

SENATE No. 1468

The Commonwealth of Massachusetts

SENATE, May 5, 1976.

The committee on State Administration, to whom was referred the petition (accompanied by bill, Senate, No. 1029) of Bill Owens and members of the House of Representatives for legislation to amend the authority and responsibility of the Secretary of Administration and Finance relative to state purchasing reports the accompanying bill (Senate, No. 1468).

For the Committee,

ALAN D. SISITSKY

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Six.

AN ACT CONCERNING THE CREATION OF A MASSACHUSETTS SMALL BUSINESS PURCHASING ACT.

Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, as follows:

1 SECTION 1. The Legislature hereby declares that it serves
2 a public purpose, and is of benefit to the state, to promote
3 and facilitate the fullest possible participation by all citizens
4 in the affairs of the Commonwealth of Massachusetts and it
5 is desirable to improve the economy of the Commonwealth of
6 Massachusetts in every possible way. It is also essential that
7 opportunity is provided for full participation in our free enter-
8 prise system by small business enterprises.

9 It is the declared policy of the Legislature that the state
10 should aid, counsel, assist, and protect, insofar as is possible,
11 the interests of small business concerns in order to preserve
12 free competitive enterprise and to ensure that a fair propor-
13 tion of the total purchases and contracts or subcontracts for
14 property and services for the state be placed with small
15 business enterprises.

1 SECTION 2. The following words shall have the following
2 meanings, unless the context clearly requires otherwise:

3 1. THE COMMISSIONER: The Commissioner of Com-
4 merce and Development.

5 2. THE PROGRAM: The program established by the Chap-
6 ter providing for certain purchases by the Commonwealth
7 being made only from small businesses as herein defined.

8 3. PURCHASES: A contract by which a purchasing agency
9 agrees to buy goods and/or services from a specified vendor
10 at a specified price and according to various specified condi-
11 tions.

12 4. PURCHASING AGENCY: Any agency, department,
13 board, commission, office, or authority of the Commonwealth
14 empowered by law to purchase goods and/or services.

15 5. THE SECRETARY: The Secretary of Administration
16 and Finance.

17 6. SMALL BUSINESS: A business which is independently
18 owned and operated, has its principal place of business in
19 Massachusetts, which is not dominant in its field of operation,
20 and is not a corporation which is a member of an affiliated
21 group. An "affiliated group" means one or more chains of
22 corporations connected through ownership with a common
23 parent corporation if:

24 a) Stock possessing at least 20% of the voting power of all
25 classes of stock and at least 20% of each class of the non-
26 voting stock of each of the members of the affiliated group
27 (except the common parent corporation) is owned directly by
28 one or more of the other members of the affiliated group;

29 b) the common parent corporation owns directly stock
30 possessing at least 20% of the voting power of all classes of
31 stock and at least 20% of each class of the non-voting stock
32 of at least one of the other members of the affiliated group.

33 As used in this definition, the term "stock" does not include
34 non-voting stock which is limited and preferred as to
35 dividends.

36 In addition, the Secretary, after consultation with the Com-
37 missioner, shall establish more detailed definitions which shall
38 use, among other things, sales volume and number of em-
39 ployees. The definitions may vary from industry to industry
40 to the extent necessary to reflect differing characteristics of
41 such industries.

42 Such definitions shall be established within 120 days after
43 passage of this Act and adopted as regulations after notice and
44 hearing in accordance with section 2 of Chapter 30A, and
45 shall be subject to sections 4 through 8 of said Chapter 30A,
46 and shall be further subject to review and approval by the
47 Joint Committee on State Administration of the General
48 Court.

1 SECTION 3. The provisions of this Act shall apply to all
2 small business purchases which the Secretary institutes
3 pursuant to this program, notwithstanding the provisions of
4 sections 44A through 44L of Chapter 149, section 39M of

5 Chapter 30, sections 22 through 23A of Chapter 7, section
6 29A of Chapter 29 of the General Laws, or any other law or
7 regulation concerning the authority for and the procedure for
8 state purchasing.

9 To further the goals outlined in Section one, the Secretary
10 shall establish and implement a program by which certain
11 purchases of goods and services by the Commonwealth shall
12 be made only from small businesses. The program shall apply
13 to all Purchasing Agencies. The Secretary, after consultation
14 with the Commissioner, shall promulgate rules and regulations
15 establishing guidelines for determining which purchases by
16 such Agencies shall be eligible for the program; and, further,
17 the Secretary shall promulgate rules and regulations establish-
18 ing a prequalification process to determine businesses which
19 are eligible for the program. Such rules and regulations shall
20 be established within 120 days after passage of this Act and
21 adopted in accordance with section 2 of Chapter 30A, and
22 shall be subject to sections 4 through 8 of said Chapter 30A,
23 and shall be further subject to review and approval by the
24 Joint Committee on State Administration of the General
25 Court.

