

By Senator Diaz-Balart

41-1536A-00

1 A bill to be entitled
2 An act relating to state procurement; amending
3 s. 287.094, F.S.; revising provisions relating
4 to minority business enterprise programs;
5 providing for revoking the certification of
6 certain minority businesses under certain
7 circumstances; providing exceptions;
8 prohibiting agencies from denying contractors,
9 firms, or individuals an opportunity to compete
10 in public procurement of commodities and
11 services under certain circumstances; providing
12 for filing of certain complaints; providing
13 procedures and requirements; providing a
14 penalty for certain discrimination; amending s.
15 287.0943, F.S.; requiring the Office of
16 Supplier Diversity to accept certain businesses
17 as certified minority businesses for certain
18 purposes under certain circumstances; revising
19 criteria for certification of minority business
20 enterprises; requiring businesses to comply
21 with state licensing requirements for certain
22 certification; providing for review or audit of
23 certain businesses under certain circumstances;
24 providing for random reviews or audits of
25 certain business by the Office of Supplier
26 Diversity; authorizing the Auditor General to
27 review or audit certain minority businesses for
28 certain purposes; transferring the Minority
29 Business Advocacy and Assistance Office from
30 the Department of Labor and Employment Security
31 to the Department of Management Services and

1 renaming the office as the Office of Supplier
2 Diversity; amending s. 287.09451, F.S., to
3 conform to such transfer and renaming; amending
4 s. 288.703, F.S.; revising certain definitions;
5 creating s. 287.134, F.S.; providing
6 definitions; prohibiting certain entities or
7 affiliates from bidding on certain contracts;
8 prohibiting public entities from accepting
9 certain bids from, awarding certain contracts
10 to, or transacting business with certain
11 entities; requiring invitations to bid,
12 requests for proposals, and certain written
13 contracts to contain notice of provisions;
14 providing requirements, procedures, and
15 limitations for determinations of
16 discrimination by certain entities; providing
17 for notice and administrative hearings;
18 providing for nonapplication to certain
19 activities; amending ss. 17.11, 255.102,
20 287.012, 287.042, 287.057, and 287.9431, F.S.,
21 to conform; providing an effective date.

22

23 Be It Enacted by the Legislature of the State of Florida:

24

25 Section 1. Section 287.094, Florida Statutes, is
26 amended to read:

27 287.094 Minority business enterprise programs; penalty
28 for discrimination and false representation.--

29 (1) It is unlawful for any individual to falsely claim
30 to be ~~represent~~ any entity as a minority business enterprise
31 for purposes of qualifying for certification with any

1 governmental certifying organization as a minority business
2 enterprise in order to participate under a program of a state
3 agency which is designed to assist certified minority business
4 enterprises in the receipt of contracts with the agency for
5 the provision of goods or services. The certification of any
6 contractor, firm, or individual obtained by such false
7 representation shall be permanently revoked and the entity
8 shall be barred from doing business with state government for
9 a period of 36 months. Any person who violates this section is
10 guilty of a felony of the second degree, punishable as
11 provided in s. 775.082, s. 775.083, or s. 775.084.

12 (2) Any contractor, firm, or individual which falsely
13 represents to an agency or to a contractor, pursuant to a
14 state contract, that it is a certified minority business
15 enterprise or which represents that it will use the services
16 or commodities of a certified minority business enterprise and
17 subsequently does not do so shall be in breach of contract.
18 Upon determination that a breach has occurred, all payments
19 under the contract may be immediately suspended. The
20 contractor or firm may show that it attempted through
21 reasonable and objective means and in good faith to comply
22 with the terms of the contract relating to minority business
23 enterprises but was unable to comply. If the agency determines
24 that the contractor or firm did not act in good faith, all
25 amounts paid to the contractor or firm under the state
26 contract intended for expenditure with the certified minority
27 business enterprises shall be forfeited and recoverable by the
28 Department of Legal Affairs. In addition, the contract may be
29 rescinded and the agency may return all goods received and
30 recover all amounts paid under the contract.

31

1 (3) Any ~~No~~ contractor, firm, or individual shall be
2 barred from doing business with state government for a period
3 of 36 months, and shall be permanently disqualified from doing
4 business with state government as a certified minority
5 business enterprise, if ~~qualified for 36 months to bid on~~
6 ~~contracts or negotiate for the rendering of professional~~
7 ~~services pursuant to s. 287.055 awarded by an agency after the~~
8 ~~office determines that the contractor, firm, or individual has~~
9 ~~falsely represented that it is a certified minority business~~
10 ~~enterprise, or the office has determined that the contractor,~~
11 ~~firm, or individual has not acted in good faith to fulfill the~~
12 ~~terms of a contract calling for it to use the services or~~
13 ~~commodities of a certified minority business enterprise. If~~
14 ~~the Department of Legal Affairs, agency final order, or a~~
15 court of law determines ~~or a court of law adjudges~~ that a
16 person was involved in a violation of this section, knew about
17 such violation, or collaborated with a contractor or firm in
18 such violation, the person, or any contractor or firm the
19 person is employed by or affiliated with, shall be barred from
20 doing business with state government for a period of at least
21 36 months ~~shall not be a qualified vendor for the state for at~~
22 ~~least 36 months to bid on contracts or negotiate for the~~
23 ~~rendering of professional services pursuant to s. 287.055~~
24 ~~awarded by an agency after such determination is made.~~

25 (4) No agency shall deny any contractor, firm, or
26 individual a fair opportunity to compete in the public
27 procurement of commodities and services based on race,
28 national origin, gender, religion, or physical disability,
29 which for purposes of this subsection constitutes prohibited
30 discrimination. Complaints alleging prohibited discrimination
31 by an agency in its public procurement may be filed with the

1 Office of Supplier Diversity within 60 days after the facts
2 giving rise to the complaint are known, or reasonably should
3 have been discovered. Any complaint shall be filed in
4 writing, and must set forth the specific facts giving rise to
5 the claim of prohibited discrimination. The Office of
6 Supplier Diversity shall, within 10 days, refer the complaint
7 to the Inspector General for the agency that is the subject of
8 the complaint, who shall coordinate a prompt investigation and
9 issue written findings of fact. These findings shall be
10 reviewed by the Chief Inspector General or his or her
11 designee, who is authorized to conduct any further
12 investigation deemed necessary or appropriate. Upon a final
13 determination that an agency has abused its discretion by
14 engaging in prohibited discrimination, the Chief Inspector
15 General shall refer any state employee determined to have
16 participated in the prohibited discrimination for disciplinary
17 action in accordance with Chapter 60K(9), Florida
18 Administrative Code, and subsequently enacted rules, up to and
19 including termination.

20 (5)(4) The owner of a minority business enterprise
21 that has been found guilty under subsection (1) or subsection
22 (3) shall not attempt to circumvent this section by creating a
23 new business entity for the purposes of attempting to transact
24 business in this state ~~corporate~~ structure.

25 Section 2. Section 287.0943, Florida Statutes, is
26 amended to read:

27 287.0943 Certification of minority business
28 enterprises.--

29 (1) A business certified by any local governmental
30 jurisdiction or organization shall be accepted by the
31 Department of Management Services, Office of Supplier

1 Diversity, as a certified minority business enterprise for
2 purposes of doing business with state government when the
3 Office of Supplier Diversity determines that the state's
4 minority business enterprise certification criteria are
5 applied in the local certification process.

6 (2)~~(1)~~(a) The office is hereby directed to convene a
7 "Minority Business Certification Task Force." The task force
8 shall meet as often as necessary, but no less frequently than
9 annually.

