

1 AN ACT concerning finance.

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, 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8 (Section scheduled to be repealed on June 30, 2024)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
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 (4.3) "Commission" means, unless the context clearly
5 indicates otherwise, the Commission on Equity and
6 Inclusion created under the Commission on Equity and
7 Inclusion Act.

8 (4.4) "Certified vendor" means a minority-owned
9 business, women-owned business, or business owned by a
10 person with a disability that is certified by the Business
11 Enterprise Program.

12 (4.5) "Subcontractor" means a person or entity that
13 enters into a contractual agreement with a prime vendor to
14 provide, on behalf of the prime vendor, goods, services,
15 real property, or remuneration or other monetary
16 consideration that is the subject of the primary State
17 contract. "Subcontractor" includes a sublessee under a
18 State contract.

19 (4.6) "Prime vendor" means any person or entity having
20 a contract that is subject to this Act with a State agency
21 or public institution of higher education.

22 (5) "State contracts" means all contracts entered into
23 by the State, any agency or department thereof, or any
24 public institution of higher education, including
25 community college districts, regardless of the source of
26 the funds with which the contracts are paid, which are not

1 subject to federal reimbursement. "State contracts" does
2 not include contracts awarded by a retirement system,
3 pension fund, or investment board subject to Section
4 1-109.1 of the Illinois Pension Code. This definition
5 shall control over any existing definition under this Act
6 or applicable administrative rule.

7 "State construction contracts" means all State
8 contracts entered into by a State agency or public
9 institution of higher education for the repair,
10 remodeling, renovation or construction of a building or
11 structure, or for the construction or maintenance of a
12 highway defined in Article 2 of the Illinois Highway Code.

13 (6) "State agencies" shall mean all departments,
14 officers, boards, commissions, institutions and bodies
15 politic and corporate of the State, but does not include
16 the Board of Trustees of the University of Illinois, the
17 Board of Trustees of Southern Illinois University, the
18 Board of Trustees of Chicago State University, the Board
19 of Trustees of Eastern Illinois University, the Board of
20 Trustees of Governors State University, the Board of
21 Trustees of Illinois State University, the Board of
22 Trustees of Northeastern Illinois University, the Board of
23 Trustees of Northern Illinois University, the Board of
24 Trustees of Western Illinois University, municipalities or
25 other local governmental units, or other State
26 constitutional officers.

1 (7) "Public institutions of higher education" means
2 the University of Illinois, Southern Illinois University,
3 Chicago State University, Eastern Illinois University,
4 Governors State University, Illinois State University,
5 Northeastern Illinois University, Northern Illinois
6 University, Western Illinois University, the public
7 community colleges of the State, and any other public
8 universities, colleges, and community colleges now or
9 hereafter established or authorized by the General
10 Assembly.

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

21 (9) "Control" means the exclusive or ultimate and sole
22 control of the business including, but not limited to,
23 capital investment and all other financial matters,
24 property, acquisitions, contract negotiations, legal
25 matters, officer-director-employee selection and
26 comprehensive hiring, operating responsibilities,

1 cost-control matters, income and dividend matters,
2 financial transactions and rights of other shareholders or
3 joint partners. Control shall be real, substantial and
4 continuing, not pro forma. Control shall include the power
5 to direct or cause the direction of the management and
6 policies of the business and to make the day-to-day as
7 well as major decisions in matters of policy, management
8 and operations. Control shall be exemplified by possessing
9 the requisite knowledge and expertise to run the
10 particular business and control shall not include simple
11 majority or absentee ownership.

12 (10) "Business" means a business that has annual gross
13 sales of less than \$150,000,000 as evidenced by the
14 federal income tax return of the business. A certified
15 vendor ~~firm~~ with gross sales in excess of this cap may
16 apply to the Council for certification for a particular
17 contract if the vendor ~~firm~~ can demonstrate that the
18 contract would have significant impact on businesses owned
19 by minorities, women, or persons with disabilities as
20 suppliers or subcontractors or in employment of
21 minorities, women, or persons with disabilities. Firms
22 with gross sales in excess of this cap that are granted
23 certification by the Council shall be granted
24 certification for the life of the contract, including
25 available renewals.

