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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1761 Session of  
2019

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INTRODUCED BY WHEATLEY, KINSEY, HILL-EVANS AND BULLOCK,  
AUGUST 16, 2019

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, AUGUST 16, 2019

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AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, in small and disadvantaged businesses, further  
3 providing for definitions, providing for authority to waive  
4 employee limit, for alternative certification, for contractor  
5 performance and general conditions, for mentor-protégé  
6 program and for small business reserve program; establishing  
7 the Surety Bond Guarantee Program and the Surety Bond  
8 Guarantee Fund; and, in contracts for public works, further  
9 providing for contractors' and subcontractors' payment  
10 obligations.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

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

15 § 2102. Definitions.

16 [Subject] Notwithstanding section 103 (relating to  
17 definitions) and subject to section 2103 (relating to  
18 regulations), the following words and phrases when used in this  
19 chapter shall have the meanings given to them in this section  
20 unless the context clearly indicates otherwise:

21 "Commonwealth agency."

22 (1) The term includes an office, department, authority,

1 board, multistate agency or commission of the executive  
2 branch, including:

3 (i) The Governor's Office.

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

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

10 (2) The term does not include a legislative agency or  
11 judicial agency.

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

17 "Governmental agency." A Commonwealth agency, local agency,  
18 independent agency, State-affiliated entity or State-related  
19 institution. The term does not include a local library, county  
20 library, library system, district library center or Statewide  
21 library resource center under 24 Pa.C.S. Ch. 93 (relating to  
22 public library code) or a nonprofit organization that performs  
23 or is intended to perform an essential governmental function.

24 "Independent agency." A board, commission or other agency or  
25 officer of the Commonwealth that is not subject to the policy  
26 supervision and control of the Governor. The term does not  
27 include a legislative agency or judicial agency.

28 "Judicial agency." A court of the Commonwealth or other  
29 entity or office of the unified judicial system.

30 "Legislative agency." Any of the following:

- 1           (1) The Senate.
- 2           (2) The House of Representatives.
- 3           (3) The Capitol Preservation Committee.
- 4           (4) The Center for Rural Pennsylvania.
- 5           (5) The Joint Legislative Air and Water Pollution  
6 Control and Conservation Committee.
- 7           (6) The Joint State Government Commission.
- 8           (7) The Legislative Budget and Finance Committee.
- 9           (8) The Legislative Data Processing Committee.
- 10          (9) The Independent Regulatory Review Commission.
- 11          (10) The Legislative Reference Bureau.
- 12          (11) The Local Government Commission.
- 13          (12) The Pennsylvania Commission on Sentencing.
- 14          (13) The Legislative Reapportionment Commission.
- 15          (14) The Independent Fiscal Office.
- 16          (15) The Legislative Audit Advisory Commission.
- 17          (16) Another office, commission, committee or agency of  
18 the General Assembly, or a caucus of that office, commission,  
19 committee or agency, whose general operation is funded  
20 separately through a General Fund appropriation.

21 "Local agency." Any of the following:

- 22           (1) A political subdivision, intermediate unit, charter  
23 school, cyber charter school or public trade or vocational  
24 school.
- 25           (2) A local, intergovernmental, regional or municipal  
26 agency, authority, council, board, commission or similar  
27 governmental entity.

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

1 "State-affiliated entity." A Commonwealth authority or  
2 Commonwealth entity. The term includes the Pennsylvania Higher  
3 Education Assistance Agency and any entity established by that  
4 agency, the Pennsylvania Gaming Control Board, the Pennsylvania  
5 Game Commission, the Pennsylvania Fish and Boat Commission, the  
6 Pennsylvania Housing Finance Agency, the Pennsylvania Municipal  
7 Retirement Board, the State System of Higher Education, a  
8 community college, the Pennsylvania Turnpike Commission, the  
9 Pennsylvania Public Utility Commission, the Pennsylvania  
10 Infrastructure Investment Authority, the State Public School  
11 Building Authority, the Pennsylvania Interscholastic Athletic  
12 Association, the Pennsylvania Higher Educational Facilities  
13 Authority and a State-related institution.

14 "State-related institution." Includes:

- 15 (1) Temple University.
- 16 (2) The University of Pittsburgh.
- 17 (3) The Pennsylvania State University.
- 18 (4) Lincoln University.

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

20 § 2104.1. Authority to waive employee limit.

21 (a) Authority to waive.--The department or a Commonwealth  
22 agency may, at its discretion and where it is determined to be  
23 in the best interest of the Commonwealth, waive the small  
24 business employee limit requirement as established in the  
25 definition of "small business" in section 2102 (relating to  
26 definitions) in order to promote and create economic  
27 opportunities for disadvantaged businesses.

28 (b) Inclusion of employee limit in bid document.--The  
29 department or a Commonwealth agency shall inform prospective  
30 bidders of the decision to waive the small business employee

1 limit for disadvantaged businesses by including notice of the  
2 waiver in the invitation for bid, request for proposal or other  
3 document that is subject to an employee limit waiver, prior to  
4 its release for bidding or solicitation purposes by the  
5 department or a Commonwealth agency.

6 (c) Subsequent determination to waive notice.--If the  
7 department or a Commonwealth agency determines that the small  
8 business employee limit should be waived subsequent to the  
9 release of an invitation for bid, request for proposal or other  
10 document, the department or the Commonwealth agency shall take  
11 appropriate action to ensure the inclusion of disadvantaged  
12 businesses in bidding requirements or solicitation of proposals  
13 and provide prompt notice to all prospective bidders and  
14 offerors of the determination to waive the small business  
15 employee limit.

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

21 (1) The number of times the employee limit was waived  
22 prior to the release of an invitation for bid, request for  
23 proposal or other document and the reason for imposing the  
24 waiver.

25 (2) The number of times the employee limit was waived  
26 following the release of an invitation for bid, request for  
27 proposal or other document and the reason for the subsequent  
28 determination to waive the small business employee limit  
29 requirement.

30 (3) The identity and geographic location of the

1 disadvantaged businesses subject to an employee limit waiver.

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

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

6 (e) Applicability.--The provisions of this section shall  
7 apply to any eligible disadvantaged business.

8 § 2109. Alternative certification.

9 (a) Acceptance of alternative certification authorized.--

10 (1) Subject to the provisions of paragraph (2), to  
11 establish greater uniformity in the Commonwealth's  
12 disadvantaged business certification process, the department  
13 may accept the certification of an eligible disadvantaged  
14 business certified under the Pennsylvania Unified  
15 Certification Program as established by the department in  
16 accordance with the requirements of 49 CFR Pts. 23 (relating  
17 to participation of disadvantaged business enterprise in  
18 airport concessions) and 26 (relating to participation by  
19 disadvantaged business enterprises in Department of  
20 Transportation financial assistance programs).

21 (2) The department may not certify or accept a  
22 certification from an owner of a disadvantaged business who  
23 is not a citizen or lawful permanent resident of the United  
24 States.

25 (b) Reciprocity.--Notwithstanding any provision of law,  
26 regulation, guideline or policy statement to the contrary, the  
27 certification of a disadvantaged business enterprise by the  
28 department in accordance with subsection (a) shall be accepted  
29 and used by a governmental agency as adequate certification for  
30 the purpose of bidding on or participating in any public bid,

1 contract or award, the execution of which involves the use of  
2 Commonwealth funds.

3 (c) Disadvantaged business utilization program.--

4 (1) Each governmental agency receiving Commonwealth  
5 funds may establish a disadvantaged business utilization  
6 program which encourages the participation and use of  
7 disadvantaged businesses in the performance of Commonwealth-  
8 funded contracts.

