
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2256 Session of
2024

INTRODUCED BY SCOTT, GUENST, MADDEN, KINSEY, T. DAVIS, CEPEDA-FREYTIZ, HOHENSTEIN, HILL-EVANS, DELLOSO, ROZZI, SANCHEZ, KAZEEM, MAYES AND GREEN, MAY 1, 2024

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MAY 1, 2024

AN ACT

1 Amending Titles 51 (Military Affairs), 62 (Procurement) and 74
2 (Transportation) of the Pennsylvania Consolidated Statutes,
3 in veteran-owned small businesses, further providing for
4 definitions, for regulations, for participation goal, for
5 duties of Department of General Services and for bonding and
6 progress payments, providing for request for full or partial
7 waiver and good faith efforts, further providing for reports
8 and providing for disparity study; in small and disadvantaged
9 businesses, further providing for policy and for definitions,
10 providing for Small and Midsize Diverse Business Program and
11 for nonapplicability, further providing for regulations and
12 for duties of department, providing for request for full or
13 partial waiver and good faith efforts, further providing for
14 bonding and progress payments and for report to General
15 Assembly and providing for aspirational target, for disparity
16 study and for program review and expiration; providing for
17 Program for Construction and Design Professional Services;
18 and making editorial changes.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. Sections 9601, 9602 heading, (a) and (c), 9603,
22 9604, 9605, 9606 and 9607 of Title 51 of the Pennsylvania
23 Consolidated Statutes are amended to read:

24 § 9601. Definitions.

25 Subject to section 9602 (relating to policy and regulations),

1 the following words and phrases when used in this chapter shall
2 have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Aspirational target." A target established by the Secretary
5 of General Services under section 9603 (relating to Statewide
6 participation goal and aspirational target).

7 "Commonwealth agency." As defined in 62 Pa.C.S. § 103
8 (relating to definitions).

9 "Contract-specific goal." A goal established by the
10 Department of General Services in collaboration with the
11 purchasing agency for use of veteran business enterprises on a
12 specific procurement.

13 "Disparity study." A study conducted to determine whether
14 there is a disparity between the availability and use of veteran
15 business enterprises in Commonwealth procurement.

16 "Executive agency." As defined in 62 Pa.C.S. § 103
17 [(relating to definitions)].

18 "Good faith efforts." The practices or activities instituted
19 by a bidder or offeror to promote and ensure participation by
20 veteran business enterprises in an agency procurement in order
21 to meet a contract-specific goal.

22 "Midsize business." As defined in 62 Pa.C.S. § 2102
23 (relating to definitions).

24 "Purchasing agency." As defined in 62 Pa.C.S. § 103
25 [(relating to definitions)].

26 "Service-disabled." Being in possession of:

27 (1) a disability rating letter issued by the United
28 States Department of Veterans Affairs; or

29 (2) a disability determination from the United States
30 Department of Defense.

1 "Service-disabled veteran-owned midsize business." A midsize
2 business owned and controlled by:

- 3 (1) a service-disabled veteran or veterans; or
4 (2) if approved by the Department of General Services, a
5 surviving spouse or permanent caregiver of a service-disabled
6 veteran.

7 "Service-disabled veteran-owned small business." A small
8 business owned and controlled by:

- 9 (1) a service-disabled veteran or veterans; or
10 (2) if approved by the Department of General Services, a
11 surviving spouse or permanent caregiver of a service-disabled
12 veteran.

13 "Small business." As defined in 62 Pa.C.S. § 2102 [(relating
14 to definitions)].

15 "State-affiliated entity." As defined in 62 Pa.C.S. § 103
16 [(relating to definitions)].

17 "Utilization schedule." A document, submitted by a bidder or
18 offeror as part of a bid or proposal, in which a bidder or
19 offeror commits to a level of veteran business enterprise
20 participation for a contract. If required by the solicitation, a
21 utilization schedule may also require a bidder or offeror to
22 identify:

- 23 (1) The veteran business enterprises that will be
24 utilized.
25 (2) Associated responsibilities and scopes of work.
26 (3) The dollar value or percentages of the work to be
27 performed.

28 "Veteran." An individual who served in the United States
29 Armed Forces, including a reserve component or the National
30 Guard, and who was discharged or released from service under

1 conditions other than dishonorable.

2 "Veteran business enterprise." Any of the following:

3 (1) A veteran-owned small business.

4 (2) A veteran-owned midsize business.

5 (3) A service-disabled veteran-owned small business.

6 (4) A service-disabled veteran-owned midsize business.

7 "Veteran-owned midsize business." A midsize business owned
8 and controlled by a veteran or veterans.

9 "Veteran-owned small business." A small business owned and
10 controlled by a veteran or veterans.

11 § 9602. [Regulations] Policy and regulations.

12 (a) Promulgation.--The Department of General Services shall
13 establish policy [in accordance with this subchapter] for
14 executive agencies and those independent agencies [and may, in
15 consultation with the department,] for which the Department of
16 General Services acts as a purchasing agency. The Department of
17 General Services in its discretion may promulgate regulations
18 [establishing detailed definitions of the words and phrases
19 defined in section 9601 (relating to definitions) using, in
20 addition to the criteria set forth in section 9601, other
21 criteria as it deems appropriate, including the number of
22 employees and the dollar volume of business.] to carry out and
23 enforce the provisions of this subchapter.

