding a chapter to read:

16 CHAPTER 21-A

17 SURETY BOND GUARANTEE PROGRAM

18 Sec.

19 2101-A. Definitions.

20 2102-A. Establishment of program.

21 2103-A. Surety Bond Guarantee Fund.

22 2104-A. Contract eligible for guarantee.

23 2105-A. Disadvantaged business participation.

24 2106-A. Criteria for denying program participation.

25 2107-A. Duties of department.

26 2108-A. Regulations.

27 § 2101-A. Definitions.

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

1 "Applicant." A disadvantaged business as defined in this
2 chapter.

3 "Department." The Department of Community and Economic
4 Development of the Commonwealth.

5 "Disadvantaged business." A small business which is owned or
6 controlled by a majority of persons, not limited to members of
7 minority groups, who have been deprived of the opportunity to
8 develop and maintain a competitive position in the economy
9 because of social disadvantages. The term shall include a small
10 business which is owned or controlled by a majority of persons
11 who are veterans, including service-disabled veterans.

12 "Fund." The Surety Bond Guarantee Fund established in
13 section 2103-A (relating to Surety Bond Guarantee Fund).

14 "Program." The Surety Bond Guarantee Fund Program
15 established in this chapter.

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

18 "Service-disabled veteran." A veteran who possesses either
19 an adjudication letter from the Department of Veterans' Affairs
20 establishing a service-connected disability rating or a
21 disability determination from the Department of Defense.

22 "Small business." A business in the United States which is
23 independently owned, is not dominant in its field of operation
24 and employs 100 or fewer employees.

25 "Surety bond." A guarantee in which the surety guarantees
26 that the contractor or principal in the bond will perform the
27 obligation stated in the bond. The term shall include the
28 following types of bonds:

29 (1) Bid bonds that guarantee the bidder will enter into
30 a contract and furnish the required payment and performance

1 bonds.

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

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

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

9 "Veteran." An individual who:

10 (1) Served in the active United States military in any
11 of the four current branches and all previous branches,
12 including a reserve component or the National Guard.

13 (2) Was released or discharged from active military
14 service under conditions other than dishonorable.

15 (3) Possesses a certificate of release or discharge from
16 active duty.

17 § 2102-A. Establishment of program.

18 The Surety Bond Guarantee Fund Program is established, to the
19 extent funds are appropriated specifically for the purposes of
20 this act, in the department. The purpose of the program is to
21 assist disadvantaged businesses to competitively bid for
22 governmental contracts.

23 § 2103-A. Surety Bond Guarantee Fund.

24 (a) Fund established.--There is established the Surety Bond
25 Guarantee Fund within the State Treasury for the purpose of
26 assisting disadvantaged businesses to competitively bid for
27 certain Commonwealth contracts.

28 (b) Fund administration.--The fund shall be administered by
29 the department. All moneys in the fund shall be used to finance
30 guarantees to bonding companies against percentages of losses

1 sustained as a result of defaults by qualified disadvantaged
2 businesses on a contract or project.

3 (c) Payments from fund.--Surety bond guarantees made with
4 payments from the fund under the program shall not exceed the
5 sum of \$1,000,000 for any one disadvantaged business.

6 § 2104-A. Contract eligible for guarantee.

7 (a) Eligibility.--A bond guaranteeing the performance of a
8 contract or project shall be qualified and eligible for a surety
9 bond guarantee under the program if:

10 (1) The bond is listed in the contract bonds section of
11 the Surety Association of America's "Manual of Rules,
12 Procedures and Classifications."

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

15 (3) The bond is executed by a surety company that is
16 acceptable to the Treasury Department and qualified by the
17 department.

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

20 (b) Required provision; notice of cancellation.--No bond
21 shall qualify or be eligible for a guarantee under the program
22 unless it contains a provision affirming that the bond shall not
23 be canceled for any cause unless notice of intention to cancel
24 is given to the department at least 30 days before the day upon
25 which cancellation shall take effect. Cancellation of the bond
26 shall not invalidate the bond regarding the period of time it
27 was in effect.

28 § 2105-A. Disadvantaged business participation.

29 (a) Application process.--A disadvantaged business may apply
30 to participate in the program by filing an application with the

1 department. The department shall review the application to
2 determine if the applicant is eligible to participate in the
3 program within 30 days of receipt of the completed application.
4 The department may extend the review period for an additional 30
5 days if it determines that additional time is needed to complete
6 the review process. The department shall notify the applicant in
7 writing of the extended period, including the date it will reach
8 its final decision.

9 (b) Investigation.--Upon receipt of a completed application,
10 the department may conduct an investigation of the applicant,
11 including an investigation of its owners, officers, directors,
12 principals or agents, in order to determine whether the
13 applicant is eligible to participate in the program. If the
14 investigation finds and the department determines that an
15 applicant is not eligible to participate in the program, it
16 shall notify the applicant in writing that the applicant will
17 not be approved for program participation. The notification of
18 ineligibility shall include the reason the application was not
19 approved and that the applicant has the right to appeal the
20 department's determination to the secretary within 30 days of
21 the date of the notice.