9 (2) A governmental agency that fails to establish a  
10 disadvantaged business utilization program in accordance with  
11 paragraph (1) shall adopt and implement the program  
12 established by the department.

13 (d) Adoption of procurement practices.--

14 (1) The department shall provide assistance to the  
15 Auditor General, the State Treasurer, the Attorney General  
16 and appropriate officers in the legislative agencies and  
17 judicial agencies to develop best procurement practices  
18 specific to the constitutional and statutory functions of  
19 each office and agency and consistent with the provisions of  
20 this title and regulations related to procurement by  
21 disadvantaged businesses.

22 (2) To facilitate participation by disadvantaged  
23 businesses in procurement by constitutional offices and the  
24 legislative agencies and judicial agencies, the  
25 constitutional officers and purchasing agents of a  
26 legislative agency or judicial agency may adopt the  
27 procurement practices and utilization program used by the  
28 department to promote participation by disadvantaged  
29 businesses in contracting, subcontracting and purchasing.

30 § 2110. Contractor performance and general conditions.

1 (a) Mandatory provisions.--Each Commonwealth agency taking  
2 bids in connection with the award of a contract shall provide,  
3 in the general conditions under which a bid will be received,  
4 that a person making a bid as a prime contractor shall, in the  
5 bid or offer, specify the following information:

6 (1) The name and business address of the place of  
7 business of each subcontractor certified as a disadvantaged  
8 business that will perform work or labor or render service to  
9 the prime contractor in connection with the performance of  
10 the contract and that will be used by the prime contractor to  
11 fulfill disadvantaged business participation goals.

12 (2) The portion of the contract that will be performed  
13 by each subcontractor under paragraph (1), except that, in  
14 the case of an emergency where a contract is necessary and  
15 essential for the immediate preservation of the public  
16 health, welfare or safety or the protection of State  
17 property, the prime contractor shall list only one  
18 subcontractor for each portion of the contract as defined by  
19 the prime contractor in the bid or offer.

20 (3) A statement of the efforts made to negotiate with  
21 disadvantaged businesses, including the name, address and  
22 telephone number of any disadvantaged business contacted by  
23 the prime contractor, along with the date the negotiations  
24 took place, if any, and a description of the information  
25 provided to the disadvantaged businesses regarding the plans,  
26 specifications and requirements for the portion of the  
27 contract proposed to be performed by the disadvantaged  
28 business.

29 (b) Discretionary provisions.--The bid or offer under  
30 subsection (a) may also specify any of the following



1 information:

2 (1) Whether the person or a representative of the person  
3 attended a prebid or preproposal conference.

4 (2) A copy of written notification of the bid or offer  
5 to perform a contract sent by certified mail, return receipt  
6 requested, or e-mail, read receipt, to disadvantaged  
7 businesses that perform the type of work to be subcontracted  
8 in sufficient time to allow the disadvantaged businesses to  
9 participate effectively.

10 (3) The specific work the person intends to subcontract,  
11 that interest in the project is being solicited and how to  
12 obtain information for the review and inspection of the  
13 plans, specifications and requirements of the invitation for  
14 bids or requests for proposals.

15 (4) A statement of whether economically feasible  
16 portions of the contract will be performed by disadvantaged  
17 businesses, including, where appropriate, segmenting or  
18 combining elements of a contract into economically feasible  
19 units.

20 (5) Information on whether the person or a  
21 representative of the person consulted with the Bureau of  
22 Diversity, Inclusion and Small Business Opportunities to  
23 ensure significant contracting, subcontracting and purchasing  
24 opportunities for disadvantaged businesses.

25 (6) Information on whether the person or a  
26 representative of the person participated in outreach  
27 activities or events to increase disadvantaged business  
28 interest and participation in contracting, subcontracting and  
29 purchasing opportunities.

30 (7) Information on use of the department's publicly

1 accessible Internet website to identify certified  
2 disadvantaged businesses as prospects for contracting,  
3 subcontracting and purchasing opportunities in connection  
4 with a bid or offer.