24 * * *

25 (c) Antifraud provisions.--The Department of General
26 Services shall establish policy and promulgate regulations
27 establishing antifraud provisions to deter and penalize
28 businesses that [are not owned by those who are service-disabled
29 or by veterans but who falsely claim that they are] falsely
30 claim the businesses are owned by service-disabled individuals

1 or veterans in order to receive any action authorized by this
2 subchapter.

3 * * *

4 § 9603. [Participation goal.] Statewide participation goal and
5 aspirational target.

6 A Statewide annual goal of not less than 3% participation by
7 [veteran-owned small businesses, including service-disabled
8 veteran-owned small businesses,] veteran business enterprises is
9 established. [The participation goal shall apply to the total
10 value of all contracts available to small businesses in each
11 fiscal year.] The Secretary of General Services may set a
12 Statewide aspirational target for veteran business enterprise
13 participation which may be reviewed and adjusted every five
14 years upon completion of a disparity study and which may not be
15 less than the Statewide annual goal.

16 § 9604. Duties of Department of General Services.

17 The Department of General Services[, with the assistance of
18 the department,] shall have the following duties:

19 (1) If feasible, provide appropriate staff, who shall be
20 responsible to the Department of General Services and who
21 shall [serve within designated Commonwealth agencies to
22 assist veteran-owned small businesses and service-disabled
23 veteran-owned small businesses] assist veteran business
24 enterprises in this Commonwealth in learning how to do
25 business with Commonwealth agencies.

26 (2) Give special publicity to procurement procedures and
27 issue special publications designed to assist [veteran-owned
28 small businesses and service-disabled veteran-owned small
29 businesses] veteran business enterprises in learning how to
30 do business with Commonwealth agencies.

1 (2.1) Verify the current certification of businesses
2 claiming to be certified as veteran business enterprises.

3 (3) [Compile, maintain and make available source lists
4 of veteran-owned small businesses and service-disabled
5 veteran-owned small businesses] Develop and maintain a
6 directory of veteran business enterprises for the purpose of
7 encouraging procurement from [veteran-owned small businesses]
8 veteran business enterprises.

9 (4) Include [veteran-owned small businesses and service-
10 disabled veteran-owned small businesses] veteran business
11 enterprises on solicitation mailing lists.

12 (5) Assure that [veteran-owned small businesses and
13 service-disabled veteran-owned small businesses are
14 solicited] purchasing agencies solicit veteran business
15 enterprises on procurements for which the businesses may be
16 suited.

17 (6) Develop [special] training programs to assist
18 [veteran-owned small businesses and service-disabled veteran-
19 owned small businesses] veteran business enterprises in
20 learning how to do business with Commonwealth agencies.

21 [(7) Assure that participation by veteran-owned small
22 businesses and service-disabled veteran-owned small
23 businesses is, if appropriate, factored into the evaluation
24 of proposals for supplies, services or construction when a
25 purchasing agency uses the competitive sealed proposals
26 method under 62 Pa.C.S. § 513 (relating to competitive sealed
27 proposals).]

28 (8) Verify the current certification of businesses
29 claiming to be certified as veteran-owned small businesses
30 and service-disabled veteran-owned small businesses.]

1 (9) Establish contract-specific goals for utilization of
2 veteran business enterprises, in collaboration with the
3 purchasing agency, based upon relevant factors, including the
4 availability of veteran business enterprises to provide the
5 supplies, materials and equipment or services required by the
6 scope of work of the procurement.

7 (10) In collaboration with the purchasing agency, review
8 utilization schedules, consider requests for waivers of
9 contract-specific goals based upon a showing of good faith
10 efforts and evaluate the extent to which contract-specific
11 goals were achieved.

12 (11) Monitor contracts to evaluate compliance with
13 contract-specific goals and commitments.

14 (12) Cooperate with and provide assistance to
15 Commonwealth agencies to facilitate participation by veteran
16 business enterprises in procurements.

17 (13) Receive, review and act upon complaints and
18 suggestions concerning the utilization of veteran business
19 enterprises, with the assistance of the purchasing agency, as
20 appropriate.

21 (14) Monitor and evaluate the Commonwealth's use of
22 veteran business enterprises and the Commonwealth's progress
23 toward the aspirational target.

24 (15) Require that applications for veteran business
25 enterprises verification under this chapter shall be sworn
26 under oath.

27 § 9605. Bonding and progress payments.

28 (a) Bonding.--Notwithstanding 62 Pa.C.S. Pt. I (relating to
29 Commonwealth Procurement Code) or any other law or regulation:

30 (1) Except as provided in paragraph (2), a purchasing

1 agency may reduce the [level] amount or change the types of
2 bonding normally required or accept alternative forms of
3 security to the extent reasonably necessary to encourage
4 procurement from [veteran-owned small businesses and service-
5 disabled veteran-owned small businesses] veteran business
6 enterprises.

7 (2) For contracts under \$25,000, [veteran-owned small
8 businesses and service-disabled veteran-owned small
9 businesses] veteran business enterprises shall be exempt from
10 any bonding requirements.

