



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2343

Introduced 2/26/2021, by Sen. Kimberly A. Lightford

SYNOPSIS AS INTRODUCED:

30 ILCS 575/2

30 ILCS 575/3.5 new

30 ILCS 575/7

from Ch. 127, par. 132.607

30 ILCS 575/8

from Ch. 127, par. 132.608

Amends the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Defines "good faith effort" for purposes of the Act. Provides factors for determining whether a good faith effort has been made for purposes of granting a waiver under the Act. Provides for a uniform standard of contract goals for State agencies, public institutions of higher education, and other departments. Specifies further requirements concerning the uniform standard of contract goals. Provides that the terms of every contract entered into by a State agency or public institution of higher education for purposes of the Act shall include a provision requiring vendors who fail to comply with a utilization plan to return all funds paid to that vendor with an expectation of compliance. Provides that the Business Enterprise Council may (rather than shall) grant a waiver under specified circumstances. Makes conforming changes.

LRB102 17326 RJF 22816 b

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Business Enterprise for Minorities, Women,
5 and Persons with Disabilities Act is amended by changing
6 Sections 2, 7, and 8 and by adding Section 3.5 as follows:

7 (30 ILCS 575/2)

8 (Section scheduled to be repealed on June 30, 2024)

9 Sec. 2. Definitions.

10 (A) For the purpose of this Act, the following terms shall
11 have the following definitions:

12 (1) "Minority person" shall mean a person who is a
13 citizen or lawful permanent resident of the United States
14 and who is any of the following:

15 (a) American Indian or Alaska Native (a person
16 having origins in any of the original peoples of North
17 and South America, including Central America, and who
18 maintains tribal affiliation or community attachment).

19 (b) Asian (a person having origins in any of the
20 original peoples of the Far East, Southeast Asia, or
21 the Indian subcontinent, including, but not limited
22 to, Cambodia, China, India, Japan, Korea, Malaysia,
23 Pakistan, the Philippine Islands, Thailand, and

1 Vietnam).

2 (c) Black or African American (a person having
3 origins in any of the black racial groups of Africa).

4 (d) Hispanic or Latino (a person of Cuban,
5 Mexican, Puerto Rican, South or Central American, or
6 other Spanish culture or origin, regardless of race).

7 (e) Native Hawaiian or Other Pacific Islander (a
8 person having origins in any of the original peoples
9 of Hawaii, Guam, Samoa, or other Pacific Islands).

10 (2) "Woman" shall mean a person who is a citizen or
11 lawful permanent resident of the United States and who is
12 of the female gender.

13 (2.05) "Person with a disability" means a person who
14 is a citizen or lawful resident of the United States and is
15 a person qualifying as a person with a disability under
16 subdivision (2.1) of this subsection (A).

17 (2.1) "Person with a disability" means a person with a
18 severe physical or mental disability that:

19 (a) results from:

20 amputation,

21 arthritis,

22 autism,

23 blindness,

24 burn injury,

25 cancer,

26 cerebral palsy,

1 Crohn's disease,
2 cystic fibrosis,
3 deafness,
4 head injury,
5 heart disease,
6 hemiplegia,
7 hemophilia,
8 respiratory or pulmonary dysfunction,
9 an intellectual disability,
10 mental illness,
11 multiple sclerosis,
12 muscular dystrophy,
13 musculoskeletal disorders,
14 neurological disorders, including stroke and
15 epilepsy,
16 paraplegia,
17 quadriplegia and other spinal cord conditions,
18 sickle cell anemia,
19 ulcerative colitis,
20 specific learning disabilities, or
21 end stage renal failure disease; and
22 (b) substantially limits one or more of the
23 person's major life activities.

24 Another disability or combination of disabilities may
25 also be considered as a severe disability for the purposes
26 of item (a) of this subdivision (2.1) if it is determined

1 by an evaluation of rehabilitation potential to cause a
2 comparable degree of substantial functional limitation
3 similar to the specific list of disabilities listed in
4 item (a) of this subdivision (2.1).

5 (3) "Minority-owned business" means a business which
6 is at least 51% owned by one or more minority persons, or
7 in the case of a corporation, at least 51% of the stock in
8 which is owned by one or more minority persons; and the
9 management and daily business operations of which are
10 controlled by one or more of the minority individuals who
11 own it.