5 (8) A solicitation of certified disadvantaged businesses  
6 for contracting, subcontracting or purchasing opportunities  
7 and inclusion of certified disadvantaged businesses on  
8 solicitation lists.

9 (9) Records of solicitations, including a bid  
10 tabulation, showing the names of all disadvantaged businesses  
11 solicited and the dollar amount of the bid, quote or  
12 proposal, as well as copies of all bids, quotes and proposals  
13 received.

14 (10) Quarterly reports or other reports provided to the  
15 Bureau of Diversity, Inclusion and Small Business  
16 Opportunities depicting disadvantaged business utilization.

17 (11) Evidence demonstrating good faith effort in the  
18 oversight of and timely payment to, as provided under  
19 Subchapter D of Chapter 39 (relating to prompt payment  
20 schedules), disadvantaged businesses and to maintain the  
21 commitment made to a disadvantaged business that served as a  
22 subcontractor at the time the subcontract was awarded and  
23 after that time.

24 § 2111. Mentor-protégé program.

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

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

30 (2) The purpose of the mentor-protégé program is to

1 foster long-term business relationships between disadvantaged  
2 businesses and prime contractors in order to facilitate  
3 growth and development of disadvantaged businesses and  
4 increase prime contracting and subcontracting opportunities  
5 for disadvantaged businesses with Commonwealth agencies.

6 (b) Agreement required.--A prime contractor that is approved  
7 as a mentor by the department may enter into a written agreement  
8 with a disadvantaged business to provide developmental  
9 assistance to enhance the disadvantaged business's contracting  
10 and subcontracting capabilities. Developmental assistance  
11 provided by a mentor prime contractor to its protégé  
12 disadvantaged business may include, but not be limited to, the  
13 following:

14 (1) Management assistance, including financial  
15 management, organizational management, business management  
16 and planning and business development.

17 (2) Technical assistance.

18 (3) Financial assistance.

19 (4) Temporary employee assistance.

20 (5) Use of facilities, equipment or property without  
21 charge.

22 (6) Any other type of developmental assistance as  
23 approved by the department.

24 (c) Factor to be considered.--Notwithstanding any other  
25 provision of this title to the contrary, the mentor-protégé  
26 arrangement between a prime contractor and a disadvantaged  
27 business whereby the disadvantaged business serves as a joint  
28 venture partner or subcontractor to the prime contractor shall  
29 be an important factor to be considered or weighed by a  
30 Commonwealth agency in awarding a contract under sections 513

1 (relating to competitive sealed proposals), 517 (relating to  
2 multiple awards), 518 (relating to competitive selection  
3 procedures for certain services) and 519 (relating to selection  
4 procedure for insurance and notary bonds).

5 (d) Guidelines.--The department shall adopt and publish  
6 guidelines to enforce and carry out the requirements of this  
7 section. The department shall transmit notice of the guidelines  
8 to the Legislative Reference Bureau for publication in the  
9 Pennsylvania Bulletin. The guidelines shall include, but may not  
10 be limited to, the following:

11 (1) Selection criteria for mentor and protégé  
12 businesses.

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

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

17 (4) The required contents of a mentor-protégé written  
18 agreement. Each written agreement shall specify the type of  
19 developmental assistance that will be provided by the mentor  
20 to the protégé disadvantaged business.

21 § 2112. Small business reserve program.

22 (a) Small business reserve.--The department shall establish  
23 a small business reserve program for the purpose of increasing  
24 economic opportunities for small and disadvantaged businesses  
25 and affording small and disadvantaged businesses the opportunity  
26 to bid on State government contracts without competing with  
27 larger businesses. All procurement by the department shall be  
28 eligible for designation for the small business reserve program  
29 and shall be published in the same manner as required for a  
30 request for proposal or an invitation for bid.

