

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1196 Session of 2013

INTRODUCED BY WILLIAMS, COSTA, SCHWANK, FONTANA, HUGHES AND
FARNESE, NOVEMBER 27, 2013

REFERRED TO STATE GOVERNMENT, NOVEMBER 27, 2013

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 62 (Procurement) of
2 the Pennsylvania Consolidated Statutes, in forgery and
3 fraudulent practices, further providing for deception
4 relating to certifications or verification of small diverse
5 businesses; in general provisions, further providing for
6 definitions; in procurement organization, further providing
7 for powers and duties; providing for contractor
8 responsibility program; and further providing for Office of
9 the Budget; in small and disadvantaged businesses, further
10 providing for policy and for definitions; repealing
11 provisions relating to regulations; providing for department
12 regulations and statements of policy; repealing provisions
13 relating to duties of department; providing for
14 administration, for enforcement and legal remedies, for
15 duties of the bureau, for duties of the certification unit
16 and for duties of the compliance unit; further providing for
17 bonding and progress payments and for reporting requirements;
18 providing for certification, for small diverse business
19 compliance, for nonsmall diverse business compliance, for
20 nonsmall diverse business diversity plan and for contract
21 clauses and preference provisions; in antibid-rigging,
22 further providing for definitions and prohibited activities;
23 and making editorial changes.

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. Section 4107.2 of Title 18 of the Pennsylvania
27 Consolidated Statutes is amended to read:

28 § 4107.2. Deception relating to [certification] certifications

1 or verification of [minority business enterprise or
2 women's business enterprise] small diverse
3 businesses.

4 (a) Offense defined.--A person commits a felony of the third
5 degree if, in the course of business, he:

6 (1) Fraudulently obtains or retains certification as a
7 [minority business enterprise or a women's business
8 enterprise] small business or a diverse business.

9 (2) Fraudulently obtains or retains verification as a
10 small diverse business.

11 [(2)] (3) Willfully makes a false statement, whether by
12 affidavit, report or other representation, to an official or
13 employee of a public body for the purpose of influencing the
14 certification or denial of certification of any business
15 entity as a [minority business enterprise or a women's
16 business enterprise.] small business or diverse business, or
17 for the purpose of influencing the verification or denial of
18 verification as a small diverse business.

19 [(3)] (4) Willfully obstructs or impedes any agency
20 official or employee who is investigating the qualifications
21 of a business entity which has requested certification as a
22 [minority business enterprise or a women's business
23 enterprise] small business or verification as a small diverse
24 business.

25 [(4)] (5) Fraudulently obtains public moneys reserved
26 for or allocated or available to [minority business
27 enterprises or women's business enterprises.] small diverse
28 businesses.

29 (6) Fraudulently uses a certification or verification of
30 a small diverse business to gain an advantage in an

invitation for bid or request for proposal.

(a.1) Enforcement.--The Department of General Services may enforce this section in accordance with 62 Pa.C.S. Ch. 45 (relating to antibid-rigging).

(b) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Certification." A determination made by a [public body] purchasing agency that a business entity is a [minority business enterprise or a women's business enterprise] small business for whatever purpose[.], or a determination made by a certification entity that a business entity is a diverse business for whatever purpose.

"Certification entity." A third-party entity that certifies whether a business is a diverse business. The term includes the following entities:

(1) The National Minority Supplier Development Council.
(2) The Women's Business Enterprise National Council.
(3) The United States Department of Veterans Affairs.
(4) The United States Small Business Administration's 8(a) Program.

(5) The Department of Transportation's Unified Certification Program for Disadvantaged Business Enterprises.

"Control." The exclusive or ultimate and sole control of the business including, but not limited to, capital investment and all other financial, property, acquisition, contract negotiation, legal matters, officer-director-employee selection and comprehensive hiring, operating responsibility, cost-control matters, income and dividend matters, financial transactions and rights of other shareholders or joint partners. Control shall be

1 real, substantial and continuing not pro forma. Control shall
2 include the power to direct or cause the direction of the
3 management and policies of the business and to make the day-to-
4 day as well as major decisions in matters of policy, management
5 and operations. Control shall be exemplified by possessing the
6 requisite knowledge and expertise to run the particular business
7 and control shall not include simple majority or absentee
8 ownership. Further, control by a socially and economically
9 disadvantaged individual or woman shall not be deemed to exist
10 in any case where any nonminority owner or employee of the
11 business is disproportionately responsible for the operation of
12 the firm.

13 "Diverse business." A small business which is owned or
14 controlled by a majority of persons, not limited to members of
15 minority groups, who have been deprived of the opportunity to
16 develop and maintain a competitive position in the economy
17 because of social disadvantages.

18 "Minority business enterprise." [A small business concern
19 which is:

20 (1) A sole proprietorship, owned and controlled by a
21 socially and economically disadvantaged individual.

22 (2) A partnership or joint venture controlled by
23 socially and economically disadvantaged individuals in which
24 51% of the beneficial ownership interest is held by socially
25 and economically disadvantaged individuals.

26 (3) A corporation or other entity controlled by socially
27 and economically disadvantaged individuals in which at least
28 51% of the voting interest and 51% of the beneficial
29 ownership interest are held by socially and economically
30 disadvantaged individuals.] A small, for-profit business

1 which is controlled by one or more minorities. In the case of
2 a corporation, at least 51% of the stock must be owned by one
3 or more minorities.

4 ["Public body." A department, bureau, agency, commission or
5 other instrumentality of the Commonwealth, political
6 subdivision, municipal authority or any wholly or partially
7 owned government corporation which enters into contracts.]

8 "Purchasing agency." A department, bureau, agency,
9 commission or other instrumentality of the Commonwealth which
10 enters into contracts.