26 (11) "Utilization plan" means an attachment that is

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

20 (12) "Business Enterprise Program" means the Business
21 Enterprise Program of the Commission on Equity and
22 Inclusion.

23 (13) "Good faith effort" means actions undertaken by a
24 vendor to achieve a contract specific Business Enterprise
25 Program goal that, by scope, intensity, and
26 appropriateness to the objective, can reasonably be

1 expected to fulfill the program's requirements.

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

11 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;
12 102-29, eff. 6-25-21; 102-1119, eff. 1-23-23.)

13 (30 ILCS 575/3.5 new)

14 Sec. 3.5. Uniform standard of contract goals.

15 (a) The Business Enterprise Program shall establish
16 uniform standards for calculating contract specific Business
17 Enterprise Program goals for all State contracts and State
18 construction contracts subject to this Act. The uniform
19 standards may consider normal industry practice, the scope of
20 the work to be performed under a contract, the availability of
21 vendors that are able to perform the scope of the work to be
22 performed under a contract, the availability of certified
23 vendors that are able to perform the work to be performed under
24 a contract, and the State's progress to date toward meeting
25 the aspirational goals set forth in this Act.

1 (b) No State agency or public institution of higher
2 education shall maintain a policy of establishing contract
3 specific goals for the participation of certified vendors that
4 is inconsistent with or less stringent than the uniform
5 standards for calculating contract specific goals established
6 by the Business Enterprise Program.

7 (c) Each State agency and public institution of higher
8 education subject to the requirements of this Act shall, on an
9 annual basis, submit a report to the Council detailing its
10 plan to meet the aspirational contract goals established under
11 this Act and established for that agency, institution or
12 department.

13 (30 ILCS 575/5) (from Ch. 127, par. 132.605)

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

15 Sec. 5. Business Enterprise Council.

16 (1) To help implement, monitor, and enforce the goals of
17 this Act, there is created the Business Enterprise Council for
18 Minorities, Women, and Persons with Disabilities, hereinafter
19 referred to as the Council, composed of the Chairperson of the
20 Commission on Equity and Inclusion, the Secretary of Human
21 Services and the Directors of the Department of Human Rights,
22 the Department of Commerce and Economic Opportunity, the
23 Department of Central Management Services, the Department of
24 Transportation and the Capital Development Board, or their
25 duly appointed representatives, with the Comptroller, or his

1 or her designee, serving as an advisory member of the Council.
2 Ten individuals representing businesses that are
3 minority-owned, women-owned, or owned by persons with
4 disabilities, 2 individuals representing the business
5 community, and a representative of public institutions of
6 higher education shall be appointed by the Governor. These
7 members shall serve 2-year terms and shall be eligible for
8 reappointment. Any vacancy occurring on the Council shall also
9 be filled by the Governor. Any member appointed to fill a
10 vacancy occurring prior to the expiration of the term for
11 which his or her predecessor was appointed shall be appointed
12 for the remainder of such term. Members of the Council shall
13 serve without compensation but shall be reimbursed for any
14 ordinary and necessary expenses incurred in the performance of
15 their duties.

16 The Chairperson of the Commission shall serve as the
17 Council chairperson and shall select, subject to approval of
18 the Council, a Secretary responsible for the operation of the
19 program who shall serve as the Division Manager of the
20 Business Enterprise for Minorities, Women, and Persons with
21 Disabilities Division of the Commission on Equity and
22 Inclusion.

23 The Director of each State agency and the chief executive
24 officer of each public institution of higher education shall
25 appoint a liaison to the Council. The liaison shall be
26 responsible for submitting to the Council any reports and

1 documents necessary under this Act.

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

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

14 (b) Maintain a list of all businesses legitimately
15 classified as businesses owned by minorities, women, or
16 persons with disabilities to provide to State agencies and
17 public institutions of higher education.

18 (c) Review rules and regulations for the
19 implementation of the program for businesses owned by
20 minorities, women, and persons with disabilities.

21 (d) Review compliance plans submitted by each State
22 agency and public institution of higher education pursuant
23 to this Act.

