
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2053 Session of
2018

INTRODUCED BY WHEATLEY, FEBRUARY 2, 2018

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 2, 2018

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:

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

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

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

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

30 "Judicial agency." A court of the Commonwealth or 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) Another office, commission, committee or agency of
20 the General Assembly, or a caucus of that office, commission,
21 committee or agency, whose general operation is funded
22 separately through a General Fund appropriation.

23 "Local agency." Any of the following:

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

27 (2) A 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 Department of
2 Veterans Affairs establishing a service-connected disability
3 rating or a disability determination from the United States
4 Department of 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 by that
11 agency, the Pennsylvania Gaming Control Board, the Pennsylvania
12 Game 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, the Pennsylvania Higher Educational Facilities
20 Authority and 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 Armed Forces in
28 any 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; and
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 the 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 other
18 document that is subject to an employee limit waiver, prior to
19 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 other
25 document, the department or the Commonwealth agency shall take
26 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.

23 § 2109. Alternative certification.

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

25 (1) Subject to the provisions of paragraph (2), to
26 establish greater uniformity in the Commonwealth's
27 disadvantaged business certification process, the department
28 may accept the certification of an eligible disadvantaged
29 business certified under the Pennsylvania Unified
30 Certification Program as established by the department in

1 accordance with the requirements of 49 CFR Parts 23 (relating
2 to participation of disadvantaged business enterprise in
3 airport concessions) and 26 (relating to participation by
4 disadvantaged business enterprises in Department of
5 Transportation financial assistance programs).

6 (2) The department may not certify or accept a
7 certification from an owner of a disadvantaged business who
8 is not a citizen or lawful permanent resident of the United
9 States.

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

18 (c) Disadvantaged business utilization program.--

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

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

28 (d) Adoption of procurement practices.--

29 (1) The department shall provide assistance to the
30 Auditor General, the State Treasurer, the Attorney General

1 and appropriate officers in the legislative agencies and
2 judicial agencies to develop best procurement practices
3 specific to the constitutional and statutory functions of
4 each office and agency and consistent with the provisions of
5 this title and regulations related to procurement by
6 disadvantaged businesses.

7 (2) To facilitate participation by disadvantaged
8 businesses in procurement by constitutional offices and the
9 legislative agencies and judicial agencies, the
10 constitutional officers and purchasing agents of a
11 legislative agency or judicial agency may adopt the
12 procurement practices and utilization program used by the
13 department to promote participation by disadvantaged
14 businesses in contracting, subcontracting and purchasing.

15 § 2110. Contractor performance and general conditions.

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

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

27 (2) The portion of the contract that will be performed
28 by each subcontractor under paragraph (1), except that, in
29 the case of an emergency where a contract is necessary and
30 essential for the immediate preservation of the public

1 health, welfare or safety or the protection of State
2 property, the prime contractor shall list only one
3 subcontractor for each portion of the contract as defined by
4 the prime contractor in the bid or offer.

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

14 (b) Discretionary provisions.--The bid or offer under
15 subsection (a) may also specify any of the following
16 information:

17 (1) Whether the person or a representative of the person
18 attended a prebid or preproposal conference.

19 (2) A copy of written notification of the bid or offer
20 to perform a contract sent by certified mail, return receipt
21 requested, or e-mail, read receipt, to disadvantaged
22 businesses that perform the type of work to be subcontracted
23 in sufficient time to allow the disadvantaged businesses to
24 participate effectively.

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

30 (4) A statement of whether economically feasible

1 portions of the contract will be performed by disadvantaged
2 businesses, including, where appropriate, segmenting or
3 combining elements of a contract into economically feasible
4 units.

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

10 (6) Information on whether the person or a
11 representative of the person participated in outreach
12 activities or events to increase disadvantaged business
13 interest and participation in contracting, subcontracting and
14 purchasing opportunities.

15 (7) Information on use of the department's publicly
16 accessible Internet website to identify certified
17 disadvantaged businesses as prospects for contracting,
18 subcontracting and purchasing opportunities in connection
19 with a bid or offer.

20 (8) A solicitation of certified disadvantaged businesses
21 for contracting, subcontracting or purchasing opportunities
22 and inclusion of certified disadvantaged businesses on
23 solicitation lists.

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

29 (10) Quarterly reports or other reports provided to the
30 Bureau of Minority and Women Business Opportunities depicting

1 disadvantaged business utilization.

2 (11) Evidence demonstrating good faith effort in the
3 oversight of and timely payment to, as provided under
4 Subchapter D of Chapter 39 (relating to prompt payment
5 schedules), disadvantaged businesses and to maintain the
6 commitment made to a disadvantaged business that served as a
7 subcontractor at the time the subcontract was awarded and
8 after that time.

9 § 2111. Mentor-protégé program.

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

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

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

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

29 (1) Management assistance, including financial
30 management, organizational management, business management

1 and planning and business development.

2 (2) Technical assistance.

3 (3) Financial assistance.

4 (4) Temporary employee assistance.

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

7 (6) Any other type of developmental assistance as
8 approved by the department.

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

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

25 (1) Selection criteria for mentor and protégé
26 businesses.

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

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

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

5 § 2112. Small business reserve program.