11 "Service-disabled veteran." A veteran who possesses either a
12 disability rating letter issued by the United States Department
13 of Veterans Affairs or a disability determination from the
14 United States Department of Defense. In the case of a veteran
15 with a permanent and severe disability, the term includes the
16 spouse or permanent caregiver of that veteran.

17 "Service-disabled veteran-owned business enterprise." A
18 small, for-profit business that is controlled by one or more
19 service-disabled veterans. In the case of a corporation, at
20 least 51% of the stock must be owned by one or more service-
21 disabled veterans. For procurement, a service-disabled veteran-
22 owned business enterprise shall be certified by the United
23 States Department of Veterans Affairs according to its
24 regulations as a small business which is controlled by one or
25 more service-disabled veterans.

26 "Small business." A business in the United States which is
27 independently owned, is not dominant in its field of operation
28 and employs 100 or fewer employees.

29 "Small diverse business." A small business which is also a
30 diverse business.

1 "Socially and economically disadvantaged individuals."
2 Persons who are citizens of the United States and who are Black
3 Americans, Hispanic Americans, Native Americans, Asian-Pacific
4 Americans, women and other minorities or persons found to be
5 disadvantaged by the Small Business Administration pursuant to
6 the Small Business Act (15 U.S.C. § 631 et seq.). The term
7 includes veterans and service-disabled veterans.

8 "Verification." The process through which a small diverse
9 business is verified by the department that it is certified
10 through one or more certification entities as a diverse business
11 for the purpose of procurement.

12 "Veteran." An individual who served on active duty in the
13 United States Armed Forces, including any of the following:

14 (1) A reservist or member of the National Guard who was
15 discharged or released from the service under honorable
16 conditions.

17 (2) A reservist or member of the National Guard who
18 completed an initial term of enlistment or qualifying period
19 of service.

20 (3) A reservist or member of the National Guard who was
21 disabled in the line of duty during training.

22 (4) An eligible surviving spouse of a veteran.

23 "Veteran-owned business enterprise." A small, for-profit
24 business which is controlled by one or more veterans. In the
25 case of a corporation, at least 51% of the stock must be owned
26 by one or more veterans. For procurement, a veteran-owned
27 business enterprise shall be certified by the United States
28 Department of Veterans Affairs according to its regulations as a
29 small business concern which is controlled by one or more
30 veterans.

1 "Women's business enterprise." A small business concern
2 which is at least 51% owned and controlled by women, or, in the
3 case of any publicly owned business, at least 51% of the stock
4 of which is owned by one or more women and whose management and
5 daily business operations are controlled by one or more of the
6 women who own it.

7 Section 2. Section 103 of Title 62 is amended by adding a
8 definition to read:

9 § 103. Definitions.

10 Subject to additional definitions contained in subsequent
11 provisions of this part which are applicable to specific
12 provisions of this part, the following words and phrases when
13 used in this part shall have the meanings given to them in this
14 section unless the context clearly indicates otherwise:

15 * * *

16 "Contractor responsibility file." A business's record in the
17 contractor responsibility program.

18 * * *

19 Section 3. Section 321(6) of Title 62 is amended and the
20 section is amended by adding a paragraph to read:

21 § 321. Powers and duties.

22 Except as otherwise specifically provided in this part, the
23 department shall have the following powers and duties:

24 * * *

25 (6) Participate in the management and maintenance of a
26 contractor responsibility program as provided in section 323
27 (relating to contractor responsibility program) in
28 coordination with the Office of the Budget and other agencies
29 as may be directed by the Governor.

30 (7) Establish policies and promulgate regulations

1 concerning the administration of a contractor responsibility
2 program subject to the review of the Office of the Budget and
3 other agencies as directed by the Governor.

4 Section 4. Title 62 is amended by adding a section to read:

5 § 323. Contractor responsibility program.

6 (a) Program.--A contractor responsibility program shall be
7 established by the department.

8 (b) Objectives.--The contractor responsibility program
9 established under subsection (a) shall, at a minimum, provide
10 for all of the following:

11 (1) Mandating agency reporting of nonresponsible
12 contractors.

13 (2) Securing of information on contractor responsibility
14 from the Federal Government.

15 (3) Agency investigations of allegations of contractor
16 nonresponsibility.

17 (4) Standards and procedures for agency determinations
18 of contractor responsibility.

19 (5) Centralizing the collection and dissemination of
20 information concerning unsatisfactory or deficient
21 performance and nonresponsible contractors.

22 (6) Maintaining the confidentiality of the information
23 contained in the Commonwealth contractor responsibility files
24 and sanctions for the unauthorized use or disclosure of the
25 information.

26 (7) Collecting Commonwealth liabilities.

27 (c) Use.--For a procurement exceeding an amount to be
28 determined by the department, a purchasing agency shall access
29 the contractor responsibility file of the bidder or offeror to
30 gather and analyze all of the following information regarding

1 the bidder or offeror:

2 (1) Current responsibility status.

3 (2) Past performance.

4 (3) Identification of tax delinquencies or other
5 liabilities.

6 (d) Violations.--All purchasing agencies shall maintain
7 contractor responsibility files and update the files for
8 violations of any of the following provisions:

9 (1) 18 Pa.C.S. § 4107 (relating to deceptive or
10 fraudulent business practices).

11 (2) 18 Pa.C.S. § 4107.2 (relating to deception relating
12 to certifications or verification of small diverse
13 businesses).

14 (3) Section 2111 (relating to small diverse business
15 compliance).

16 (4) Section 2111.1 (relating to relating to nonsmall
17 diverse business compliance).

18 (5) Chapter 23 (relating to ethics in public
19 contracting).

