

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 1449 Session of  
2023

---

INTRODUCED BY SIEGEL, KRUEGER, MALAGARI, PIELLI, HILL-EVANS,  
McNEILL, MADDEN, PROBST, SCHLOSSBERG, D. WILLIAMS, NEILSON,  
SHUSTERMAN, GUENST, DONAHUE, SANCHEZ, MERSKI, D. MILLER,  
CERRATO, CEPEDA-FREYTIZ, BOROWSKI, DELLOSO, WEBSTER, CIRESI,  
BRENNAN, OTTEN, KHAN AND T. DAVIS, JUNE 20, 2023

---

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JUNE 20, 2023

---

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, in source selection and contract formation,  
3 providing for additional qualifications for public work  
4 projects; imposing duties on the Office of State Inspector  
5 General; and imposing penalties.

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

8 Section 1. Chapter 5 of Title 62 of the Pennsylvania  
9 Consolidated Statutes is amended by adding a subchapter to read:

10 SUBCHAPTER D.1

11 ADDITIONAL QUALIFICATIONS FOR PUBLIC WORK PROJECTS

12 Sec.

13 539. Definitions.

14 539.1. Applicability.

15 539.2. Forms.

16 539.3. Responsibilities of purchasing agency.

17 539.4. Additional qualifications.

18 539.5. Enforcement, penalties and remedies.

1 539.6. Criminal penalty.

2 § 539. Definitions.

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

6 "Apprenticeship program." As follows:

7 (1) An apprenticeship training program that is approved  
8 by and registered with the Department of Labor and Industry  
9 under the act of July 14, 1961 (P.L.604, No.304), known as  
10 The Apprenticeship and Training Act, and that provides for  
11 on-the-job training, classroom training and the graduation of  
12 apprentice trainees to journeyperson status.

13 (2) The term includes an apprenticeship program subject  
14 to ERISA or a non-ERISA program.

15 "ERISA." The Employee Retirement Income Security Act of 1974  
16 (Public Law 93-406, 29 U.S.C. § 1001 et seq.).

17 "Public work contract." A contract for a public work  
18 project.

19 "Public work project." A project providing for any aspect of  
20 construction, reconstruction, demolition, alteration, repair or  
21 maintenance work completed under a contract or cooperative  
22 purchasing agreement by a Commonwealth agency, which costs at  
23 least \$300,000.

24 "Skilled craft laborer." A member of a trade who:

25 (1) is a journeyperson who has work experience  
26 equivalent to the total number of on-the-job training hours  
27 required by the applicable apprenticeship program; or

28 (2) graduated from or is currently enrolled in an  
29 apprenticeship program.

30 § 539.1. Applicability.

1 Notwithstanding any provision of law and this title, this  
2 subchapter shall apply to public work projects. The requirements  
3 of this subchapter are intended to supplement the requirements  
4 under this chapter.

5 § 539.2. Forms.

6 (a) Development of form.--The department shall develop a  
7 form that a contractor or subcontractor will certify compliance  
8 with all of the requirements specified under this subchapter.

9 (b) Completion and submission.--The form under this section  
10 must be completed by a contractor and submitted to a purchasing  
11 agency with an offer or bid.

12 (c) Subcontractor.--Forms must be completed by a  
13 subcontractor, regardless of tier, and submitted to the  
14 contractor and purchasing agency prior to commencing work on a  
15 public work project.

16 § 539.3. Responsibilities of purchasing agency.

17 A purchasing agency:

18 (1) Shall only award a public work contract to a  
19 contractor that meets the requirements of this subchapter.

20 (2) Shall review a form submitted by a contractor for  
21 compliance before awarding a public work contract.

22 (3) May require any additional information from a  
23 contractor that it deems necessary to evaluate compliance  
24 with this subchapter.

25 (4) Shall determine if each subcontractor on a  
26 subcontractor list provided under section 539.4(b) (relating  
27 to additional qualifications) meets the requirements of this  
28 subchapter. If the purchasing agency determines that a  
29 subcontractor does not meet the requirements of this  
30 subchapter, the purchasing agency shall inform the contractor

1 in writing of the determination and shall:

2 (i) Permit the contractor to substitute the  
3 subcontractor with a subcontractor that meets the  
4 requirements of this subchapter.

5 (ii) Disqualify the contractor if the subcontractor  
6 remains in noncompliance.

7 (5) Shall notify the contractor, in writing, whether a  
8 contractor or subcontractor meets or does not meet the  
9 requirements of this subchapter.

10 § 539.4. Additional qualifications.

11 (a) Requirements for public work project.--In addition to  
12 the requirements under this subchapter, to receive an award for  
13 or commence work on a public work project, a contractor or  
14 subcontractor, regardless of tier, shall:

15 (1) Maintain all registrations, certificates or other  
16 credentials required by Federal and State law and regulations  
17 that may be required to do business.