24 (e) Make annual reports as provided in Section 8f to
25 the Governor and the General Assembly on the status of the
26 program.

1 (f) Serve as a central clearinghouse for information
2 on State contracts, including the maintenance of a list of
3 all pending State contracts upon which businesses owned by
4 minorities, women, and persons with disabilities may bid.
5 At the Council's discretion, maintenance of the list may
6 include 24-hour electronic access to the list along with
7 the bid and application information.

8 (g) Establish a toll-free telephone number to
9 facilitate information requests concerning the
10 certification process and pending contracts.

11 (h) Adopt a procedure to grant automatic certification
12 to businesses holding a certification from at least one of
13 the following entities: (i) the Illinois Unified
14 Certification Program; (ii) the Women's Business
15 Development Center in Chicago; (iii) the Chicago Minority
16 Supplier Development Council; or (iv) any other similar
17 entity offering such certification to businesses.

18 (i) Develop and maintain a repository for
19 non-certified vendors that: (i) have applied for
20 certification and have been denied; (ii) have started, but
21 not completed, the certification process; (iii) have
22 achieved certification, but did not seek renewal; or (iv)
23 are known businesses owned by minorities, women, or
24 persons with disabilities.

25 (3) No premium bond rate of a surety company for a bond
26 required of a business owned by a minority, woman, or person

1 with a disability bidding for a State contract shall be higher
2 than the lowest rate charged by that surety company for a
3 similar bond in the same classification of work that would be
4 written for a business not owned by a minority, woman, or
5 person with a disability.

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

10 (5) The Secretary shall have the following duties and
11 responsibilities:

12 (a) To be responsible for the day-to-day operation of
13 the Council.

14 (b) To serve as a coordinator for all of the State's
15 programs for businesses owned by minorities, women, and
16 persons with disabilities and as the information and
17 referral center for all State initiatives for businesses
18 owned by minorities, women, and persons with disabilities.

19 (c) To establish an enforcement procedure whereby the
20 Council may recommend to the appropriate State legal
21 officer that the State exercise its legal remedies which
22 shall include (1) termination of the contract involved,
23 (2) prohibition of participation by the respondent in
24 public contracts for a period not to exceed 3 years, (3)
25 imposition of damages in the amount of the discrepancy
26 between the commitment contained in the utilization plan,

1 as such amount may be amended over the term of the
2 contract, and the qualifying payments made to the eligible
3 certified vendors listed in the utilization plan ~~a penalty~~
4 ~~not to exceed any profit acquired as a result of~~
5 ~~violation,~~ or (4) any combination thereof. Such procedures
6 shall require prior approval by Council. All funds
7 collected as penalties under this subsection shall be used
8 exclusively for maintenance and further development of the
9 Business Enterprise Program and encouragement of
10 participation in State procurement by minorities, women,
11 and persons with disabilities.

12 (d) To devise appropriate policies, regulations, and
13 procedures for including participation by businesses owned
14 by minorities, women, and persons with disabilities as
15 prime contractors, including, but not limited to: (i)
16 encouraging the inclusions of qualified businesses owned
17 by minorities, women, and persons with disabilities on
18 solicitation lists, (ii) investigating the potential of
19 blanket bonding programs for small construction jobs, and
20 (iii) investigating and making recommendations concerning
21 the use of the sheltered market process.

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

24 (f) To accept donations and, with the approval of the
25 Council or the Chairperson of the Commission on Equity and
26 Inclusion, grants related to the purposes of this Act; to

1 conduct seminars related to the purpose of this Act and to
2 charge reasonable registration fees; and to sell
3 directories, vendor lists, and other such information to
4 interested parties, except that forms necessary to become
5 eligible for the program shall be provided free of charge
6 to a business or individual applying for the Business
7 Enterprise Program.

8 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;
9 102-29, eff. 6-25-21; 102-558, eff. 8-20-21; 102-721, eff.
10 1-1-23.)

