

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 752 Session of 2015

INTRODUCED BY WILLIAMS, FONTANA, TEPLITZ, HUGHES, COSTA AND FARNESE, APRIL 21, 2015

REFERRED TO STATE GOVERNMENT, APRIL 21, 2015

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 certification of minority business enterprise or
 5 women's business enterprise; in general provisions, further
 6 providing for definitions; in procurement organization,
 7 further providing for powers and duties, providing for
 8 contractor responsibility program and further providing for
 9 Office of the Budget; in small and disadvantaged businesses,
 10 further 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 and
 16 verification unit and for duties of the compliance unit,
 17 further providing for bonding and progress payments and for
 18 report to General Assembly and providing for certification,
 19 for verification, for small diverse business compliance, for
 20 contractor compliance, for contractor diversity plan and for
 21 contract provisions protecting small diverse businesses as
 22 subcontractors; in antibid-rigging, further providing for
 23 definitions and for prohibited activities; and making
 24 editorial changes.

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

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

29 § 4107.2. Deception relating to [certification] certifications

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

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

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

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

27 (5) Fraudulently uses a certification or verification of
28 a small business or small diverse business to gain an
29 advantage in an invitation for bid or request for proposal.

30 (a.1) Enforcement.--The Department of General Services may

1 enforce this section in accordance with 62 Pa.C.S. Ch. 45
2 (relating to antibid-rigging).

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

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

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

15 (1) The National Minority Supplier Development Council.

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

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

18 (4) The United States Small Business Administration's

19 8(a) Program.

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

22 "Control." The exclusive or ultimate and sole control of the
23 business including, but not limited to, capital investment and
24 all other financial, property, acquisition, contract
25 negotiation, legal matters, officer-director-employee selection
26 and comprehensive hiring, operating responsibility, cost-control
27 matters, income and dividend matters, financial transactions and
28 rights of other shareholders or joint partners. Control shall be
29 real, substantial and continuing not pro forma. Control shall
30 include the power to direct or cause the direction of the

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

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

16 "Minority business enterprise." [A small business concern
17 which is:

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

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

24 (3) A corporation or other entity controlled by socially
25 and economically disadvantaged individuals in which at least
26 51% of the voting interest and 51% of the beneficial
27 ownership interest are held by socially and economically
28 disadvantaged individuals.] A small, for-profit business
29 which is controlled by one or more minorities. In the case of
30 a corporation, at least 51% of the stock must be owned by one

1 or more minorities.

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

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

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

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

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

27 "Small diverse business." A small business which is owned or
28 controlled by a majority of persons, not limited to members of
29 minority groups, who have been deprived of the opportunity to
30 develop and maintain a competitive position in the economy

1 because of social disadvantages.

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

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

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

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

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

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

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

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

1 veterans.

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

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

10 § 103. Definitions.

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

16 * * *

17 "Contractor responsibility file." A business' record in the
18 contractor responsibility program established under section 323
19 (relating to contractor responsibility program).

20 * * *

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

23 § 321. Powers and duties.

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

26 * * *

27 (6) Participate in the management and maintenance of a
28 contractor responsibility program as provided in section 323
29 (relating to contractor responsibility program) in
30 coordination with the Office of the Budget and other agencies

1 as may be directed by the Governor.

2 (7) Establish policies and promulgate regulations
3 concerning the administration of a contractor responsibility
4 program subject to the review of the Office of the Budget and
5 other agencies as directed by the Governor.

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

7 § 323. Contractor responsibility program.

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

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

13 (1) Mandating agency reporting of nonresponsible
14 contractors.

15 (2) Securing of information on contractor responsibility
16 from the Federal Government.

17 (3) Agency investigations of allegations of contractor
18 nonresponsibility.

19 (4) Standards and procedures for agency determinations
20 of contractor responsibility.

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

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

28 (7) Collecting Commonwealth liabilities.

