



Rep. Curtis J. Tarver, II

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10200HB3220ham001

LRB102 15164 RJF 37099 a

1 AMENDMENT TO HOUSE BILL 3220

2 AMENDMENT NO. _____. Amend House Bill 3220 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8 (Section scheduled to be repealed on June 30, 2024)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 \$75,000,000 as evidenced by the federal
21 income tax return of the business. A vendor ~~firm~~ with
22 gross sales in excess of this cap may apply to the Council
23 for certification for a particular contract if the vendor
24 ~~firm~~ can demonstrate that the contract would have
25 significant impact on businesses owned by minorities,
26 women, or persons with disabilities as suppliers or

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

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

23 (12) "Business Enterprise Program" means the Business
24 Enterprise Program of the Commission on Equity and
25 Inclusion.

26 (13) "Good faith effort" means actions undertaken by a

1 vendor to achieve a contract specific Business Enterprise
2 Program goal that, by scope, intensity, and
3 appropriateness to the objective, can reasonably be
4 expected to fulfill the program's requirements.

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

14 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;
15 102-29, eff. 6-25-21.)

16 (30 ILCS 575/3.5 new)

17 Sec. 3.5. Uniform standard of contract goals.

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

1 vendors that are able to perform the work to be performed under
2 a contract, and the State's progress to date toward meeting
3 the aspirational goals set forth in this Act.

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

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

15 (30 ILCS 575/5) (from Ch. 127, par. 132.605)

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

17 Sec. 5. Business Enterprise Council.

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

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

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

25 The Director of each State agency and the chief executive
26 officer of each public institution of higher education shall

1 appoint a liaison to the Council. The liaison shall be
2 responsible for submitting to the Council any reports and
3 documents necessary under this Act.

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

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

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

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

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

26 (e) Make annual reports as provided in Section 8f to

1 the Governor and the General Assembly on the status of the
2 program.

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

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

13 (3) No premium bond rate of a surety company for a bond
14 required of a business owned by a minority, woman, or person
15 with a disability bidding for a State contract shall be higher
16 than the lowest rate charged by that surety company for a
17 similar bond in the same classification of work that would be
18 written for a business not owned by a minority, woman, or
19 person with a disability.

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

24 (5) The Secretary shall have the following duties and
25 responsibilities:

26 (a) To be responsible for the day-to-day operation of

1 the Council.

2 (b) To serve as a coordinator for all of the State's
3 programs for businesses owned by minorities, women, and
4 persons with disabilities and as the information and
5 referral center for all State initiatives for businesses
6 owned by minorities, women, and persons with disabilities.

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

26 (d) To devise appropriate policies, regulations, and

1 procedures for including participation by businesses owned
2 by minorities, women, and persons with disabilities as
3 prime contractors, including, but not limited to: (i)
4 encouraging the inclusions of qualified businesses owned
5 by minorities, women, and persons with disabilities on
6 solicitation lists, (ii) investigating the potential of
7 blanket bonding programs for small construction jobs, and
8 (iii) investigating and making recommendations concerning
9 the use of the sheltered market process.

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

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

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

24 (30 ILCS 575/7) (from Ch. 127, par. 132.607)

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

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

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

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

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

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

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

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

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

17 (i) the justification for the requested exemption,
18 including whether diligent efforts were undertaken to
19 identify and solicit eligible businesses owned by
20 minorities, women, and persons with disabilities;

21 (ii) the total number of exemptions granted to the
22 affected agency, public institution of higher
23 education, or recipient of a grant or loan of State
24 funds of \$250,000 or more complying with Section 45 of
25 the State Finance Act that have been granted by the
26 Council in the current and prior fiscal years; and

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

6 (2) Class exemptions.

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

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

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

26 (ii) a clear demonstration that the number of

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

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

9 (iv) the number of class exemptions the affected
10 agency or public institution of higher education
11 requested in the current and prior fiscal years.

12 (a-2) Determination. The Council's determination
13 concerning class exemptions must consider, at a minimum,
14 the following:

15 (i) the justification for the requested exemption,
16 including whether diligent efforts were undertaken to
17 identify and solicit eligible businesses owned by
18 minorities, women, and persons with disabilities;

19 (ii) the total number of class exemptions granted
20 to the requesting agency or public institution of
21 higher education that have been granted by the Council
22 in the current and prior fiscal years; and

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 the current and prior fiscal

1 years.