10 (b) The task force shall be regionally balanced and
11 comprised of officials representing the department, counties,
12 municipalities, school boards, special districts, and other
13 political subdivisions of the state who administer programs to
14 assist minority businesses in procurement or development in
15 government-sponsored programs. The following organizations may
16 appoint two members each of the task force who fit the
17 description above:

- 18 1. The Florida League of Cities, Inc.
- 19 2. The Florida Association of Counties.
- 20 3. The Florida School Boards Association, Inc.
- 21 4. The Association of Special Districts.
- 22 5. The Florida Association of Minority Business
23 Enterprise Officials.
- 24 6. The Florida Association of Government Purchasing
25 Officials.

26
27 In addition, the ~~Minority Business Advocacy and Assistance~~
28 Office of Supplier Diversity shall appoint seven members
29 consisting of three representatives of minority business
30 enterprises, two officials of the office, and two at-large
31 members to ensure balance ~~regional, gender, racial, and ethnic~~

1 ~~balance among the groups specified in s. 288.703(3).~~ The
2 chairperson of the Legislative Committee on Intergovernmental
3 Relations or a designee shall be a member of the task force,
4 ex officio. A quorum shall consist of one-third of the current
5 members, and the task force may take action by majority vote.
6 Any vacancy may only be filled by the organization or agency
7 originally authorized to appoint the position.

8 (c) The purpose of the task force will be to propose
9 uniform criteria and procedures by which participating
10 entities and organizations can qualify businesses to
11 participate in procurement or contracting programs as
12 certified minority business enterprises in accordance with the
13 certification criteria established by law.

14 (d) A final list of the criteria and procedures
15 proposed by the task force shall be considered by the
16 secretary. The task force may seek technical assistance from
17 qualified providers of technical, business, and managerial
18 expertise to ensure the reliability of the certification
19 criteria developed.

20 (e) In assessing the status of ownership and control,
21 certification criteria shall, at a minimum:

22 1. Link ownership by a minority person, as defined in
23 s. 288.703(3), or as dictated by the legal obligations of a
24 certifying organization, to day-to-day control and financial
25 risk by the qualifying minority owner, and to demonstrated
26 expertise licensure of a minority owner in any trade or
27 profession that the minority business enterprise will offer to
28 the state when certified; ~~however, the minority licenseholder~~
29 ~~need not be the controlling owner of the enterprise, but must~~
30 ~~hold an ownership interest. Minority business enterprises~~
31 ~~presently certified by the state will not be subject to the~~

1 ~~licensure requirement until 5 years after the effective date~~
2 ~~of this act. Businesses must comply with all state licensing~~
3 ~~requirements prior to becoming certified as a minority~~
4 ~~business enterprise.~~

5 2. If present ownership was obtained by transfer,
6 require the minority person on whom eligibility is based to
7 have owned at least 51 percent of the applicant firm for a
8 minimum of 2 years, when any previous majority ownership
9 interest in the firm was by a nonminority who is or was a
10 relative, former employer, or current employer of the minority
11 person on whom eligibility is based. This requirement shall
12 not apply to minority persons who are otherwise eligible who
13 take a 51-percent-or-greater interest in a firm that requires
14 professional licensure to operate and who will be the
15 qualifying licenseholder for the firm when certified. A
16 transfer made within a related immediate family group from a
17 nonminority person to a minority person in order to establish
18 ownership by a minority person shall be deemed to have been
19 made solely for purposes of satisfying certification criteria
20 and shall render such ownership invalid for purposes of
21 qualifying for such certification if the combined total net
22 asset value of all members of such family group exceeds \$1
23 million. For purposes of this subparagraph, the term "related
24 immediate family group" means one or more children under 16
25 years of age and a parent of such children or the spouse of
26 such parent residing in the same house or living unit.

27 3. Require that prospective certified minority
28 business enterprises be currently performing or seeking to
29 perform a useful business function. A "useful business
30 function" is defined as a business function which results in
31 the provision of materials, supplies, equipment, or services

1 to customers ~~other than state or local government~~. Acting as a
2 conduit to transfer funds to a nonminority business does not
3 constitute a useful business function unless it is done so in
4 a normal industry practice. As used in this section, the term
5 "acting as a conduit" means, in part, not acting as a regular
6 dealer by making sales of material, goods, or supplies from
7 items bought, kept in stock, and regularly sold to the public
8 in the usual course of business. Brokers, manufacturer's
9 representatives, sales representatives, and nonstocking
10 distributors are considered as conduits that do not perform a
11 useful business function, unless normal industry practice
12 dictates.

13 (f) When a business receives payments or awards
14 exceeding \$100,000 in one fiscal year, a review/audit will be
15 conducted within 2 years. In addition, random reviews/audits
16 will be conducted as deemed appropriate by the Office of
17 Supplier Diversity.~~The certification procedures should~~
18 ~~include, at a minimum, an onsite visit to inspect business~~
19 ~~operations and verify statements included in the application,~~
20 ~~unless verification can be accomplished by other methods of~~
21 ~~adequate verification or assessment of ownership and control.~~

22 (g) The certification criteria approved by the task
23 force and adopted by the Department of Management Services
24 ~~Labor and Employment Security~~ shall be included in a statewide
25 and interlocal agreement as defined in s. 287.09431 and, in
26 accordance with s. 163.01, shall be executed according to the
27 terms included therein.

28 (h) The certification procedures should allow an
29 applicant seeking certification to designate on the
30 application form the information the applicant considers to be
31 proprietary, confidential business information. As used in

1 this paragraph, "proprietary, confidential business
2 information" includes, but is not limited to, any information
3 that would be exempt from public inspection pursuant to the
4 provisions of s. 119.07(3); trade secrets; internal auditing
5 controls and reports; contract costs; or other information the
6 disclosure of which would injure the affected party in the
7 marketplace or otherwise violate s. 286.041. The executor in
8 receipt of the application shall issue written and final
9 notice of any information for which noninspection is requested
10 but not provided for by law.

11 (i) A business that is certified under the provisions
12 of the statewide and interlocal agreement shall be deemed a
13 certified minority enterprise in all jurisdictions or
14 organizations where the agreement is in effect, and that
15 business is deemed available to do business as such within any
16 such jurisdiction or with any such organization statewide. All
17 state agencies must accept minority business enterprises
18 certified in accordance with the statewide and interlocal
19 agreement of s. 287.09431, and that business shall also be
20 deemed a "certified minority business enterprise" as defined
21 in s. 288.703. However, any governmental jurisdiction or
22 organization that administers a minority business purchasing
23 program may reserve the right to establish further
24 certification procedures necessary to comply with federal law.

25 (j) The statewide and interlocal agreement shall be
26 guided by the terms and conditions found therein and may be
27 amended at any meeting of the task force and subsequently
28 adopted by the secretary of the Department of Management
29 Services ~~Labor and Employment Security~~. The amended agreement
30 must be enacted, initialed, and legally executed by at least
31 two-thirds of the certifying entities party to the existing

1 agreement and adopted by the state as originally executed in
2 order to bind the certifying entity.

3 (k) The task force shall meet for the first time no
4 later than 45 days after the effective date of this act.

5 (3)~~(2)~~(a) The office shall review and evaluate the
6 certification programs and procedures of all prospective
7 executors of the statewide and interlocal agreement to
8 determine if their programs exhibit the capacity to meet the
9 standards of the agreement.

10 (b) The evaluations shall, at a minimum, consider: the
11 certifying entity's capacity to conduct investigations of
12 applicants seeking certification under the designated
13 criteria; the ability of the certifying entity to collect the
14 requisite data and to establish adequate protocol to store and
15 exchange said information among the executors of the agreement
16 and to provide adequate security to prevent unauthorized
17 access to information gathered during the certification
18 process; and the degree to which any legal obligations or
19 supplemental requirements unique to the certifying entity
20 exceed the capacity of that entity to conduct certifications.