20 (6) Any other evidence of a business's nonresponsibility
21 that a purchasing agency may consider in selecting the
22 business as a contractor.

23 (e) Penalties.--The following apply:

24 (1) The department may impose a fine of no more than
25 \$1,000 on a business for a negative entry in the business's
26 contractor responsibility file under the following
27 circumstances:

28 (i) The business has a total of three negative
29 entries in its contractor responsibility file.

30 (ii) The business has a total of more than three

1 negative entries in its contractor responsibility file.

2 (iii) The business has incurred any single negative
3 entry in the business's contractor responsibility file
4 for which the department or a purchasing agency
5 determines in its discretion that the underlying
6 nonresponsible conduct is egregious.

7 (2) Penalties given through the contractor
8 responsibility program do not preclude the Commonwealth from
9 imposing debarment, suspension, other penalties or further
10 legal action under this title for the same underlying
11 nonresponsible conduct in a business's contractor
12 responsibility file.

13 Fines shall be payable to the department and may be waived by
14 department for cause shown.

15 Section 5. Section 327(b) of Title 62 is amended to read:

16 § 327. Office of the Budget.

17 * * *

18 (b) Contractor responsibility program.--The Office of the
19 Budget shall participate in the management and maintenance of a
20 contractor responsibility program as provided in section 323
21 (relating to contractor responsibility program) in coordination
22 with the department and other agencies as may be directed by the
23 Governor.

24 * * *

25 Section 6. The heading of Chapter 21 of Title 62 is amended
26 to read:

27 CHAPTER 21

28 SMALL AND [DISADVANTAGED] DIVERSE BUSINESSES

29 Section 7. Sections 2101 and 2102 of Title 62 are amended to
30 read:

1 § 2101. Policy.

2 The policy of this Commonwealth is to assist small and
3 [disadvantaged] diverse businesses in learning how to do
4 business with [Commonwealth] purchasing agencies. The department
5 shall implement this policy in accordance with regulations
6 promulgated by the department.

7 § 2102. Definitions.

8 [Subject to section 2103 (relating to regulations), the]
9 Subject to section 2103.1 (relating to department regulations
10 and statements of policy), the following words and phrases when
11 used in this chapter shall have the meanings given to them in
12 this section unless the context clearly indicates otherwise:

13 "Audit." An investigation of business records in accordance
14 with section 552 (relating to right to audit records).

15 "Bureau." The Bureau of Small Business Opportunities within
16 the department.

17 "Business." A contractor or subcontractor for procurement.

18 "Certification." A determination made by a purchasing agency
19 that a business entity is a small business for whatever purpose,
20 or a determination made by a certification entity that a
21 business entity is a diverse business for whatever purpose.

22 "Certification entity." A third-party entity that certifies
23 whether a business is a diverse business. The term includes the
24 following entities:

25 (1) The National Minority Supplier Development Council.

26 (2) The Women's Business Enterprise National Council.

27 (3) The United States Department of Veterans Affairs.

28 (4) The United States Small Business Administration's
29 8(a) program.

30 (5) The Department of Transportation's Unified

1 Certification Program for Disadvantaged Business Enterprises.

2 "Control." The exclusive or ultimate and sole control of the
3 business including, but not limited to, capital investment and
4 all other financial, property, acquisition, contract
5 negotiation, legal matters, officer-director-employee selection
6 and comprehensive hiring, operating responsibility, cost-control
7 matters, income and dividend matters, financial transactions and
8 rights of other shareholders or joint partners. Control shall be
9 real, substantial and continuing not pro forma. Control shall
10 include the power to direct or cause the direction of the
11 management and policies of the business and to make the day-to-
12 day as well as major decisions in matters of policy, management
13 and operations. Control shall be exemplified by possessing the
14 requisite knowledge and expertise to run the particular business
15 and control shall not include simple majority or absentee
16 ownership. Further, control by a socially and economically
17 disadvantaged individual or woman shall not be deemed to exist
18 in any case where any nonminority owner or employee of the
19 business is disproportionately responsible for the operation of
20 the firm.

21 ["Disadvantaged business."] "Diverse business." A small
22 business which is owned or controlled by a majority of persons,
23 not limited to members of minority groups, who have been
24 deprived of the opportunity to develop and maintain a
25 competitive position in the economy because of social
26 disadvantages.

27 "Diversity plan." A plan submitted to the department by a
28 business that establishes a separate goal of diversity in
29 control, ownership, participation, operation and employment when
30 fulfilling the obligations of an invitation for bid or request

1 for proposal.

2 "Inspection." An on-site investigation of the place of
3 business or worksite of a contractor or any subcontractor that
4 is related to the performance of any contract awarded or to be
5 awarded by the purchasing agency.

6 "Minority business enterprise." A small, for-profit business
7 which is controlled by one or more minorities. In the case of a
8 corporation, at least 51% of the stock must be owned by one or
9 more minorities.

10 "Self-certification." The process through which a business
11 obtains certification as a diverse business through a
12 certification entity.

13 "Service-disabled veteran." A veteran who possesses either a
14 disability rating letter issued by the United States Department
15 of Veterans Affairs or a disability determination from the
16 United States Department of Defense. In the case of a veteran
17 with a permanent and severe disability, the term includes the
18 spouse or permanent caregiver of that veteran.

19 "Service-disabled veteran-owned business enterprise." A
20 small, for-profit business that is controlled by one or more
21 service-disabled veterans. In the case of a corporation, at
22 least 51% of the stock must be owned by one or more service-
23 disabled veterans. For procurement, a service-disabled veteran-
24 owned business enterprise shall be certified by the United
25 States Department of Veterans Affairs according to its
26 regulations as a small business which is controlled by one or
27 more service-disabled veterans.