11 (b) Progress payments.--A purchasing agency may make special
12 provisions for progress payments as it deems reasonably
13 necessary to encourage procurement from [veteran-owned small
14 businesses and service-disabled veteran-owned small businesses]
15 veteran business enterprises.

16 § 9606. [(Reserved).] Request for full or partial waiver and
17 good faith efforts.

18 Notwithstanding any provision of this subchapter, bidders or
19 offerors may request a partial or full waiver of a contract-
20 specific goal for veteran business enterprise participation. The
21 following apply:

22 (1) A bidder or offeror requesting a partial or full
23 waiver shall submit, in writing, a report detailing good
24 faith efforts to meet the contract-specific goal as required
25 by the solicitation.

26 (2) In reviewing a bidder's or offeror's written request
27 for a partial or full waiver of a contract-specific goal, the
28 purchasing agency, based on the recommendation of the
29 Department of General Services, shall determine if a bidder
30 or offeror has made good faith efforts to meet the contract-

1 specific goal and to what extent the waiver request should be
2 granted.

3 (3) In determining if a bidder or offeror has made good
4 faith efforts, the purchasing agency and the Department of
5 General Services may consider levels of participation by
6 veteran business enterprises by other bidders or offerors.

7 § 9607. Reports.

8 [(a) Report to Department of General Services.--By August
9 15, 2013, and each August 15 thereafter, each executive agency
10 and independent agency shall submit an annual report for the
11 period of July 1 to June 30 to the Department of General
12 Services on actual utilization of veteran-owned small businesses
13 and service-disabled veteran-owned small businesses as
14 contractors, subcontractors, suppliers and professional service
15 providers.]

16 (b) Report to standing committees.--

17 (1) The Department of General Services and each State-
18 affiliated entity shall annually, before October 1, report in
19 writing to the Veterans Affairs and Emergency Preparedness
20 Committee of the Senate and the Veterans Affairs and
21 Emergency Preparedness Committee of the House of
22 Representatives the actual utilization, Statewide and by each
23 purchasing agency, of veteran-owned small businesses and
24 service-disabled veteran-owned small businesses during the
25 preceding fiscal year.

26 (2) The report shall include a list of all veteran-owned
27 small businesses and service-disabled veteran-owned small
28 businesses that participated as contractors, subcontractors,
29 suppliers and professional service providers during the
30 preceding fiscal year.

1 (3) Initial reports under this subsection shall be
2 submitted to the standing committees by October 1, 2013.]

3 (c) Annual report.--

4 (1) The Department of General Services shall annually
5 report in writing to the Veterans Affairs and Emergency
6 Preparedness Committee of the Senate and the Veterans Affairs
7 and Emergency Preparedness Committee of the House of
8 Representatives concerning the awarding of contracts to
9 veteran business enterprises.

10 (2) Each annual report shall include statistical
11 information regarding veteran business enterprises, including
12 business classification, location and industry.

13 (3) In preparing an annual report, the Department of
14 General Services shall verify if commitments made to veteran
15 business enterprises in the course of awarding the contracts
16 have been maintained or achieved.

17 Section 2. Title 51 is amended by adding a section to read:
18 § 9609. Disparity study.

19 Beginning no later than June 30, 2024, and every five years
20 thereafter, the Department of General Services may complete a
21 Statewide disparity study on the availability and use of veteran
22 business enterprises, the results of which may be used to set an
23 aspirational target under section 9603 (relating to Statewide
24 participation goal and aspirational target).

25 Section 3. Chapter 21 heading and sections 2101 and 2102 of
26 Title 62 are amended to read:

27 CHAPTER 21

28 SMALL AND [DISADVANTAGED] MIDSIZE DIVERSE BUSINESSES

29 § 2101. Policy.

30 The policy of this Commonwealth is [to assist small and

1 disadvantaged businesses in learning how to do business with
2 Commonwealth agencies. The department shall implement this
3 policy in accordance with regulations promulgated by the
4 department.] to provide equitable opportunities in its
5 procurements to small businesses, midsize businesses, small
6 diverse businesses and midsize diverse businesses, both as prime
7 contractors and subcontractors, and to assist small businesses,
8 midsize businesses, small diverse businesses and midsize diverse
9 businesses in learning how to do business with Commonwealth
10 agencies. The department shall implement this policy in
11 accordance with department regulations and policy.

12 § 2102. Definitions.

13 Subject to section 2103 (relating to policy and regulations),
14 the following words and phrases when used in this chapter shall
15 have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "Agency liaison." An agency employee reporting directly to a
18 secretary, agency head or equivalent responsible for assisting
19 the agency on issues related to the program.

20 "Aspirational target." A target established by the Secretary
21 of General Services under section 2109 (relating to aspirational
22 target).

23 "Contract-specific goal." A goal established by the
24 department in collaboration with the purchasing agency for use
25 of small diverse businesses and midsize diverse businesses on a
26 specific procurement.

27 ["Disadvantaged business." A small business which is owned
28 or controlled by a majority of persons, not limited to members
29 of 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 "Disparity study." A study conducted to determine whether
3 there is a disparity between the availability and use of small
4 diverse businesses and midsize diverse businesses in
5 Commonwealth procurement.