26 In order to minimize small business dependence on the pro-
27 gram, any small business which has been awarded five con-
28 tracts of \$3,000 or more each under the program shall be
29 ineligible for further participation. Technical assistance will
30 be provided to a small business making the transition to
31 bidding in the open, competitive market.

32 It shall be the responsibility of the chief administrative
33 officer of each Purchasing Agency in consultation with the
34 Commissioner to determine which purchases, consistent with
35 the Secretary's rules and regulations, shall be included in the
36 program; provided, however, that it shall be the responsibility
37 of the Secretary to ensure that, with respect to each fiscal
38 year, the aggregate amount of the purchases included in this
39 program shall equal or exceed five per cent of the aggregate
40 amount of all purchases made by the Commonwealth; and
41 provided, further, that the Secretary shall have the authority
42 to include specific purchases in the program, irrespective of
43 which Purchasing Agency is making the particular purchases,

44 if such action is necessary in the Secretary's Judgment to
45 ensure that the five per cent minimum is met or exceeded.
46 It shall further be the responsibility of the Secretary to ensure
47 that participants in the program include small businesses
48 which are beneficially owned and controlled by one or more
49 minority individuals; provided, that minority groups for this
50 purpose shall be blacks, orientals,

1 SECTION 4. Purchases to be made as part of the program
2 shall be so advertised when requests for bids are published.
3 Said purchases shall be made by awarding the purchase to
4 the lowest responsible bidder among the small businesses
5 submitting bids. The Purchasing Agency may reject any or
6 all bids if such agency believes it to be in the public interest.

7 Certification of the lowest responsible bidder shall be the
8 responsibility of the chief administrative officer of the Pur-
9 chasing Agency which is making the particular purchase. No
10 such certification shall be made unless at least two small
11 businesses shall have submitted bids for the particular pur-
12 chase.

1 SECTION 5. The Secretary shall be responsible for establish-
2 ing a procedure for administering and paying for the pur-
3 chases made under the program. Said procedure shall involve
4 the very minimum necessary paper work and the shortest
5 possible period between request for payment and receipt of
6 payment. In order to affect the purposes of this Section, the
7 Purchasing Agency, having selected the lowest responsible
8 bidder, and having entered into a contract therewith, may
9 assign said contract to the Secretary for administration. Such
10 procedure may also provide for the delegation of the purchase
11 to the Secretary by the Purchasing Agency, such delegation
12 to include the responsibility for requesting bids, awarding the
13 purchase and meeting the requirements of this Section.

1 SECTION 6. The Secretary, in consultation with the Com-
2 missioner, shall be responsible for carrying out any respon-
3 sibilities conferred upon him in accordance with Section five
4 of this Act. The Secretary may enter into contracts and agree-
5 ments with, and accept gifts, grants, contributions, and

6 bequests of funds from any department, agency or sub-
7 division of federal, county, or municipal government and any
8 individual, foundation, corporation, association, or public
9 authority for the purpose of providing or receiving services,
10 facilities, or staff assistance in connection with the implemen-
11 tation of this program. Such funds shall be deposited with the
12 conditions of the gift, grant, contribution, or bequest, without
13 specific appropriation. The Secretary may expend for services
14 and other expenses any amount that the General Court may
15 appropriate therefor.

1 SECTION 7. The Commissioner shall:

2 1. Compile and maintain a comprehensive bidders list of
3 small businesses. In this duty it shall cooperate with the United
4 States Small Business Administration and other public or
5 private agencies in locating potential sources for various
6 products and services;

7 2. Seek out and encourage small businesses to bid on pur-
8 chases to be made by the Commonwealth, including purchases
9 to be made under the program;

10 3. Provide instruction and technical assistance to small
11 businesses to assist them in conducting business with the
12 Commonwealth;

13 4. Make recommendations for the simplification of procure-
14 ment specifications and terms in order to increase the oppor-
15 tunities for small business participation.

16 5. Assist the Secretary, when requested, in determining
17 the responsibility of potential participants and bidders in the
18 program;

19 6. Act as an advocate within state government for small
20 businesses which have been awarded purchases by a Pur-
21 chasing Agency.

1 SECTION 8. The Secretary shall annually, before December 1,
2 report in writing to the General Court the measures he has
3 taken concerning the implementation of the program. The
4 report shall include the total dollar amount and number of
5 contracts awarded during the preceding fiscal year.

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