



Rep. Curtis J. Tarver, II

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10300HB3606ham001

LRB103 25805 DTM 59673 a

1 AMENDMENT TO HOUSE BILL 3606

2 AMENDMENT NO. _____. Amend House Bill 3606 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Business Enterprise for Minorities, Women,
5 and Persons with Disabilities Act is amended by changing
6 Sections 2, 5, 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8 (Section scheduled to be repealed on June 30, 2024)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

1 and South America, including Central America, and who
2 maintains tribal affiliation or community attachment).

3 (b) Asian (a person having origins in any of the
4 original peoples of the Far East, Southeast Asia, or
5 the Indian subcontinent, including, but not limited
6 to, Cambodia, China, India, Japan, Korea, Malaysia,
7 Pakistan, the Philippine Islands, Thailand, and
8 Vietnam).

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

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

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

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

20 (2.05) "Person with a disability" means a person who
21 is a citizen or lawful resident of the United States and is
22 a person qualifying as a person with a disability under
23 subdivision (2.1) of this subsection (A).

24 (2.1) "Person with a disability" means a person with a
25 severe physical or mental disability that:

26 (a) results from:

1 amputation,
2 arthritis,
3 autism,
4 blindness,
5 burn injury,
6 cancer,
7 cerebral palsy,
8 Crohn's disease,
9 cystic fibrosis,
10 deafness,
11 head injury,
12 heart disease,
13 hemiplegia,
14 hemophilia,
15 respiratory or pulmonary dysfunction,
16 an intellectual disability,
17 mental illness,
18 multiple sclerosis,
19 muscular dystrophy,
20 musculoskeletal disorders,
21 neurological disorders, including stroke and
22 epilepsy,
23 paraplegia,
24 quadriplegia and other spinal cord conditions,
25 sickle cell anemia,
26 ulcerative colitis,

1 specific learning disabilities, or
2 end stage renal failure disease; and

3 (b) substantially limits one or more of the
4 person's major life activities.

5 Another disability or combination of disabilities may
6 also be considered as a severe disability for the purposes
7 of item (a) of this subdivision (2.1) if it is determined
8 by an evaluation of rehabilitation potential to cause a
9 comparable degree of substantial functional limitation
10 similar to the specific list of disabilities listed in
11 item (a) of this subdivision (2.1).

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

19 (4) "Women-owned business" means a business which is
20 at least 51% owned by one or more women, or, in the case of
21 a corporation, at least 51% of the stock in which is owned
22 by one or more women; and the management and daily
23 business operations of which are controlled by one or more
24 of the women who own it.

25 (4.1) "Business owned by a person with a disability"
26 means a business that is at least 51% owned by one or more

1 persons with a disability and the management and daily
2 business operations of which are controlled by one or more
3 of the persons with disabilities who own it. A
4 not-for-profit agency for persons with disabilities that
5 is exempt from taxation under Section 501 of the Internal
6 Revenue Code of 1986 is also considered a "business owned
7 by a person with a disability".

8 (4.2) "Council" means the Business Enterprise Council
9 for Minorities, Women, and Persons with Disabilities
10 created under Section 5 of this Act.

11 (4.3) "Commission" means, unless the context clearly
12 indicates otherwise, the Commission on Equity and
13 Inclusion created under the Commission on Equity and
14 Inclusion Act.

15 (4.4) "Certified vendor" means a minority-owned
16 business, women-owned business, or business owned by a
17 person with a disability that is certified by the Business
18 Enterprise Program.

19 (4.5) "Subcontractor" means a person or entity that
20 enters into a contractual agreement with a prime vendor to
21 provide, on behalf of the prime vendor, goods, services,
22 real property, or remuneration or other monetary
23 consideration that is the subject of the primary State
24 contract. "Subcontractor" includes a sublessee under a
25 State contract.

26 (4.6) "Prime vendor" means any person or entity having

1 a contract that is subject to this Act with a State agency
2 or public institution of higher education.

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

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

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

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

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

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

1 "women-owned business" and a "minority-owned business".