29 (c) Use.--For a procurement exceeding an amount to be
30 determined by the department, a purchasing agency shall access

1 the contractor responsibility file of the bidder or offeror to
2 gather and analyze all of the following information regarding
3 the bidder or offeror:

4 (1) Current responsibility status.

5 (2) Past performance.

6 (3) Identification of tax delinquencies or other
7 liabilities.

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

11 (1) 18 Pa.C.S. § 4107 (relating to deceptive or
12 fraudulent business practices).

13 (2) 18 Pa.C.S. § 4107.2 (relating to deception relating
14 to certifications or verifications of minority business
15 enterprise, women's business enterprise, small businesses or
16 small diverse businesses).

17 (3) Section 2111 (relating to small diverse business
18 compliance).

19 (4) Section 2111.1 (relating to relating to contractor
20 compliance).

21 (5) Chapter 23 (relating to ethics in public
22 contracting).

23 (6) Any other evidence of a business' nonresponsibility
24 that a purchasing agency may consider in selecting the
25 business as a contractor.

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

27 (1) The department may impose a fine of no more than
28 \$1,000 on a business for a negative entry in the business'
29 contractor responsibility file under the following
30 circumstances:

1 (i) The business has a total of three or more
2 negative entries in its contractor responsibility file.

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

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

14 (3) Fines shall be payable to the department and may be
15 waived by the department for cause shown.

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

17 § 327. Office of the Budget.

18 * * *

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

25 * * *

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

28 CHAPTER 21

29 SMALL BUSINESSES AND [DISADVANTAGED] SMALL DIVERSE BUSINESSES

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

1 read:

2 § 2101. Policy.

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

8 § 2102. Definitions.

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

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

16 "Bureau." The Bureau of Small Business Opportunities within
17 the department established under section 2104.1 (relating to
18 administration).

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

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

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

27 (1) The National Minority Supplier Development Council.

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

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

30 (4) The United States Small Business Administration's

1 8(a) program.

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

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

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

29 "Diversity plan." A plan submitted to the department by a
30 business that establishes a separate goal of diversity in

1 control, ownership, participation, operation and employment when
2 fulfilling the obligations of an invitation for bid or request
3 for proposal.

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

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

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

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

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

30 "Small business." A business in the United States which is

1 independently owned, is not dominant in its field of operation
2 and employs 100 or fewer employees.

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

7 "Small diverse business." A small business which is owned or
8 controlled by a majority of persons, not limited to members of
9 minority groups, who have been deprived of the opportunity to
10 develop and maintain a competitive position in the economy
11 because of social disadvantages.

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

19 "Verification." The process through which a small diverse
20 business is verified by the department that it is certified
21 through one or more certification entities as a diverse business
22 for the purpose of procurement.

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

25 (1) A reservist or member of the National Guard who was
26 discharged or released from the service under honorable
27 conditions.

28 (2) A reservist or member of the National Guard who
29 completed an initial term of enlistment or qualifying period
30 of service.

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

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

4 "Veteran-owned business enterprise." A small, for-profit
5 business which is controlled by one or more veterans. In the
6 case of a corporation, at least 51% of the stock must be owned
7 by one or more veterans. For procurement, a veteran-owned
8 business enterprise shall be certified by the United States
9 Department of Veterans Affairs according to its regulations as a
10 small business concern which is controlled by one or more
11 veterans.

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

18 Section 8. Section 2103 of Title 62 is repealed:

19 [§ 2103. Regulations.

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

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

30 § 2103.1. Department regulations and statements of policy.

1 (a) Regulations.--The department shall promulgate
2 regulations in accordance with this chapter. Regulations shall
3 be sufficient to ensure reasonable predictability in small
4 diverse business procurement for contractors and subcontractors.

5 Regulations shall establish all of the following:

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

8 (2) Verification procedures as provided in section 2110
9 (relating to verification).

10 (3) Compliance as provided in sections 2111 (relating to
11 small diverse business compliance) and 2111.1 (relating to
12 contractor compliance).