6 "Good faith efforts." The practices or activities instituted
7 by a bidder or offeror to promote and ensure participation by
8 small diverse businesses and midsize diverse businesses in an
9 agency procurement in order to meet a contract-specific goal.

10 "Midsize business." A business in the United States which is
11 independently owned and is not dominant in its field of
12 operation and employs 750 or fewer employees.

13 "Midsize diverse business." A midsize business owned or
14 controlled by a majority of persons, not limited to members of
15 minority groups, that have been deprived of the opportunity to
16 develop and maintain a competitive position in the economy
17 because of economic and social disadvantages.

18 "Program." The Small and Midsize Diverse Business Program
19 established under section 2102.1 (relating to Small and Midsize
20 Diverse Business Program).

21 "Race-neutral and gender-neutral measures." Methodologies
22 that are or can be used to assist businesses, notwithstanding
23 the social, economic, racial or gender composition of the
24 individuals that own or control the business.

25 "Small business." A business in the United States which is
26 independently owned[,] and is not dominant in its field of
27 operation and employs [100] 500 or fewer employees.

28 "Small diverse business." A small business owned or
29 controlled by a majority of persons, not limited to members of
30 minority groups, that have been deprived of the opportunity to

1 develop and maintain a competitive position in the economy
2 because of economic and social disadvantages.

3 "Social disadvantages." An individual is believed to have
4 experienced social disadvantages if the individual is a member
5 of a socially disadvantaged group whose members historically
6 have been subjected to racial or ethnic discrimination within
7 the United States because of their identity as members of the
8 group, without regard to their individual qualities. The
9 following apply:

10 (1) If the individual identifies as Black, Hispanic,
11 Native American or Asian American, or any combination
12 thereof, the individual shall be presumed to be socially
13 disadvantaged.

14 (2) If the individual does not identify as Black,
15 Hispanic, Native American or Asian American, or any
16 combination thereof, the individual must establish that the
17 individual is a socially disadvantaged individual by a
18 preponderance of the evidence.

19 "Utilization schedule." A document, submitted by a bidder or
20 offeror as part of a bid or proposal, in which a bidder or
21 offeror commits to a level of small diverse business or midsize
22 diverse business participation for a contract. If required by
23 the solicitation, a utilization schedule may also require a
24 bidder or offeror to identify:

25 (1) The small diverse businesses or midsize diverse
26 businesses that will be utilized.

27 (2) Associated responsibilities and scopes of work.

28 (3) The dollar value or percentages of the work to be
29 performed.

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

1 § 2102.1. Small and Midsize Diverse Business Program.

2 The Small and Midsize Diverse Business Program is established
3 in the department.

4 § 2102.2. Nonapplicability.

5 Beginning on and after the effective date of this section,
6 this chapter shall not apply to procurements for construction
7 and design professional services.

8 Section 5. Sections 2103 and 2104 of Title 62 are amended to
9 read:

10 § 2103. [Regulations] Policy and regulations.

11 [The] To implement the program, the department shall
12 establish policy for executive and those independent agencies
13 for which the department acts as purchasing agency and may
14 promulgate regulations [establishing detailed definitions of the
15 words and phrases defined in section 2102 (relating to
16 definitions) using, in addition to the criteria set forth in
17 section 2102, other criteria as it deems appropriate, including
18 the number of employees and the dollar volume of business.
19 State-affiliated entities shall implement the policy for their
20 procurement programs.] to carry out and enforce the provisions
21 of this chapter. State-affiliated entities shall implement the
22 policy for their procurement.

23 § 2104. Duties of department.

24 [The department shall have the following duties] The
25 department shall administer the program. The department's duties
26 shall include:

27 (1) [Where feasible, provide appropriate staff who shall
28 be responsible to the department and who shall serve within
29 designated Commonwealth agencies to assist small and
30 disadvantaged businesses in this Commonwealth in learning how

1 to do business with Commonwealth agencies.] Formulating,
2 proposing and implementing policy and regulations for the
3 development, implementation and monitoring of the program,
4 including the process or procedures to govern the following:

5 (i) The process and criteria for certification,
6 verification, recertification and decertification of
7 small businesses, midsize businesses, small diverse
8 businesses and midsize diverse businesses.

9 (ii) The setting of contract-specific goals.

10 (iii) Changes to solicitation and contract language,
11 requirements and forms.

12 (iv) Monitoring and tracking contract commitments
13 and utilization of small diverse businesses and midsize
14 diverse businesses.

15 (v) Mentor-protégé programs.

16 (vi) Program-related education, training, networking
17 and outreach.

18 (vii) Any other processes or procedures the
19 department deems necessary to implement the program.

20 (2) [Give special publicity to procurement procedures
21 and issue special publications designed to assist small and
22 disadvantaged businesses in learning how to do business with
23 Commonwealth agencies.] Developing, using and assisting
24 purchasing agencies in using race-neutral and gender-neutral
25 measures to facilitate the participation of all firms in
26 Commonwealth procurement activities, including the
27 implementation of a program to reserve procurements for award
28 to self-certified small businesses and midsize businesses
29 only.