21 (c) Any firms certified by organizations or
22 governmental entities determined not to meet the state
23 certification criteria ~~standards of the agreement~~ shall not be
24 eligible to participate as certified minority business
25 enterprises in the minority business assistance programs of
26 the state ~~or of the executors of the agreement~~. For a period
27 of 1 year from the effective date of this legislation, the
28 executor of the statewide and interlocal agreement may elect
29 to accept only minority business enterprises certified
30 pursuant to criteria in place at the time the agreement was
31 signed. After the 1-year period, either party may elect to

1 ~~withdraw from the agreement without further notice. Such a~~
2 ~~firm may subsequently apply to an executor of the agreement~~
3 ~~for certification.~~

4 (d) Any organizations or governmental entities
5 determined by the office not to meet the standards of the
6 agreement shall not be eligible to execute the statewide and
7 interlocal agreement as a participating organization until
8 approved by the office.

9 (e) Any participating program receiving three or more
10 challenges to its certification decisions pursuant to
11 subsection (3) from other organizations that are executors to
12 the statewide and interlocal agreement, shall be subject to a
13 review by the office, as provided in paragraphs (a) and (b),
14 of the organization's capacity to perform under such agreement
15 and in accordance with the core criteria established by the
16 task force. The office shall submit a report to the secretary
17 of the Department of Management Services ~~Labor and Employment~~
18 ~~Security~~ regarding the results of the review.

19 (f) The office shall maintain a directory of all
20 executors of the statewide and interlocal agreement. The
21 directory should be communicated to the general public.

22 (4)~~(3)~~ A certification may be challenged by any
23 executor to the statewide and interlocal agreement upon the
24 grounds of failure by the certifying organization to adhere to
25 the adopted criteria or to the certifying organization's rules
26 and procedures, or on the grounds of a misrepresentation or
27 fraud by the certified minority business enterprise. The
28 challenge shall proceed according to procedures specified in
29 the agreement.

30 (5)~~(4)~~(a) The secretary of the Department of
31 Management Services ~~Labor and Employment Security~~ shall

1 execute the statewide and interlocal agreement established
2 under s. 287.09431 on behalf of the state. The office shall
3 certify minority business enterprises in accordance with the
4 laws of this state ~~agreement~~ and, by affidavit, shall
5 recertify such minority business enterprises not less than
6 once each year.

7 (b) The office shall contract with parties to the
8 statewide and interlocal agreement to perform onsite visits
9 associated with state certifications. ~~The Minority Business
10 Advocacy and Assistance Office may perform random, onsite
11 reviews of certified minority business enterprises to
12 determine whether the applicants are meeting all certification
13 requirements of a certified minority business enterprise and
14 of a qualified vendor.~~

15 (6)~~(5)~~(a) The office shall maintain up-to-date records
16 of all certified minority business enterprises, as defined in
17 s. 288.703, ~~that are certified by a party to the statewide and
18 interlocal agreement~~ and of applications for certification
19 that were denied and shall make this list available to all
20 agencies. The office shall, for statistical purposes, collect
21 and track subgroupings of gender and nationality status for
22 each certified minority business enterprise. Agency spending
23 shall also be tracked for these subgroups. The records may
24 include information about minority business enterprises that
25 provide legal services, auditing services, and health
26 services. Agencies shall use this list in efforts to meet the
27 minority business enterprise procurement goals set forth in s.
28 289.09451 ~~289.0945~~.

29 (b) The office shall establish and administer a
30 computerized data bank to carry out the requirements of
31 paragraph (a), to be available to all executors of the

1 statewide and interlocal agreement. Data maintained in the
2 data bank shall be sufficient to allow each executor to
3 reasonably monitor certifications it has issued.

4 (7)~~(6)~~ The office shall identify minority business
5 enterprises eligible for certification in all areas of state
6 services and commodities purchasing. The office may contract
7 with a private firm or other agency, if necessary, in seeking
8 to identify minority business enterprises for certification.
9 Agencies may request the office to identify certifiable
10 minority business enterprises that are in the business of
11 providing a given service or commodity; the office shall
12 respond to such requests and seek out such certifiable
13 minority business enterprises.

14 (8)~~(7)~~ The office shall adopt rules necessary to
15 implement this section.

16 (9)~~(8)~~ State agencies shall comply with this act
17 except to the extent that the requirements of this act are in
18 conflict with federal law.

19 (10)~~(9)~~ Any transfer of ownership or permanent change
20 in the management and daily operations of a certified minority
21 business enterprise which may affect certification must be
22 reported to the original certifying jurisdiction or entity and
23 to the office within 14 days of the transfer or change taking
24 place. In the event of a transfer of ownership, the transferee
25 seeking to do business with the state as a certified minority
26 business enterprise is responsible for such reporting. In the
27 event of a permanent change in the management and daily
28 operations, owners seeking to do business with the state as a
29 certified minority business enterprise are responsible for
30 reporting such change to the office. Any person violating the
31 provisions of this subsection shall be guilty of a misdemeanor

1 of the first degree, punishable as provided in s. 775.082 or
2 s. 775.083.

3 (11)~~(10)~~ To deter fraud in the program, the Auditor
4 General shall conduct random reviews or audits of certified
5 minority business enterprises ~~may review these certifications~~
6 pursuant to s. 11.45.

7 (12)~~(11)~~ Any executor of the statewide and interlocal
8 agreement may revoke the certification or recertification of a
9 firm doing business as a certified minority business
10 enterprise if the minority business enterprise does not meet
11 the requirements of the jurisdiction or certifying entity that
12 certified or recertified the firm as a certified minority
13 business enterprise, or the requirements of subsection (1), s.
14 288.703, and any rule of the office or the Department of
15 Management Services or if the business acquired certification
16 or recertification by means of falsely representing any entity
17 as a minority business enterprise for purposes of qualifying
18 for certification or recertification.

19 (13)~~(12)~~ Unless permanently revoked, a certified
20 minority business enterprise for which certification or
21 recertification has been revoked may not apply or reapply for
22 certification or recertification for a minimum of 36 months
23 after the date of the notice of revocation.

24 (14)~~(13)~~(a) Except for certification decisions issued
25 by the Office of Supplier Diversity, an executor to the
26 statewide and interlocal agreement shall, in accordance with
27 its rules and procedures:

28 1. Give reasonable notice to affected persons or
29 parties of its decision to deny certification based on failure
30 to meet eligibility requirements of the statewide and
31

1 interlocal agreement of s. 287.09431, together with a summary
2 of the grounds therefor.

3 2. Give affected persons or parties an opportunity, at
4 a convenient time and place, to present to the agency written
5 or oral evidence in opposition to the action or of the
6 executor's refusal to act.

7 3. Give a written explanation of any subsequent
8 decision of the executor overruling the objections.

9 (b) An applicant that is denied minority business
10 enterprise certification based on failure to meet eligibility
11 requirements of the statewide and interlocal agreement
12 pursuant to s. 287.09431 may not reapply for certification or
13 recertification until at least 6 months after the date of the
14 notice of the denial of certification or recertification.

15 ~~(15)(14)~~ The office shall adopt rules in compliance
16 with this part.

17 Section 3. Effective July 1, 2000, the Minority
18 Business Advocacy and Assistance Office is transferred by a
19 type two transfer as defined in section 20.06(2), Florida
20 Statutes, from the Department of Labor and Employment Security
21 to the Department of Management Services and renamed as the
22 Office of Supplier Diversity. The Executive Office of the
23 Governor shall take the necessary actions to ensure the
24 transfer of the budget, as appropriated, of the Minority
25 Business Advocacy and Assistance Office from the Department of
26 Labor and Employment Security to the Department of Management
27 Services.

28 Section 4. Section 287.09451, Florida Statutes, is
29 amended to read:

30 287.09451 ~~Minority Business Advocacy and Assistance~~
31 Office of Supplier Diversity; powers, duties, and functions.--

1 (1) The Legislature finds that there is evidence of a
2 systematic pattern of past and continuing racial
3 discrimination against minority business enterprises and a
4 disparity in the availability and use of minority business
5 enterprises in the state procurement system. It is determined
6 to be a compelling state interest to rectify such
7 discrimination and disparity. Based upon statistical data
8 profiling this discrimination, the Legislature has enacted
9 race-conscious and gender-conscious remedial programs to
10 ensure minority participation in the economic life of the
11 state, in state contracts for the purchase of commodities and
12 services, and in construction contracts. The purpose and
13 intent of this section is to increase participation by
14 minority business enterprises accomplished by encouraging the
15 use of minority business enterprises and the entry of new and
16 diversified minority business enterprises into the
17 marketplace.

18 (2) The ~~Minority Business Advocacy and Assistance~~
19 Office of Supplier Diversity is established within the
20 Department of Management Services ~~Labor and Employment~~
21 ~~Security~~ to assist minority business enterprises in becoming
22 suppliers of commodities, services, and construction to state
23 government.

24 (3) The secretary shall appoint an executive director
25 for the ~~Minority Business Advocacy and Assistance~~ Office of
26 Supplier Diversity, who shall serve at the pleasure of the
27 secretary.

28 (4) The ~~Minority Business Advocacy and Assistance~~
29 Office of Supplier Diversity shall have the following powers,
30 duties, and functions:
31

1 (a) To adopt rules to determine what constitutes a
2 "good faith effort" for purposes of state agency compliance
3 with the minority business enterprise procurement goals set
4 forth in s. 287.042. Factors which shall be considered by the
5 Minority Business Enterprise Assistance Office in determining
6 good faith effort shall include, but not be limited to:

7 1. Whether the agency scheduled presolicitation or
8 prebid meetings for the purpose of informing minority business
9 enterprises of contracting and subcontracting opportunities.

10 2. Whether the contractor advertised in general
11 circulation, trade association, or minority-focus media
12 concerning the subcontracting opportunities.

13 3. Whether the agency effectively used services and
14 resources of available minority community organizations;
15 minority contractors' groups; local, state, and federal
16 minority business assistance offices; and other organizations
17 that provide assistance in the recruitment and placement of
18 minority business enterprises or minority persons.

19 4. Whether the agency provided written notice to a
20 reasonable number of minority business enterprises that their
21 interest in contracting with the agency was being solicited in
22 sufficient time to allow the minority business enterprises to
23 participate effectively.

24 (b) To adopt rules to determine what constitutes a
25 "good faith effort" for purposes of contractor compliance with
26 contractual requirements relating to the use of services or
27 commodities of a minority business enterprise under s.
28 287.094(2). Factors which shall be considered by the ~~Minority~~
29 ~~Business Advocacy and Assistance Office~~ of Supplier Diversity
30 in determining whether a contractor has made good faith
31 efforts shall include, but not be limited to:

1 1. Whether the contractor attended any presolicitation
2 or prebid meetings that were scheduled by the agency to inform
3 minority business enterprises of contracting and
4 subcontracting opportunities.

5 2. Whether the contractor advertised in general
6 circulation, trade association, or minority-focus media
7 concerning the subcontracting opportunities.

8 3. Whether the contractor provided written notice to a
9 reasonable number of specific minority business enterprises
10 that their interest in the contract was being solicited in
11 sufficient time to allow the minority business enterprises to
12 participate effectively.

13 4. Whether the contractor followed up initial
14 solicitations of interest by contacting minority business
15 enterprises or minority persons to determine with certainty
16 whether the minority business enterprises or minority persons
17 were interested.

18 5. Whether the contractor selected portions of the
19 work to be performed by minority business enterprises in order
20 to increase the likelihood of meeting the minority business
21 enterprise procurement goals, including, where appropriate,
22 breaking down contracts into economically feasible units to
23 facilitate minority business enterprise participation.

24 6. Whether the contractor provided interested minority
25 business enterprises or minority persons with adequate
26 information about the plans, specifications, and requirements
27 of the contract or the availability of jobs.

28 7. Whether the contractor negotiated in good faith
29 with interested minority business enterprises or minority
30 persons, not rejecting minority business enterprises or
31

1 minority persons as unqualified without sound reasons based on
2 a thorough investigation of their capabilities.

3 8. Whether the contractor effectively used the
4 services of available minority community organizations;
5 minority contractors' groups; local, state, and federal
6 minority business assistance offices; and other organizations
7 that provide assistance in the recruitment and placement of
8 minority business enterprises or minority persons.

9 (c) To adopt rules and do all things necessary or
10 convenient to guide all state agencies toward making
11 expenditures for commodities, contractual services,
12 construction, and architectural and engineering services with
13 certified minority business enterprises in accordance with the
14 minority business enterprise procurement goals set forth in s.
15 287.042.

16 (d) To monitor the degree to which agencies procure
17 services, commodities, and construction from minority business
18 enterprises in conjunction with the Department of Banking and
19 Finance as specified in s. 17.11.

20 (e) To receive and disseminate information relative to
21 procurement opportunities, availability of minority business
22 enterprises, and technical assistance.

23 (f) To advise agencies on methods and techniques for
24 achieving procurement objectives.

25 (g) To provide a central minority business enterprise
26 certification process which includes independent verification
27 of status as a minority business enterprise.

28 (h) To develop procedures to investigate complaints
29 against minority business enterprises or contractors alleged
30 to violate any provision related to this section or s.
31 287.0943, that may include visits to worksites or business

1 premises, and to refer all information on businesses suspected
2 of misrepresenting minority status to the Department of
3 Management Services ~~Labor and Employment Security~~ for
4 investigation. When an investigation is completed and there is
5 reason to believe that a violation has occurred, the
6 Department of Labor and Employment Security shall refer the
7 matter to the office of the Attorney General, Department of
8 Legal Affairs, for prosecution.

9 (i) To maintain a directory of all minority business
10 enterprises which have been certified and provide this
11 information to any agency or business requesting it.

12 (j) To encourage all firms which do more than \$1
13 million in business with the state within a 12-month period to
14 develop, implement, and submit to this office a minority
15 business development plan.

16 (k) To communicate on a monthly basis with the Small
17 and Minority Business Advisory Council to keep the council
18 informed on issues relating to minority enterprise
19 procurement.

20 (l) To serve as an advocate for minority business
21 enterprises, and coordinate with the small and minority
22 business ombudsman, as defined in s. 288.703, which duties
23 shall include:

24 1. Ensuring that agencies supported by state funding
25 effectively target the delivery of services and resources, as
26 related to minority business enterprises.

27 2. Establishing standards within each industry with
28 which the state government contracts on how agencies and
29 contractors may provide the maximum practicable opportunity
30 for minority business enterprises.

31

1 3. Assisting agencies and contractors by providing
2 outreach to minority businesses, by specifying and monitoring
3 technical and managerial competence for minority business
4 enterprises, and by consulting in planning of agency
5 procurement to determine how best to provide opportunities for
6 minority business enterprises.

7 4. Integrating technical and managerial assistance for
8 minority business enterprises with government contracting
9 opportunities.

10 (m) To certify minority business enterprises, as
11 defined in s. 288.703, and as specified in ss. 287.0943 and
12 287.09431, and shall recertify such minority businesses not
13 less than once a year. Minority business enterprises must be
14 recertified annually by affidavit.

15 (n)1. To develop procedures to be used by an agency in
16 identifying commodities, contractual services, architectural
17 and engineering services, and construction contracts, except
18 those architectural, engineering, construction, or other
19 related services or contracts subject to the provisions of
20 chapter 339, that could be provided by minority business
21 enterprises. Each agency is encouraged to spend 21 percent of
22 the moneys actually expended for construction contracts, 25
23 percent of the moneys actually expended for architectural and
24 engineering contracts, 24 percent of the moneys actually
25 expended for commodities, and 50.5 percent of the moneys
26 actually expended for contractual services during the previous
27 fiscal year, except for the state university construction
28 program which shall be based upon public education capital
29 outlay projections for the subsequent fiscal year, and
30 reported to the Legislature pursuant to s. 216.023, for the
31 purpose of entering into contracts with certified minority

1 business enterprises as defined in s. 288.703(2), or approved
2 joint ventures. However, in the event of budget reductions
3 pursuant to s. 216.221, the base amounts may be adjusted to
4 reflect such reductions. The overall spending goal for each
5 industry category shall be subdivided as follows:

6 a. For construction contracts: 4 percent for black
7 Americans, 6 percent for Hispanic-Americans, and 11 percent
8 for American women.

9 b. For architectural and engineering contracts: 9
10 percent for Hispanic-Americans, 1 percent for Asian-Americans,
11 and 15 percent for American women.

12 c. For commodities: 2 percent for black Americans, 4
13 percent for Hispanic-Americans, 0.5 percent for
14 Asian-Americans, 0.5 percent for Native Americans, and 17
15 percent for American women.

16 d. For contractual services: 6 percent for black
17 Americans, 7 percent for Hispanic-Americans, 1 percent for
18 Asian-Americans, 0.5 percent for Native Americans, and 36
19 percent for American women.

20 2. For the purposes of commodities contracts for the
21 purchase of equipment to be used in the construction and
22 maintenance of state transportation facilities involving the
23 Department of Transportation, "minority business enterprise"
24 has the same meaning as provided in s. 288.703. "Minority
25 person" has the same meaning as in s. 288.703(3). In order to
26 ensure that the goals established under this paragraph for
27 contracting with certified minority business enterprises are
28 met, the department, with the assistance of the ~~Minority~~
29 ~~Business Advocacy and Assistance Office~~ of Supplier Diversity,
30 shall make recommendations to the Legislature on revisions to
31 the goals, based on an updated statistical analysis, at least

1 once every 5 years. Such recommendations shall be based on
2 statistical data indicating the availability of and disparity
3 in the use of minority businesses contracting with the state.
4 The results of the first updated disparity study must be
5 presented to the Legislature no later than December 1, 1996.

6 3. In determining the base amounts for assessing
7 compliance with this paragraph, the ~~Minority Business Advocacy~~
8 ~~and Assistance Office~~ of Supplier Diversity may develop, by
9 rule, guidelines for all agencies to use in establishing such
10 base amounts. These rules must include, but are not limited
11 to, guidelines for calculation of base amounts, a deadline for
12 the agencies to submit base amounts, a deadline for approval
13 of the base amounts by the ~~Minority Business Advocacy and~~
14 ~~Assistance Office~~ of Supplier Diversity, and procedures for
15 adjusting the base amounts as a result of budget reductions
16 made pursuant to s. 216.221.

17 4. To determine guidelines for the use of price
18 preferences, weighted preference formulas, or other
19 preferences, as appropriate to the particular industry or
20 trade, to increase the participation of minority businesses in
21 state contracting. These guidelines shall include
22 consideration of:

- 23 a. Size and complexity of the project.
- 24 b. The concentration of transactions with minority
25 business enterprises for the commodity or contractual services
26 in question in prior agency contracting.
- 27 c. The specificity and definition of work allocated to
28 participating minority business enterprises.
- 29 d. The capacity of participating minority business
30 enterprises to complete the tasks identified in the project.

31

1 e. The available pool of minority business enterprises
2 as prime contractors, either alone or as partners in an
3 approved joint venture that serves as the prime contractor.

4 5. To determine guidelines for use of joint ventures
5 to meet minority business enterprises spending goals. For
6 purposes of this section, "joint venture" means any
7 association of two or more business concerns to carry out a
8 single business enterprise for profit, for which purpose they
9 combine their property, capital, efforts, skills, and
10 knowledge. The guidelines shall allow transactions with joint
11 ventures to be eligible for credit against the minority
12 business enterprise goals of an agency when the contracting
13 joint venture demonstrates that at least one partner to the
14 joint venture is a certified minority business enterprise as
15 defined in s. 288.703, and that such partner is responsible
16 for a clearly defined portion of the work to be performed, and
17 shares in the ownership, control, management,
18 responsibilities, risks, and profits of the joint venture.
19 Such demonstration shall be by verifiable documents and sworn
20 statements and may be reviewed by the ~~Minority Business~~
21 ~~Advocacy and Assistance~~ Office of Supplier Diversity at or
22 before the time a contract bid is submitted. An agency may
23 count toward its minority business enterprise goals a portion
24 of the total dollar amount of a contract equal to the
25 percentage of the ownership and control held by the qualifying
26 certified minority business partners in the contracting joint
27 venture, so long as the joint venture meets the guidelines
28 adopted by the office.

29 (o)1. To establish a system to record and measure the
30 use of certified minority business enterprises in state
31 contracting. This system shall maintain information and

1 statistics on certified minority business enterprise
2 participation, awards, dollar volume of expenditures and
3 agency goals, and other appropriate types of information to
4 analyze progress in the access of certified minority business
5 enterprises to state contracts and to monitor agency
6 compliance with this section. Such reporting must include, but
7 is not limited to, the identification of all subcontracts in
8 state contracting by dollar amount and by number of
9 subcontracts and the identification of the utilization of
10 certified minority business enterprises as prime contractors
11 and subcontractors by dollar amounts of contracts and
12 subcontracts, number of contracts and subcontracts, minority
13 status, industry, and any conditions or circumstances that
14 significantly affected the performance of subcontractors.
15 Agencies shall report their compliance with the requirements
16 of this reporting system at least annually and at the request
17 of the office. All agencies shall cooperate with the office in
18 establishing this reporting system. Except in construction
19 contracting, all agencies shall review contracts costing in
20 excess of CATEGORY FOUR as defined in s. 287.017 to determine
21 if such contracts could be divided into smaller contracts to
22 be separately bid and awarded, and shall, when economical,
23 offer such smaller contracts to encourage minority
24 participation.

25 2. To report agency compliance with the provisions of
26 subparagraph 1. for the preceding fiscal year to the Governor
27 and Cabinet, the President of the Senate, the Speaker of the
28 House of Representatives, and the secretary of the Department
29 of Labor and Employment Security on or before February 1 of
30 each year. The report must contain, at a minimum, the
31 following:

- 1 a. Total expenditures of each agency by industry.
- 2 b. The dollar amount and percentage of contracts
3 awarded to certified minority business enterprises by each
4 state agency.
- 5 c. The dollar amount and percentage of contracts
6 awarded indirectly to certified minority business enterprises
7 as subcontractors by each state agency.
- 8 d. The total dollar amount and percentage of contracts
9 awarded to certified minority business enterprises, whether
10 directly or indirectly, as subcontractors.
- 11 e. A statement and assessment of good faith efforts
12 taken by each state agency.
- 13 f. A status report of agency compliance with
14 subsection (6), as determined by the Minority Business
15 Enterprise Office.
- 16 (5)(a) Each agency shall, at the time the
17 specifications or designs are developed or contract sizing is
18 determined for any proposed procurement costing in excess of
19 CATEGORY FOUR, as defined in s. 287.017, forward a notice to
20 the ~~Minority Business Advocacy and Assistance Office~~ of
21 Supplier Diversity of the proposed procurement and any
22 determination on the designs of specifications of the proposed
23 procurement that impose requirements on prospective vendors,
24 no later than 30 days prior to the issuance of a solicitation,
25 except that this provision shall not apply to emergency
26 acquisitions. The 30-day notice period shall not toll the time
27 for any other procedural requirements.
- 28 (b) If the ~~Minority Business Advocacy and Assistance~~
29 ~~Office~~ of Supplier Diversity determines that the proposed
30 procurement will not likely allow opportunities for minority
31 business enterprises, the office may, within 20 days after it

1 receives the information specified in paragraph (a), propose
2 the implementation of minority business enterprise utilization
3 provisions or submit alternative procurement methods that
4 would significantly increase minority business enterprise
5 contracting opportunities.

6 (c) Whenever the agency and the ~~Minority Business~~
7 ~~Advocacy and Assistance~~ Office of Supplier Diversity disagree,
8 the matter shall be submitted for determination to the head of
9 the agency or the senior-level official designated pursuant to
10 this section as liaison for minority business enterprise
11 issues.

12 (d) Should the proposed procurement proceed to
13 competitive bidding, the office is hereby granted standing to
14 protest, pursuant to this section, in a timely manner, any
15 contract award in competitive bidding for contractual services
16 and construction contracts that fail to include minority
17 business enterprise participation, if any responding bidder
18 has demonstrated the ability to achieve any level of
19 participation, or, any contract award for commodities where, a
20 reasonable and economical opportunity to reserve a contract,
21 statewide or district level, for minority participation was
22 not executed or, an agency failed to adopt an applicable
23 preference for minority participation. The bond requirement
24 shall be waived for the office purposes of this subsection.

25 (e) An agency may presume that a bidder offering no
26 minority participation has not made a good faith effort when
27 other bidders offer minority participation of firms listed as
28 relevant to the agency's purchasing needs in the pertinent
29 locality or statewide to complete the project.

30 (f) Paragraph (a) will not apply when the ~~Minority~~
31 ~~Business Advocacy and Assistance~~ Office of Supplier Diversity

1 determines that an agency has established a work plan to allow
2 advance consultation and planning with minority business
3 enterprises and where such plan clearly demonstrates:

4 1. A high level of advance planning by the agency with
5 minority business enterprises.

6 2. A high level of accessibility, knowledge, and
7 experience by minority business enterprises in the agency's
8 contract decisionmaking process.

9 3. A high quality of agency monitoring and enforcement
10 of internal implementation of minority business utilization
11 provisions.

12 4. A high quality of agency monitoring and enforcement
13 of contractor utilization of minority business enterprises,
14 especially tracking subcontractor data, and ensuring the
15 integrity of subcontractor reporting.

16 5. A high quality of agency outreach, agency
17 networking of major vendors with minority vendors, and
18 innovation in techniques to improve utilization of minority
19 business enterprises.

20 6. Substantial commitment, sensitivity, and proactive
21 attitude by the agency head and among the agency minority
22 business staff.

23 (6) Each state agency shall coordinate its minority
24 business enterprise procurement activities with the ~~Minority~~
25 ~~Business Advocacy and Assistance~~ Office of Supplier Diversity.
26 At a minimum, each agency shall:

27 (a) Adopt a minority business enterprise utilization
28 plan for review and approval by the ~~Minority Business Advocacy~~
29 ~~and Assistance~~ Office of Supplier Diversity which should
30 require meaningful and useful methods to attain the
31 legislative intent in assisting minority business enterprises.

1 (b) Designate a senior-level employee in the agency as
2 a minority enterprise assistance officer, responsible for
3 overseeing the agency's minority business utilization
4 activities, and who is not also charged with purchasing
5 responsibility. A senior-level agency employee and agency
6 purchasing officials shall be accountable to the agency head
7 for the agency's minority business utilization performance.
8 ~~The Minority Business Advocacy and Assistance Office of~~
9 Supplier Diversity shall advise each agency on compliance
10 performance.

11 (c) If an agency deviates significantly from its
12 utilization plan in 2 consecutive or 3 out of 5 total fiscal
13 years, the ~~Minority Business Advocacy and Assistance Office of~~
14 Supplier Diversity may review any and all solicitations and
15 contract awards of the agency as deemed necessary until such
16 time as the agency meets its utilization plan.

17 Section 5. Subsections (1), (4), (5), (6), and (8) of
18 section 288.703, Florida Statutes, are amended to read:

19 288.703 Definitions.--As used in this act, the
20 following words and terms shall have the following meanings
21 unless the content shall indicate another meaning or intent:

22 (1) "Small business" means an independently owned and
23 operated business concern that employs 200 ~~100~~ or fewer
24 permanent full-time employees and that, together with its
25 affiliates, has a net worth of not more than ~~\$5\$3~~ million or
26 any firm based in this state which has a Small Business
27 Administration 8(a) certification ~~and an average net income~~
28 ~~after federal income taxes, excluding any carryover losses,~~
29 ~~for the preceding 2 years of not more than \$2 million. As~~
30 applicable to sole proprietorships, the ~~\$5\$3~~ million net
31

1 worth requirement shall include both personal and business
2 investments.

3 (4) "Certified minority business enterprise" means a
4 business which has been certified by the certifying
5 organization or jurisdiction in accordance with s. 287.0943(1)
6 and (2).

7 (5) "Department" means the Department of Management
8 Services ~~labor and Employment Security~~.

9 (6) "Ombudsman" means an office or individual whose
10 responsibilities include coordinating with the ~~Minority~~
11 ~~Business Advocacy and Assistance~~ Office of Supplier Diversity
12 for the interests of and providing assistance to small and
13 minority business enterprises in dealing with governmental
14 agencies and in developing proposals for changes in state
15 agency rules.

16 (8) "Secretary" means the secretary of the Department
17 of Management Services ~~labor and Employment Security~~.

18 Section 6. Section 287.134, Florida Statutes, is
19 created to read:

20 287.134 Discrimination; denial or revocation of the
21 right to transact business with public entities.--

22 (1) As used in this section, the term:

23 (a) "Affiliate" means:

24 1. A predecessor or successor of an entity that
25 discriminated; or

26 2. An entity under the control of any natural person
27 or entity that is active in the management of the entity that
28 discriminated. The term "affiliate" includes those officers,
29 directors, executives, partners, shareholders, employees,
30 members, and agents who are active in the management of an
31 affiliate. The ownership by one entity of shares constituting

1 a controlling interest in another entity, or a pooling of
2 equipment or income among entities when not for fair market
3 value under an arm's length agreement, shall be a prima facie
4 case that one entity controls another entity.

5 (b) "Discrimination" or "discriminated" means a
6 determination of liability by a state circuit court or federal
7 district court for a violation of any state or federal law
8 prohibiting discrimination on the basis of race, gender,
9 national origin, disability, or religion by an entity; if an
10 appeal is made, the determination of liability does not occur
11 until the completion of any appeals to a higher tribunal.

12 (c) "Discriminatory vendor list" means the list
13 required to be kept by the department pursuant to paragraph
14 (3)(d).

15 (d) "Department" means the Department of Management
16 Services.

17 (e) "Entity" means any natural person or any entity
18 organized under the laws of any state or of the United States
19 with the legal power to enter into a binding contract and
20 which bids or applies to bid on contracts let by a public
21 entity, or which otherwise transacts or applies to transact
22 business with a public entity.

23 (f) "Public entity" means this state and any
24 department or agency of this state.

25 (g) "Senior Management" includes chief executive
26 officers; assistant chief executive officers, including, but
27 not limited to, assistant presidents, vice presidents, or
28 assistant treasurers; chief financial officers; chief
29 personnel officers; or any employee of an entity performing
30 similar functions.

31

1 (2)(a) An entity or affiliate who has been placed on
2 the discriminatory vendor list may not submit a bid on a
3 contract to provide any goods or services to a public entity,
4 may not submit a bid on a contract with a public entity for
5 the construction or repair of a public building or public
6 work, may not submit bids on leases of real property to a
7 public entity, may not be awarded or perform work as a
8 contractor, supplier, subcontractor, or consultant under a
9 contract with any public entity, and may not transact business
10 with any public entity.

11 (b) No public entity shall accept any bid from, award
12 any contract to, or transact any business with any entity or
13 affiliate on the discriminatory vendor list for a period of 36
14 months from the date that entity or affiliate was placed on
15 the discriminatory vendor list unless that entity or affiliate
16 has been removed from the list pursuant to paragraph (3)(f).
17 No public entity which was transacting business with an entity
18 at the time of the discrimination which resulted in that
19 entity being placed on the discriminatory vendor list shall
20 accept any bid from, award any contract to, or transact any
21 business with any other entity who is under the same, or
22 substantially the same, control as the entity whose name
23 appears on the discriminatory vendor list so long as that
24 entity's name appears on the discriminatory vendor list.

25 (3)(a) All invitations to bid, as defined by s.
26 287.012(11), requests for proposals, as defined by s.
27 287.012(15), and any written contract document of the state
28 shall contain a statement informing entities of the provisions
29 of paragraph (2)(a).

30 (b) An entity must notify the department within 30
31 days after a final determination of discrimination. Any

1 public entity which receives information that an entity has
2 discriminated shall transmit that information to the
3 department in writing within 10 days. Before entering into
4 any contract with the state, all entities shall disclose to
5 the department whether they have been found liable, in a state
6 circuit court or federal court, for violation of any state or
7 federal law prohibiting discrimination based on race, gender,
8 national origin, disability, or religion.

9 (c) The department shall maintain a list of the names
10 and addresses of any entity which has been disqualified from
11 the public contracting and purchasing process under this
12 section. The department shall publish an initial list on
13 January 1, 2001, and shall publish an updated version of the
14 list quarterly thereafter. The initial list and revised
15 quarterly lists shall be published in the Florida
16 Administrative Weekly. Notwithstanding this paragraph, an
17 entity or affiliate disqualified from the public contracting
18 and purchasing process pursuant to this section shall be
19 disqualified as of the date the final order is entered.

20 (d)1. Upon receiving reasonable information from any
21 source that an entity has discriminated, the department shall
22 investigate the information and determine whether good cause
23 exists to place that entity or an affiliate of that entity on
24 the discriminatory vendor list. If good cause exists, the
25 department shall notify the entity or affiliate in writing of
26 its intent to place the name of that entity or affiliate on
27 the discriminatory vendor list, and of the entity's or
28 affiliate's right to a hearing, the procedure that must be
29 followed, and the applicable time requirements. If the entity
30 of affiliate does not request a hearing, the department shall
31 enter a final order placing the name of the entity or

1 affiliate on the discriminatory vendor list. No entity or
2 affiliate may be placed on the discriminatory vendor list
3 without receiving an individual notice of intent from the
4 department.

5 2. Within 21 days after receipt of the notice of
6 intent, the entity or affiliate may file a petition for a
7 formal hearing pursuant to ss. 120.569 and 120.57(1) to
8 determine whether it is in the public interest for that entity
9 or affiliate to be placed on the discriminatory vendor list.

10 An entity or affiliate may not file a petition for an informal
11 hearing under s. 120.57(2). The procedures of chapter 120
12 shall apply to any formal hearing under this section except
13 where they are in conflict with the following provisions:

14 a. The petition shall be filed with the department.
15 The department shall be a party to the proceeding for all
16 purposes.

17 b. Within 5 days after the filing of the petition, the
18 department shall notify the Division of Administrative
19 Hearings of the request for a formal hearing. The director of
20 the Division of Administrative Hearings shall, within 5 days
21 after receipt of notice from the department, assign an
22 administrative law judge to preside over the proceeding. The
23 administrative law judge, upon request by a party, may
24 consolidate related proceedings.

25 c. The administrative law judge shall conduct the
26 formal hearing within 30 days after being assigned, unless
27 otherwise stipulated by the parties.

28 d. Within 30 days after the formal hearing or receipt
29 of the hearing transcript, whichever is later, the
30 administrative law judge shall enter a final order, which
31 shall consist of findings of fact, conclusions of law,

1 interpretation of agency rules, and any other information
2 required by law or rule to be contained in the final order.
3 Such final order shall place or not place the entity or
4 affiliate on the discriminatory vendor list.

5 e. The final order of the administrative law judge
6 shall be final agency action for purposes of s. 120.68.

7 f. At any time after the filing of the petition,
8 informal disposition may be made pursuant to s. 120.57(4). In
9 that event, the administrative law judge shall enter a final
10 order adopting the stipulation, agreed settlement, or consent
11 order.

12 3. It shall not be in the public interest to place an
13 entity or affiliate on the discriminatory vendor list if:

14 a. Discrimination did not occur;

15 b. The discrimination was committed by an employee of
16 the entity or affiliate other than senior management; or

17 c. The member of senior management responsible for the
18 discrimination is no longer an employee of the entity or
19 affiliate.

20 4. In determining whether it is in the public interest
21 to place an entity or affiliate on the discriminatory vendor
22 list, the administrative law judge shall consider the
23 following factors:

24 a. The nature and details of the discrimination.

25 b. The degree of culpability of the entity or
26 affiliate proposed to be placed on the discriminatory vendor
27 list.

28 c. The prompt or voluntary payment of any damages or
29 penalty as a result of the discrimination.

30 d. Prior or future self-policing by the entity or
31 affiliate to prevent discrimination.

1 e. Compliance by the entity or affiliate with the
2 notification provisions of paragraph (b).

3 f. The needs of public entities for additional
4 competition in the procurement of goods and services in their
5 respective markets.

6 g. Mitigation based upon any demonstration of good
7 citizenship by the entity or affiliate.

8 5. In any proceeding under this section, the
9 department shall be required to prove by clear and convincing
10 evidence that it is in the public interest for the entity to
11 which the department has given notice under this section to be
12 placed on the discriminatory vendor list. Proof of
13 discrimination by the entity or a person or entity which is an
14 affiliate of such entity shall constitute a prima facie case
15 that it is in the public interest for the entity or affiliate
16 to which the department has given notice to be put on the
17 discriminatory vendor list. Status as an affiliate must be
18 proven by clear and convincing evidence.

19 6. Any entity or affiliate which has been notified by
20 the department of the department's intent to place the
21 entity's or affiliate's name on the discriminatory vendor list
22 may offer evidence on any relevant issue. Upon establishment
23 of a prima facie case that it is in the public interest for
24 the entity or affiliate to which the department has given
25 notice to be put on the discriminatory vendor list, that
26 entity or affiliate may prove by a preponderance of the
27 evidence that it would not be in the public interest to put
28 such entity on the discriminatory vendor list, based upon
29 evidence addressing the factors in subparagraphs 3. and 4.

30 (e)1. An entity on the discriminatory vendor list may
31 petition for removal from the list no sooner than 6 months

1 from the date a final order is entered disqualifying that
2 entity from the public purchasing and contracting process
3 pursuant to this section. The petition shall be filed with
4 the department and the proceeding shall be conducted pursuant
5 to the procedures and requirements of this subsection.

6 2. An entity may be removed from the discriminatory
7 vendor list subject to such terms and conditions as may be
8 prescribed by the administrative law judge upon a
9 determination that removal is in the public interest. In
10 determining whether removal would be in the public interest,
11 the administrative law judge shall give consideration to any
12 relevant factors, including, but not limited to, the factors
13 identified in subparagraphs 3. and 4.

14 3. If a petition for removal is denied, the entity or
15 affiliate may not petition for another hearing on removal for
16 a period of 9 months after the date of denial. The department
17 may petition for removal prior to the the expiration of such
18 period if, in the department's discretion, the department
19 determines that removal would be in the public interest.