13 (b) Statements of policy.--The department shall establish
14 policies for purchasing agencies for which the department acts
15 as a purchasing agency. Purchasing agencies shall implement the
16 policies for their procurement programs.

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

18 [§ 2104. Duties of department.

19 The department shall have the following duties:

20 (1) Where feasible, provide appropriate staff who shall
21 be responsible to the department and who shall serve within
22 designated Commonwealth agencies to assist small and
23 disadvantaged businesses in this Commonwealth in learning how
24 to do business with Commonwealth agencies.

25 (2) Give special publicity to procurement procedures and
26 issue special publications designed to assist small and
27 disadvantaged businesses in learning how to do business with
28 Commonwealth agencies.

29 (3) Compile, maintain and make available source lists of
30 small and disadvantaged businesses for the purpose of

1 encouraging procurement from small and disadvantaged
2 businesses.

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

5 (5) Assure that small and disadvantaged businesses are
6 solicited on each procurement for which the businesses may be
7 suited.

8 (6) Develop special training programs to assist small
9 and disadvantaged businesses in learning how to do business
10 with Commonwealth agencies.]

11 Section 11. Title 62 is amended by adding sections to read:
12 § 2104.1. Administration.

13 (a) Bureau of Small Business Opportunities.--The department
14 shall establish the Bureau of Small Business Opportunities to
15 administer this chapter.

16 (b) Certification and verification unit.--The department
17 shall establish a staffed certification unit within the bureau
18 that shall assist small businesses obtain or renew certification
19 for procurement and small diverse businesses obtain or renew
20 verification for procurement in accordance with this chapter. At
21 least one employee of the unit shall be fluent in both English
22 and Spanish.

23 (c) Compliance unit.--The department shall establish a
24 staffed compliance unit within the bureau that shall ensure all
25 small businesses, small diverse businesses and businesses that
26 subcontract or plan to subcontract with a small business or
27 small diverse business maintain compliance with this chapter. At
28 least one employee of the compliance unit shall be fluent in
29 both English and Spanish.

30 (d) Duties of the department.--The department shall have the

1 following duties:

2 (1) Provide appropriate staff who shall be responsible
3 to the department and who shall serve within designated
4 purchasing agencies to assist small businesses and small
5 diverse businesses in learning how to do business with
6 purchasing agencies and to enforce the provisions of this
7 chapter.

8 (2) Assure that participation by small businesses and
9 small diverse businesses is, if appropriate, factored into
10 the evaluation of proposals for supplies, services or
11 construction when a purchasing agency uses the competitive
12 sealed proposals method under section 513 (relating to
13 competitive sealed proposals).

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

16 (4) Approve or reject any contract modification
17 regarding the respective responsibilities of contractors and
18 subcontractors in an existing contract before such contract
19 modification is accepted and enforceable.

20 (5) Determine the employment data that shall be included
21 in a business' performance report that demonstrates its
22 achievement of a diversity plan in accordance with section
23 2112 (relating to contractor diversity plan).

24 § 2104.2. Enforcement and legal remedies.

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

26 (1) The bureau shall monitor and enforce contractor
27 compliance, contractor responsibility and may recommend a
28 case of noncompliance or nonresponsibility to the department
29 for further action.

30 (2) The department may develop other enforcement

1 mechanisms that are derived from the provisions of this
2 chapter.

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

7 (1) A violation of 18 Pa.C.S. § 4107.2 (relating to
8 deception relating to certifications or verifications of
9 minority business enterprise, women's business enterprise,
10 small businesses or small diverse businesses).

11 (2) A violation of Chapter 45 (relating to antibid-
12 rigging).

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

14 § 2104.3. Duties of the bureau.

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

16 (1) Give special publicity to procurement procedures and
17 issue special publications designed to assist small
18 businesses and small diverse businesses in learning how to do
19 business with purchasing agencies.

20 (2) Compile, maintain and make available source lists of
21 verified small diverse businesses for the purpose of
22 encouraging procurement from small diverse businesses.