12 (4) "Women-owned business" means a business which is
13 at least 51% owned by one or more women, or, in the case of
14 a corporation, at least 51% of the stock in which is owned
15 by one or more women; and the management and daily
16 business operations of which are controlled by one or more
17 of the women who own it.

18 (4.1) "Business owned by a person with a disability"
19 means a business that is at least 51% owned by one or more
20 persons with a disability and the management and daily
21 business operations of which are controlled by one or more
22 of the persons with disabilities who own it. A
23 not-for-profit agency for persons with disabilities that
24 is exempt from taxation under Section 501 of the Internal
25 Revenue Code of 1986 is also considered a "business owned
26 by a person with a disability".

1 (4.2) "Council" means the Business Enterprise Council
2 for Minorities, Women, and Persons with Disabilities
3 created under Section 5 of this Act.

4 (5) "State contracts" means all contracts entered into
5 by the State, any agency or department thereof, or any
6 public institution of higher education, including
7 community college districts, regardless of the source of
8 the funds with which the contracts are paid, which are not
9 subject to federal reimbursement. "State contracts" does
10 not include contracts awarded by a retirement system,
11 pension fund, or investment board subject to Section
12 1-109.1 of the Illinois Pension Code. This definition
13 shall control over any existing definition under this Act
14 or applicable administrative rule.

15 "State construction contracts" means all State
16 contracts entered into by a State agency or public
17 institution of higher education for the repair,
18 remodeling, renovation or construction of a building or
19 structure, or for the construction or maintenance of a
20 highway defined in Article 2 of the Illinois Highway Code.

21 (6) "State agencies" shall mean all departments,
22 officers, boards, commissions, institutions and bodies
23 politic and corporate of the State, but does not include
24 the Board of Trustees of the University of Illinois, the
25 Board of Trustees of Southern Illinois University, the
26 Board of Trustees of Chicago State University, the Board

1 of Trustees of Eastern Illinois University, the Board of
2 Trustees of Governors State University, the Board of
3 Trustees of Illinois State University, the Board of
4 Trustees of Northeastern Illinois University, the Board of
5 Trustees of Northern Illinois University, the Board of
6 Trustees of Western Illinois University, municipalities or
7 other local governmental units, or other State
8 constitutional officers.

9 (7) "Public institutions of higher education" means
10 the University of Illinois, Southern Illinois University,
11 Chicago State University, Eastern Illinois University,
12 Governors State University, Illinois State University,
13 Northeastern Illinois University, Northern Illinois
14 University, Western Illinois University, the public
15 community colleges of the State, and any other public
16 universities, colleges, and community colleges now or
17 hereafter established or authorized by the General
18 Assembly.

19 (8) "Certification" means a determination made by the
20 Council or by one delegated authority from the Council to
21 make certifications, or by a State agency with statutory
22 authority to make such a certification, that a business
23 entity is a business owned by a minority, woman, or person
24 with a disability for whatever purpose. A business owned
25 and controlled by women shall be certified as a
26 "woman-owned business". A business owned and controlled by

1 women who are also minorities shall be certified as both a
2 "women-owned business" and a "minority-owned business".

3 (9) "Control" means the exclusive or ultimate and sole
4 control of the business including, but not limited to,
5 capital investment and all other financial matters,
6 property, acquisitions, contract negotiations, legal
7 matters, officer-director-employee selection and
8 comprehensive hiring, operating responsibilities,
9 cost-control matters, income and dividend matters,
10 financial transactions and rights of other shareholders or
11 joint partners. Control shall be real, substantial and
12 continuing, not pro forma. Control shall include the power
13 to direct or cause the direction of the management and
14 policies of the business and to make the day-to-day as
15 well as major decisions in matters of policy, management
16 and operations. Control shall be exemplified by possessing
17 the requisite knowledge and expertise to run the
18 particular business and control shall not include simple
19 majority or absentee ownership.

20 (10) "Business" means a business that has annual gross
21 sales of less than \$75,000,000 as evidenced by the federal
22 income tax return of the business. A firm with gross sales
23 in excess of this cap may apply to the Council for
24 certification for a particular contract if the firm can
25 demonstrate that the contract would have significant
26 impact on businesses owned by minorities, women, or

1 persons with disabilities as suppliers or subcontractors
2 or in employment of minorities, women, or persons with
3 disabilities.

4 (11) "Utilization plan" means a form and additional
5 documentations included in all bids or proposals that
6 demonstrates a vendor's proposed utilization of vendors
7 certified by the Business Enterprise Program to meet the
8 targeted goal. The utilization plan shall demonstrate that
9 the Vendor has either: (1) met the entire contract goal or
10 (2) requested a full or partial waiver, which may be
11 granted upon showing ~~and made~~ good faith efforts towards
12 meeting the goal.

13 (12) "Business Enterprise Program" means the Business
14 Enterprise Program of the Department of Central Management
15 Services.

16 (13) "Good faith effort" means that a contractor has
17 taken all necessary steps to comply with the goals for
18 participation by businesses owned by minorities, women,
19 and persons with disabilities as provided under this Act.
20 In determining whether a good faith effort has been made
21 for purposes of granting a waiver under this Act, the
22 Council shall consider all of the following factors:

23 (a) Soliciting through reasonable and available
24 means the interest of businesses certified under this
25 Act that have the capability to perform the work of the
26 contract. The contractor must solicit this interest

1 within sufficient time to allow certified businesses
2 to respond. The contractor must take appropriate steps
3 to follow up initial solicitations with interested
4 certified businesses.

5 (b) Providing interested certified businesses with
6 adequate information about the plans, specifications,
7 and requirements of the contract, including addenda,
8 in a timely manner to assist them in responding to the
9 solicitation.

10 (c) Negotiating in good faith with interested
11 certified businesses that have submitted bids.
12 Documentation of negotiation must include the names,
13 addresses, and telephone numbers of certified
14 businesses that were solicited; the date of each such
15 solicitation; a description of the information
16 provided regarding the plans and specifications for
17 the work selected for subcontracting; and evidence as
18 to why agreements could not be reached with certified
19 businesses to perform the work. That there may be some
20 additional costs involved in soliciting and using
21 certified businesses is not a sufficient reason for a
22 contractor's failure to meet the goals, as long as
23 such costs are reasonable.

24 (d) Not rejecting certified businesses as being
25 unqualified without sound reasons based on a thorough
26 investigation of their capabilities. The certified

1 business' standing within its industry, membership in
2 specific groups, organizations, or associations, and
3 political or social affiliations are not legitimate
4 causes for rejecting or not soliciting bids to meet
5 the goals.

6 (e) Making a portion of the work available to
7 certified business subcontractors and suppliers and
8 selecting the portions of the work or material
9 consistent with the available certified business
10 subcontractors and suppliers, so as to facilitate
11 meeting the goals.

12 (f) Making good faith efforts to utilize certified
13 businesses, despite the ability or desire of a
14 contractor to perform the work of a contract with its
15 own organization. A contractor who desires to
16 self-perform the work of a contract must demonstrate
17 good faith efforts unless the goals have been met.

18 (g) Selecting portions of the work to be performed
19 by certified businesses in order to increase the
20 likelihood that the goals will be met. This includes,
21 when appropriate, breaking out contract work items
22 into economically feasible units to facilitate
23 certified business participation, even when the
24 contractor might otherwise prefer to perform these
25 work items with its own forces.

26 (h) Making efforts to assist interested certified

1 businesses in obtaining any required bonding, lines of
2 credit, or insurance.

3 (i) Making efforts to assist interested certified
4 businesses in obtaining necessary equipment, supplies,
5 materials, or related assistance or services.

6 (j) Effectively using the services of the State;
7 minority or women community organizations; minority or
8 women contractors' groups; local, state, and federal
9 minority or women business assistance offices; and
10 other organizations to provide assistance in the
11 recruitment and placement of certified businesses.

12 (k) Affected by State or local action that caused
13 the shortfall, such as a change in the scope of work
14 that eliminated certified business budget line items,
15 or an increase in the scope of work covered by line
16 items being performed by non-certified business
17 contractors, or a change in specifications.

18 (l) Unable to obtain certified business
19 participation without requiring the introduction of
20 extra participants not performing a commercially
21 useful function.

22 (m) Making efforts to utilize appropriate forums
23 for purposes of advertising subcontracting
24 opportunities suitable for certified businesses.

25 (B) When a business is owned at least 51% by any
26 combination of minority persons, women, or persons with

1 disabilities, even though none of the 3 classes alone holds at
2 least a 51% interest, the ownership requirement for purposes
3 of this Act is considered to be met. The certification
4 category for the business is that of the class holding the
5 largest ownership interest in the business. If 2 or more
6 classes have equal ownership interests, the certification
7 category shall be determined by the business.

8 (Source: P.A. 100-391, eff. 8-25-17; 101-601, eff. 1-1-20.)

9 (30 ILCS 575/3.5 new)

10 Sec. 3.5. Uniform standard of contract goals.

11 (a) There shall be established across all State agencies,
12 all public institutions of higher education, and all
13 departments, a uniform contract goal standard.

14 (b) No State agency, public institution of higher
15 education, or department shall maintain a policy of awarding
16 State contracts to minorities, women, and persons with a
17 disability that does not conform to or is less stringent than
18 the contract goals set forth under this Act.

19 (c) Each State agency, public institution of higher
20 education, and department subject to the requirements of this
21 Act shall, on an annual basis, submit a report to the Council
22 detailing its plan to meet the contract goals established
23 under this Act and established for that agency, institution,
24 or department.

25 (d) Any State agency, public institution of higher

1 education, or department failing to meet its proposed goals
2 shall have its budgetary funding automatically reduced by a
3 percentage equivalent to the difference between the proposed
4 goal and what it actually achieved.

5 (30 ILCS 575/7) (from Ch. 127, par. 132.607)

6 (Section scheduled to be repealed on June 30, 2024)

7 Sec. 7. Exemptions; waivers; publication of data.

8 (1) Individual contract exemptions. The Council, at the
9 written request of the affected agency, public institution of
10 higher education, or recipient of a grant or loan of State
11 funds of \$250,000 or more complying with Section 45 of the
12 State Finance Act, may permit an individual contract or
13 contract package, (related contracts being bid or awarded
14 simultaneously for the same project or improvements) be made
15 wholly or partially exempt from State contracting goals for
16 businesses owned by minorities, women, and persons with
17 disabilities prior to the advertisement for bids or
18 solicitation of proposals whenever there has been a
19 determination, reduced to writing and based on the best
20 information available at the time of the determination, that
21 there is an insufficient number of businesses owned by
22 minorities, women, and persons with disabilities to ensure
23 adequate competition and an expectation of reasonable prices
24 on bids or proposals solicited for the individual contract or
25 contract package in question. Any such exemptions shall be

1 given by the Council to the Bureau on Apprenticeship Programs.

2 (a) Written request for contract exemption. A written
3 request for an individual contract exemption must include,
4 but is not limited to, the following:

5 (i) a list of eligible businesses owned by
6 minorities, women, and persons with disabilities;

7 (ii) a clear demonstration that the number of
8 eligible businesses identified in subparagraph (i)
9 above is insufficient to ensure adequate competition;

10 (iii) the difference in cost between the contract
11 proposals being offered by businesses owned by
12 minorities, women, and persons with disabilities and
13 the agency or public institution of higher education's
14 expectations of reasonable prices on bids or proposals
15 within that class; and

16 (iv) a list of eligible businesses owned by
17 minorities, women, and persons with disabilities that
18 the contractor has used in the current and prior
19 fiscal years.

20 (b) Determination. The Council's determination
21 concerning an individual contract exemption must consider,
22 at a minimum, the following:

23 (i) the justification for the requested exemption,
24 including whether diligent efforts were undertaken to
25 identify and solicit eligible businesses owned by
26 minorities, women, and persons with disabilities;

1 (ii) the total number of exemptions granted to the
2 affected agency, public institution of higher
3 education, or recipient of a grant or loan of State
4 funds of \$250,000 or more complying with Section 45 of
5 the State Finance Act that have been granted by the
6 Council in the current and prior fiscal years; and

7 (iii) the percentage of contracts awarded by the
8 agency or public institution of higher education to
9 eligible businesses owned by minorities, women, and
10 persons with disabilities in the current and prior
11 fiscal years.

12 (2) Class exemptions.

13 (a) Creation. The Council, at the written request of
14 the affected agency or public institution of higher
15 education, may permit an entire class of contracts be made
16 exempt from State contracting goals for businesses owned
17 by minorities, women, and persons with disabilities
18 whenever there has been a determination, reduced to
19 writing and based on the best information available at the
20 time of the determination, that there is an insufficient
21 number of qualified businesses owned by minorities, women,
22 and persons with disabilities to ensure adequate
23 competition and an expectation of reasonable prices on
24 bids or proposals within that class. Any such exemption
25 shall be given by the Council to the Bureau on
26 Apprenticeship Programs.

1 (a-1) Written request for class exemption. A written
2 request for a class exemption must include, but is not
3 limited to, the following:

4 (i) a list of eligible businesses owned by
5 minorities, women, and persons with disabilities;

6 (ii) a clear demonstration that the number of
7 eligible businesses identified in subparagraph (i)
8 above is insufficient to ensure adequate competition;

9 (iii) the difference in cost between the contract
10 proposals being offered by eligible businesses owned
11 by minorities, women, and persons with disabilities
12 and the agency or public institution of higher
13 education's expectations of reasonable prices on bids
14 or proposals within that class; and

15 (iv) the number of class exemptions the affected
16 agency or public institution of higher education
17 requested in the current and prior fiscal years.

18 (a-2) Determination. The Council's determination
19 concerning class exemptions must consider, at a minimum,
20 the following:

21 (i) the justification for the requested exemption,
22 including whether diligent efforts were undertaken to
23 identify and solicit eligible businesses owned by
24 minorities, women, and persons with disabilities;

25 (ii) the total number of class exemptions granted
26 to the requesting agency or public institution of

1 higher education that have been granted by the Council
2 in the current and prior fiscal years; and

3 (iii) the percentage of contracts awarded by the
4 agency or public institution of higher education to
5 eligible businesses owned by minorities, women, and
6 persons with disabilities the current and prior fiscal
7 years.

8 (b) Limitation. Any such class exemption shall not be
9 permitted for a period of more than one year at a time.

10 (3) Waivers. Where a particular contract requires a
11 contractor to meet a goal established pursuant to this Act,
12 the contractor shall have the right to request a waiver from
13 such requirements. The Council may ~~shall~~ grant the waiver
14 where the contractor demonstrates that there has been made a
15 good faith effort to comply with the goals for participation
16 by businesses owned by minorities, women, and persons with
17 disabilities. Any such waiver may ~~shall~~ also be transmitted in
18 writing to the Bureau on Apprenticeship Programs.

19 (a) Request for waiver. A contractor's request for a
20 waiver under this subsection (3) must include, but is not
21 limited to, the following, if available:

22 (i) a list of eligible businesses owned by
23 minorities, women, and persons with disabilities that
24 pertain to the class of contracts in the requested
25 waiver;

26 (ii) a clear demonstration that the number of

1 eligible businesses identified in subparagraph (i)
2 above is insufficient to ensure competition;

3 (iii) the difference in cost between the contract
4 proposals being offered by businesses owned by
5 minorities, women, and persons with disabilities and
6 the agency or the public institution of higher
7 education's expectations of reasonable prices on bids
8 or proposals within that class; and

9 (iv) a list of businesses owned by minorities,
10 women, and persons with disabilities that the
11 contractor has used in the current and prior fiscal
12 years.

13 (b) Determination. The Council's determination
14 concerning waivers must include following:

15 (i) the justification for the requested waiver,
16 including whether the requesting contractor made a
17 good faith effort to identify and solicit eligible
18 businesses owned by minorities, women, and persons
19 with disabilities;

20 (ii) the total number of waivers the contractor
21 has been granted by the Council in the current and
22 prior fiscal years;

23 (iii) the percentage of contracts awarded by the
24 agency or public institution of higher education to
25 eligible businesses owned by minorities, women, and
26 persons with disabilities in the current and prior

1 fiscal years; and

2 (iv) the contractor's use of businesses owned by
3 minorities, women, and persons with disabilities in
4 the current and prior fiscal years.

5 (3.5) (Blank).

6 (4) Conflict with other laws. In the event that any State
7 contract, which otherwise would be subject to the provisions
8 of this Act, is or becomes subject to federal laws or
9 regulations which conflict with the provisions of this Act or
10 actions of the State taken pursuant hereto, the provisions of
11 the federal laws or regulations shall apply and the contract
12 shall be interpreted and enforced accordingly.

13 (5) Each chief procurement officer, as defined in the
14 Illinois Procurement Code, shall maintain on his or her
15 official Internet website a database of the following: (i)
16 waivers granted under this Section with respect to contracts
17 under his or her jurisdiction; (ii) a State agency or public
18 institution of higher education's written request for an
19 exemption of an individual contract or an entire class of
20 contracts; and (iii) the Council's written determination
21 granting or denying a request for an exemption of an
22 individual contract or an entire class of contracts. The
23 database, which shall be updated periodically as necessary,
24 shall be searchable by contractor name and by contracting
25 State agency.

26 (6) Each chief procurement officer, as defined by the

1 Illinois Procurement Code, shall maintain on its website a
2 list of all firms that have been prohibited from bidding,
3 offering, or entering into a contract with the State of
4 Illinois as a result of violations of this Act.

5 Each public notice required by law of the award of a State
6 contract shall include for each bid or offer submitted for
7 that contract the following: (i) the bidder's or offeror's
8 name, (ii) the bid amount, (iii) the name or names of the
9 certified firms identified in the bidder's or offeror's
10 submitted utilization plan, and (iv) the bid's amount and
11 percentage of the contract awarded to businesses owned by
12 minorities, women, and persons with disabilities identified in
13 the utilization plan.

14 (Source: P.A. 100-391, eff. 8-25-17; 101-170, eff. 1-1-20;
15 101-601, eff. 1-1-20.)

16 (30 ILCS 575/8) (from Ch. 127, par. 132.608)

17 (Section scheduled to be repealed on June 30, 2024)

18 Sec. 8. Enforcement.

19 (1) The Council shall make such findings, recommendations
20 and proposals to the Governor as are necessary and appropriate
21 to enforce this Act. If, as a result of its monitoring
22 activities, the Council determines that its goals and policies
23 are not being met by any State agency or public institution of
24 higher education, the Council may recommend any or all of the
25 following actions:

1 (a) Establish enforcement procedures whereby the
2 Council may recommend to the appropriate State agency,
3 public institutions of higher education, or law
4 enforcement officer that legal or administrative remedies
5 be initiated for violations of contract provisions or
6 rules issued hereunder or by a contracting State agency or
7 public institutions of higher education. State agencies
8 and public institutions of higher education shall be
9 authorized to adopt remedies for such violations which
10 shall include (1) termination of the contract involved,
11 (2) prohibition of participation of the respondents in
12 public contracts for a period not to exceed one year, (3)
13 imposition of a penalty not to exceed any profit acquired
14 as a result of violation, or (4) any combination thereof.

15 (b) If the Council concludes that a compliance plan
16 submitted under Section 6 is unlikely to produce the
17 participation goals for businesses owned by minorities,
18 women, and persons with disabilities within the then
19 current fiscal year, the Council may recommend that the
20 State agency or public institution of higher education
21 revise its plan to provide additional opportunities for
22 participation by businesses owned by minorities, women,
23 and persons with disabilities. Such recommended revisions
24 may include, but shall not be limited to, the following:

25 (i) assurances of stronger and better focused
26 solicitation efforts to obtain more businesses owned

1 by minorities, women, and persons with disabilities as
2 potential sources of supply;

3 (ii) division of job or project requirements, when
4 economically feasible, into tasks or quantities to
5 permit participation of businesses owned by
6 minorities, women, and persons with disabilities;

7 (iii) elimination of extended experience or
8 capitalization requirements, when programmatically
9 feasible, to permit participation of businesses owned
10 by minorities, women, and persons with disabilities;

11 (iv) identification of specific proposed contracts
12 as particularly attractive or appropriate for
13 participation by businesses owned by minorities,
14 women, and persons with disabilities, such
15 identification to result from and be coupled with the
16 efforts of subparagraphs (i) through (iii);

17 (v) implementation of those regulations
18 established for the use of the sheltered market
19 process.

20 (2) State agencies and public institutions of higher
21 education shall review a vendor's compliance with its
22 utilization plan and the terms of its contract. The terms of
23 every contract entered into by a State agency or public
24 institution of higher education for the purposes of this Act
25 shall include a provision requiring vendors who fail to comply
26 with a utilization plan to return all funds paid to that vendor

1 with an expectation of compliance. Without limitation, a
2 vendor's failure to comply with its contractual commitments as
3 contained in the utilization plan; failure to cooperate in
4 providing information regarding its compliance with its
5 utilization plan; or the provision of false or misleading
6 information or statements concerning compliance, certification
7 status, or eligibility of the Business Enterprise
8 Program-certified vendor, good faith efforts, or any other
9 material fact or representation shall constitute a material
10 breach of the contract and entitle the State agency or public
11 institution of higher education to declare a default,
12 terminate the contract, or exercise those remedies provided
13 for in the contract, at law, or in equity, including the return
14 of any funds paid to the vendor.

15 (3) A vendor shall be in breach of the contract and may be
16 subject to penalties for failure to meet contract goals
17 established under this Act, unless the vendor can show that it
18 made good faith efforts to meet the contract goals.

19 (Source: P.A. 99-462, eff. 8-25-15; 100-391, eff. 8-25-17.)