30 (3) [Compile, maintain and make available source lists

1 of small and disadvantaged businesses for the purpose of
2 encouraging procurement from small and disadvantaged
3 businesses.] Developing and maintaining a directory of small
4 businesses, midsize businesses, small diverse businesses and
5 midsize diverse businesses.

6 (4) [Include small and disadvantaged businesses on
7 solicitation mailing lists.] Providing information and
8 assistance to small businesses, midsize businesses, small
9 diverse businesses and midsize diverse businesses relating to
10 the program, including special training programs to assist
11 small businesses, midsize businesses, small diverse
12 businesses and midsize diverse businesses in learning how to
13 do business with Commonwealth agencies and serving as liaison
14 to community, contractors, professionals and supplier groups,
15 associations and organizations.

16 (5) [Assure that small and disadvantaged businesses are
17 solicited on each procurement for which the businesses may be
18 suited.] Collaborating with and providing information and
19 assistance to Commonwealth agencies to facilitate
20 participation by small businesses, midsize businesses, small
21 diverse businesses and midsize diverse businesses in
22 procurements.

23 (6) [Develop special training programs to assist small
24 and disadvantaged businesses in learning how to do business
25 with Commonwealth agencies.] Establishing thresholds for
26 procurements which require the setting of contract-specific
27 goals.

28 (7) Ensuring that small diverse businesses and midsize
29 diverse businesses are solicited on procurements for which
30 the businesses may be suited.

1 (8) Establishing contract-specific goals, in
2 collaboration with the purchasing agency, based upon relevant
3 factors, including the availability of small diverse
4 businesses and midsize diverse businesses to provide the
5 supplies, materials and equipment or services required by the
6 scope of work of the procurement.

7 (9) In collaboration with the purchasing agency,
8 reviewing utilization schedules, considering requests for
9 waivers of contract-specific goals based upon a showing of
10 good faith efforts and evaluating the extent to which
11 contract-specific goals were achieved.

12 (10) Monitoring contracts to evaluate compliance with
13 contract-specific goals and commitments.

14 (11) Receiving, reviewing and acting upon complaints and
15 suggestions concerning the program, with the assistance of
16 the purchasing agency, as appropriate.

17 (12) Coordinating with agency liaisons on agency issues
18 related to the program.

19 (13) Evaluating the effectiveness and utility of the
20 program.

21 (14) Monitoring the program and the Commonwealth's
22 progress toward the aspirational target.

23 (15) Establishing business assistance offices throughout
24 this Commonwealth to assist small businesses and midsize
25 businesses to carry out the provisions of the program.

26 (16) Requiring that all applications for small business,
27 midsize business, small diverse business and midsize diverse
28 business verification under this chapter shall be sworn under
29 oath.

30 (17) Identifying barriers to equitable participation by

1 small diverse businesses and midsize diverse businesses in
2 Commonwealth procurement.

3 (18) Designating staff to assist small businesses,
4 midsize businesses, small diverse businesses and midsize
5 diverse businesses in learning how to participate in
6 Commonwealth procurement in accordance with this chapter.

7 (19) Developing the conditions under which a contract-
8 specific goal may be waived, either partially or fully, upon
9 request of a bidder or offeror in accordance with section
10 2105 (relating to bonding and progress payments).

11 Section 6. Title 62 is amended by adding a section to read:

12 § 2104.1. Request for full or partial waiver and good faith
13 efforts.

14 Notwithstanding any provision of this chapter, bidders or
15 offerors may request a partial or full waiver of a contract-
16 specific goal for small diverse business or midsize diverse
17 business participation. The following apply:

18 (1) A bidder or offeror requesting a partial or full
19 waiver shall submit, in writing, a report detailing the
20 bidder's or offeror's good faith efforts to meet the
21 contract-specific goal as required by the solicitation.

22 (2) In reviewing a bidder's or offeror's written request
23 for a partial or full waiver of a contract-specific goal, the
24 purchasing agency, based on the recommendation of the
25 department, shall determine if a bidder or offeror has made
26 good faith efforts to meet the contract-specific goal and to
27 what extent the waiver request should be granted.

28 (3) In determining if a bidder or offeror has made good
29 faith efforts, the purchasing agency and the department may
30 consider levels of participation by small diverse businesses

1 and midsize diverse businesses by other bidders or offerors.

2 Section 7. Sections 2105 and 2107 of Title 62 are amended to
3 read:

4 § 2105. Bonding and progress payments.

5 (a) Bonding.--Notwithstanding [other provisions of this
6 part] any provisions of law, a purchasing agency may reduce the
7 [level] amount or change the types of bonding normally required
8 or accept alternative forms of security to the extent reasonably
9 necessary to encourage procurement from [small and disadvantaged
10 businesses] small businesses, midsize businesses, small diverse
11 businesses and midsize diverse businesses.

12 (b) Progress payments.--A purchasing agency may make special
13 provisions for progress payments as it deems reasonably
14 necessary to encourage procurement from [small and disadvantaged
15 businesses] small businesses, midsize businesses, small diverse
16 businesses and midsize diverse businesses.

17 § 2107. Report to General Assembly.