1 (b) Reserved amount of procurement contracts.--

2 (1) Notwithstanding any other provision of this title to  
3 the contrary, the department shall structure its procurement  
4 procedures to reserve up to 10% of the total dollar value of  
5 its procurement contracts, including public works,  
6 construction and professional services and designed  
7 professional services contracts, to be made directly to  
8 qualified small and disadvantaged businesses.

9 (2) The total dollar value of procurements by the  
10 department may not include the value of any contract to which  
11 this subsection would not apply because of a conflict with  
12 Federal law.

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

16 (1) is the lowest bid price;

17 (2) is the lowest evaluated bid price, if the invitation  
18 for bid or request for proposal so provides; or

19 (3) is in the best interest of the Commonwealth.

20 (d) Other Commonwealth agencies.--

21 (1) A Commonwealth agency may collaborate with the  
22 department to structure its procurement procedures to provide  
23 for a small business reserve program which shall be subject  
24 to the requirements of this section.

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

28 (e) Construction and application.--

29 (1) The provisions of this section shall not be  
30 construed to preclude any small and disadvantaged business

1 from competing for any other contract that is not  
2 specifically designated for the small business reserve  
3 program.

4 (2) The provisions of this section shall apply to any  
5 eligible small business as defined under section 2102  
6 (relating to definitions).

7 (f) Regulations.--The department shall adopt and promulgate  
8 regulations to govern the provisions of this section. The  
9 regulations shall:

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

12 (2) Provide procedures for maintaining the list in  
13 paragraph (1).

14 (3) Include any other information the department  
15 determines necessary and appropriate to carry out the  
16 provisions of this section.

17 (g) Reports.--On or before December 31, 2019, and on or  
18 before each December 31 thereafter, the department shall submit  
19 a report to the Chief Clerk of the Senate and the Chief Clerk of  
20 the House of Representatives on the operation and effectiveness  
21 of the small business reserve program. The department may submit  
22 the report electronically. The report shall include the  
23 following:

24 (1) The total number and dollar value of payments that  
25 the department made to small and disadvantaged businesses  
26 pursuant to designated small business reserve contracts.

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

30 (3) The total dollar value of payments made by the

1 department under procurement contracts.

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

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

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

8 CHAPTER 21A

9 SURETY BOND GUARANTEE PROGRAM

10 Sec.

11 21A01. Definitions.

12 21A02. Establishment of program.

13 21A03. Surety Bond Guarantee Fund.

14 21A04. Contract eligible for guarantee.

15 21A05. Disadvantaged business participation.

16 21A06. Criteria for denying program participation.

17 21A07. Duties of department.

18 21A08. Regulations.

19 § 21A01. Definitions.

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

23 "Applicant." A disadvantaged business as defined in this  
24 chapter.

25 "Department." The Department of Community and Economic  
26 Development of the Commonwealth.

27 "Disadvantaged business." A small business which is owned or  
28 controlled by a majority of persons, not limited to members of  
29 minority groups, who have been deprived of the opportunity to  
30 develop and maintain a competitive position in the economy

1 because of social disadvantages.

2 "Fund." The Surety Bond Guarantee Fund established under  
3 section 21A03 (relating to Surety Bond Guarantee Fund).

4 "Program." The Surety Bond Guarantee Fund Program  
5 established under this chapter.

6 "Secretary." The Secretary of Community and Economic  
7 Development of the Commonwealth.

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

11 "Surety bond." A guarantee in which the surety guarantees  
12 that the contractor or principal in the bond will perform the  
13 obligation stated in the bond. The term includes the following  
14 types of bonds:

15 (1) Bid bonds that guarantee the bidder will enter into  
16 a contract and furnish the required payment and performance  
17 bonds.

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

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

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

25 § 21A02. Establishment of program.

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



1 § 21A03. Surety Bond Guarantee Fund.