28 "Small business." A business in the United States which is
29 independently owned, is not dominant in its field of operation
30 and employs 100 or fewer employees.

1 "Small Business Procurement Initiative." The process through
2 which a small business concern is certified by the department as
3 a small business and thereby registers as a small business
4 eligible for the purpose of procurement.

5 "Small diverse business." A small business which is also a
6 diverse business.

7 "Socially and economically disadvantaged individuals."
8 Persons who are citizens of the United States and who are Black
9 Americans, Hispanic Americans, Native Americans, Asian-Pacific
10 Americans, women and other minorities or persons found to be
11 disadvantaged by the Small Business Administration pursuant to
12 the Small Business Act (15 U.S.C. § 631 et seq.). The term
13 includes veterans and service-disabled veterans.

14 "Verification." The process through which a small diverse
15 business is verified by the department that it is certified
16 through one or more certification entities as a diverse business
17 for the purpose of procurement.

18 "Veteran." An individual who served on active duty in the
19 United States Armed Forces, including any of the following:

20 (1) A reservist or member of the National Guard who was
21 discharged or released from the service under honorable
22 conditions.

23 (2) A reservist or member of the National Guard who
24 completed an initial term of enlistment or qualifying period
25 of service.

26 (3) A reservist or member of the National Guard who was
27 disabled in the line of duty during training.

28 (4) An eligible surviving spouse of a veteran.

29 "Veteran-owned business enterprise." A small, for-profit
30 business which is controlled by one or more veterans. In the

case of a corporation, at least 51% of the stock must be owned by one or more veterans. For procurement, a veteran-owned business enterprise shall be certified by the United States Department of Veterans Affairs according to its regulations as a small business concern which is controlled by one or more veterans.

"Women's business enterprise." A small business concern which is at least 51% owned and controlled by women, or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more of the women who own it.

Section 8. Section 2103 of Title 62 is repealed:

[§ 2103. Regulations.

The department shall establish policy for executive and those independent agencies for which the department acts as purchasing agency and may promulgate regulations establishing detailed definitions of the words and phrases defined in section 2102 (relating to definitions) using, in addition to the criteria set forth in section 2102, other criteria as it deems appropriate, including the number of employees and the dollar volume of business. State-affiliated entities shall implement the policy for their procurement programs.]

Section 9. Title 62 is amended by adding a section to read:

§ 2103.1. Department regulations and statements of policy.

(a) Regulations.--The department shall promulgate regulations in accordance with this chapter. Regulations shall be sufficient to ensure reasonable predictability in small diverse business procurement for contractors and subcontractors. Regulations shall establish all of the following:

1 (1) Certification procedures as provided in section 2109
2 (relating to certification).

3 (2) Verification procedures as provided in section 2110
4 (relating to verification).

5 (3) Compliance as provided in sections 2111 (relating to
6 small diverse business compliance) and 2111.1 (relating to
7 nonsmall diverse business compliance).

8 (b) Statements of policy.--The department shall establish
9 policies for purchasing agencies for which the department acts
10 as a purchasing agency. Purchasing agencies shall implement the
11 policies for their procurement programs.

12 Section 10. Section 2104 of Title 62 is repealed:

13 [§ 2104. Duties of department.

14 The department shall have the following duties:

15 (1) Where feasible, provide appropriate staff who shall
16 be responsible to the department and who shall serve within
17 designated Commonwealth agencies to assist small and
18 disadvantaged businesses in this Commonwealth in learning how
19 to do business with Commonwealth agencies.

20 (2) Give special publicity to procurement procedures and
21 issue special publications designed to assist small and
22 disadvantaged businesses in learning how to do business with
23 Commonwealth agencies.

24 (3) Compile, maintain and make available source lists of
25 small and disadvantaged businesses for the purpose of
26 encouraging procurement from small and disadvantaged
27 businesses.

28 (4) Include small and disadvantaged businesses on
29 solicitation mailing lists.

30 (5) Assure that small and disadvantaged businesses are

1 solicited on each procurement for which the businesses may be
2 suited.

3 (6) Develop special training programs to assist small
4 and disadvantaged businesses in learning how to do business
5 with Commonwealth agencies.]

6 Section 11. Title 62 is amended by adding sections to read:

7 § 2104.1. Administration.

8 (a) Bureau of Small Business Opportunities.--The department
9 shall establish the Bureau of Small Business Opportunities to
10 administer this chapter.

11 (b) Certification unit.--The department shall establish a
12 staffed certification unit within the bureau that shall assist
13 small diverse businesses in obtaining or renewing certification
14 for procurement in accordance with this chapter. At least one
15 employee of the certification unit shall be fluent in both
16 English and Spanish.

17 (c) Compliance unit.--The department shall establish a
18 staffed compliance unit within the bureau that shall ensure all
19 small diverse businesses and nonsmall diverse businesses that
20 subcontract or plan to subcontract with a small diverse business
21 maintain compliance with this chapter. At least one employee of
22 the compliance unit shall be fluent in both English and Spanish.

23 (d) Duties of the department.--The department shall have the
24 following duties:

25 (1) Provide appropriate staff who shall be responsible
26 to the department and who shall serve within designated
27 purchasing agencies to assist small diverse businesses in
28 learning how to do business with purchasing agencies and to
29 enforce the provisions of this chapter.

30 (2) Assure that participation by small diverse

1 businesses is, if appropriate, factored into the evaluation
2 of proposals for supplies, services or construction when a
3 purchasing agency uses the competitive sealed proposals
4 method under section 513 (relating to competitive sealed
5 proposals).

6 (3) Exercise authority over the bureau to carry out the
7 provisions of this chapter.