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

4 (3) Waivers. Where a particular contract requires a vendor
5 ~~contractor~~ to meet a goal established pursuant to this Act,
6 the vendor ~~contractor~~ shall have the right to request a waiver
7 from such requirements prior to the contract award. The
8 Business Enterprise Program shall evaluate a vendor's request
9 for a waiver based on the vendor's documented good faith
10 efforts to meet the contract-specific Business Enterprise
11 Program goal. The Council may ~~shall~~ grant the waiver when the
12 contractor demonstrates that there has been made a good faith
13 effort to comply with the goals for participation by
14 businesses owned by minorities, women, and persons with
15 disabilities. Any such waiver may ~~shall~~ also be transmitted in
16 writing to the Bureau on Apprenticeship Programs and Clean
17 Energy Jobs.

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

22 (i) a list of eligible businesses owned by
23 minorities, women, and persons with disabilities that
24 pertain to the the class of contracts in the requested
25 waiver that were contracted by the vendor ~~scope of~~
26 ~~work of the contract.~~ Eligible businesses are only

1 eligible if the business is certified for the products
2 or work advertised in the solicitation or bid;

3 (ii) (blank);

4 (iia) a clear demonstration that the vendor
5 ~~contractor~~ selected portions of the work to be
6 performed by certified vendors to facilitate meeting
7 the contract specific goal, and that certified vendors
8 that have the capability to perform the work of the
9 contract were eligible businesses owned by minorities,
10 ~~women, and persons with disabilities,~~ solicited
11 through all reasonable and available means ~~eligible~~
12 ~~businesses, and negotiated in good faith with~~
13 ~~interested eligible businesses;~~

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

24 (iic) proof that the prime vendor solicited
25 eligible certified vendors with: (1) sufficient time
26 to respond; (2) adequate information about the scope,

1 specifications, and requirements of the solicitation
2 or bid, including plans, drawings, and addenda, to
3 allow eligible businesses an opportunity to respond to
4 the solicitation or bid; and (3) sufficient follow up
5 with certified vendors;

6 (iid) a clear demonstration that the prime vendor
7 communicated with certified vendors;

8 (iie) evidence that the prime vendor negotiated
9 with certified vendors to enter into subcontracts to
10 provide a commercially useful function of the contract
11 for a reasonable cost;

12 (iii) documentation demonstrating that the
13 difference in cost between the contract proposals
14 being offered by certified vendors is contract
15 proposals being offered by businesses owned by
16 minorities, women, and persons with disabilities are
17 excessive or unreasonable; and

18 (iv) a list of certified vendors ~~businesses~~ owned
19 by minorities, women, and persons with disabilities
20 that the contractor has used in the current and prior
21 fiscal years; ~~=~~

22 (v) documentation demonstrating that the vendor
23 made efforts to utilize certified vendors despite the
24 ability or desire of a vendor to perform the work with
25 its own operations by selecting portions of the work
26 to be performed by certified vendors, which may, when

1 appropriate, include breaking out portions of the work
2 to be performed into economically feasible units to
3 facilitate certified vendor participation; and

4 (vi) documentation that the vendor used the
5 services of: (1) the State; (2) organizations or
6 contractors' groups representing or composed of
7 minorities, women, or persons with disabilities; (3)
8 local, State, or federal assistance offices
9 representing or assisting minorities, women, or
10 persons with disabilities; and (4) other organizations
11 that provide assistance in the recruitment and
12 engagement of certified vendors.

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 vendor ~~contractor~~
17 made a good faith effort to identify and solicit
18 certified vendors based on the criteria set forth in
19 this Section ~~eligible businesses owned by minorities,~~
20 ~~women, and persons with disabilities;~~

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

24 (iii) (blank); and

25 (iv) the vendor's ~~contractor's~~ use of businesses
26 owned by minorities, women, and persons with

1 disabilities in the current and prior fiscal years.

2 (3.5) (Blank).