22 (c) Criteria for determining eligibility.--An applicant
23 shall be deemed eligible to participate in the program if the
24 department determines that an applicant meets all of the
25 following qualifications:

26 (1) The applicant is a disadvantaged business certified
27 by the Department of General Services.

28 (2) The applicant is in the construction or building
29 trade industry.

30 (3) The applicant has been actively operating its

1 business for at least one year prior to the application date.

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

4 (5) The applicant has agreed to subcontract no more than
5 75% of the work to be performed under a qualified contract or
6 project.

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

9 (7) The applicant or one of its owners, officers,
10 directors, principals or agents has not committed or been
11 convicted of any of the activities set forth in section 2106-
12 A (relating to criteria for denying program participation).

13 (8) The applicant meets any other program requirements
14 that establish criteria for eligibility that the department
15 shall adopt by regulation, guideline or statement of policy
16 within 180 days of the effective date of this chapter.

17 § 2106-A. Criteria for denying program participation.

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

22 (1) Made a material misstatement in the application or
23 any other document required to be submitted by the
24 department, under a provision of this chapter or by the
25 Department of General Services under the provisions of this
26 title.

27 (2) Failed to comply with or violated any provision of
28 this chapter or any regulation, order or statement of policy
29 issued by the department under this chapter or any
30 regulation, order or statement of policy issued by the

1 Department of General Services under this title.

2 (3) Engaged in unfair or unethical conduct in connection
3 with the construction or building trade industry or in
4 violation of Chapter 23 (relating to ethics in public
5 contracting).

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

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

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

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

19 (8) Has had the certification as a disadvantaged
20 business issued by the Department of General Services
21 revoked.

22 (9) Became the subject of a United States Postal Service
23 fraud order.

24 (10) Demonstrated negligence or incompetence in
25 performing, or failure to perform, an act for which the
26 applicant is required to hold a license under any law of
27 this Commonwealth.

28 (11) Has an outstanding debt to the Federal Government,
29 the Commonwealth or any Federal or Commonwealth agency or a
30 political subdivision of the Commonwealth or agency of a

1 political subdivision.

2 (12) Became insolvent at any time prior to the
3 application date, meaning that the liabilities of the
4 applicant exceeded the assets of the applicant or that the
5 applicant could not meet the obligations of the applicant as
6 they matured or was in such financial condition that the
7 applicant could not continue in business without jeopardizing
8 the health, safety and welfare of its customers and
9 employees.

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

17 § 2107-A. Duties of department.

18 (a) Technical assistance.--The department, in consultation
19 with the Department of General Services, shall provide technical
20 assistance to enable disadvantaged businesses to competitively
21 bid on State and other governmental contracts. Technical
22 assistance shall include, but not be limited to, assisting
23 disadvantaged businesses in responding to bid requests,
24 strengthening financial condition and addressing other concerns
25 raised or likely to be raised by a bonding company.

26 (b) Monitoring program.--The department shall establish a
27 monitoring program to monitor the activities of disadvantaged
28 businesses participating in the program. The monitoring program
29 shall include inspections of projects approved for bond
30 guarantees to minimize the risk of calls on the fund. The

1 department shall promptly advise the disadvantaged business of
2 any deficiencies identified during an inspection. In the event
3 the deficiencies noted in the report are not promptly addressed
4 by the disadvantaged business to the satisfaction of the
5 department, the department may give the disadvantaged business a
6 reasonable period to correct the deficiencies or may report such
7 deficiencies to the issuing bond company.

8 § 2108-A. Regulations.

9 (a) Adoption of regulations.--The department shall
10 administer and enforce the provisions of this chapter and shall
11 adopt and promulgate regulations, guidelines or policy
12 statements necessary to carry out the provisions of this
13 chapter.

14 (b) Department of General Services.--The department shall
15 consult or collaborate with the Department of General Services
16 to carry out the provisions of this chapter. The Department of
17 General Services shall from time to time provide any technical
18 or staff assistance as may be required to assist the department
19 in carrying out the provisions of this chapter.

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

21 § 3933. Contractors' and subcontractors' payment obligations.

22 * * *

23 (c) Payment.--When a subcontractor has performed in
24 accordance with the provisions of the contract, a contractor
25 shall pay to the subcontractor, and each subcontractor shall in
26 turn pay to its subcontractors, the full or proportional amount
27 received for each such subcontractor's work and material, based
28 on work completed or services provided under the subcontract,
29 [14] seven days after receipt of a progress payment. Payment
30 shall be made under this section unless it is being withheld

1 under section 3934 (relating to withholding of payment for good
2 faith claims).

3 * * *

4 Section 5. The provisions of this act are severable. If any
5 provision of this act or its application to any person or
6 circumstance is held invalid, the invalidity shall not affect
7 other provisions or applications of this act which can be given
8 effect without the invalid provision or application.

9 Section 6. This act shall take effect as follows:

10 (1) The following provisions shall take effect
11 immediately:

12 (i) The amendment of 62 Pa.C.S. § 3933(c).

13 (ii) This section.

14 (2) The addition of 62 Pa.C.S. Ch. 21-A shall take
15 effect upon publication by the department in the Pennsylvania
16 Bulletin of the appropriation referenced in section 2102-A.

17 (3) The remainder of this act shall take effect in 60
18 days.