8 (4) Approve or reject any contract modification
9 regarding the respective responsibilities of contractors and
10 subcontractors in an existing contract before such contract
11 modification is accepted and enforceable.

12 (5) Determine the employment data that shall be included
13 in a nonsmall diverse business's performance report that
14 demonstrates its achievement of a diversity plan in
15 accordance with section 2112 (relating to nonsmall diverse
16 business diversity plan).

17 § 2104.2. Enforcement and legal remedies.

18 (a) Enforcement.--The following apply:

19 (1) The bureau shall monitor and enforce contractor
20 compliance, contractor responsibility and may recommend a
21 case of noncompliance or nonresponsibility to the department
22 for further action.

23 (2) The department may develop other enforcement
24 mechanisms that are derived from the provisions of this
25 chapter.

26 (b) Legal remedies.--At the department's discretion, a
27 business may be subject to legal action by the Attorney General
28 for civil liability or criminal prosecution, including, but not
29 limited to, the following:

30 (1) A violation of 18 Pa.C.S. § 4107.2 (relating to

1 deception relating to certifications or verification of small
2 diverse businesses).

3 (2) A violation of Chapter 45 (relating to antibid-
4 rigging).

5 (3) Any other legal remedies provided by law.

6 § 2104.3. Duties of the bureau.

7 (a) Duties.--The bureau shall have the following duties:

8 (1) Give special publicity to procurement procedures and
9 issue special publications designed to assist small diverse
10 businesses in learning how to do business with purchasing
11 agencies.

12 (2) Compile, maintain and make available source lists of
13 verified small diverse businesses for the purpose of
14 encouraging procurement from small diverse businesses.

15 (3) Include verified small diverse businesses on
16 solicitation mailing lists.

17 (4) Ensure that verified small diverse businesses are
18 solicited on each procurement for which the businesses may be
19 suited.

20 (5) Develop and publicize training programs to assist
21 small diverse businesses in learning how to do business with
22 purchasing agencies, including assistance with certification,
23 verification, compliance, bonding and diversity plans.

24 (6) Conduct regular meetings with all purchasing
25 agencies to monitor compliance with this chapter.

26 (7) Develop and publicize educational initiatives
27 including, but not limited to, informational sessions,
28 programs and courses designed to educate small diverse
29 businesses on the processes and benefits of doing business
30 with purchasing agencies.

1 (b) Hotline.--The bureau shall establish a hotline telephone
2 number for contractors, subcontractors and the public to connect
3 with the bureau for all of the following purposes:

4 (1) Obtaining guidance on the certification process.

5 (2) Obtaining guidance on contractor compliance.

6 (3) Reporting any of the following suspected activities:

7 (i) Abuse or misuse of one's certified status as a
8 small diverse business in procurement.

9 (ii) A violation of any of the provisions of this
10 chapter.

11 (iii) A violation of 18 Pa.C.S. § 4107.2 (relating
12 to deception relating to certifications or verification
13 of small diverse businesses).

14 (iv) Fraud.

15 (c) Distribution.--The bureau shall distribute the hotline
16 established under subsection (b) to all contractors and
17 subcontractors engaging in procurement in accordance with this
18 chapter.

19 (d) Maintenance.--The bureau shall maintain the contractor
20 responsibility file within the contractor responsibility program
21 as provided in section 323 (relating to contractor
22 responsibility program) of the following entities:

23 (1) A small diverse business.

24 (2) A nonsmall diverse business as a prime contractor
25 that uses or plans to use a small diverse business as a
26 subcontractor.

27 (e) Enforcement.--If the bureau finds a business is in
28 noncompliance, then the bureau may take the following actions:

29 (1) Record a negative entry in the business's contractor
30 responsibility file.

1 (2) Cancel the contract.

2 (3) Suspend the business for a period of no more than 90
3 days.

4 (4) Debar the business for a period of no more than
5 three years.

6 (5) Decertify the business from the Small Business
7 Procurement Initiative.

8 (6) Withdraw verification of the business.

9 (7) Impose fines.

10 (8) Make a recommendation to the department to refer the
11 case to the Attorney General for legal action.

12 (9) Exercise authority over the certification unit and
13 the compliance unit to ensure this chapter is effective.

14 § 2104.4. Duties of the certification unit.

15 (a) Duties.--The certification unit shall have the following
16 duties:

17 (1) Assist small diverse businesses in obtaining
18 certification.

19 (2) Certify and decertify small businesses through the
20 Small Business Procurement Initiative.

21 (3) Verify or withdraw verification of a business
22 seeking or relying on verification as a small diverse
23 business.

24 (b) Decertification and withdrawal of verification.--The
25 certification unit may decertify a business's certification as a
26 small business or withdraw verification of a small diverse
27 business for any of the following reasons:

28 (1) The business received certification or verification
29 by knowingly submitting false and misleading information.

30 (2) The business knowingly allowed the abuse or misuse

1 of its certification or verification status.

2 (3) The business failed to cooperate with or respond to
3 a request for information from the department or other
4 purchasing agency or official.

5 (4) A certification entity decertifies the business.

6 (5) The business otherwise violates any of the following
7 provisions:

8 (i) 18 Pa.C.S. § 4107.2 (relating to deception
9 relating to certifications or verification of small
10 diverse businesses).

11 (ii) Section 2111 (relating to small diverse
12 business compliance).

13 (iii) Section 4503 (relating to prohibited
14 activities).

15 (iv) The certification unit shall give the business
16 notice of proposed decertification or withdrawal of
17 verification and the right to due process through
18 regulations promulgated by the department.

19 (v) The certification unit shall record a
20 decertification or withdrawal of verification in the
21 business's contractor responsibility file within the
22 contractor responsibility program as provided in section
23 323 (relating to contractor responsibility program).