11 (30 ILCS 575/7) (from Ch. 127, par. 132.607)

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

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

14 (1) Individual contract exemptions. The Council, at the
15 written request of the affected agency, public institution of
16 higher education, or recipient of a grant or loan of State
17 funds of \$250,000 or more complying with Section 45 of the
18 State Finance Act, may permit an individual contract or
19 contract package, (related contracts being bid or awarded
20 simultaneously for the same project or improvements) be made
21 wholly or partially exempt from State contracting goals for
22 businesses owned by minorities, women, and persons with
23 disabilities prior to the advertisement for bids or
24 solicitation of proposals whenever there has been a
25 determination, reduced to writing and based on the best

1 information available at the time of the determination, that
2 there is an insufficient number of businesses owned by
3 minorities, women, and persons with disabilities to ensure
4 adequate competition and an expectation of reasonable prices
5 on bids or proposals solicited for the individual contract or
6 contract package in question. Any such exemptions shall be
7 given by the Council to the Bureau on Apprenticeship Programs
8 and Clean Energy Jobs.

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

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

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

17 (iii) the difference in cost between the contract
18 proposals being offered by businesses owned by
19 minorities, women, and persons with disabilities and
20 the agency or public institution of higher education's
21 expectations of reasonable prices on bids or proposals
22 within that class; and

23 (iv) a list of eligible businesses owned by
24 minorities, women, and persons with disabilities that
25 the contractor has used in the current and prior
26 fiscal years.

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

4 (i) the justification for the requested exemption,
5 including whether diligent efforts were undertaken to
6 identify and solicit eligible businesses owned by
7 minorities, women, and persons with disabilities;

8 (ii) the total number of exemptions granted to the
9 affected agency, public institution of higher
10 education, or recipient of a grant or loan of State
11 funds of \$250,000 or more complying with Section 45 of
12 the State Finance Act that have been granted by the
13 Council in the current and prior fiscal years; and

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

19 (2) Class exemptions.

20 (a) Creation. The Council, at the written request of
21 the affected agency or public institution of higher
22 education, may permit an entire class of contracts be made
23 exempt from State contracting goals for businesses owned
24 by minorities, women, and persons with disabilities
25 whenever there has been a determination, reduced to
26 writing and based on the best information available at the

1 time of the determination, that there is an insufficient
2 number of qualified businesses owned by minorities, women,
3 and persons with disabilities to ensure adequate
4 competition and an expectation of reasonable prices on
5 bids or proposals within that class. Any such exemption
6 shall be given by the Council to the Bureau on
7 Apprenticeship Programs and Clean Energy Jobs.

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

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

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

16 (iii) the difference in cost between the contract
17 proposals being offered by eligible businesses owned
18 by minorities, women, and persons with disabilities
19 and the agency or public institution of higher
20 education's expectations of reasonable prices on bids
21 or proposals within that class; and

22 (iv) the number of class exemptions the affected
23 agency or public institution of higher education
24 requested in the current and prior fiscal years.

25 (a-2) Determination. The Council's determination
26 concerning class exemptions must consider, at a minimum,

1 the following:

2 (i) the justification for the requested exemption,
3 including whether diligent efforts were undertaken to
4 identify and solicit eligible businesses owned by
5 minorities, women, and persons with disabilities;

6 (ii) the total number of class exemptions granted
7 to the requesting agency or public institution of
8 higher education that have been granted by the Council
9 in the current and prior fiscal years; and

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

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

17 (3) Waivers. Where a particular contract requires a vendor
18 ~~contractor~~ to meet a goal established pursuant to this Act,
19 the vendor ~~contractor~~ shall have the right to request a waiver
20 from such requirements prior to the contract award. The
21 Business Enterprise Program shall evaluate a vendor's request
22 for a waiver based on the vendor's documented good faith
23 efforts to meet the contract-specific Business Enterprise
24 Program goal. The Council may ~~shall~~ grant the waiver when the
25 contractor demonstrates that there has been made a good faith
26 effort to comply with the goals for participation by

1 businesses owned by minorities, women, and persons with
2 disabilities. Any such waiver may ~~shall~~ also be transmitted in
3 writing to the Bureau on Apprenticeship Programs and Clean
4 Energy Jobs.