23 (3) Include verified small diverse businesses on
24 solicitation mailing lists.

25 (4) Ensure that verified small diverse businesses are
26 solicited on each procurement for which the businesses may be
27 suited.

28 (5) Develop and publicize training programs to assist
29 small businesses and small diverse businesses in learning how
30 to do business with purchasing agencies, including assistance

1 with certification, verification, compliance, bonding and
2 diversity plans.

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

5 (7) Develop and publicize educational initiatives
6 including, but not limited to, informational sessions,
7 programs and courses designed to educate small diverse
8 businesses on the processes and benefits of doing business
9 with purchasing agencies.

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

13 (1) Obtaining guidance on the certification process.

14 (2) Obtaining guidance on contractor compliance.

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

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

18 (ii) A violation of any of the provisions of this
19 chapter.

20 (iii) A violation of 18 Pa.C.S. § 4107.2 (relating
21 to deception relating to certifications or verifications
22 of minority business enterprise, women's business
23 enterprise, small businesses or small diverse
24 businesses).

25 (iv) Fraud.

26 (c) Distribution.--The bureau shall distribute the hotline
27 established under subsection (b) to all contractors and
28 subcontractors engaging in procurement in accordance with this
29 chapter.

30 (d) Maintenance.--The bureau shall maintain the contractor

1 responsibility file within the contractor responsibility program
2 as provided in section 323 (relating to contractor
3 responsibility program) of the following entities:

4 (1) A small diverse business.

5 (2) A business as a prime contractor that uses or plans
6 to use a small diverse business as a subcontractor.

7 (3) A small business.

8 (4) A business as a prime contractor that uses or plans
9 to use a small business as a subcontractor.

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

12 (1) Record a negative entry in the business' contractor
13 responsibility file.

14 (2) Cancel the contract.

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

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

19 (5) Decertify the business from the Small Business
20 Procurement Initiative.

21 (6) Withdraw verification of the business.

22 (7) Impose fines.

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

25 (9) Exercise authority over the certification and
26 verification unit and the compliance unit to ensure this
27 chapter is effective.

28 § 2104.4. Duties of the certification and verification unit.

29 (a) Duties.--The certification and verification unit shall
30 have the following duties:

1 (1) Assist small businesses in obtaining certification.

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

4 (3) Assist small diverse businesses in obtaining
5 verification.

6 (4) Verify or withdraw verification of a business
7 seeking or relying on verification as a small diverse
8 business.

9 (b) Decertification and withdrawal of verification.--The
10 certification and verification unit may decertify a business'
11 certification as a small business or withdraw verification of a
12 small diverse business for any of the following reasons:

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

15 (2) The business knowingly allowed the abuse or misuse
16 of its certification or verification status.

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

20 (4) A certification entity decertifies the business.

21 (5) The business otherwise violates any of the following
22 provisions:

23 (i) 18 Pa.C.S. § 4107.2 (relating to deception
24 relating to certifications or verifications of minority
25 business enterprise, women's business enterprise, small
26 businesses or small diverse businesses).

27 (ii) Section 2111 (relating to small diverse
28 business compliance).

29 (iii) Section 4503 (relating to prohibited
30 activities).

1 (iv) The certification unit shall give the business
2 notice of proposed decertification or withdrawal of
3 verification and the right to due process through
4 regulations promulgated by the department.

5 (v) The certification unit shall record a
6 decertification or withdrawal of verification in the
7 business' contractor responsibility file within the
8 contractor responsibility program as provided in section
9 323 (relating to contractor responsibility program).

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

13 (1) An inspection shall be performed during verification
14 to ensure proper certifications of a small diverse business
15 in accordance with this chapter. The certification and
16 verification unit may perform any subsequent inspection at
17 the discretion of the bureau to ensure proper certifications
18 and verification.

19 (2) The certification and verification unit may
20 recommend the grounds for decertifying a small business or
21 not verifying a small diverse business to the department for
22 further action.

23 § 2104.5. Duties of the compliance unit.

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

26 (1) Assist contractors and subcontractors in maintaining
27 compliance with this chapter.

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

30 (b) Audits and inspections.--The compliance unit shall audit

1 or inspect a small diverse business according to the following:

2 (1) The compliance unit shall audit or inspect a
3 business suspected of noncompliance under section 2111
4 (relating to small diverse business compliance) or
5 noncompliance under section 2111.1 (relating to contractor
6 compliance).

7 (2) The compliance unit may conduct further audits or
8 inspections at its discretion to ensure compliance with this
9 chapter.

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

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

16 Section 12. Sections 2105 and 2107 of Title 62 are amended
17 to read:

18 § 2105. Bonding and progress payments.

19 (a) Bonding.--Notwithstanding other provisions of this part,
20 a purchasing agency may reduce the level or change the types of
21 bonding normally required or accept alternative forms of
22 security to the extent reasonably necessary to encourage
23 procurement from small businesses and [disadvantaged] small
24 diverse businesses.

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

29 § 2107. Report to General Assembly.

30 The department shall annually, before October 1, report in

1 writing [to the General Assembly concerning the awarding of
2 contracts to small and disadvantaged businesses during the
3 preceding fiscal year. The report shall include a list of all
4 small and disadvantaged businesses that participated as
5 contractors, subcontractors or suppliers during the preceding
6 fiscal year for contracts if the number of contractors under a
7 previously existing contract for the same supply or service is
8 reduced to a single contractor or reduced by more than 50% of
9 the number existing on September 30, 2003.] on the actual
10 utilization of small businesses and small diverse businesses as
11 contractors, subcontractors, suppliers and professional service
12 providers. The department shall annually, before October 1,
13 deliver the report in writing to the General Assembly and post
14 the report on the bureau's Internet website. In preparing the
15 report, the department shall [verify whether commitments made to
16 small and disadvantaged businesses in the course of awarding
17 these contracts have been maintained.] include the following
18 data from the preceding fiscal year:

19 (1) A list of all small businesses and small diverse
20 businesses that participated as contractors, subcontractors,
21 suppliers or professional service providers utilized by
22 purchasing agencies.

23 (2) The dollar amounts spent on the actual utilization
24 of small businesses and small diverse businesses as
25 contractors, subcontractors, suppliers or professional
26 service providers, including the following categories:

27 (i) The total amount spent by the Commonwealth on
28 small business and small diverse business procurement,
29 including, but not limited to, the following:

30 (A) A comparison with the total amount spent by

1 the Commonwealth on all procurement contracts.

2 (B) The total amounts spent by the Commonwealth
3 on all contracts awarded to minority business
4 enterprises, women's business enterprises, veteran-
5 owned business enterprises and service-disabled
6 veteran-owned business enterprises.

7 (ii) The amount spent by each purchasing agency on
8 small business and small diverse business procurement,
9 including, but not limited to, the following:

10 (A) A comparison with the total amount spent by
11 each purchasing agency on all of its procurement
12 contracts.

13 (B) The amounts spent by each purchasing agency
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 (3) The percentages of actual utilization of small
19 businesses and small diverse businesses as contractors,
20 subcontractors, suppliers or professional service providers
21 as compared to the actual utilization of businesses,
22 including, but not limited to, the following categories:

23 (i) The percentage of small business and small
24 diverse business procurement out of the total amount
25 spent by the Commonwealth on procurement, including, but
26 not limited to, the percentages of total amounts spent by
27 the Commonwealth on all contracts awarded to minority
28 business enterprises, women's business enterprises,
29 veteran-owned business enterprises and service-disabled
30 veteran-owned business enterprises.

1 (ii) The percentage of small business and small
2 diverse business procurement out of the total amount
3 spent by each purchasing agency on all procurement,
4 including, but not limited to, the percentages of the
5 amounts spent by each purchasing agency on all contracts
6 awarded to minority business enterprises, women's
7 business enterprises, veteran-owned business enterprises
8 and service-disabled veteran-owned business enterprises.