18 The department shall annually[, before October 1,] report in
19 writing to the General Assembly concerning the awarding of
20 contracts [to small and disadvantaged businesses] and
21 subcontracts to small businesses, midsize businesses, small
22 diverse businesses and midsize diverse businesses during the
23 preceding fiscal year. The report shall include [a list of all
24 small and disadvantaged businesses that participated as
25 contractors, subcontractors or suppliers during the preceding
26 fiscal year for contracts if the number of contractors under a
27 previously existing contract for the same supply or service is
28 reduced to a single contractor or reduced by more than 50% of
29 the number existing on September 30, 2003.] statistical
30 information regarding the program and information regarding

1 small businesses, midsize businesses, small diverse businesses
2 and midsize diverse businesses, including business
3 classification, location and industry. In preparing the report,
4 the department shall verify whether commitments made to small
5 [and disadvantaged] diverse businesses and midsize diverse
6 businesses in the course of awarding these contracts have been
7 maintained or achieved.

8 Section 8. Title 62 is amended by adding sections to read:
9 § 2109. Aspirational target.

10 The Secretary of General Services shall set an aspirational
11 target for small diverse business and midsize diverse business
12 participation by the Commonwealth, which shall be reviewed and
13 adjusted every five years upon completion of a disparity study.
14 § 2110. Disparity study.

15 (a) Requirement.--Beginning no later than June 30, 2024, and
16 at least once every five years thereafter, the department shall
17 complete a Statewide disparity study on the availability and use
18 of small diverse businesses and midsize diverse businesses, the
19 results of which shall be used to set an aspirational target
20 under section 2109 (relating to aspirational target).

21 (b) Notice and publication.--The Secretary of General
22 Services shall transmit notice, to the Legislative Reference
23 Bureau for publication in the next available issue of the
24 Pennsylvania Bulletin, regarding whether or not the disparity
25 study shows a statistically significant disparity.

26 § 2111. Program review and expiration.

27 (a) Review.--Upon completion of the disparity study
28 conducted under section 2110 (relating to disparity study), the
29 department shall review the results and recommendations of the
30 disparity study and the operation of and evidentiary basis for

1 the program to determine whether the Commonwealth has a
2 continuing compelling interest in remedying discrimination
3 against small diverse businesses and midsize diverse businesses
4 in its marketplace and the permissible scope of any narrowly
5 tailored remedies to redress discrimination against small
6 diverse businesses and midsize diverse businesses so that the
7 Commonwealth will not function as a passive participant in a
8 discriminatory marketplace.

9 (b) Expiration.--This chapter shall expire January 1, 2028,
10 unless the disparity study completed under section 2110 shows a
11 statistically significant disparity in the utilization of small
12 diverse businesses and midsize diverse businesses. If the
13 disparity study shows a statistically significant disparity, the
14 program shall renew for an additional five years with the review
15 and expiration under this section each occurring every five
16 years thereafter until the disparity study shows no
17 statistically significant disparity in the utilization of small
18 diverse businesses and midsize diverse businesses.

19 Section 9. Title 62 is amended by adding a chapter to read:

20 CHAPTER 21A

21 PROGRAM FOR CONSTRUCTION AND

22 DESIGN PROFESSIONAL SERVICES

23 Sec.

24 21A01. Definitions.

25 21A02. Program for Construction and Design Professional
26 Services.

27 21A03. Applicability.

28 21A04. Policy and regulations.

29 21A05. Duties of department.

30 21A06. Request for full or partial waiver and good faith

1 efforts.

2 21A07. Bonding and progress payments.

3 21A08. Report to General Assembly.

4 21A09. Aspirational target.

5 21A10. Disparity study.

6 21A11. Compliance with Federal requirements.

7 21A12. Review and expiration.

8 § 21A01. Definitions.

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

12 "Aspirational target." A target established by the Secretary
13 of General Services under section 21A09 (relating to
14 aspirational target).

15 "Contract-specific goal." A goal established by the
16 department in collaboration with the purchasing agency for use
17 of small diverse businesses and midsize diverse businesses on a
18 specific procurement.

19 "Disparity study." A study conducted to determine whether
20 there is a disparity between the availability and use of small
21 diverse businesses and midsize diverse businesses in
22 Commonwealth procurement for construction and design
23 professional services.

24 "Good faith efforts." The practices or activities instituted
25 by a bidder or offeror to promote and ensure participation by
26 small diverse businesses and midsize diverse businesses in
27 agency procurements for construction and design professional
28 services in order to meet a contract-specific goal.

29 "Midsize business." A business in the United States which is
30 independently owned and is not dominant in its field of

1 operation and employs 750 or fewer employees.

2 "Midsize diverse business." A midsize business owned or
3 controlled by a majority of persons, not limited to members of
4 minority groups, who have been deprived of the opportunity to
5 develop and maintain a competitive position in the economy
6 because of economic and social disadvantages.

7 "Program." The Program for Construction and Design
8 Professional Services established under section 21A02 (relating
9 to Program for Construction and Design Professional Services).

10 "Race-neutral and gender-neutral measures." Methodologies
11 that are or can be used to assist businesses, notwithstanding
12 the social, economic, racial or gender composition of
13 individuals that own or control the business.

14 "Small business." A business in the United States which is
15 independently owned and is not dominant in its field of
16 operation and employs 500 or fewer employees.