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

19 (10) "Business" means a business that has annual gross
20 sales of less than \$150,000,000 as evidenced by the
21 federal income tax return of the business. A certified
22 vendor ~~firm~~ with gross sales in excess of this cap may
23 apply to the Council for certification for a particular
24 contract if the vendor ~~firm~~ can demonstrate that the
25 contract would have significant impact on businesses owned
26 by minorities, women, or persons with disabilities as

1 suppliers or subcontractors or in employment of
2 minorities, women, or persons with disabilities. Firms
3 with gross sales in excess of this cap that are granted
4 certification by the Council shall be granted
5 certification for the life of the contract, including
6 available renewals.

7 (11) "Utilization plan" means an attachment that is
8 made to a form and additional documentations included in
9 all bids or proposals and that demonstrates the bidder's
10 or offeror's efforts to meet the contract-specific
11 Business Enterprise Program goal. The utilization plan
12 shall indicate whether the prime vendor intends to meet
13 the Business Enterprise Program goal through its own
14 performance, if it is a certified vendor, or through the
15 use of subcontractors that are certified vendors ~~a~~
16 ~~vendor's proposed utilization of vendors certified by the~~
17 ~~Business Enterprise Program to meet the targeted goal.~~ The
18 utilization plan shall demonstrate that the Vendor has
19 either: (1) met the entire contract goal or (2) requested
20 a full or partial waiver of the contract goal. If the prime
21 vendor intends to use a subcontractor that is a certified
22 vendor to fulfill the contract goal, a participation
23 agreement executed between the prime vendor and the
24 certified subcontractor must be included with the
25 utilization plan and made good faith efforts towards
26 ~~meeting the goal.~~

1 (12) "Business Enterprise Program" means the Business
2 Enterprise Program of the Commission on Equity and
3 Inclusion.

4 (13) "Good faith effort" means actions undertaken by a
5 vendor to achieve a contract specific Business Enterprise
6 Program goal that, by scope, intensity, and
7 appropriateness to the objective, can reasonably be
8 expected to fulfill the program's requirements.

9 (B) When a business is owned at least 51% by any
10 combination of minority persons, women, or persons with
11 disabilities, even though none of the 3 classes alone holds at
12 least a 51% interest, the ownership requirement for purposes
13 of this Act is considered to be met. The certification
14 category for the business is that of the class holding the
15 largest ownership interest in the business. If 2 or more
16 classes have equal ownership interests, the certification
17 category shall be determined by the business.

18 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;
19 102-29, eff. 6-25-21; 102-1119, eff. 1-23-23.)

20 (30 ILCS 575/3.5 new)

21 Sec. 3.5. Uniform standard of contract goals.

22 (a) The Business Enterprise Program shall establish
23 uniform standards for calculating contract specific Business
24 Enterprise Program goals for all State contracts and State
25 construction contracts subject to this Act. The uniform

1 standards may consider normal industry practice, the scope of
2 the work to be performed under a contract, the availability of
3 vendors that are able to perform the scope of the work to be
4 performed under a contract, the availability of certified
5 vendors that are able to perform the work to be performed under
6 a contract, and the State's progress to date toward meeting
7 the aspirational goals set forth in this Act.

8 (b) No State agency or public institution of higher
9 education shall maintain a policy of establishing contract
10 specific goals for the participation of certified vendors that
11 is inconsistent with or less stringent than the uniform
12 standards for calculating contract specific goals established
13 by the Business Enterprise Program.

14 (c) Each State agency and public institution of higher
15 education subject to the requirements of this Act shall, on an
16 annual basis, submit a report to the Council detailing its
17 plan to meet the aspirational contract goals established under
18 this Act and established for that agency, institution or
19 department.