18 (2) Be in compliance with bonding and general liability  
19 insurance requirements required by law or contract  
20 specifications and with the act of June 2, 1915 (P.L.736,  
21 No.338), known as the Workers' Compensation Act, and the act  
22 of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1),  
23 known as the Unemployment Compensation Law.

24 (3) Within the previous three years, have not, after  
25 notice and appeal procedures specified in applicable law:

26 (i) been debarred or suspended by a Federal, State  
27 or local government agency or authority;

28 (ii) defaulted on a project;

29 (iii) had any business, contracting or trade  
30 license, registration or certification revoked or

1 suspended; or

2 (iv) been found in violation of any law applicable  
3 to its business, including licensing, tax, wage and hour,  
4 environmental or safety laws.

5 (4) Within the previous 10 years, have not been  
6 convicted of any crime relating to its business.

7 (5) Ensure that all construction workers employed on the  
8 public work project and the prime contractor or onsite  
9 supervisor have completed the Occupational Safety and Health  
10 Administration 10-hour construction training course  
11 established by the United States Department of Labor.

12 (6) Participate in an apprenticeship program for each  
13 specific trade or classification employed by the contractor  
14 on the project.

15 (7) Provide a list of all crafts or classifications for  
16 all construction workers that it will employ on the public  
17 work project and the names and addresses of the applicable  
18 apprenticeship programs.

19 (8) Have all other resources, including equipment,  
20 personnel and financial resources, to successfully perform  
21 the public work contract or subcontract and to maintain  
22 capabilities throughout the duration of the public work  
23 project or obtain these resources through the use of  
24 subcontractors or vendors.

25 (9) Notify the purchasing agency within seven days of  
26 any material changes in its operation that impact compliance  
27 with this subsection.

28 (10) For the previous five years, disclose any  
29 fictitious name changes or controlling interests by another  
30 company or business entity.

1 (b) Contractors.--A contractor shall:

2 (1) Submit a subcontractor list to the purchasing agency  
3 that provides the name and address of the subcontractors that  
4 it intends to use on the public work project and the scope of  
5 work assigned to each subcontractor. The contractor shall  
6 only use subcontractors identified on the list and may  
7 request written authorization from the purchasing agency to  
8 substitute or add subcontractors.

9 (2) Ensure that 70% of workers employed for the  
10 construction of a public work project are skilled craft  
11 laborers.

12 § 539.5. Enforcement, penalties and remedies.

13 (a) Termination and forfeiture of money.--If a purchasing  
14 agency determines that a contractor has knowingly falsified a  
15 compliance form or failed to meet additional qualifications  
16 under section 539.4 (relating to additional qualifications), the  
17 purchasing agency may terminate the public work contract, and  
18 all money due or to become due to the contractor may be  
19 forfeited as a violation of the terms and conditions of the  
20 contract.

21 (b) Enforcement by Office of State Inspector General.--In  
22 addition to the responsibilities assigned to a purchasing agency  
23 under this subchapter, the Office of State Inspector General  
24 shall provide supplemental enforcement by:

25 (1) Accepting, reviewing and investigating in a timely  
26 manner any credible complaint that a contractor has violated  
27 a provision of this subchapter.

28 (2) Conducting complaint-based and random audits of  
29 contracts covered by this subchapter to ensure compliance.

30 (c) Penalties imposed by Office of State Inspector

1 General.--If the Office of State Inspector General finds that a  
2 contractor has knowingly falsified a compliance form or failed  
3 to meet the additional qualifications under section 539.4, the  
4 Office of State Inspector General shall:

5 (1) Assess an administrative fine of \$1,000 for a first  
6 offense and up to \$25,000 for a subsequent offense, depending  
7 on the severity of the violation.

8 (2) Notify the purchasing agency and require  
9 cancellation or termination of the public work contract at no  
10 fault to the purchasing agency.

11 (3) Refer all identified or suspected violations of  
12 existing wage and hour, safety, procurement or other laws to  
13 the appropriate Federal or State agency for additional  
14 enforcement.

15 (d) Cooperative agreements.--To the extent permitted by  
16 Federal and State law, the Office of State Inspector General or  
17 purchasing agencies may enter into cooperative agreements with  
18 purchasing agencies to facilitate information sharing and  
19 enforcement of the requirements of this subchapter.

20 (e) Notice and hearing.--Enforcement actions under this  
21 section may be appealed in accordance with 2 Pa.C.S. (relating  
22 to administrative law and procedure).

23 § 539.6. Criminal penalty.

24 An individual or contractor who knowingly submits a form or  
25 other information to the purchasing agency under this subchapter  
26 which is false in any material manner shall be guilty of a  
27 misdemeanor in accordance with 18 Pa.C.S. § 4903 (relating to  
28 false swearing) and shall be subject to a fine not to exceed  
29 \$1,000.

30 Section 2. The addition of 62 Pa.C.S. Ch. 5 Subch. D.1 shall

1 apply to bids or proposals made on or after the date that is one  
2 year after the effective date of this section.

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