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

6 (b) Fund administration.--Money in the fund shall be used to  
7 finance guarantees to bonding companies against percentages of  
8 losses sustained as a result of defaults by qualified  
9 disadvantaged businesses on a contract or project.

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

13 § 21A04. Contract eligible for guarantee.

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

17 (1) is listed in the contract bonds section of the  
18 Surety & Fidelity Association of America's "Manual of Rules,  
19 Procedures and Classifications";

20 (2) is required by the contract, invitation for bid or  
21 request for proposal;

22 (3) is executed by a surety company that is acceptable  
23 to the Treasury Department and qualified by the department;  
24 and

25 (4) meets other requirements established by the  
26 department.

27 (b) Required provision and notice of cancellation.--

28 (1) No bond shall qualify or be eligible for a guarantee  
29 under the program unless it contains a provision affirming  
30 that the bond shall not be canceled for any cause unless

1 notice of intention to cancel is given to the department at  
2 least 30 days before the day upon which cancellation shall  
3 take effect.

4 (2) Cancellation of the bond shall not invalidate the  
5 bond regarding the period of time it was in effect.

6 § 21A05. Disadvantaged business participation.

7 (a) Application process.--

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

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

16 (3) The department shall notify the applicant in writing  
17 of the extended period, including the date that the  
18 department will reach its final decision.

19 (b) Investigation.--

20 (1) Upon receipt of a completed application, the  
21 department may conduct an investigation of the applicant,  
22 including an investigation of its owners, officers,  
23 directors, principals or agents, in order to determine  
24 whether the applicant is eligible to participate in the  
25 program.

26 (2) If the investigation finds and the department  
27 determines that an applicant is not eligible to participate  
28 in the program, the department shall notify the applicant in  
29 writing that the applicant will not be approved for program  
30 participation.

1           (3) The notification of ineligibility shall include the  
2 reason the application was not approved and that the  
3 applicant has the right to appeal the department's  
4 determination to the secretary within 30 days of the date of  
5 the notice.

6           (c) Criteria for determining eligibility.--An applicant  
7 shall be deemed eligible to participate in the program if the  
8 department determines that the applicant meets all of the  
9 following qualifications:

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

12           (2) The applicant is in the construction or building  
13 trade industry.

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

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

18           (5) The applicant has agreed to subcontract no more than  
19 75% of the work to be performed under a qualified contract or  
20 project.

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

23           (7) The applicant or one of its owners, officers,  
24 directors, principals or agents has not committed or been  
25 convicted of any of the activities set forth in section 21A06  
26 (relating to criteria for denying program participation).

27           (8) The applicant meets any other program requirements  
28 that establish criteria for eligibility that the department  
29 shall adopt by regulation, guideline or statement of policy  
30 within 180 days of the effective date of this paragraph.

1 § 21A06. Criteria for denying program participation.

2 The department may not approve an application for program  
3 participation if it determines that any of the following applies  
4 regarding the applicant or one of its owners, officers,  
5 directors, principals or agents:

6 (1) The person committed or has been convicted of any of  
7 the following:

8 (i) Making a material misstatement in the  
9 application or another document required to be submitted  
10 to the department under a provision of this chapter or to  
11 the Department of General Services under the provisions  
12 of this title.

13 (ii) Failing to comply with or violating a provision  
14 of this chapter or a regulation, order or statement of  
15 policy issued by the department under this chapter or a  
16 regulation, an order or a statement of policy issued by  
17 the Department of General Services under this title.

18 (iii) Engaging in unfair or unethical conduct in  
19 connection with the construction or building trade  
20 industry or in violation of Chapter 23 (relating to  
21 ethics in public contracting).

22 (iv) Notwithstanding any other provision of law to  
23 the contrary, being convicted of or pleading guilty or  
24 nolo contendere to a crime of moral turpitude or to an  
25 offense graded as a felony.

