

No. 2002-159

AN ACT

HB 878

Amending Title 62 (Procurement) of the Pennsylvania Consolidated Statutes, further providing for supplies manufactured and services performed by persons with disabilities.

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

Section 1. Section 520 of Title 62 of the Pennsylvania Consolidated Statutes is amended to read:

§ 520. Supplies manufactured and services performed by persons with disabilities.

(a) General rule.—

(1) Contracts for supplies manufactured by and services performed by persons with disabilities shall be entered into in accordance with this section without the requirement for competitive bidding. Persons with disabilities must make an appreciable contribution in manufacturing an item or performing a service.

(2) When the Commonwealth enters into a contract under this section with a cost exceeding \$300,000 per year, the department, in cooperation with the purchasing agency, shall conduct an annual review to confirm compliance with the contract and the requirements of this section. The annual review shall include, but not be limited to, an assessment of all requirements related to appreciable contribution. If the department, in cooperation with the purchasing agency, determines that persons with disabilities are not making an appreciable contribution in the manufacturing of an item or the performance of a service or an agency for persons with disabilities is not in compliance with other requirements of this section, the department shall give an agency for persons with disabilities 45 days in which to remedy the deficiency. If the agency for persons with disabilities fails to remedy the deficiency within 45 days, the agency for persons with disabilities shall be deemed to be in noncompliance with the contract, and the purchasing agency may terminate the contract and seek to procure the item or service through a competitive bidding process. Nothing in this section shall preclude a purchasing agency from procuring an item or service through an emergency contract when an agency for persons with disabilities is deemed to be in noncompliance.

(b) Fair market price.—Upon request [of] to the department and notice to the purchasing agency, the department shall determine the fair market price of any supply manufactured by or service performed by persons with

disabilities and offered for sale to any Commonwealth agency by an agency for persons with disabilities. The department shall revise the prices in accordance with changing market conditions.

(c) Distribution.—At the request of the department, the Department of Public Welfare or a nonprofit agency with the approval of the Department of Public Welfare shall facilitate the distribution of orders for supplies manufactured by or services performed by persons with disabilities among agencies for persons with disabilities.

(d) Procurement of supplies manufactured and services performed by persons with disabilities.—Except as provided in subsection (e), all supplies manufactured by and services furnished by persons with disabilities shall be procured in accordance with applicable specifications of the department or other Commonwealth agencies from any agency for persons with disabilities whenever the supplies and services are available at a price determined by the department to be the fair market price. The head of a purchasing agency shall annually discuss its needs for supplies or services with any agency for persons with disabilities.

(e) Procurement from Commonwealth agency.—If any supply manufactured by or any service performed by persons with disabilities and offered for sale is available for procurement from any Commonwealth agency and this part or any other statute requires the procurement of the supply or service from the Commonwealth agency, then the procurement of the supply or service shall be made in accordance with the other provisions.

(f) Exception.—Notwithstanding subsection (h), when the Commonwealth enters into a contract under this section for the operation of the Commonwealth's driver's license photo centers, at least 70% of the amount paid by the Commonwealth shall be used to cover payment of wages and salaries to persons with disabilities and to cover actual manufacturing costs, real estate lease costs, property insurance and other costs which are specifically required by contract.

(g) Application.—

(1) This section shall not supersede any contract currently in force between a Commonwealth agency and another party.

(2) Nothing in this section shall be construed as conferring upon any party any right or interest in any contract entered into with the Commonwealth.

(h) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Agency for persons with disabilities.” Any charitable, nonprofit agency incorporated under the laws of this Commonwealth and approved by the department through which persons with disabilities manufacture supplies or perform services in this Commonwealth.

“Appreciable contribution.”

(1) *In addition to paragraph (2), the department shall determine whether the contribution by individuals with disabilities is appreciable.*

Persons with disabilities must make an appreciable contribution in manufacturing a supply or performing a service.

(2) At least 75% of the personnel either engaged in the direct labor of manufacturing of a supply or engaged in the direct labor in performing a service in this Commonwealth must be visually impaired, mentally retarded or physically disabled. In addition, at least 75% of the amount paid by the Commonwealth agency for the supply or the service shall be remitted to the agency for persons with disabilities to cover payment of wages and salaries to persons with disabilities and to cover other actual manufacturing costs incurred by the agency for persons with disabilities in manufacturing of a supply.

“Manufactured.” The transformation of raw materials or the assembly of essential component parts or a combination of both in the production of a supply which is different in form, composition or character from the raw materials or the essential component parts. This definition applies only to the assembly of a supply.

“Mentally retarded.” Subaverage general intellectual functioning which originates during the developmental period and is associated with the impairment of maturation, learning or social adjustment.

“Performed.” Labor provided to do the work to fulfill the requirements of the contract.

“Persons with a disability.” A person who is visually impaired, mentally retarded or physically disabled.

“Physically disabled.” A limitation of most activities and functioning by virtue of a severe impairment of the various bodily systems which cannot be eliminated, modified or substantially reduced by the usual rehabilitation services and which precludes competitive employment.

“Services.” While “services” is defined in section 103 (relating to definitions), for the purposes of this section, the term specifically includes such packaging or repackaging which, as determined by the department, provides a substantial and real benefit to the Commonwealth agency which needs the supplies to be packaged or repackaged. When packaging or repackaging services are to be provided to a Commonwealth agency by an agency for persons with disabilities, the Commonwealth agency shall make the arrangements for the procurement of the supplies to be packaged or repackaged. Packaging or repackaging shall not be considered “services” if the manufacturer usually packages or repackages the supplies in the quantity required by the agency as a part of its manufacturing and distribution process. This definition applies only to the packaging or repackaging of a supply.

[“Supply manufactured by or service performed by person with disabilities.” At least 75% of the personnel either engaged in the direct labor of manufacturing of a product or engaged in the direct labor in performing a service in this Commonwealth must be visually impaired, mentally retarded or physically disabled. In addition, at least 75% of

the amount paid by the Commonwealth agency for the product or the service shall be remitted to the agency for persons with disabilities to cover payment of wages and salaries to persons with disabilities and to cover other actual manufacturing costs incurred by the agency for persons with disabilities in manufacturing of a product.]

“Visually impaired.” A condition in which central visual acuity does not exceed 20/200 in the better eye with correcting lenses or in which the widest diameter of the visual field subtends an angle no greater than 20 degrees.

Section 2. This act shall take effect in 30 days.

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER