
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1167 Session of
2017

INTRODUCED BY DAWKINS, BOYLE, SCHLOSSBERG, SOLOMON, V. BROWN,
CEPHAS, BULLOCK AND VAZQUEZ, APRIL 12, 2017

REFERRED TO COMMITTEE ON STATE GOVERNMENT, APRIL 12, 2017

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, in small and disadvantaged businesses, further
3 providing for definitions, for duties of department, for
4 bonding and progress payments, for report to General Assembly
5 and providing for nondiscriminatory procurement procedures;
6 and imposing penalties.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The definition of "disadvantaged business" in
10 section 2102 of Title 62 of the Pennsylvania Consolidated
11 Statutes is amended to read:

12 § 2102. Definitions.

13 Subject to section 2103 (relating to regulations), the
14 following words and phrases when used in this chapter shall have
15 the meanings given to them in this section unless the context
16 clearly indicates otherwise:

17 ["Disadvantaged business." A small business which is owned
18 or controlled by a majority of persons, not limited to members
19 of minority groups, who have been deprived of the opportunity to
20 develop and maintain a competitive position in the economy

1 because of social disadvantages.]

2 * * *

3 Section 2. Sections 2104, 2105 and 2107 of Title 62 are
4 amended to read:

5 § 2104. Duties of department.

6 The department shall have the following duties:

7 (1) Where feasible, provide appropriate staff who shall
8 be responsible to the department and who shall serve within
9 designated Commonwealth agencies to assist small [and
10 disadvantaged] businesses in this Commonwealth in learning
11 how to do business with Commonwealth agencies.

12 (2) Give special publicity to procurement procedures and
13 issue special publications designed to assist small [and
14 disadvantaged] businesses in learning how to do business with
15 Commonwealth agencies.

16 (3) Compile, maintain and make available source lists of
17 small [and disadvantaged] businesses for the purpose of
18 encouraging procurement from small [and disadvantaged]
19 businesses.

20 (4) Include small [and disadvantaged] businesses on
21 solicitation mailing lists.

22 (5) Assure that small [and disadvantaged] businesses are
23 solicited on each procurement for which the businesses may be
24 suited.

25 (6) Develop special training programs to assist small
26 [and disadvantaged] businesses in learning how to do business
27 with Commonwealth agencies.

28 § 2105. Bonding and progress payments.

29 (a) Bonding.--Notwithstanding other provisions of this part,
30 a purchasing agency may reduce the level or change the types of

1 bonding normally required or accept alternative forms of
2 security to the extent reasonably necessary to encourage
3 procurement from small [and disadvantaged] businesses.

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

8 § 2107. Report to General Assembly.

9 The department shall annually, before October 1, report in
10 writing to the General Assembly concerning the awarding of
11 contracts to small [and disadvantaged] businesses during the
12 preceding fiscal year. The report shall include a list of all
13 small [and disadvantaged] businesses that participated as
14 contractors, subcontractors or suppliers during the preceding
15 fiscal year for contracts if the number of contractors under a
16 previously existing contract for the same supply or service is
17 reduced to a single contractor or reduced by more than 50% of
18 the number existing on September 30, 2003. In preparing the
19 report, the department shall verify whether commitments made to
20 small [and disadvantaged] businesses in the course of awarding
21 these contracts have been maintained.

22 Section 3. Title 62 is amended by adding a chapter to read:

23 CHAPTER 24

24 NONDISCRIMINATORY PROCUREMENT PROCEDURES

25 Sec.

26 2401. Policy.

27 2402. Definitions.

28 2403. Procurement procedures.

29 2404. Establishment of goals and guidelines.

30 2405. Commonwealth agency duties.

- 1 2406. Prohibitions.
2 2406.1. Women-owned businesses.
3 2407. Multiple certifications.
4 2408. Contractor duties.
5 2409. Department duties.
6 2410. Failure to meet participation goals.
7 2411. Waivers.
8 2412. Duties of bidders and offerors.
9 2413. Executed contracts.
10 2414. Reporting by minority business enterprises.
11 2415. Ineligibility due to net worth.
12 2416. Not-for-profit entities.
13 2417. Conflicts with Federal requirements.
14 2418. Regulations.
15 2419. Records and reports.
16 2420. Directory.
17 2421. Reporting requirements.
18 2422. Fraudulent actions.
19 2423. False statements regarding certification.
20 2424. Fraud hotline.
21 2425. Applicability of chapter.
22 § 2401. Policy.

23 The General Assembly finds and declares as follows:

24 (1) The Commonwealth wishes to provide all of its
25 residents with equal access to business formation and
26 business-growth opportunities.

27 (2) The elimination of discrimination against minority-
28 owned and women-owned businesses is of paramount importance
29 to the future welfare of this Commonwealth.

30 (3) Evidence demonstrates persistent discrimination

1 against minority-owned and women-owned businesses and further
2 demonstrates the following:

3 (i) There are substantial and statistically
4 significant adverse disparities between the availability
5 and utilization of minorities and women in the private
6 sector in the same geographic markets and industry
7 categories in which the Commonwealth does business.

8 (ii) The Commonwealth would become a passive
9 participant in private sector racial and gender
10 discrimination if it ceased or curtailed its remedial
11 efforts.

12 (iii) There are substantial and statistically
13 significant adverse disparities for all racial and ethnic
14 groups and nonminority women combined in all major
15 contracting categories in procurement.

16 (iv) There are substantial and statistically
17 significant adverse disparities for all individual racial
18 and ethnic groups and for nonminority women in most major
19 industry categories in procurement.

20 (v) There is ample evidence that discrimination in
21 the private sector has depressed firm formation and firm
22 growth among minority and nonminority women
23 entrepreneurs.

24 (vi) There is powerful and persuasive qualitative
25 and anecdotal evidence of discrimination against minority
26 and nonminority women business owners in both the public
27 and private sectors.

28 (4) As a result of ongoing discrimination and the
29 present-day effects of past discrimination, minority-owned
30 and women-owned businesses combined continue to be

1 significantly underutilized relative to their availability to
2 perform work in the sectors in which the Commonwealth does
3 business.

4 (5) Minority prime contractors also are subject to
5 discrimination and confront especially daunting barriers in
6 attempting to compete with very large and long-established
7 nonminority companies.

8 (6) Despite the fact that the Commonwealth has employed,
9 and continues to employ, numerous and robust race-neutral
10 remedies, including aggressive outreach and advertising,
11 training and education, small business programs, efforts to
12 improve access to capital and other efforts, there is a
13 strong basis in evidence that discrimination persists even in
14 public sector procurement where these efforts have been
15 employed.

16 (7) This chapter ensures that race-neutral efforts will
17 be used to the maximum extent feasible and that race-
18 conscious measures will be used only where necessary to
19 eliminate discrimination that was not alleviated by race-
20 neutral efforts.

21 (8) This chapter continues and enhances efforts to
22 ensure that the Commonwealth limits the burden on nonminority
23 businesses as much as possible by ensuring that all goals are
24 developed using the best available data and that waivers are
25 available whenever contractors make good faith efforts.

26 (9) Commonwealth efforts to support the development of
27 competitively viable minority-owned and women-owned business
28 enterprises will assist in reducing discrimination and
29 creating jobs for all residents of this Commonwealth.

30 § 2402. Definitions.

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

4 "African American." An individual having origins in any of
5 the black racial groups of Africa.

6 "American Indian/Native American." An individual having
7 origins in any of the original peoples of North America and who
8 is a documented member of a North American tribe or band or
9 otherwise has a special relationship with the United States or a
10 state through treaty, agreement or some other form of
11 recognition. The term includes an individual who claims to be an
12 American Indian/Native American and who is regarded as such by
13 the American Indian/Native American community of which the
14 individual claims to be a part, but does not include an
15 individual of Eskimo or Aleutian origin.

16 "Asian." An individual having origins in the Far East,
17 Southeast Asia or the Indian subcontinent and who is regarded as
18 such by the community of which the person claims to be a part.

19 "Certification." The determination that a legal entity is a
20 minority business enterprise for the purposes of this chapter.

21 "Certified minority business enterprise." A minority
22 business enterprise that holds a certification.

23 "Economically disadvantaged individual." A socially
24 disadvantaged individual whose ability to compete in the free
25 enterprise system has been impaired due to diminished capital
26 and credit opportunities as compared to others in the same or
27 similar line of business who are not socially disadvantaged.

28 "Hispanic." An individual of Mexican, Puerto Rican, Cuban,
29 Central or South American culture or origin or other Spanish
30 culture or origin, regardless of race, and who is regarded as

1 such by the community of which the person claims to be a part.

2 "Minority business enterprise." Any legal entity, except a
3 joint venture, that is all of the following:

4 (1) Organized to engage in commercial transactions.

5 (2) At least 51% owned and controlled by one or more
6 individuals who are socially and economically disadvantaged.

7 (3) Managed by, and the daily business operations of
8 which are controlled by, one or more of the socially and
9 economically disadvantaged individuals who own it.

10 "Minority business enterprise participation schedule." A
11 schedule included in the submission of a bid or offer that
12 identifies the following:

13 (1) The certified minority business enterprises that a
14 bidder or offeror agrees to use in the performance of the
15 contract.

16 (2) The percentage of contract value attributed to each
17 certified minority business enterprise.

18 "Not-for-profit entity." A corporation that meets the
19 following criteria:

20 (1) Is incorporated in this Commonwealth or otherwise
21 qualified to do business in this Commonwealth.

22 (2) Has been determined by the Internal Revenue Service
23 to be exempt from taxation under section 501(c)(3), (4) or
24 (6) of the Internal Revenue Code of 1986 (Public Law 99-514,
25 26 U.S.C. § 501(c)(3), (4) or (6)).

26 (3) Is organized to promote the interests of individuals
27 who are physically or mentally disabled.

28 "Personal net worth." The net value of the assets of an
29 individual remaining after total liabilities are deducted. The
30 term includes the individual's share of assets held jointly or

1 as community property with the individual's spouse. The term
2 does not include any of the following:

3 (1) The individual's ownership interest in the applicant
4 or a certified minority business enterprise.

5 (2) The individual's equity in the individual's primary
6 place of residence.

7 (3) Up to \$500,000 of the cash value of any qualified
8 retirement savings plans or individual retirement accounts.

9 "Physically or mentally disabled." An impairment that
10 substantially limits one or more major life activities.

11 "Race-neutral measure." A method that is or can be used to
12 assist all small businesses.

13 "Socially and economically disadvantaged individual."

14 (1) A citizen or lawfully admitted permanent resident of
15 the United States who is:

16 (i) In any of the following minority groups:

17 (A) African American.

18 (B) American Indian/Native American.

19 (C) Asian.

20 (D) Hispanic.

21 (ii) Physically or mentally disabled and who is
22 regarded generally by the community as having such a
23 disability and whose disability has substantially limited
24 the individual's ability to engage in competitive
25 business.

26 (iii) A woman, regardless of race or ethnicity.

27 (iv) Otherwise found by the department to be a
28 socially and economically disadvantaged individual. There
29 is a rebuttable presumption that an individual who is a
30 member of a minority group under subparagraph (i), (ii)

1 or (iii) is socially and economically disadvantaged.

2 (2) An individual whose personal net worth exceeds
3 \$1,500,000, as adjusted annually for inflation according to
4 the Consumer Price Index, may not be found to be economically
5 disadvantaged.

6 "Socially disadvantaged individual." An individual who has
7 been subjected to racial or ethnic prejudice or cultural bias
8 within American society because of membership in a group and
9 without regard to individual qualities. Social disadvantage must
10 stem from circumstances beyond the control of the individual.
11 § 2403. Procurement procedures.

12 Except for leases of real property, each Commonwealth agency
13 shall structure procurement procedures, consistent with the
14 purposes of this chapter, to attempt to achieve an overall
15 percentage goal of the Commonwealth agency's total dollar value
16 of contracts being made directly or indirectly to certified
17 minority business enterprises. The following contracts may not
18 be counted as part of a Commonwealth agency's total dollar value
19 of contracts:

20 (1) A contract awarded in accordance with section 520
21 (relating to supplies manufactured and services performed by
22 persons with disabilities).

23 (2) A contract awarded to a not-for-profit entity in
24 accordance with requirements mandated by Federal or State
25 law.

26 § 2404. Establishment of goals and guidelines.

27 (a) Overall goal.--The overall percentage goal shall be
28 established on a biennial basis by the department, in
29 consultation with the Secretary of Transportation and the
30 Attorney General.

1 (b) Establishment of goals and guidelines.--In consultation
2 with the Secretary of Transportation and the Attorney General,
3 the department shall do the following:

4 (1) Establish guidelines on a biennial basis for each
5 Commonwealth agency to consider while determining whether to
6 set subgoals for the minority groups listed in the definition
7 of "socially and economically disadvantaged individual" under
8 section 2402 (relating to definitions).

9 (2) Establish goals and subgoal guidelines that, to the
10 maximum extent feasible, approximate the level of minority
11 business enterprise participation that would be expected in
12 the absence of discrimination.

13 (3) Establish guidelines for each Commonwealth agency to
14 consider when determining the appropriate minority business
15 enterprise participation percentage goal for a contract in
16 accordance with section 2405 (relating to Commonwealth agency
17 duties).

18 (c) Delay in establishing goals and guidelines.--During any
19 year in which there is a delay in establishing the overall goal,
20 the previous year's goal shall apply. During any year in which
21 there is a delay in establishing the subgoal guidelines, the
22 previous year's subgoal guidelines shall apply.

23 (d) Public participation.--In establishing overall goals and
24 subgoal guidelines, the department shall provide for public
25 participation by consulting with minority, women's and general
26 contractor groups, community organizations and other officials
27 or organizations that could be expected to have information
28 concerning:

29 (1) The availability of minority-owned and women-owned
30 businesses.

1 (2) The effects of discrimination on opportunities for
2 minority-owned and women-owned businesses.

3 (3) The operation of the department's Bureau of
4 Diversity, Inclusion and Small Business Opportunities.

5 (e) Factors.--In establishing overall goals, the factors to
6 be considered shall include:

7 (1) The relative availability of minority-owned and
8 women-owned businesses to participate in procurement as
9 demonstrated by the State's most recent disparity study.

10 (2) Past participation of minority business enterprises
11 in procurement, except for procurement related to leases of
12 real property.

13 (3) Other factors that contribute to constitutional goal
14 setting.

15 § 2405. Commonwealth agency duties.

16 (a) General rule.--Each Commonwealth agency shall:

17 (1) Consider the practical severability of all contracts
18 and, unless otherwise prohibited by law, may not bundle
19 contracts.

20 (2) Implement a program that will enable the
21 Commonwealth agency to evaluate each contract to determine
22 the appropriate minority business enterprise participation
23 goals, if any, for the contract based on the following:

24 (i) The potential subcontract opportunities
25 available in the prime contract.

26 (ii) The availability of certified minority business
27 enterprises to respond competitively to the potential
28 subcontract opportunities.

29 (iii) The contract goal guidelines established under
30 section 2404(b)(3) (relating to establishment of goals

1 and guidelines).

2 (iv) The subgoal guidelines established under
3 section 2404(b)(1).

4 (v) Other factors that contribute to constitutional
5 goal setting.

6 (3) Set forth in invitations to bid and requests for
7 proposals the expected degree of minority business enterprise
8 participation based, in part, on the factors under this
9 subsection. A bid or proposal with an expected degree of
10 minority business enterprise participation must identify the
11 specific commitment of certified minority business
12 enterprises at the time of submission.

13 (4) Provide a current list of certified minority
14 business enterprises to each prospective contractor.

15 (5) Verify and maintain data concerning payments
16 received by minority business enterprises, including a
17 requirement that, upon completion of a project, the
18 Commonwealth agency shall compare the total dollar value
19 actually received by minority business enterprises with the
20 amount of contract dollars initially awarded along with an
21 explanation of any discrepancies.

22 (6) Monitor and collect data with respect to prime
23 contractor compliance with contract goals. A Commonwealth
24 agency shall verify that minority business enterprises listed
25 in a successful bid are actually participating to the extent
26 listed in the project for which the bid was submitted.

27 (7) Institute corrective action when prime contractors
28 do not make good faith efforts to comply with contract goals.

29 (8) Cooperate with the department to designate certain
30 procurements as being excluded from the requirements of this

1 chapter.

2 (b) Facilitation of participation.--Each Commonwealth agency
3 shall meet the maximum feasible portion of the Commonwealth's
4 overall goal established under section 2404(a) by using race-
5 neutral measures to facilitate minority business enterprise
6 participation in the procurement process.

7 § 2406. Prohibitions.

8 Commonwealth agencies may not use quotas or any project goal-
9 setting process that:

10 (1) Solely relies on the Commonwealth's overall
11 numerical goal or any other jurisdiction's overall numerical
12 goal.

13 (2) Fails to incorporate the analysis outlined in
14 section 2405(a)(2) (relating to Commonwealth agency duties).

15 § 2406.1. Women-owned businesses.

16 A woman who is also a member of an ethnic or racial minority
17 group may be certified in that category in addition to the
18 gender category.

19 § 2407. Multiple certifications.

20 For purposes of achieving the goals in this chapter, a
21 certified minority business enterprise may participate in a
22 contract and be counted as a woman-owned business or as a
23 business owned by a member of an ethnic or racial group, but not
24 both, if the business has been certified in both categories.

25 § 2408. Contractor duties.

26 If a Commonwealth agency establishes minority business
27 enterprise participation goals for a contract, a contractor,
28 including a contractor that is a certified minority business
29 enterprise, shall:

30 (1) Identify specific work categories appropriate for

1 subcontracting.

2 (2) At least 10 days before bid opening, solicit
3 minority business enterprises through written notice that:

4 (i) Describes the categories of work under paragraph
5 (1).

6 (ii) Provides information regarding the type of work
7 being solicited and specific instructions on how to
8 submit a bid.

9 (3) Attempt to make personal contact with the minority
10 business enterprises in paragraph (2).

11 (4) Offer to provide reasonable assistance to minority
12 business enterprises to fulfill bonding requirements or to
13 obtain a waiver of those requirements.

14 (5) In order to publicize contracting opportunities to
15 minority business enterprises, attend prebid or preproposal
16 meetings or other meetings scheduled by the Commonwealth
17 agency.

18 (6) Upon acceptance of a bid or proposal, provide the
19 Commonwealth agency with a list of minority businesses with
20 whom the contractor negotiated, including price quotes from
21 minority and nonminority firms.

22 § 2409. Department duties.

23 The department shall:

24 (1) In consultation with the Secretary of Transportation
25 and the Attorney General, establish procedures governing how
26 the participation of minority business enterprise prime
27 contractors is counted toward contract goals.

28 (2) Publish biennially in the Pennsylvania Bulletin
29 notice of the Commonwealth's overall goal established under
30 section 2404(a) (relating to establishment of goals and

1 guidelines).

2 (3) Provide for certifying and decertifying minority
3 business enterprises for all Commonwealth agencies through a
4 single process that meets applicable Federal requirements.

5 (4) Promote and facilitate the submission of some or all
6 of the certification applications through an electronic
7 process.

8 (5) Promote and facilitate certification of minority
9 business enterprises that have received certification from
10 the Small Business Administration or a county that uses a
11 certification process substantially similar to the process
12 under paragraph (1).

13 (6) Complete its review of an application for
14 certification and notify the applicant of the department's
15 decision within 90 days of receipt of an application that
16 includes all of the information necessary for the department
17 to make a decision.

18 (7) Provide a one-time extension of the notification
19 requirement under paragraph (6). The department shall provide
20 the applicant with a written notice and explanation for the
21 extension. The extension shall be for no more than 60 days.

22 (8) Ensure the uniformity of requests for bids on
23 subcontracts.

24 (9) Establish a schedule for receipt of requests for
25 bids on subcontracts and of submission of bids on
26 subcontracts.

27 (10) To the extent practicable, ensure that a fiscal
28 disadvantage to the Commonwealth does not result from an
29 inadequate response by minority business enterprises to a
30 request for bids.

1 (11) Provide for the counting and reporting of certified
2 minority business enterprises as prime contractors.

3 (12) Ensure that all contracts containing minority
4 business enterprise participation goals contain a liquidated
5 damages provision that applies in the event that the
6 contractor fails to comply in good faith with the provisions
7 of this chapter or the pertinent terms of the applicable
8 contract.

9 (13) Establish standards to require a minority business
10 enterprise to perform a commercially useful function on a
11 contract.

12 (14) Provide for how a bidder may calculate the minority
13 business enterprise portion of a joint venture toward meeting
14 its minority business enterprise participation goal.

15 (15) Consistent with section 2411 (relating to waivers),
16 identify circumstances under which a Commonwealth agency may
17 waive obligations of the contractor relating to minority
18 business enterprise participation.

19 (16) Establish a graduation program based on the
20 financial viability of the minority business enterprise,
21 using annual gross receipts or other economic indicators as
22 may be determined by the department.

23 (17) Develop and implement any other procedures that the
24 department considers necessary or appropriate to encourage
25 participation by minority business enterprises and to protect
26 the integrity of the procurement process.

27 § 2410. Failure to meet participation goals.

28 If a contractor, including a certified minority business
29 enterprise, does not achieve all or a part of the minority
30 business enterprise participation goals on a contract, the

1 Commonwealth agency shall make a finding of whether the
2 contractor has demonstrated that the contractor took all
3 necessary and reasonable steps to achieve the goals, including
4 compliance with section 2408 (relating to contractor duties).
5 § 2411. Waivers.

6 (a) General rule.--A waiver of any part of the minority
7 business enterprise goals for a contract shall be granted if a
8 contractor provides a reasonable demonstration of good-faith
9 efforts to achieve the goals.

10 (b) Contract renegotiation.--If the Commonwealth agency
11 determines that a waiver should be granted in accordance with
12 subsection (a), the Commonwealth agency may not require the
13 contractor to renegotiate any subcontract in order to achieve a
14 different result.

15 (c) Waiver by agency head.--The head of a Commonwealth
16 agency may waive any of the requirements of this subsection
17 relating to the establishment, use and waiver of contract goals
18 for a sole source or emergency procurement in which the public
19 interest cannot reasonably accommodate use of those
20 requirements.

21 (d) Documentation.--The following apply:

22 (1) Except for waivers granted in accordance with
23 subsection (c), when a waiver determination is made, the
24 Commonwealth agency shall issue the determination in writing.

25 (2) The head of the Commonwealth agency shall:

26 (i) Keep one copy of the waiver determination and
27 the reasons for the determination.

28 (ii) Forward one copy of the waiver determination to
29 the department.

30 (e) Report required.--On or before July 31 of each year,

1 each Commonwealth agency shall furnish to the department an
2 annual report of waivers requested and waivers granted under
3 this section. The report shall contain the following information
4 on those contracts where the Commonwealth agency considered a
5 contractor's request for waiver of all or a portion of the
6 minority business enterprise goals:

7 (1) The contract titles, numbers and dates.

8 (2) The number of waiver requests received.

9 (3) The number of waiver requests granted.

10 (4) Any other information specifically requested by the
11 department.

12 § 2412. Duties of bidders and offerors.

13 (a) Documentation.--A bidder or offeror must complete a
14 document setting forth the percentage of the total dollar amount
15 of the contract that the bidder or offeror agrees will be
16 performed by certified minority business enterprises.
17 Documentation submitted by the bidder or offeror in connection
18 with its minority business enterprise participation commitment
19 must be attached to and made a part of the contract.

20 (b) Change of circumstance.--After submission of a bid or
21 proposal and before the execution of a contract with an expected
22 degree of minority business enterprise participation, the
23 following shall apply:

24 (1) If the bidder or offeror determines that a minority
25 business enterprise identified in the minority business
26 enterprise participation schedule has become or will become
27 unavailable or ineligible to perform the work required under
28 the contract, the bidder or offeror shall notify the
29 Commonwealth agency within 72 hours of making the
30 determination.

1 (2) If a minority business enterprise identified in the
2 minority business enterprise participation schedule submitted
3 with a bid or offer has become or will become unavailable or
4 ineligible to perform the work required under the contract,
5 the bidder or offeror may submit a written request with the
6 Commonwealth agency to amend the minority business enterprise
7 participation schedule.

8 (3) The request to amend the minority business
9 enterprise participation schedule shall indicate the bidder's
10 or offeror's efforts to substitute another certified minority
11 business enterprise to perform the work that the unavailable
12 or ineligible minority business enterprise would have
13 performed.

14 (4) A minority business enterprise participation
15 schedule may not be amended unless:

16 (i) The bidder or offeror provides a satisfactory
17 explanation of the reason for inclusion of the
18 unavailable or ineligible firm on the minority business
19 enterprise participation schedule.

20 (ii) The amendment is approved by the Commonwealth
21 agency's contracting officer.

22 § 2413. Executed contracts.

23 After execution of a contract with an expected degree of
24 minority business enterprise participation, the following shall
25 apply:

26 (1) The minority business enterprise participation
27 schedule, including any amendment, shall be attached to and
28 made a part of the executed contract.

29 (2) A contractor may not terminate or otherwise cancel
30 the contract of a certified minority business enterprise

1 subcontractor listed in the minority business enterprise
2 participation schedule without showing good cause and
3 obtaining the written approval of the head of the
4 Commonwealth agency.

5 (3) The Commonwealth agency shall send a copy of the
6 written approval obtained under paragraph (2) to the
7 Governor's Office of Administration.

8 (4) A minority business enterprise participation
9 schedule may not be amended after the date of contract
10 execution unless the request is approved by the head of the
11 Commonwealth agency and the contract is amended.

12 § 2414. Reporting by minority business enterprises.

13 A minority business enterprise shall submit a monthly report
14 to the Commonwealth agency acknowledging all payments received
15 in the preceding 30 days under a contract governed by this
16 chapter.

17 § 2415. Ineligibility due to net worth.

18 If, during the performance of a contract, a certified
19 minority business enterprise contractor or subcontractor becomes
20 ineligible to participate because one or more of its owners has
21 a personal net worth that exceeds the amount specified in
22 paragraph (2) of the definition of "socially and economically
23 disadvantaged individual" under section 2402 (relating to
24 definitions):

25 (1) That ineligibility alone may not cause the
26 termination of the certified minority business enterprise's
27 contractual relationship for the remainder of the term of the
28 contract.

29 (2) The certified minority business enterprise's
30 participation under the contract shall continue to be counted

1 toward the contract goals.

2 § 2416. Not-for-profit entities.

3 (a) General rule.--Except as provided in subsection (b), a
4 not-for-profit entity participating as a minority business
5 enterprise on a contract awarded by a Commonwealth agency before
6 the effective date of this section may continue to participate
7 in the contract until the contract expires or otherwise
8 terminates, including all options, renewals and other
9 extensions.

10 (b) Calculating participation.--The not-for-profit entity's
11 participation may not be counted toward achieving the minority
12 business enterprise participation goals.

13 (c) Substitution prohibited.--The Commonwealth agency may
14 not require that a certified minority business enterprise be
15 substituted for the not-for-profit entity in order to meet the
16 minority business enterprise goals for the contract.

17 § 2417. Conflicts with Federal requirements.

18 The provisions of this chapter are inapplicable to the extent
19 that any Commonwealth agency determines the provisions to be in
20 conflict with any applicable Federal program requirement. The
21 determination under this section shall be included with the
22 report required under section 2421 (relating to reporting
23 requirements).

24 § 2418. Regulations.

25 (a) General rule.--The department shall promulgate
26 regulations to carry out the requirements of this chapter. The
27 regulations shall establish procedures to be followed by
28 Commonwealth agencies, prospective contractors and successful
29 bidders or offerors to maximize notice to, and the opportunity
30 to participate in the procurement process by, a broad range of

1 minority business enterprises.

2 (b) Pending certification as minority business enterprise.--
3 The regulations adopted under this section shall specify that a
4 Commonwealth agency may not allow a business to participate as
5 if it were a certified minority business enterprise if the
6 business's certification is pending.

7 § 2419. Records and reports.

8 (a) Waivers.--The department shall keep a record of
9 information regarding any waivers requested in accordance with
10 section 2411 (relating to waivers) and annually submit a copy of
11 the record to the General Assembly.

12 (b) Certifications.--The department shall keep a record of
13 the aggregate number and the identity of minority business
14 enterprises that receive certification under the process
15 established by the department and annually submit a copy of the
16 record to the General Assembly.

17 § 2420. Directory.

18 (a) General rule.--The department shall develop and maintain
19 a directory of all certified minority business enterprises. The
20 directory shall be accessible to the public through the
21 department's publicly accessible Internet website.

22 (b) Directory information.--For each minority business
23 enterprise included in the directory, the department shall
24 include the following information:

25 (1) All contract information available to the department
26 for the minority business enterprise.

27 (2) The certification number and minority status of the
28 minority business enterprise.

29 (3) Contact information for up to three professional
30 references for the minority business enterprise.

1 (4) Any other information the department considers
2 necessary or appropriate to encourage participation in the
3 procurement process by minority business enterprises.

4 (c) Maintenance of directory.--The department shall:

5 (1) Update the directory at least monthly.

6 (2) Identify as recently certified in the directory each
7 minority business enterprise that has obtained certification
8 during the calendar year.

9 (3) Include in the directory a list of all minority
10 business enterprises that have become ineligible to
11 participate for any of the following reasons:

12 (i) One or more of its owners has a personal net
13 worth that exceeds the amount specified in paragraph (2)
14 of the definition of "socially and economically
15 disadvantaged individual" under section 2402 (relating to
16 definitions).

17 (ii) The minority business enterprise no longer
18 meets the standards developed under section 2414
19 (relating to reporting by minority business enterprises).

20 § 2421. Reporting requirements.

21 (a) Report required.--Within 90 days after the end of the
22 fiscal year, each Commonwealth agency shall report to the
23 department the following information for the preceding fiscal
24 year:

25 (1) The total number and value of contracts between the
26 Commonwealth agency and certified minority business
27 enterprises, by specific category of minority business
28 enterprise, including whether the minority business
29 enterprise participated as a prime contractor or as a
30 subcontractor.

1 (2) The percentage that those contracts represent, by
2 specific category of minority business enterprise, of the
3 total number and value of contracts.

4 (3) The total number and the names of certified minority
5 business enterprises that participated as prime contractors
6 or as subcontractors on contracts awarded by a Commonwealth
7 agency.

8 (4) For each minority business included in the report, a
9 list of all contracts awarded by a Commonwealth agency to the
10 minority business enterprise, including a description of the
11 contract.

12 (5) As to contracts for architectural services and
13 engineering services included in the report, procurements for
14 the following, identified by separate category of minority
15 business enterprise:

16 (i) Architectural services.

17 (ii) Engineering services.

18 (b) Form.--A report under this section shall be in a form
19 prescribed by the department.

20 (c) Summary report.--On or before December 31 of each year,
21 the department shall submit to the Governor and the General
22 Assembly a report summarizing the information received by the
23 department under subsection (a).

24 § 2422. Fraudulent actions.

25 (a) Prohibited actions.--A person may not:

26 (1) Fraudulently obtain or hold certification.

27 (2) Willfully obstruct or impede a State official or
28 employee investigating the qualifications of a business
29 entity that has requested certification.

30 (3) Fraudulently obtain public money to which the person

1 is not entitled under this chapter.

2 (4) In any minority business enterprise matter
3 administered under this chapter:

4 (i) Willfully falsify, conceal or cover up a
5 material fact by any scheme or device.

6 (ii) Make a false or fraudulent statement or
7 representation.

8 (iii) Use a false writing or document that the
9 person knows to contain a false or fraudulent statement
10 or entry.

11 (b) Actions of contractors.--Except as otherwise provided by
12 law, a contractor may not identify a certified minority business
13 enterprise in a bid or proposal and:

14 (1) Fail to request, receive or otherwise obtain
15 authorization from the certified minority business enterprise
16 to identify the certified minority business enterprise in its
17 bid or proposal.

18 (2) Fail to notify the certified minority business
19 enterprise before execution of the contract of its inclusion
20 of the bid or proposal.

21 (3) Fail to use the certified minority business
22 enterprise in the performance of the contract.

23 (4) Pay the certified minority business enterprise
24 solely for the use of its name in the bid or proposal.

25 (c) Grading.--A person who violates this section commits a
26 felony of the third degree and shall, upon conviction, be
27 sentenced to pay a fine of not more than \$20,000 or to
28 imprisonment for not more than five years, or both.

29 § 2423. False statements regarding certification.

30 (a) Offense.--A person may not make a false statement about

1 whether an entity has certification.

2 (b) Grading.--A person who violates this section commits a
3 misdemeanor of the third degree and shall, upon conviction, be
4 sentenced to pay a fine of not more than \$2,500 or to
5 imprisonment of not more than one year, or both.

6 § 2424. Fraud hotline.

7 The department shall make available a fraud hotline for
8 reporting violations of this chapter.

9 § 2425. Applicability of chapter.

10 The provisions of this chapter and any regulations
11 promulgated under this chapter shall apply on and after July 1,
12 2018.

13 Section 4. This act shall take effect in 60 days.