9 (4) Confirmation of whether commitments made to small
10 businesses and small diverse businesses in the course of
11 awarding these contracts have been maintained.

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

14 (a) Requirements.--A small diverse business shall be
15 certified by the department as a small business and self-
16 certified pursuant to subsection (d) as a diverse business
17 before being verified by the department to engage in
18 Commonwealth procurement as a small diverse business.

19 (b) Supplier registration.--The business shall register as a
20 supplier with the Commonwealth through the Pennsylvania Supplier
21 Portal before obtaining certification as a small business.

22 (c) Certification as a small business.--A business shall be
23 certified by the department as a small business through the
24 Small Business Procurement Initiative by proving the following
25 criteria:

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

27 (2) The business is independently owned.

28 (3) The business is not dominant in its field of
29 operation.

30 (4) The business does not exceed more than 100 full-time

1 equivalent employees.

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

4 (d) Self-certification as a diverse business.--A business
5 self-certifies as a diverse business by completing all of the
6 following steps:

7 (1) Obtaining certification that the business is a
8 diverse business through one or more of the following
9 certification entities:

10 (i) The National Minority Supplier Development
11 Council.

12 (ii) The Women's Business Enterprise National
13 Council.

14 (iii) The United States Department of Veterans
15 Affairs.

16 (iv) The United States Small Business
17 Administration's 8(a) program.

18 (v) The Department of Transportation's Unified
19 Certification Program for Disadvantaged Business
20 Enterprises.

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

24 § 2110. Verification.

25 (a) Obtaining verification.--To obtain verification as a
26 small diverse business, a business shall perform all of the
27 following:

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

30 (2) Pay a first-time verification fee of \$40 to the

1 department.

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

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

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

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

13 (1) Maintain certification in accordance with section
14 2109.

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

17 (3) Allow the bureau to conduct annually an audit and an
18 inspection and to conduct additional audits or inspections at
19 the bureau's discretion.

20 (4) Submit any other documentation the bureau may
21 request to the bureau for verification.

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

26 (6) Maintain a record of good standing in the small
27 diverse business' contractor responsibility file as
28 determined by the bureau.

29 (7) Maintain small diverse business compliance in
30 accordance with section 2111 (relating to small diverse

1 business compliance) or maintain contractor compliance in
2 accordance with section 2111.1 (relating to contractor
3 compliance).

4 § 2111. Small diverse business compliance.

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

7 (1) Maintain a record of good standing in the contractor
8 responsibility file as determined by the compliance unit.

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

10 (3) Annually attend a training program provided by the
11 department on small diverse business procurement procedures
12 and maintaining compliance.

13 (b) Display and distribute the hotline.--The following
14 apply:

15 (1) A small diverse business shall display the hotline
16 on-site and distribute the hotline to all contractors,
17 subcontractors and employees.

18 (2) A small diverse business or any other person may use
19 this hotline for any of the following purposes:

20 (i) Obtaining guidance on certification and
21 verification processes.

22 (ii) Obtaining guidance on contractor compliance.

23 (iii) Reporting any of the following suspected
24 activities:

25 (A) Abuse or misuse of one's certified status as
26 a small business or of one's verified status as a
27 small diverse business.

28 (B) A violation of 18 Pa.C.S. § 4107.2 (relating
29 to deception relating to certifications or
30 verifications of minority business enterprise,

1 women's business enterprise, small businesses or
2 small diverse businesses).

3 (C) A violation of this section.

4 § 2111.1. Contractor compliance.

5 (a) Compliance.--A business acting as a prime contractor
6 that subcontracts or plans to subcontract with a small diverse
7 business shall have the following duties:

8 (1) Maintain a record of good standing in the business'
9 contractor responsibility file as determined by the
10 compliance unit.