24 (c) Audit and inspection.--The certification unit shall
25 audit and inspect a business for proper certification and
26 verification according to the following:

27 (1) An inspection shall be performed during verification
28 to ensure proper certifications of a small diverse business
29 in accordance with this chapter. The certification unit may
30 perform any subsequent inspection at the discretion of the

1 bureau to ensure proper certifications and verification.

2 (2) The certification unit may recommend the grounds for
3 decertifying a small business or not verifying a small
4 diverse business to the department for further action.

5 § 2104.5. Duties of the compliance unit.

6 (a) Duties.--The compliance unit shall have all of the
7 following duties:

8 (1) Assist contractors and subcontractors in maintaining
9 compliance with this chapter.

10 (2) Conduct an audit or an inspection of the business
11 when it is suspected of noncompliance.

12 (b) Audits and inspections.--The compliance unit shall audit
13 or inspect a small diverse business according to the following:

14 (1) The compliance unit shall audit or inspect a
15 business suspected of noncompliance under section 2111
16 (relating to small diverse business compliance) or
17 noncompliance under section 2111.1 (relating to nonsmall
18 diverse business compliance).

19 (2) The compliance unit may conduct further audits or
20 inspections at its discretion to ensure compliance with this
21 chapter.

22 (c) Negative entry.--The compliance unit may report a
23 negative entry in the business's contractor responsibility file
24 to the department and the purchasing agency for further action.

25 (d) Noncompliance.--The compliance unit may impose any other
26 consequences for noncompliance at its discretion in accordance
27 with this chapter.

28 Section 12. Sections 2105 and 2107 of Title 62 are amended
29 to read:

30 § 2105. Bonding and progress payments.

1 (a) Bonding.--Notwithstanding other provisions of this part,
2 a purchasing agency may reduce the level or change the types of
3 bonding normally required or accept alternative forms of
4 security to the extent reasonably necessary to encourage
5 procurement from small [and disadvantaged] diverse businesses.

6 (b) Progress payments.--A purchasing agency may make special
7 provisions for progress payments as it deems reasonably
8 necessary to encourage procurement from small [and
9 disadvantaged] diverse businesses.

10 § 2107. Report to General Assembly.

11 The department shall annually, before October 1, report in
12 writing [to the General Assembly concerning the awarding of
13 contracts to small and disadvantaged businesses during the
14 preceding fiscal year. The report shall include a list of all
15 small and disadvantaged businesses that participated as
16 contractors, subcontractors or suppliers during the preceding
17 fiscal year for contracts if the number of contractors under a
18 previously existing contract for the same supply or service is
19 reduced to a single contractor or reduced by more than 50% of
20 the number existing on September 30, 2003.] on the actual
21 utilization of small diverse businesses as contractors,
22 subcontractors, suppliers and professional service providers.

23 The department shall annually, before October 1, deliver the
24 report in writing to the General Assembly and post the report on
25 the bureau's Internet website. In preparing the report, the
26 department shall [verify whether commitments made to small and
27 disadvantaged businesses in the course of awarding these
28 contracts have been maintained.] include the following data from
29 the preceding fiscal year:

30 (1) A list of all small diverse businesses that

1 participated as contractors, subcontractors, suppliers or
2 professional service providers utilized by purchasing
3 agencies.

4 (2) The dollar amounts spent on the actual utilization
5 of small diverse businesses as contractors, subcontractors,
6 suppliers or professional service providers, including the
7 following categories:

8 (i) The total amount spent by the Commonwealth on
9 small diverse business procurement, including, but not
10 limited to, the following:

11 (A) A comparison with the total amount spent by
12 the Commonwealth on all procurement contracts.

13 (B) The total amounts spent by the Commonwealth
14 on all contracts awarded to minority business
15 enterprises, women's business enterprises, veteran-
16 owned business enterprises and service-disabled
17 veteran-owned business enterprises.

18 (ii) The amount spent by each purchasing agency on
19 small diverse business procurement, including, but not
20 limited to, the following:

21 (A) A comparison with the total amount spent by
22 each purchasing agency on all of its procurement
23 contracts.

24 (B) The amounts spent by each purchasing agency
25 on all contracts awarded to minority business
26 enterprises, women's business enterprises, veteran-
27 owned business enterprises and service-disabled
28 veteran-owned business enterprises.

29 (3) The percentages of actual utilization of small
30 diverse businesses as contractors, subcontractors, suppliers

1 or professional service providers as compared to the actual
2 utilization of nonsmall diverse businesses, including, but
3 not limited to, the following categories:

4 (i) The percentage of small diverse business
5 procurement out of the total amount spent by the
6 Commonwealth on procurement, including, but not limited
7 to, the percentages of total amounts spent by the
8 Commonwealth on all contracts awarded to minority
9 business enterprises, women's business enterprises,
10 veteran-owned business enterprises and service-disabled
11 veteran-owned business enterprises.

12 (ii) The percentage of small diverse business
13 procurement out of the total amount spent by each
14 purchasing agency on all procurement, including, but not
15 limited to, the percentages of the amounts spent by each
16 purchasing agency on all contracts awarded to minority
17 business enterprises, women's business enterprises,
18 veteran-owned business enterprises and service-disabled
19 veteran-owned business enterprises.

20 (4) Confirmation of whether commitments made to small
21 diverse businesses in the course of awarding these contracts
22 have been maintained.

23 Section 13. Title 62 is amended by adding sections to read:
24 § 2109. Certification.

25 (a) Requirements.--A small diverse business shall be
26 certified by the department as a small business and self-
27 certified by a certification entity as a diverse business before
28 being verified by the department to engage in Commonwealth
29 procurement as a small diverse business.

30 (b) Supplier registration.--The business shall register as a

1 supplier with the Commonwealth through the Pennsylvania Supplier
2 Portal before obtaining certification as a small business.

3 (c) Certification as a small business.--A business shall be
4 certified by the department as a small business through the
5 Small Business Procurement Initiative by proving the following
6 criteria:

7 (1) The business is a for-profit United States business.

8 (2) The business is independently owned.

9 (3) The business is not dominant in its field of
10 operation.

11 (4) The business does not exceed more than 100 full-time
12 equivalent employees.

13 (5) The average gross income sales of the business do
14 not exceed an amount to be determined by the department.

15 (d) Self-certification as a diverse business.--A business
16 self-certifies as a diverse business by completing all of the
17 following steps:

18 (1) Obtaining certification that the business is a
19 diverse business through one or more of the following
20 certification entities:

21 (i) The National Minority Supplier Development
22 Council.

23 (ii) The Women's Business Enterprise National
24 Council.

25 (iii) The United States Department of Veterans
26 Affairs.

27 (iv) The United States Small Business
28 Administration's 8(a) program.

29 (v) The Department of Transportation's Unified
30 Certification Program for Disadvantaged Business

1 Enterprises.

2 (2) Submitting proof of self-certification as a diverse
3 business by presenting diverse business certification through
4 a certification entity to the department.

5 § 2110. Verification.

6 (a) Obtaining verification.--To obtain verification as a
7 small diverse business, a business shall perform all of the
8 following:

9 (1) Complete the process of certification in accordance
10 with section 2109 (relating to certification).

11 (2) Pay a first-time verification fee of \$40 to the
12 department.

13 (3) Allow the bureau to conduct an audit and an
14 inspection.

15 (4) Submit any other documentation the bureau may
16 request to the bureau for verification.

17 (5) Complete a training program provided by the bureau
18 concerning small diverse business procurement that includes,
19 but is not limited to, training in certifications,
20 verification, compliance, bonding and diversity plans.

21 (b) Renewing verification.--Verification shall be renewed
22 annually. To renew verification as a small diverse business, a
23 small diverse business shall perform all of the following:

24 (1) Maintain certification in accordance with section
25 2109.

26 (2) Pay an annual verification fee of \$25 to the
27 department.

28 (3) Allow the bureau to conduct annually an audit and an
29 inspection and to conduct additional audits or inspections at
30 the bureau's discretion.

1 (4) Submit any other documentation the bureau may
2 request to the bureau for verification.

3 (5) Complete an annual training program provided by the
4 bureau concerning small diverse business procurement that
5 includes, but is not limited to, training in certification,
6 verification, compliance, bonding and diversity plans.

7 (6) Maintain a record of good standing in the small
8 diverse business's contractor responsibility file as
9 determined by the bureau.

10 (7) Maintain small diverse business compliance in
11 accordance with section 2111 (relating to small diverse
12 business compliance) or maintain nonsmall diverse business
13 compliance in accordance with section 2111.1 (relating to
14 nonsmall diverse business compliance).

15 § 2111. Small diverse business compliance.

16 (a) Compliance.--A small diverse business that contracts
17 with a purchasing agency shall do all of the following:

18 (1) Maintain a record of good standing in the nonsmall
19 diverse business's contractor responsibility file as
20 determined by the compliance unit.

21 (2) Allow any audits or inspections by the department.

22 (3) Annually attend a training program provided by the
23 department on small diverse business procurement procedures
24 and maintaining compliance.

25 (b) Display and distribute the hotline.--The following
26 apply:

27 (1) A small diverse business shall display the hotline
28 on-site and distribute the hotline to all contractors,
29 subcontractors and employees.

30 (2) A small diverse business or any other person may use

1 this hotline for any of the following purposes:

2 (i) Obtaining guidance on certification and
3 verification processes.

4 (ii) Obtaining guidance on contractor compliance.

5 (iii) Reporting any of the following suspected
6 activities:

7 (A) Abuse or misuse of one's certified status as
8 a small business or of one's verified status as a
9 small diverse business.

10 (B) A violation of 18 Pa.C.S. § 4107.2 (relating
11 to deception relating to certifications or
12 verification of small diverse businesses).

13 (C) A violation of this section.

14 § 2111.1 Nonsmall diverse business compliance.

15 (a) Compliance.--A nonsmall diverse business acting as a
16 prime contractor that subcontracts or plans to subcontract with
17 a small diverse business shall have the following duties:

18 (1) Maintain a record of good standing in the nonsmall
19 diverse business's contractor responsibility file as
20 determined by the compliance unit.

21 (2) Annually attend a training program provided by the
22 department on small diverse business procurement and
23 maintaining compliance.

24 (3) Submit a diversity plan with each invitation for bid
25 or request for proposal in accordance with section 2112
26 (relating to nonsmall diverse business diversity plan).

27 (4) Maintain compliance with the submitted diversity
28 plan for its corresponding contract in accordance with
29 section 2111 (relating to small diverse business compliance).

30 (b) Prohibitions.--A nonsmall diverse business acting as a

prime contractor that subcontracts or plans to subcontract with a small diverse business may not do the following:

(1) Misuse a small diverse business's certification or verification to gain an unfair advantage in its invitation for bid or request for proposal.

(2) Abuse or otherwise take advantage of a subcontracting small diverse business, including, but not limited to, withholding performance of the contract according to its terms accepted by the parties and approved by the department.

§ 2112. Nonsmall diverse business diversity plan.

(a) Diversity plan.--A nonsmall diverse business that subcontracts or plans to subcontract with a small diverse business for procurement shall submit a diversity plan with its invitation for bid or request for proposal and deliver a copy of the diversity plan to the subcontractor.