17 "Small diverse business." A small business owned or
18 controlled by a majority of persons, not limited to members of
19 minority groups, who have been deprived of the opportunity to
20 develop and maintain a competitive position in the economy
21 because of economic and social disadvantages.

22 "Social disadvantages." As defined in section 2102 (relating
23 to definitions).

24 "Utilization schedule." A document, submitted by a bidder or
25 offeror as part of a bid or proposal, in which a bidder or
26 offeror commits to a level of small diverse business or midsize
27 diverse business participation for a contract. If required by
28 the solicitation, a utilization schedule may also require a
29 bidder or offeror to identify:

30 (1) The small diverse businesses and midsize diverse

1 businesses that will be utilized.

2 (2) Associated responsibilities and scope of work.

3 (3) The dollar value or percentages of the work to be
4 performed.

5 § 21A02. Program for Construction and Design Professional
6 Services.

7 The Program for Construction and Design Professional Services
8 is established in the department.

9 § 21A03. Applicability.

10 This chapter shall apply to procurements for construction and
11 design professional services.

12 § 21A04. Policy and regulations.

13 To implement the program, the department shall establish
14 policy for executive and independent agencies for which the
15 department acts as a purchasing agency and may promulgate
16 regulations to carry out and enforce the provisions of this
17 chapter. State-affiliated entities shall implement the policy
18 for their procurement programs.

19 § 21A05. Duties of department.

20 The department shall administer the program. The department's
21 duties shall include:

22 (1) Formulating, proposing and implementing policy and
23 regulations for the development, implementation and
24 monitoring of the program, which shall include processes or
25 procedures to govern the following:

26 (i) The process and criteria for certification,
27 verification, recertification and decertification of
28 small businesses, midsize businesses, small diverse
29 businesses and midsize diverse businesses.

30 (ii) The setting of contract-specific goals.

1 (iii) Changes to solicitation and contract language,
2 requirements and forms.

3 (iv) Monitoring and tracking contract commitments
4 and utilization of small diverse businesses and midsize
5 diverse businesses.

6 (v) Mentor-protégé programs.

7 (vi) Program-related education, training, networking
8 and outreach.

9 (vii) Any other processes or procedures the
10 department deems necessary to implement the program for
11 construction and design professional services.

12 (2) Developing, using and assisting purchasing agencies
13 in using race-neutral and gender-neutral measures to
14 facilitate the participation of firms in Commonwealth
15 procurement activities, including the implementation of a
16 program to reserve procurements for award to small diverse
17 businesses and midsize diverse businesses only.

18 (3) Providing information and assistance to small
19 businesses, midsize businesses, small diverse businesses and
20 midsize diverse businesses relating to the program, including
21 special training programs to assist small businesses, midsize
22 businesses, small diverse businesses and midsize diverse
23 businesses in learning how to do business with Commonwealth
24 agencies and serving as a liaison to community, contractors,
25 professionals and supplier groups, associations and
26 organizations.

27 (4) Establishing thresholds for construction and design
28 professional services procurements which require the setting
29 of contract-specific goals.

30 (5) Ensuring that small diverse businesses and midsize

1 diverse businesses are solicited on procurements for which
2 the businesses may be suited.

3 (6) Establishing contract-specific goals, in
4 collaboration with the purchasing agency, based upon relevant
5 factors, including the availability of small diverse
6 businesses and midsize diverse businesses to provide the
7 supplies, materials and equipment or services required by the
8 scope of work of the procurement.

9 (7) In collaboration with the purchasing agency,
10 reviewing utilization schedules, considering requests for
11 waivers of contract-specific goals based upon a showing of
12 good faith efforts and evaluating the extent to which
13 contract-specific goals were achieved.

14 (8) Monitoring contracts to evaluate compliance with
15 contract-specific goals and commitments.

16 (9) Receiving, reviewing and acting upon complaints and
17 suggestions concerning the program, with the assistance of
18 the purchasing agency, as appropriate.

19 (10) Evaluating the effectiveness and utility of the
20 program.

21 (11) Monitoring the program and the Commonwealth's
22 progress toward the aspirational target.

23 (12) Identifying barriers to equitable participation by
24 small diverse businesses and midsize diverse businesses in
25 Commonwealth procurements for construction and design and
26 professional services.

27 (13) Designating staff to assist small businesses,
28 midsize businesses, small diverse businesses and midsize
29 diverse businesses in learning how to participate in
30 Commonwealth procurement in accordance with this chapter.

1 (14) Developing and maintaining a directory of small
2 businesses, midsize businesses, small diverse businesses and
3 midsize diverse businesses.

4 (15) Requiring that all applications for small business
5 and midsize business certification and small diverse business
6 and midsize diverse business verification under this chapter
7 shall be sworn under oath.

8 (16) Collaborating with and providing information and
9 assistance to Commonwealth agencies to facilitate
10 participation by small businesses, midsize businesses, small
11 diverse businesses and midsize diverse businesses in
12 construction and design professional services procurements.

13 (17) Developing the conditions under which a contract-
14 specific goal may be waived, either partially or fully, upon
15 request of a bidder or offeror in accordance with section
16 21A06 (relating to request for full or partial waiver and
17 good faith efforts).