11 (2) Annually attend a training program provided by the
12 department on small diverse business procurement and
13 maintaining compliance.

14 (3) Submit a diversity plan with each invitation for bid
15 or request for proposal in accordance with section 2112
16 (relating to contractor diversity plan).

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

20 (b) Prohibitions.--A business acting as a prime contractor
21 that subcontracts or plans to subcontract with a small diverse
22 business may not do the following:

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

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

1 § 2112. Contractor diversity plan.

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

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

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

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

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

21 (d) Achievement demonstration.--A diverse business may
22 demonstrate achievement of a diversity plan's goals through one
23 or more of the following:

24 (1) Contracting or transacting directly with a small
25 diverse business.

26 (2) Contracting with a diverse business under terms and
27 conditions that establish a participation plan.

28 (e) Performance report.--As part of an application to renew
29 a contract, a diverse business shall file a report with the
30 bureau concerning the performance of its diversity plan. The

1 report shall include, but not be limited to, all of the
2 following:

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

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

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

8 (4) A list containing each contract or transaction
9 awarded to small diverse businesses and the actual value of
10 each contract or transaction.

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

13 (6) The total number and value of all subcontracts
14 awarded to small diverse businesses under contracts
15 containing a participation plan.

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

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

21 (9) Information on equity ownership or diversity
22 management opportunities initiated or promoted by the diverse
23 business.

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

26 (f) Definition.--As used in this section, the term
27 "participation plan" means a contractor's diversity plan for
28 participation that establishes a separate goal of diversity in
29 ownership, participation, operation and employment when
30 fulfilling the obligations of an invitation for bid or request

1 for proposal.

2 § 2113. Contract provisions protecting small diverse businesses
3 as subcontractors.

4 A diverse business that subcontracts or plans to subcontract
5 with a small diverse business shall place the following
6 provisions in each subcontract with a small diverse business:

7 (1) The responsibilities of this contract shall be
8 provided before acceptance. Any contract modification of
9 responsibilities shall be negotiated between the parties and
10 receive approval from the Department of General Services
11 before the contract modification may be accepted and
12 enforceable.

13 (2) The party who has the prime contract with a
14 purchasing agency agrees to the following rights of the
15 subcontractor:

16 (i) The subcontractor may accept or reject any
17 contract modification.

18 (ii) If the subcontractor rejects the modification,
19 the subcontractor has the right to do the following:

20 (A) Continue its relationship with the prime
21 contractor under the terms and conditions of the
22 previously accepted contract without the contract
23 modification.

24 (B) Report complaints to the Department of
25 General Services.

26 (C) Cancel the contract if it is impossible to
27 perform without the modification. If the contract is
28 canceled, the subcontractor shall be entitled to
29 either actual damages or half of the compensation
30 promised to the subcontractor when the contract was

1 last previously accepted, whichever is greater.

2 (3) The parties recognize that the Department of General
3 Services may reject the modification of the contract for
4 cause.

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

7 § 4502. Definitions.

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

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

16 (1) Agreeing to sell items or services at the same
17 price.

18 (2) Agreeing to submit identical bids.

19 (3) Agreeing to rotate bids.

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

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

24 (6) Agreeing to set up territories to restrict
25 competition.

26 (7) Agreeing not to submit bids.

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

30 The term includes any concerted activity to use a small business

1 certification or a small diverse business verification status to
2 gain an unlawful advantage in procurement.

3 * * *

4 Section 15. Section 4503(a) of Title 62 is amended to read:

5 § 4503. Prohibited activities.

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

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

12 (2) A subcontract for the purchase of equipment, goods,
13 services or materials or for construction or repair with a
14 prime contractor or proposed prime contractor for a
15 government agency.

16 * * *

17 Section 16. The provisions of this act are severable. If any
18 provision of this act or its application to any person or
19 circumstance is held invalid, the invalidity shall not affect
20 other provisions or applications of this act which can be given
21 effect without the invalid provision or application.

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