(b) Requirements.--A diversity plan shall meet the following requirements at the bureau's discretion:

(1) The diversity plan shall reasonably assure the bureau that all persons are afforded equality of opportunity in contracting and employment by the business and its contractors, subcontractors, assignees, lessees and agents.

(2) The diversity plan shall be a representation from which a good faith effort is measured to assure the bureau that all persons are afforded equal opportunities in contracting and employment by the business and its contractors, subcontractors, assignees, lessees and agents.

(c) Enforceability.--A diversity plan is legally enforceable by the Commonwealth and considered part of the invitation for bid or request for proposal.

1 (d) Achievement demonstration.--A nonsmall diverse business
2 may demonstrate achievement of a diversity plan's goals through
3 one or more of the following:

4 (1) Contracting or transacting directly with a small
5 diverse business.

6 (2) Contracting with a nonsmall diverse business under
7 terms and conditions that establish a participation plan.

8 (e) Performance report.--As part of an application to renew
9 a contract, a nonsmall diverse business shall file a report with
10 the bureau concerning the performance of its diversity plan. The
11 report shall include, but not be limited to, all of the
12 following:

13 (1) Employment data to be determined by the department.

14 (2) The total number and value of all contracts or
15 transactions awarded for goods and services.

16 (3) The total number and value of all contracts awarded
17 to small diverse businesses.

18 (4) A list containing each contract or transaction
19 awarded to small diverse businesses and the actual value of
20 each contract or transaction.

21 (5) The total number and value of all contracts awarded
22 that contain a participation plan.

23 (6) The total number and value of all subcontracts
24 awarded to small diverse businesses under contracts
25 containing a participation plan.

26 (7) A list of each subcontract awarded to small diverse
27 businesses under contracts containing a participation plan
28 and the actual value of each subcontract.

29 (8) A comprehensive description of all efforts made by
30 the business to monitor and enforce the participation plan.

1 (9) Information on equity ownership or diversity
2 management opportunities initiated or promoted by the
3 nonsmall diverse business.

4 (10) Other information the purchasing agency, department
5 or bureau requires or requests in writing.

6 (f) Definitions.--As used in this section, the term
7 "participation plan" shall mean a contractor's diversity plan
8 for participation that establishes a separate goal of diversity
9 in ownership, participation, operation and employment when
10 fulfilling the obligations of an invitation for bid or request
11 for proposal.

12 § 2113. Contract provisions protecting small diverse businesses
13 as subcontractors.

14 A nonsmall diverse business that subcontracts or plans to
15 subcontract with a small diverse business shall place the
16 following provisions in each subcontract with a small diverse
17 business:

18 (1) The responsibilities of this contract shall be
19 provided before acceptance. Any contract modification of
20 responsibilities shall be negotiated between the parties and
21 receive approval from the Department of General Services
22 before the contract modification may be accepted and
23 enforceable.

24 (2) The party who has the prime contract with a
25 purchasing agency agrees to the following rights of the
26 subcontractor:

27 (i) The subcontractor may accept or reject any
28 contract modification.

29 (ii) If the subcontractor rejects the modification,
30 the subcontractor has the right to do the following:

1 (A) Continue its relationship with the prime
2 contractor under the terms and conditions of the
3 previously accepted contract without the contract
4 modification.

5 (B) Report complaints to the Department of
6 General Services.

7 (C) Cancel the contract if it is impossible to
8 perform without the modification. If the contract is
9 canceled, the subcontractor shall be entitled to
10 either actual damages or half of the compensation
11 promised to the subcontractor when the contract was
12 last previously accepted, whichever is greater.

13 (3) The parties recognize that the Department of General
14 Services may reject the modification of the contract for
15 cause.

16 Section 14. The definition of "bid-rigging" in section 4502
17 of Title 62 is amended to read:

18 § 4502. Definitions.

19 The following words and phrases when used in this chapter
20 shall have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Bid-rigging." The concerted activity of two or more persons
23 to determine in advance the winning bidder of a contract let or
24 to be let for competitive bidding by a government agency. The
25 term includes, but is not limited to, any one or more of the
26 following:

27 (1) Agreeing to sell items or services at the same
28 price.

29 (2) Agreeing to submit identical bids.

30 (3) Agreeing to rotate bids.

1 (4) Agreeing to share profits with a contractor who does
2 not submit the low bid.

3 (5) Submitting prearranged bids, agreed-upon higher or
4 lower bids or other complementary bids.

5 (6) Agreeing to set up territories to restrict
6 competition.

7 (7) Agreeing not to submit bids.

8 (8) Colluding, conspiring, or combining with another in
9 order to commit or attempt to commit the activities
10 prohibited by this chapter.

11 The term includes any concerted activity to use one's small
12 diverse business certifications or verification status to gain
13 an unlawful advantage in procurement.

14 * * *

15 Section 15. Section 4503(a) of Title 62 is amended to read:
16 § 4503. Prohibited activities.

17 (a) Bid-rigging unlawful.--It is unlawful for any person [to
18 conspire, collude or combine with another in order] to commit or
19 attempt to commit bid-rigging involving:

20 (1) A contract for the purchase of equipment, goods,
21 services or materials or for construction or repair let or to
22 be let by a government agency.

23 (2) A subcontract for the purchase of equipment, goods,
24 services or materials or for construction or repair with a
25 prime contractor or proposed prime contractor for a
26 government agency.

27 * * *

28 Section 16. The provisions of this act are severable. If any
29 provision of this act or its application to any person or
30 circumstance is held invalid, the invalidity shall not affect

1 other provisions or applications of this act which can be given
2 effect without the invalid provision or application.

3 Section 17. This act shall take effect in 60 days.