18 § 21A06. Request for full or partial waiver and good faith
19 efforts.

20 Notwithstanding any provision of law, bidders or offerors may
21 request a partial or full waiver of a contract-specific goal for
22 small diverse business or midsize diverse business
23 participation. The following apply:

24 (1) A bidder or offeror requesting a partial or full
25 waiver shall submit, in writing, a report detailing the
26 bidder's or offeror's good faith efforts to meet the
27 contract-specific goal as required by the solicitation.

28 (2) In reviewing a bidder's or offeror's written request
29 for a partial or full waiver of a contract-specific goal, the
30 purchasing agency, based on the recommendation of the

1 department, shall determine if a bidder or offeror has made
2 good faith efforts to meet the contract-specific goal and to
3 what extent the waiver request should be granted.

4 (3) In determining if a bidder or offeror has made good
5 faith efforts, the purchasing agency and the department may
6 consider levels of participation by small diverse businesses
7 and midsize diverse businesses by other bidders or offerors.

8 § 21A07. Bonding and progress payments.

9 (a) Bonding.--Notwithstanding other provisions of law, a
10 purchasing agency may reduce the level or change the types of
11 bonding normally required or accept alternative forms of
12 security to the extent reasonably necessary to encourage
13 procurement from small businesses, midsize businesses, small
14 diverse businesses and midsize diverse businesses.

15 (b) Progress payments.--A purchasing agency may make special
16 provisions for progress payments as it deems reasonably
17 necessary to encourage procurement from small businesses,
18 midsize businesses, small diverse businesses and midsize diverse
19 businesses.

20 § 21A08. Report to General Assembly.

21 The department shall annually report in writing to the
22 General Assembly regarding the awarding of contracts and
23 subcontracts to small businesses, midsize businesses, small
24 diverse businesses and midsize diverse businesses during the
25 preceding fiscal year. The following apply:

26 (1) The report shall include statistical data from the
27 program, including business classification, location and
28 industry.

29 (2) In preparing the report, the department shall verify
30 if the commitments made in the awarding of contracts were

1 maintained or achieved.

2 § 21A09. Aspirational target.

3 The Secretary of General Services shall set an aspirational
4 target for small diverse business and midsize diverse business
5 participation by the Commonwealth on procurements subject to
6 this chapter, which shall be reviewed and adjusted every five
7 years upon completion of a disparity study.

8 § 21A10. Disparity study.

9 (a) Requirement.--Beginning no later than June 30, 2024, and
10 at least once every five years thereafter, the department shall
11 complete a Statewide disparity study on the availability and use
12 of small diverse businesses and midsize diverse businesses in
13 Commonwealth construction and design professional services, the
14 results of which shall be used to set an aspirational target
15 under section 21A09 (relating to aspirational target).

16 (b) Notice and publication.--The Secretary of General
17 Services shall transmit notice, to the Legislative Reference
18 Bureau for publication in the next available issue of the
19 Pennsylvania Bulletin, regarding whether or not the disparity
20 study shows a statistically significant disparity in the
21 utilization of small diverse businesses and midsize diverse
22 businesses.

23 § 21A11. Compliance with Federal requirements.

24 If a procurement involves the expenditure of Federal
25 assistance or contract money, the purchasing agency shall comply
26 with Federal law and authorized regulations which are
27 mandatorily applicable and which are not presently reflected in
28 this part.

29 § 21A12. Review and expiration.

30 (a) Review.--Upon completion of the disparity study

1 conducted under section 21A10 (relating to disparity study), the
2 department shall review the results and recommendations of the
3 disparity study and the operation of and evidentiary basis for
4 the program in order to determine whether the Commonwealth has a
5 continuing compelling interest in remedying discrimination
6 against small diverse businesses and midsize diverse businesses
7 in its marketplace, and the permissible scope of any narrowly
8 tailored remedies to redress discrimination against small
9 diverse businesses and midsize diverse businesses so that the
10 Commonwealth will not function as a passive participant in a
11 discriminatory marketplace.

12 (b) Expiration.--This chapter shall expire January 1, 2028,
13 unless the disparity study completed under section 21A10 shows a
14 statistically significant disparity in the utilization of small
15 diverse businesses and midsize diverse businesses. If the
16 disparity study shows a statistically significant disparity, the
17 program shall renew for an additional five years with the review
18 and expiration under this section each occurring every five
19 years thereafter until the disparity study shows no
20 statistically significant disparity in the utilization of small
21 diverse businesses and midsize diverse businesses.

22 Section 10. Section 303(a.4) of Title 74 is amended to read:

23 § 303. Diverse business participation.

24 * * *

25 (a.4) Construction.--Nothing in this section shall be
26 construed to supersede, nullify or otherwise affect 51 Pa.C.S. §
27 9603 (relating to [participation goal] Statewide participation
28 goal and aspirational target). In the case of an inconsistency
29 between this section and 51 Pa.C.S. Ch. 96 (relating to veteran-
30 owned small businesses), the provisions of 51 Pa.C.S. Ch. 96

1 shall prevail.

2 * * *

3 Section 11. This act shall take effect in 60 days.