
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 559 Session of
2013

INTRODUCED BY THOMAS, CLAY, WHEATLEY, MUSTIO, CALTAGIRONE,
YOUNGBLOOD AND BRADFORD, FEBRUARY 8, 2013

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 8, 2013

AN ACT

1 Providing for the establishment of the Surety Bond Guarantee
2 Program; imposing duties on the Department of Community and
3 Economic Development; establishing the Surety Bond Guarantee
4 Fund; providing for contracts eligible for guarantee and for
5 participation by disadvantaged businesses; and making an
6 appropriation.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

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

12 Section 2. Definitions.

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

16 "Applicant." A disadvantaged business.

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

19 "Disadvantaged business." A small business which is owned or
20 controlled by a majority of persons, not limited to members of

1 minority groups, who:

2 (1) have been deprived of the opportunity to develop and
3 maintain a competitive position in the economy because of
4 social disadvantages; or

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

6 "Fund." The Surety Bond Guarantee Fund established in
7 section 4.

8 "Program." The Surety Bond Guarantee Fund Program
9 established in section 3.

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

12 "Service-disabled veteran." A veteran who possesses either
13 an adjudication letter from the United States Veterans
14 Administration establishing a service-connected disability
15 rating or a disability determination from the United States
16 Department of Defense.

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

20 "Surety bond." A guarantee in which the surety guarantees
21 that the contractor or principal in the bond will perform the
22 obligation stated in the bond. The term shall include the
23 following types of bonds:

24 (1) Bid bonds that guarantee the bidder will enter into
25 a contract and furnish the required payment and performance
26 bonds.

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

30 (3) Performance bonds that guarantee the contractor will

fulfill the contract in accordance with terms and conditions.

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

"Veteran." An individual who:

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

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

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

Section 3. Establishment of program.

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

Section 4. Surety Bond Guarantee Fund.

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

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

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

1 Section 5. Contract eligible for guarantee.

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

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

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

10 (3) The bond is executed by a surety company that is
11 acceptable to the Treasury Department and qualified by the
12 department.

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

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

23 Section 6. Disadvantaged business participation.

24 (a) Application process.--A disadvantaged business shall
25 apply to participate in the program by filing an application
26 with the department. The department shall review the application
27 to determine if the applicant is eligible to participate in the
28 program within 30 days of receipt of the completed application.
29 The department may extend the review period for an additional 30
30 days if it determines that additional time is needed to complete

1 the review process. The department shall notify the applicant in
2 writing of the extended period, including the date it will reach
3 its final decision.

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

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

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

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

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

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

29 (5) The applicant has agreed to subcontract no more than
30 75% of the work to be performed under a qualified contract.

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

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

6 (8) The applicant and the applicant's business meets any
7 other program requirements that establish criteria for
8 eligibility that the department shall adopt by regulation,
9 guideline or statement of policy within 180 days of the
10 effective date of this act.

11 Section 7. Criteria for denying program participation.

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

16 (1) Made a material misstatement in the application or
17 any other document required to be submitted by the department
18 under a provision of this act and by the Department of
19 General Services under 62 Pa.C.S. (relating to procurement).

20 (2) Failed to comply with or violated any provision of
21 this act or any regulation, order or statement of policy
22 issued by the department under this act or any regulation,
23 order or statement of policy issued by the Department of
24 General Services under 62 Pa.C.S.

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

29 (4) Does not possess the financial fitness, character,
30 reputation, integrity and general fitness sufficient to

1 warrant reasonable belief that the applicant's business will
2 be conducted lawfully, honestly and in the public interest.

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

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

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

12 (8) Has had the certification as a disadvantaged
13 business issued by the Department of General Services
14 revoked.

15 (9) Became the subject of a United States Postal Service
16 fraud order.

17 (10) Demonstrated negligence or incompetence in
18 performing an act for which the applicant is required to hold
19 a license under any law of this Commonwealth.

20 (11) Has an outstanding debt to the Federal Government,
21 the Commonwealth or any Federal or Commonwealth agency or a
22 political subdivision of the Commonwealth or agency of a
23 political subdivision.

24 (12) Became insolvent at any time prior to the
25 application date, meaning that the liabilities of the
26 applicant exceeded the assets of the applicant or that the
27 applicant could not meet the obligations of the applicant as
28 they matured or was in such financial condition that the
29 applicant could not continue in business without jeopardizing
30 the health, safety and welfare of its customers.

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

8 Section 8. Duties of department.

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

17 (b) Monitoring program.--The department shall establish a
18 monitoring program to monitor the activities of disadvantaged
19 businesses participating in the program. The monitoring program
20 shall include inspections of projects approved for bond
21 guarantees to minimize the risk of calls on the fund. The
22 department shall promptly advise the disadvantaged business of
23 any deficiencies identified during an inspection. In the event
24 the deficiencies noted in the report are not promptly addressed
25 by the disadvantaged business to the satisfaction of the
26 department, the department may give the disadvantaged business a
27 reasonable period to correct the deficiencies or may report such
28 deficiencies to the issuing bond company.

29 Section 9. Regulations.

30 (a) Adoption of regulations.--The department shall

1 administer and enforce the provisions of this act and shall
2 adopt and promulgate regulations, guidelines or policy
3 statements necessary to carry out the provisions of this act.

4 (b) Department of General Services.--The department shall
5 consult with the Department of General Services to carry out the
6 provisions of this chapter. The Department of General Services
7 shall provide any technical or staff assistance as may be from
8 time to time required to assist the department in carrying out
9 the provisions of this chapter.

10 Section 10. Publication of notice.

11 The secretary shall, upon the effective date of an act making
12 an appropriation under section 3 to the department, submit for
13 publication in the Pennsylvania Bulletin notice thereof.

14 Section 11. Effective date.

15 This act shall take effect as follows:

16 (1) The following provisions shall take effect
17 immediately:

18 (i) This section.

19 (ii) Section 10.

20 (2) The remainder of this act shall take effect upon
21 publication of the notice under section 10.