5 (a) Request for waiver. A vendor's ~~contractor's~~
6 request for a waiver under this subsection (3) must
7 include, but is not limited to, the following, ~~if~~
8 ~~available~~:

9 (i) a list of eligible businesses owned by
10 minorities, women, and persons with disabilities that
11 pertain to the the class of contracts in the requested
12 waiver that were contacted by the vendor ~~scope of work~~
13 ~~of the contract~~. Eligible businesses are only eligible
14 if the business is certified for the products or work
15 advertised in the solicitation or bid;

16 (ii) (blank);

17 (iia) a clear demonstration that the vendor
18 ~~contractor~~ selected portions of the work to be
19 performed by certified vendors to facilitate meeting
20 the contract specific goal, and that certified vendors
21 that have the capability to perform the work of the
22 contract were ~~eligible businesses owned by minorities,~~
23 ~~women, and persons with disabilities,~~ solicited
24 through all reasonable and available means ~~eligible~~
25 ~~businesses, and negotiated in good faith with~~
26 ~~interested eligible businesses;~~

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

11 (iic) proof that the prime vendor solicited
12 eligible certified vendors with: (1) sufficient time
13 to respond; (2) adequate information about the scope,
14 specifications, and requirements of the solicitation
15 or bid, including plans, drawings, and addenda, to
16 allow eligible businesses an opportunity to respond to
17 the solicitation or bid; and (3) sufficient follow up
18 with certified vendors;

19 (iid) a clear demonstration that the prime vendor
20 communicated with certified vendors;

21 (iie) evidence that the prime vendor negotiated
22 with certified vendors to enter into subcontracts to
23 provide a commercially useful function of the contract
24 for a reasonable cost;

25 (iii) documentation demonstrating that the
26 difference in cost between the contract proposals

1 being offered by certified vendors is contract
2 proposals being offered by businesses owned by
3 minorities, women, and persons with disabilities are
4 excessive or unreasonable; ~~and~~

5 (iv) a list of certified vendors ~~businesses~~ owned
6 by minorities, women, and persons with disabilities
7 that the contractor has used in the current and prior
8 fiscal years; ~~and~~

9 (v) documentation demonstrating that the vendor
10 made efforts to utilize certified vendors despite the
11 ability or desire of a vendor to perform the work with
12 its own operations by selecting portions of the work
13 to be performed by certified vendors, which may, when
14 appropriate, include breaking out portions of the work
15 to be performed into economically feasible units to
16 facilitate certified vendor participation; and

17 (vi) documentation that the vendor used the
18 services of: (1) the State; (2) organizations or
19 contractors' groups representing or composed of
20 minorities, women, or persons with disabilities; (3)
21 local, State, or federal assistance offices
22 representing or assisting minorities, women, or
23 persons with disabilities; and (4) other organizations
24 that provide assistance in the recruitment and
25 engagement of certified vendors.

26 (b) Determination. The Council's determination

1 concerning waivers must include following:

2 (i) the justification for the requested waiver,
3 including whether the requesting vendor ~~contractor~~
4 made a good faith effort to identify and solicit
5 certified vendors based on the criteria set forth in
6 this Section ~~eligible businesses owned by minorities,~~
7 ~~women, and persons with disabilities;~~

8 (ii) the total number of waivers the vendor
9 ~~contractor~~ has been granted by the Council in the
10 current and prior fiscal years;

11 (iii) (blank); and

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

15 (3.5) (Blank).

16 (4) Conflict with other laws. In the event that any State
17 contract, which otherwise would be subject to the provisions
18 of this Act, is or becomes subject to federal laws or
19 regulations which conflict with the provisions of this Act or
20 actions of the State taken pursuant hereto, the provisions of
21 the federal laws or regulations shall apply and the contract
22 shall be interpreted and enforced accordingly.

23 (5) Each chief procurement officer, as defined in the
24 Illinois Procurement Code, shall maintain on his or her
25 official Internet website a database of the following: (i)
26 waivers granted under this Section with respect to contracts

1 under his or her jurisdiction; (ii) a State agency or public
2 institution of higher education's written request for an
3 exemption of an individual contract or an entire class of
4 contracts; and (iii) the Council's written determination
5 granting or denying a request for an exemption of an
6 individual contract or an entire class of contracts. The
7 database, which shall be updated periodically as necessary,
8 shall be searchable by contractor name and by contracting
9 State agency.