26 (2) Any of the following applies to the person:

27 (i) Does not possess the financial fitness,  
28 character, reputation, integrity and general fitness  
29 sufficient to warrant reasonable belief that the  
30 applicant's business will be conducted lawfully, honestly

1 and in the public interest.

2 (ii) Has been enjoined by a court of competent  
3 jurisdiction from engaging in the construction or  
4 building trade industry.

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

8 (iv) Has had the certification as a disadvantaged  
9 business issued by the Department of General Services  
10 revoked.

11 (v) Becomes the subject of a United States Postal  
12 Service fraud order.

13 (vi) Demonstrates negligence or incompetence in  
14 performing an act under a license required under a law of  
15 this Commonwealth or fails to perform a required duty  
16 under that license.

17 (vii) Has an outstanding debt to the Federal  
18 Government, the Commonwealth or a Federal or Commonwealth  
19 agency or a political subdivision of the Commonwealth or  
20 agency of a political subdivision.

21 (viii) Becomes insolvent at any time prior to the  
22 application date. For purposes of this paragraph,  
23 "insolvent" means that the liabilities of the applicant  
24 exceeded the assets of the applicant or that the  
25 applicant could not meet the obligations of the applicant  
26 as they matured or was in such financial condition that  
27 the applicant could not continue in business without  
28 jeopardizing the health, safety and welfare of its  
29 customers and employees.

30 (ix) At any time prior to application, has failed to

1 disburse payments to subcontractors in a timely manner as  
2 agreed to under a contract for a reason other than the  
3 owner's failure to make the agreed-to payments to the  
4 applicant or because the disbursement would constitute a  
5 violation of applicable law or an order issued by a court  
6 or administrative body of competent jurisdiction.

7 § 21A07. Duties of department.

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

16 (b) Monitoring program.--

17 (1) The department shall establish a monitoring program  
18 to monitor the activities of disadvantaged businesses  
19 participating in the program. The monitoring program shall  
20 include inspections of projects approved for bond guarantees  
21 to minimize the risk of calls on the fund. The department  
22 shall promptly advise the disadvantaged business of any  
23 deficiencies identified during an inspection.

24 (2) If the deficiencies noted in the report are not  
25 promptly addressed by the disadvantaged business to the  
26 satisfaction of the department, the department may give the  
27 disadvantaged business a reasonable period to correct the  
28 deficiencies or may report the deficiencies to the issuing  
29 bond company.

30 § 21A08. Regulations.

1 (a) Adoption of regulations.--The department shall  
2 administer and enforce the provisions of this chapter and shall  
3 adopt and promulgate regulations, guidelines or policy  
4 statements necessary to carry out the provisions of this  
5 chapter.

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

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

13 § 3933. Contractors' and subcontractors' payment obligations.

14 \* \* \*

15 (c) Payment.--When a subcontractor has performed in  
16 accordance with the provisions of the contract, a contractor  
17 shall pay to the subcontractor, and each subcontractor shall in  
18 turn pay to its subcontractors, the full or proportional amount  
19 received for each such subcontractor's work and material, based  
20 on work completed or services provided under the subcontract,  
21 [14] seven days after receipt of a progress payment. Payment  
22 shall be made under this section unless it is being withheld  
23 under section 3934 (relating to withholding of payment for good  
24 faith claims).

25 \* \* \*

26 Section 5. If funds are appropriated for the program  
27 established in 62 Pa.C.S. § 21A02, the Department of Community  
28 and Economic Development shall transmit notice of the  
29 appropriation to the Legislative Reference Bureau for  
30 publication in the Pennsylvania Bulletin.

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

2 (1) The following provisions shall take effect  
3 immediately:

4 (i) This section and section 5 of this act.

5 (ii) The amendment of 62 Pa.C.S. § 3933(c).

6 (2) The addition of 62 Pa.C.S. Ch. 21A shall take effect  
7 upon publication of the notice as provided in section 5 of  
8 this act.

9 (3) The remainder of this act shall take effect in 60  
10 days.