20 (30 ILCS 575/5) (from Ch. 127, par. 132.605)

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

22 Sec. 5. Business Enterprise Council.

23 (1) To help implement, monitor, and enforce the goals of
24 this Act, there is created the Business Enterprise Council for
25 Minorities, Women, and Persons with Disabilities, hereinafter

1 referred to as the Council, composed of the Chairperson of the
2 Commission on Equity and Inclusion, the Secretary of Human
3 Services and the Directors of the Department of Human Rights,
4 the Department of Commerce and Economic Opportunity, the
5 Department of Central Management Services, the Department of
6 Transportation and the Capital Development Board, or their
7 duly appointed representatives, with the Comptroller, or his
8 or her designee, serving as an advisory member of the Council.
9 Ten individuals representing businesses that are
10 minority-owned, women-owned, or owned by persons with
11 disabilities, 2 individuals representing the business
12 community, and a representative of public institutions of
13 higher education shall be appointed by the Governor. These
14 members shall serve 2-year terms and shall be eligible for
15 reappointment. Any vacancy occurring on the Council shall also
16 be filled by the Governor. Any member appointed to fill a
17 vacancy occurring prior to the expiration of the term for
18 which his or her predecessor was appointed shall be appointed
19 for the remainder of such term. Members of the Council shall
20 serve without compensation but shall be reimbursed for any
21 ordinary and necessary expenses incurred in the performance of
22 their duties.

23 The Chairperson of the Commission shall serve as the
24 Council chairperson and shall select, subject to approval of
25 the Council, a Secretary responsible for the operation of the
26 program who shall serve as the Division Manager of the

1 Business Enterprise for Minorities, Women, and Persons with
2 Disabilities Division of the Commission on Equity and
3 Inclusion.

4 The Director of each State agency and the chief executive
5 officer of each public institution of higher education shall
6 appoint a liaison to the Council. The liaison shall be
7 responsible for submitting to the Council any reports and
8 documents necessary under this Act.

9 (2) The Council's authority and responsibility shall be
10 to:

11 (a) Devise a certification procedure to assure that
12 businesses taking advantage of this Act are legitimately
13 classified as businesses owned by minorities, women, or
14 persons with disabilities and a registration procedure to
15 recognize, without additional evidence of Business
16 Enterprise Program eligibility, the certification of
17 businesses owned by minorities, women, or persons with
18 disabilities certified by the City of Chicago, Cook
19 County, or other jurisdictional programs with requirements
20 and procedures equaling or exceeding those in this Act.

21 (b) Maintain a list of all businesses legitimately
22 classified as businesses owned by minorities, women, or
23 persons with disabilities to provide to State agencies and
24 public institutions of higher education.

25 (c) Review rules and regulations for the
26 implementation of the program for businesses owned by

1 minorities, women, and persons with disabilities.

2 (d) Review compliance plans submitted by each State
3 agency and public institution of higher education pursuant
4 to this Act.

5 (e) Make annual reports as provided in Section 8f to
6 the Governor and the General Assembly on the status of the
7 program.

8 (f) Serve as a central clearinghouse for information
9 on State contracts, including the maintenance of a list of
10 all pending State contracts upon which businesses owned by
11 minorities, women, and persons with disabilities may bid.
12 At the Council's discretion, maintenance of the list may
13 include 24-hour electronic access to the list along with
14 the bid and application information.

15 (g) Establish a toll-free telephone number to
16 facilitate information requests concerning the
17 certification process and pending contracts.

18 (h) Adopt a procedure to grant automatic certification
19 to businesses holding a certification from at least one of
20 the following entities: (i) the Illinois Unified
21 Certification Program; (ii) the Women's Business
22 Development Center in Chicago; (iii) the Chicago Minority
23 Supplier Development Council; or (iv) any other similar
24 entity offering such certification to businesses.

25 (i) Develop and maintain a repository for
26 non-certified vendors that: (i) have applied for

1 certification and have been denied; (ii) have started, but
2 not completed, the certification process; (iii) have
3 achieved certification, but did not seek renewal; or (iv)
4 are known businesses owned by minorities, women, or
5 persons with disabilities.

6 (3) No premium bond rate of a surety company for a bond
7 required of a business owned by a minority, woman, or person
8 with a disability bidding for a State contract shall be higher
9 than the lowest rate charged by that surety company for a
10 similar bond in the same classification of work that would be
11 written for a business not owned by a minority, woman, or
12 person with a disability.

13 (4) Any Council member who has direct financial or
14 personal interest in any measure pending before the Council
15 shall disclose this fact to the Council and refrain from
16 participating in the determination upon such measure.

17 (5) The Secretary shall have the following duties and
18 responsibilities:

19 (a) To be responsible for the day-to-day operation of
20 the Council.

21 (b) To serve as a coordinator for all of the State's
22 programs for businesses owned by minorities, women, and
23 persons with disabilities and as the information and
24 referral center for all State initiatives for businesses
25 owned by minorities, women, and persons with disabilities.

26 (c) To establish an enforcement procedure whereby the

1 Council may recommend to the appropriate State legal
2 officer that the State exercise its legal remedies which
3 shall include (1) termination of the contract involved,
4 (2) prohibition of participation by the respondent in
5 public contracts for a period not to exceed 3 years, (3)
6 imposition of damages in the amount of the discrepancy
7 between the commitment contained in the utilization plan,
8 as such amount may be amended over the term of the
9 contract, and the qualifying payments made to the eligible
10 certified vendors listed in the utilization plan ~~a penalty~~
11 ~~not to exceed any profit acquired as a result of~~
12 ~~violation~~, or (4) any combination thereof. Such procedures
13 shall require prior approval by Council. All funds
14 collected as penalties under this subsection shall be used
15 exclusively for maintenance and further development of the
16 Business Enterprise Program and encouragement of
17 participation in State procurement by minorities, women,
18 and persons with disabilities.

19 (d) To devise appropriate policies, regulations, and
20 procedures for including participation by businesses owned
21 by minorities, women, and persons with disabilities as
22 prime contractors, including, but not limited to: (i)
23 encouraging the inclusions of qualified businesses owned
24 by minorities, women, and persons with disabilities on
25 solicitation lists, (ii) investigating the potential of
26 blanket bonding programs for small construction jobs, and

1 (iii) investigating and making recommendations concerning
2 the use of the sheltered market process.

3 (e) To devise procedures for the waiver of the
4 participation goals in appropriate circumstances.

5 (f) To accept donations and, with the approval of the
6 Council or the Chairperson of the Commission on Equity and
7 Inclusion, grants related to the purposes of this Act; to
8 conduct seminars related to the purpose of this Act and to
9 charge reasonable registration fees; and to sell
10 directories, vendor lists, and other such information to
11 interested parties, except that forms necessary to become
12 eligible for the program shall be provided free of charge
13 to a business or individual applying for the Business
14 Enterprise Program.

15 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;
16 102-29, eff. 6-25-21; 102-558, eff. 8-20-21; 102-721, eff.
17 1-1-23.)

18 (30 ILCS 575/7) (from Ch. 127, par. 132.607)

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

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

21 (1) Individual contract exemptions. The Council, at the
22 written request of the affected agency, public institution of
23 higher education, or recipient of a grant or loan of State
24 funds of \$250,000 or more complying with Section 45 of the
25 State Finance Act, may permit an individual contract or

1 contract package, (related contracts being bid or awarded
2 simultaneously for the same project or improvements) be made
3 wholly or partially exempt from State contracting goals for
4 businesses owned by minorities, women, and persons with
5 disabilities prior to the advertisement for bids or
6 solicitation of proposals whenever there has been a
7 determination, reduced to writing and based on the best
8 information available at the time of the determination, that
9 there is an insufficient number of businesses owned by
10 minorities, women, and persons with disabilities to ensure
11 adequate competition and an expectation of reasonable prices
12 on bids or proposals solicited for the individual contract or
13 contract package in question. Any such exemptions shall be
14 given by the Council to the Bureau on Apprenticeship Programs
15 and Clean Energy Jobs.

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

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

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

24 (iii) the difference in cost between the contract
25 proposals being offered by businesses owned by
26 minorities, women, and persons with disabilities and

1 the agency or public institution of higher education's
2 expectations of reasonable prices on bids or proposals
3 within that class; and

4 (iv) a list of eligible businesses owned by
5 minorities, women, and persons with disabilities that
6 the contractor has used in the current and prior
7 fiscal years.

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

11 (i) the justification for the requested exemption,
12 including whether diligent efforts were undertaken to
13 identify and solicit eligible businesses owned by
14 minorities, women, and persons with disabilities;

15 (ii) the total number of exemptions granted to the
16 affected agency, public institution of higher
17 education, or recipient of a grant or loan of State
18 funds of \$250,000 or more complying with Section 45 of
19 the State Finance Act that have been granted by the
20 Council in the current and prior fiscal years; and

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

26 (2) Class exemptions.

1 (a) Creation. The Council, at the written request of
2 the affected agency or public institution of higher
3 education, may permit an entire class of contracts be made
4 exempt from State contracting goals for businesses owned
5 by minorities, women, and persons with disabilities
6 whenever there has been a determination, reduced to
7 writing and based on the best information available at the
8 time of the determination, that there is an insufficient
9 number of qualified businesses owned by minorities, women,
10 and persons with disabilities to ensure adequate
11 competition and an expectation of reasonable prices on
12 bids or proposals within that class. Any such exemption
13 shall be given by the Council to the Bureau on
14 Apprenticeship Programs and Clean Energy Jobs.

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

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

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

23 (iii) the difference in cost between the contract
24 proposals being offered by eligible businesses owned
25 by minorities, women, and persons with disabilities
26 and the agency or public institution of higher

1 education's expectations of reasonable prices on bids
2 or proposals within that class; and

3 (iv) the number of class exemptions the affected
4 agency or public institution of higher education
5 requested in the current and prior fiscal years.

6 (a-2) Determination. The Council's determination
7 concerning class exemptions must consider, at a minimum,
8 the following:

9 (i) the justification for the requested exemption,
10 including whether diligent efforts were undertaken to
11 identify and solicit eligible businesses owned by
12 minorities, women, and persons with disabilities;

13 (ii) the total number of class exemptions granted
14 to the requesting agency or public institution of
15 higher education that have been granted by the Council
16 in the current and prior fiscal years; and

17 (iii) the percentage of contracts awarded by the
18 agency or public institution of higher education to
19 eligible businesses owned by minorities, women, and
20 persons with disabilities the current and prior fiscal
21 years.

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

24 (3) Waivers. Where a particular contract requires a vendor
25 ~~contractor~~ to meet a goal established pursuant to this Act,
26 the vendor ~~contractor~~ shall have the right to request a waiver

1 from such requirements prior to the contract award. The
2 Business Enterprise Program shall evaluate a vendor's request
3 for a waiver based on the vendor's documented good faith
4 efforts to meet the contract-specific Business Enterprise
5 Program goal. The Council may ~~shall~~ grant the waiver when the
6 contractor demonstrates that there has been made a good faith
7 effort to comply with the goals for participation by
8 businesses owned by minorities, women, and persons with
9 disabilities. Any such waiver may ~~shall~~ also be transmitted in
10 writing to the Bureau on Apprenticeship Programs and Clean
11 Energy Jobs.

12 (a) Request for waiver. A vendor's ~~contractor's~~
13 request for a waiver under this subsection (3) must
14 include, but is not limited to, the following, ~~if~~
15 ~~available:~~

16 (i) a list of eligible businesses owned by
17 minorities, women, and persons with disabilities that
18 pertain to the the class of contracts in the requested
19 waiver that were contacted by the vendor ~~scope of work~~
20 ~~of the contract.~~ Eligible businesses are only eligible
21 if the business is certified for the products or work
22 advertised in the solicitation or bid;

23 (ii) (blank);

24 (iia) a clear demonstration that the vendor
25 ~~contractor~~ selected portions of the work to be
26 performed by certified vendors to facilitate meeting

1 the contract specific goal, and that certified vendors
2 that have the capability to perform the work of the
3 contract were eligible businesses owned by minorities,
4 ~~women, and persons with disabilities,~~ solicited
5 through all reasonable and available means ~~eligible~~
6 ~~businesses, and negotiated in good faith with~~
7 ~~interested eligible businesses;~~

8 (iib) documentation demonstrating that certified
9 vendors businesses owned by minorities, women, and
10 ~~persons with disabilities~~ are not rejected as being
11 unqualified without sound reasons based on a thorough
12 investigation of their capabilities. The certified
13 vendor's standing within its industry, membership in
14 specific groups, organizations, or associations, and
15 political or social affiliations are not legitimate
16 causes for rejecting or not contacting or negotiating
17 with a certified vendor;

18 (iic) proof that the prime vendor solicited
19 eligible certified vendors with: (1) sufficient time
20 to respond; (2) adequate information about the scope,
21 specifications, and requirements of the solicitation
22 or bid, including plans, drawings, and addenda, to
23 allow eligible businesses an opportunity to respond to
24 the solicitation or bid; and (3) sufficient follow up
25 with certified vendors;

26 (iid) a clear demonstration that the prime vendor

1 communicated with certified vendors;

2 (iie) evidence that the prime vendor negotiated
3 with certified vendors to enter into subcontracts to
4 provide a commercially useful function of the contract
5 for a reasonable cost;

6 (iii) documentation demonstrating that the
7 difference in cost between the contract proposals
8 being offered by certified vendors is ~~contract~~
9 ~~proposals being offered by businesses owned by~~
10 ~~minorities, women, and persons with disabilities are~~
11 excessive or unreasonable; ~~and~~

12 (iv) a list of certified vendors ~~businesses~~ owned
13 by minorities, women, and persons with disabilities
14 that the contractor has used in the current and prior
15 fiscal years; ~~+~~

16 (v) documentation demonstrating that the vendor
17 made efforts to utilize certified vendors despite the
18 ability or desire of a vendor to perform the work with
19 its own operations by selecting portions of the work
20 to be performed by certified vendors, which may, when
21 appropriate, include breaking out portions of the work
22 to be performed into economically feasible units to
23 facilitate certified vendor participation; and

24 (vi) documentation that the vendor used the
25 services of: (1) the State; (2) organizations or
26 contractors' groups representing or composed of

1 minorities, women, or persons with disabilities; (3)
2 local, State, or federal assistance offices
3 representing or assisting minorities, women, or
4 persons with disabilities; and (4) other organizations
5 that provide assistance in the recruitment and
6 engagement of certified vendors.

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

9 (i) the justification for the requested waiver,
10 including whether the requesting vendor ~~contractor~~
11 made a good faith effort to identify and solicit
12 certified vendors based on the criteria set forth in
13 this Section ~~eligible businesses owned by minorities,~~
14 ~~women, and persons with disabilities;~~

15 (ii) the total number of waivers the vendor
16 ~~contractor~~ has been granted by the Council in the
17 current and prior fiscal years;

18 (iii) (blank); and

19 (iv) the vendor's ~~contractor's~~ use of businesses
20 owned by minorities, women, and persons with
21 disabilities in the current and prior fiscal years.

22 (3.5) (Blank).

23 (4) Conflict with other laws. In the event that any State
24 contract, which otherwise would be subject to the provisions
25 of this Act, is or becomes subject to federal laws or
26 regulations which conflict with the provisions of this Act or

1 actions of the State taken pursuant hereto, the provisions of
2 the federal laws or regulations shall apply and the contract
3 shall be interpreted and enforced accordingly.

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

17 (6) Each chief procurement officer, as defined by the
18 Illinois Procurement Code, shall maintain on its website a
19 list of all vendors ~~firms~~ that have been prohibited from
20 bidding, offering, or entering into a contract with the State
21 of Illinois as a result of violations of this Act.

22 Each public notice required by law of the award of a State
23 contract shall include for each bid or offer submitted for
24 that contract the following: (i) the bidder's or offeror's
25 name, (ii) the bid amount, (iii) the name or names of the
26 certified vendors ~~firms~~ identified in the bidder's or

1 offeror's submitted utilization plan, and (iv) the ~~bid's~~
2 ~~amount~~ and percentage of the contract awarded to each
3 certified vendor that is a business ~~businesses~~ owned by
4 minorities, women, and persons with disabilities identified in
5 the utilization plan.

6 (Source: P.A. 101-170, eff. 1-1-20; 101-601, eff. 1-1-20;
7 101-657, eff. 1-1-22; 102-29, eff. 6-25-21; 102-662, eff.
8 9-15-21.)

9 (30 ILCS 575/8) (from Ch. 127, par. 132.608)

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

11 Sec. 8. Enforcement.

12 (1) The Commission on Equity and Inclusion shall make such
13 findings, recommendations and proposals to the Governor as are
14 necessary and appropriate to enforce this Act. If, as a result
15 of its monitoring activities, the Commission determines that
16 its goals and policies are not being met by any State agency or
17 public institution of higher education, the Commission may
18 recommend any or all of the following actions:

19 (a) Establish enforcement procedures whereby the
20 Commission may recommend to the appropriate State agency,
21 public institutions of higher education, or law
22 enforcement officer that legal or administrative remedies
23 be initiated for violations of contract provisions or
24 rules issued hereunder or by a contracting State agency or
25 public institutions of higher education. State agencies

1 and public institutions of higher education shall be
2 authorized to adopt remedies for such violations which
3 shall include (1) termination of the contract involved,
4 (2) prohibition of participation of the respondents in
5 public contracts for a period not to exceed one year, (3)
6 the assessment of damages in the amount of the discrepancy
7 between the commitment contained in the utilization plan,
8 as such amount may be amended over the term of the
9 contract, and the qualifying payments made to the
10 certified vendors listed in the utilization plan
11 ~~imposition of a penalty not to exceed any profit acquired~~
12 ~~as a result of violation,~~ or (4) any combination thereof.

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

23 (i) assurances of stronger and better focused
24 solicitation efforts to obtain more businesses owned
25 by minorities, women, and persons with disabilities as
26 potential sources of supply;

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

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

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

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

19 (2) State agencies and public institutions of higher
20 education shall monitor a vendor's compliance with its
21 utilization plan and the terms of its contract. Without
22 limitation, a vendor's failure to comply with its contractual
23 commitments as contained in the utilization plan; failure to
24 cooperate in providing information regarding its compliance
25 with its utilization plan; or the provision of false or
26 misleading information or statements concerning compliance,

1 certification status, or eligibility of the Business
2 Enterprise Program-certified vendor, good faith efforts, or
3 any other material fact or representation shall constitute a
4 material breach of the contract and entitle the State agency
5 or public institution of higher education to declare a
6 default, terminate the contract, or exercise those remedies
7 provided for in the contract, at law, or in equity.

8 (3) Prior to the expiration or termination of a contract,
9 State agencies and public institutions of higher education
10 shall evaluate the contractor's fulfillment of the contract
11 goals for participation by certified businesses owned by
12 minorities, women, and persons with disabilities. The agency
13 or public institution of higher education shall prepare a
14 report of the vendor's compliance with the contract goals and
15 file it with the Secretary. If the Secretary determines that
16 the vendor did not fulfill the contract goals, the vendor
17 shall be in breach of the contract and may be subject to
18 remedies or sanctions, unless the vendor can show that it made
19 good faith efforts to meet the contract goals. Such remedies
20 or sanctions for failing to make good faith efforts may
21 include (i) disqualification of the contractor from doing
22 business with the State for a period of no more than one year,
23 ~~or~~ (ii) cancellation, without any penalty to the State, of any
24 contract entered into by the vendor, or (iii) the assessment
25 of damages in the amount of the discrepancy between the
26 commitment contained in the utilization plan, as such amount

1 may be amended over the term of the contract, and the
2 qualifying payments made to the certified vendors listed in
3 the utilization plan.

4 The Business Enterprise Program shall develop procedures
5 for determining whether a vendor has made good faith efforts
6 to meet the contract goals upon the expiration or termination
7 of a contract, which may include, but shall not be limited to
8 consideration of: (i) whether State or local action caused a
9 shortfall, such as a change in the scope of work that
10 eliminated work to be performed by certified vendors or a
11 change in specifications; (ii) whether the vendor was unable
12 to obtain certified business participation without requiring
13 the introduction of extra participants not performing a
14 commercially useful function; or (iii) whether the vendor made
15 efforts to use appropriate forums for purposes of advertising
16 subcontracting opportunities suitable for certified
17 businesses.

18 (Source: P.A. 101-657, eff. 1-1-22; 102-29, eff. 6-25-21.)".