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

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

23 (6) Each chief procurement officer, as defined by the
24 Illinois Procurement Code, shall maintain on its website a
25 list of all vendors ~~firms~~ that have been prohibited from
26 bidding, offering, or entering into a contract with the State

1 of Illinois as a result of violations of this Act.

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

12 (Source: P.A. 101-170, eff. 1-1-20; 101-601, eff. 1-1-20;
13 101-657, eff. 1-1-22; 102-29, eff. 6-25-21; 102-662, eff.
14 9-15-21.)

15 (30 ILCS 575/8) (from Ch. 127, par. 132.608)

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

17 Sec. 8. Enforcement.

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

25 (a) Establish enforcement procedures whereby the

1 Commission may recommend to the appropriate State agency,
2 public institutions of higher education, or law
3 enforcement officer that legal or administrative remedies
4 be initiated for violations of contract provisions or
5 rules issued hereunder or by a contracting State agency or
6 public institutions of higher education. State agencies
7 and public institutions of higher education shall be
8 authorized to adopt remedies for such violations which
9 shall include (1) termination of the contract involved,
10 (2) prohibition of participation of the respondents in
11 public contracts for a period not to exceed one year, (3)
12 the assessment of a penalty in the amount of the
13 discrepancy between the commitment contained in the
14 utilization plan, as such amount may be amended over the
15 term of the contract, and the qualifying payments made to
16 the certified vendors listed in the utilization plan
17 ~~imposition of a penalty not to exceed any profit acquired~~
18 ~~as a result of violation~~, or (4) any combination thereof.

19 (b) If the Commission concludes that a compliance plan
20 submitted under Section 6 is unlikely to produce the
21 participation goals for businesses owned by minorities,
22 women, and persons with disabilities within the then
23 current fiscal year, the Commission may recommend that the
24 State agency or public institution of higher education
25 revise its plan to provide additional opportunities for
26 participation by businesses owned by minorities, women,

1 and persons with disabilities. Such recommended revisions
2 may include, but shall not be limited to, the following:

3 (i) assurances of stronger and better focused
4 solicitation efforts to obtain more businesses owned
5 by minorities, women, and persons with disabilities as
6 potential sources of supply;

7 (ii) division of the scope of work ~~job or project~~
8 ~~requirements~~, when economically feasible, into tasks
9 or quantities to permit participation of businesses
10 owned by minorities, women, and persons with
11 disabilities;

12 (iii) elimination of extended experience or
13 capitalization requirements, when programmatically
14 feasible, to permit participation of businesses owned
15 by minorities, women, and persons with disabilities;

16 (iv) identification of specific proposed contracts
17 as particularly attractive or appropriate for
18 participation by businesses owned by minorities,
19 women, and persons with disabilities, such
20 identification to result from and be coupled with the
21 efforts of subparagraphs (i) through (iii);

22 (v) implementation of those regulations
23 established for the use of the sheltered market
24 process.

25 (2) State agencies and public institutions of higher
26 education shall monitor a vendor's compliance with its

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

14 (3) Prior to the expiration or termination of a contract,
15 State agencies and public institutions of higher education
16 shall evaluate the contractor's fulfillment of the contract
17 goals for participation by certified businesses owned by
18 minorities, women, and persons with disabilities. The agency
19 or public institution of higher education shall prepare a
20 report of the vendor's compliance with the contract goals and
21 file it with the Secretary. If the Secretary determines that
22 the vendor did not fulfill the contract goals, the vendor
23 shall be in breach of the contract and may be subject to
24 remedies or sanctions, unless the vendor can show that it made
25 good faith efforts to meet the contract goals. Such remedies
26 or sanctions for failing to make good faith efforts may

1 include (i) disqualification of the contractor from doing
2 business with the State for a period of no more than one year,
3 ~~or~~ (ii) cancellation, without any penalty to the State, of any
4 contract entered into by the vendor, or (iii) the assessment
5 of a penalty in the amount of the discrepancy between the
6 commitment contained in the utilization plan, as such amount
7 may be amended over the term of the contract, and the
8 qualifying payments made to the certified vendors listed in
9 the utilization plan.

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

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