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

15 Each public notice required by law of the award of a State
16 contract shall include for each bid or offer submitted for
17 that contract the following: (i) the bidder's or offeror's
18 name, (ii) the bid amount, (iii) the name or names of the
19 certified vendors ~~firms~~ identified in the bidder's or
20 offeror's submitted utilization plan, and (iv) the ~~bid's~~
21 ~~amount~~ and percentage of the contract awarded to each
22 certified vendor that is a business ~~businesses~~ owned by
23 minorities, women, and persons with disabilities identified in
24 the utilization plan.

25 (Source: P.A. 101-170, eff. 1-1-20; 101-601, eff. 1-1-20;
26 101-657, eff. 1-1-22; 102-29, eff. 6-25-21; 102-662, eff.

1 9-15-21.)

2 (30 ILCS 575/8) (from Ch. 127, par. 132.608)

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

4 Sec. 8. Enforcement.

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

12 (a) Establish enforcement procedures whereby the
13 Commission may recommend to the appropriate State agency,
14 public institutions of higher education, or law
15 enforcement officer that legal or administrative remedies
16 be initiated for violations of contract provisions or
17 rules issued hereunder or by a contracting State agency or
18 public institutions of higher education. State agencies
19 and public institutions of higher education shall be
20 authorized to adopt remedies for such violations which
21 shall include (1) termination of the contract involved,
22 (2) prohibition of participation of the respondents in
23 public contracts for a period not to exceed one year, (3)
24 the assessment of damages in the amount of the discrepancy
25 between the commitment contained in the utilization plan,

1 as such amount may be amended over the term of the
2 contract, and the qualifying payments made to the
3 certified vendors listed in the utilization plan
4 ~~imposition of a penalty not to exceed any profit acquired~~
5 ~~as a result of violation,~~ or (4) any combination thereof.

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

16 (i) assurances of stronger and better focused
17 solicitation efforts to obtain more businesses owned
18 by minorities, women, and persons with disabilities as
19 potential sources of supply;

20 (ii) division of the scope of work ~~job or project~~
21 ~~requirements,~~ when economically feasible, into tasks
22 or quantities to permit participation of businesses
23 owned by minorities, women, and persons with
24 disabilities;

25 (iii) elimination of extended experience or
26 capitalization requirements, when programmatically

1 feasible, to permit participation of businesses owned
2 by minorities, women, and persons with disabilities;

3 (iv) identification of specific proposed contracts
4 as particularly attractive or appropriate for
5 participation by businesses owned by minorities,
6 women, and persons with disabilities, such
7 identification to result from and be coupled with the
8 efforts of subparagraphs (i) through (iii);

9 (v) implementation of those regulations
10 established for the use of the sheltered market
11 process.

12 (2) State agencies and public institutions of higher
13 education shall monitor a vendor's compliance with its
14 utilization plan and the terms of its contract. Without
15 limitation, a vendor's failure to comply with its contractual
16 commitments as contained in the utilization plan; failure to
17 cooperate in providing information regarding its compliance
18 with its utilization plan; or the provision of false or
19 misleading information or statements concerning compliance,
20 certification status, or eligibility of the Business
21 Enterprise Program-certified vendor, good faith efforts, or
22 any other material fact or representation shall constitute a
23 material breach of the contract and entitle the State agency
24 or public institution of higher education to declare a
25 default, terminate the contract, or exercise those remedies
26 provided for in the contract, at law, or in equity.

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

23 The Business Enterprise Program shall develop procedures
24 for determining whether a vendor has made good faith efforts
25 to meet the contract goals upon the expiration or termination
26 of a contract, which may include, but shall not be limited to

1 consideration of: (i) whether State or local action caused a
2 shortfall, such as a change in the scope of work that
3 eliminated work to be performed by certified vendors or a
4 change in specifications; (ii) whether the vendor was unable
5 to obtain certified business participation without requiring
6 the introduction of extra participants not performing a
7 commercially useful function; or (iii) whether the vendor made
8 efforts to use appropriate forums for purposes of advertising
9 subcontracting opportunities suitable for certified
10 businesses.

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