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

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

16 (1) Notwithstanding any other provision of this title to
17 the contrary, the department shall structure its procurement
18 procedures to reserve up to 10% of the total dollar value of
19 its procurement contracts, including public works,
20 construction and professional services and designed
21 professional services contracts, to be made directly to
22 qualified small and disadvantaged businesses.

23 (2) The total dollar value of procurements by the
24 department may not include the value of any contract to which
25 this subsection would not apply because of a conflict with
26 Federal law.

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

30 (1) is the lowest bid price;

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

4 (d) Other Commonwealth agencies.--

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

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

12 (e) Construction and application.--

13 (1) The provisions of this section shall not be
14 construed to preclude any small and disadvantaged business
15 from competing for any other contract that is not
16 specifically designated for the small business reserve
17 program.

18 (2) The provisions of this section shall apply to any
19 eligible small business as defined under section 2102
20 (relating to definitions).

21 (f) Regulations.--The department shall adopt and promulgate
22 regulations to govern the provisions of this section. The
23 regulations shall:

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

26 (2) Provide procedures for maintaining the list in
27 paragraph (1).

28 (3) Include any other information the department
29 determines necessary and appropriate to carry out the
30 provisions of this section.

1 (g) Reports.--On or before December 31, 2019, and on or
2 before each December 31 thereafter, the department shall submit
3 a report to the Chief Clerk of the Senate and the Chief Clerk of
4 the House of Representatives on the operation and effectiveness
5 of the small business reserve program. The department may submit
6 the report electronically. The report shall include the
7 following:

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

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

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

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

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

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

22 CHAPTER 21A

23 SURETY BOND GUARANTEE PROGRAM

24 Sec.

25 21A01. Definitions.

26 21A02. Establishment of program.

27 21A03. Surety Bond Guarantee Fund.

28 21A04. Contract eligible for guarantee.

29 21A05. Disadvantaged business participation.

30 21A06. Criteria for denying program participation.

1 21A07. Duties of department.

2 21A08. Regulations.

3 § 21A01. Definitions.

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

7 "Applicant." A disadvantaged business as defined in this
8 chapter.

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

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 have been deprived of the opportunity to
14 develop and maintain a competitive position in the economy
15 because of social disadvantages. The term includes a small
16 business which is owned or controlled by a majority of persons
17 who are veterans, including service-disabled veterans.

18 "Fund." The Surety Bond Guarantee Fund established in
19 section 21A03 (relating to Surety Bond Guarantee Fund).

20 "Program." The Surety Bond Guarantee Fund Program
21 established in this chapter.

22 "Secretary." The Secretary of Community and Economic
23 Development of the Commonwealth.

24 "Service-disabled veteran." A veteran who possesses either
25 an adjudication letter from the United States Department of
26 Veterans Affairs establishing a service-connected disability
27 rating or a disability determination from the United States
28 Department of Defense.

29 "Small business." A business in the United States which is
30 independently owned, is not dominant in its field of operation

1 and employs 100 or fewer employees.

2 "Surety bond." A guarantee in which the surety guarantees
3 that the contractor or principal in the bond will perform the
4 obligation stated in the bond. The term includes the following
5 types of bonds:

6 (1) Bid bonds that guarantee the bidder will enter into
7 a contract and furnish the required payment and performance
8 bonds.

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

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

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

16 "Veteran." An individual who:

17 (1) served in the active United States Armed Forces in
18 any of the four current branches and all previous branches,
19 including a reserve component or the National Guard;

20 (2) was released or discharged from active military
21 service under conditions other than dishonorable; and

22 (3) possesses a certificate of release or discharge from
23 active duty.

24 § 21A02. Establishment of program.

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

30 § 21A03. Surety Bond Guarantee Fund.

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

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

9 (c) Payments from fund.--The Surety bond guarantees made
10 with payments from the fund under the program shall not exceed
11 the sum of \$1,000,000 for any one disadvantaged business.
12 § 21A04. Contract eligible for guarantee.

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

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

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

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

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

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

27 (1) No bond shall qualify or be eligible for a guarantee
28 under the program unless it contains a provision affirming
29 that the bond shall not be canceled for any cause unless
30 notice of intention to cancel is given to the department at

1 least 30 days before the day upon which cancellation shall
2 take effect.

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

5 § 21A05. Disadvantaged business participation.

6 (a) Application process.--

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

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

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

18 (b) Investigation.--

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

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

30 (3) The notification of ineligibility shall include the

1 reason the application was not approved and that the
2 applicant has the right to appeal the department's
3 determination to the secretary within 30 days of the date of
4 the notice.

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

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

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

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

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

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

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

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

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

30 § 21A06. Criteria for denying program participation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (ix) At any time prior to application, has failed to
30 disburse payments to subcontractors in a timely manner as

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

6 § 21A07. Duties of department.

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

15 (b) Monitoring program.--

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

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

29 § 21A08. Regulations.

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

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

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

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

12 § 3933. Contractors' and subcontractors' payment obligations.

13 * * *

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

24 * * *

25 Section 5. If funds are appropriated for the program
26 established in 62 Pa.C.S. § 21A02(a), the Department of
27 Community and Economic Development shall publish a notice in the
28 Pennsylvania Bulletin stating that fact.

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

30 (1) The following provisions shall take effect

1 immediately:

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

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

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

7 (3) The remainder of this act shall take effect in 60
8 days.