20 (4) Placement on the discriminatory vendor list shall
21 not affect any rights or obligations under any contract,
22 franchise, or other binding agreement which predates such
23 conviction or placement on the discriminatory vendor list.

24 (5) The provisions of this section do not apply to any
25 activities regulated by the Florida Public Service Commission
26 or to the purchase of goods or services made by any public
27 entity from the Department of Corrections, from the nonprofit
28 corporation organized under chapter 946, or from any
29 accredited nonprofit workshop certified under ss.
30 413.032-413.037.

31

1 Section 7. Subsection (2) of section 17.11, Florida
2 Statutes, is amended to read:

3 17.11 To report disbursements made.--

4 (2) The Comptroller shall also cause to have reported
5 from the Florida Accounting Information Resource Subsystem no
6 less than quarterly the disbursements which agencies made to
7 small businesses, as defined in the Florida Small and Minority
8 Business Assistance Act of 1985; to certified minority
9 business enterprises in the aggregate; and to certified
10 minority business enterprises broken down into categories of
11 minority persons, as well as gender and nationality subgroups.
12 This information shall be made available to the agencies, the
13 ~~Minority Business Advocacy and Assistance~~ Office of Supplier
14 Diversity, the Governor, the President of the Senate, and the
15 Speaker of the House of Representatives. Each agency shall be
16 responsible for the accuracy of information entered into the
17 Florida Accounting Information Resource Subsystem for use in
18 this reporting.

19 Section 8. Section 255.102, Florida Statutes, is
20 amended to read:

21 255.102 Contractor utilization of minority business
22 enterprises.--

23 (1) Agencies shall consider the use of price
24 preferences, weighted preference formulas, or other
25 preferences for construction contracts, as determined
26 appropriate by the ~~Minority Business Advocacy and Assistance~~
27 Office of Supplier Diversity ~~in collaboration with the~~
28 ~~Department of Management Services~~ to increase minority
29 participation.

30 (2) The ~~Minority Business Advocacy and Assistance~~
31 Office of Supplier Diversity, in collaboration with ~~the~~

1 ~~Department of Management Services and~~ the State University
2 System, shall adopt rules to determine what is a "good faith
3 effort" for purposes of contractor compliance with minority
4 participation goals established for competitively awarded
5 building and construction projects. Pro forma efforts shall
6 not be considered good faith. Factors which shall be
7 considered by the state agency in determining whether a
8 contractor has made good faith efforts shall include, but not
9 be limited to:

10 (a) Whether the contractor attended any
11 presolicitation or prebid meetings that were scheduled by the
12 agency to inform minority business enterprises of contracting
13 and subcontracting opportunities.

14 (b) Whether the contractor advertised in general
15 circulation, trade association, or minority-focus media
16 concerning the subcontracting opportunities.

17 (c) Whether the contractor provided written notice to
18 all relevant subcontractors listed on the minority vendor list
19 for that locality and statewide as provided by the agency as
20 of the date of issuance of the invitation to bid, that their
21 interest in the contract was being solicited in sufficient
22 time to allow the minority business enterprises to participate
23 effectively.

24 (d) Whether the contractor followed up initial
25 solicitations of interest by contacting minority business
26 enterprises, the ~~Minority Business Advocacy and Assistance~~
27 Office of Supplier Diversity, or minority persons who
28 responded and provided detailed information about prebid
29 meetings, access to plans, specifications, contractor's
30 project manager, subcontractor bonding, if any, payment
31 schedule, bid addenda, and other assistance provided by the

1 contractor to enhance minority business enterprise
2 participation.

3 (e) Whether the contractor selected portions of the
4 work to be performed by minority business enterprises in order
5 to increase the likelihood of meeting the minority business
6 enterprise procurement goals, including, where appropriate,
7 breaking down contracts into economically feasible units to
8 facilitate minority business enterprise participation under
9 reasonable and economical conditions of performance.

10 (f) Whether the contractor provided the ~~Minority~~
11 ~~Business Advocacy and Assistance~~ Office of Supplier Diversity
12 as well as interested minority business enterprises or
13 minority persons with adequate information about the plans,
14 specifications, and requirements of the contract or the
15 availability of jobs at a time no later than when such
16 information was provided to other subcontractors.

17 (g) Whether the contractor negotiated in good faith
18 with interested minority business enterprises or minority
19 persons, not rejecting minority business enterprises or
20 minority persons as unqualified without sound reasons based on
21 a thorough investigation of their capabilities or imposing
22 implausible conditions of performance on the contract.

23 (h) Whether the contractor diligently seeks to replace
24 a minority business enterprise subcontractor that is unable to
25 perform successfully with another minority business
26 enterprise.

27 (i) Whether the contractor effectively used the
28 services of available minority community organizations;
29 minority contractors' groups; local, state, and federal
30 minority business assistance offices; and other organizations
31

1 that provide assistance in the recruitment and placement of
2 minority business enterprises or minority persons.

3 (3) If an agency considers any other criteria in
4 determining whether a contractor has made a good faith effort,
5 the agency shall adopt such criteria in accordance with s.
6 120.54, and, where required by that section, by rule, after
7 May 31, 1994. In adopting such criteria, the agency shall
8 identify the specific factors in as objective a manner as
9 possible to be used to assess a contractor's performance
10 against said criteria.

11 (4) Notwithstanding the provisions of s. 287.0945 to
12 the contrary, agencies shall monitor good faith efforts of
13 contractors in competitively awarded building and construction
14 projects, in accordance with rules established pursuant to
15 this section. It is the responsibility of the contractor to
16 exercise good faith efforts in accordance with rules
17 established pursuant to this section, and to provide
18 documentation necessary to assess efforts to include minority
19 business participation.

20 Section 9. Subsection (19) of section 287.012, Florida
21 Statutes, is amended to read:

22 287.012 Definitions.--The following definitions shall
23 apply in this part:

24 (19) "Office" means the ~~Minority Business Advocacy and~~
25 ~~Assistance~~ Office of Supplier Diversity of the Department of
26 Management Services ~~Labor and Employment Security~~.

27 Section 10. Paragraphs (a) and (c) of subsection (2)
28 and paragraphs (b) and (c) of subsection (4) of section
29 287.042, Florida Statutes, are amended to read:

30 287.042 Powers, duties, and functions.--The department
31 shall have the following powers, duties, and functions:

1 (2)(a) To plan and coordinate purchases in volume and
2 to negotiate and execute purchasing agreements and contracts
3 for commodities and contractual services under which state
4 agencies shall make purchases pursuant to s. 287.056, and
5 under which a federal, county, municipality, institutions
6 qualified pursuant to s. 240.605, private nonprofit community
7 transportation coordinator designated pursuant to chapter 427,
8 while conducting business related solely to the Commission for
9 the Transportation Disadvantaged, or other local public agency
10 may make purchases. The department may restrict purchases from
11 some term contracts to state agencies only for those term
12 contracts where the inclusion of other governmental entities
13 will have an adverse effect on competition or to those federal
14 facilities located in this state. In such planning or
15 purchasing the ~~Minority Business Advocacy and Assistance~~
16 Office of Supplier Diversity may monitor to ensure that
17 opportunities are afforded for contracting with minority
18 business enterprises. The department, for state term
19 contracts, and all agencies, for multiyear contractual
20 services or term contracts, shall explore reasonable and
21 economical means to utilize certified minority business
22 enterprises. Purchases by any county, municipality, private
23 nonprofit community transportation coordinator designated
24 pursuant to chapter 427, while conducting business related
25 solely to the Commission for the Transportation Disadvantaged,
26 or other local public agency under the provisions in the state
27 purchasing contracts, and purchases, from the corporation
28 operating the correctional work programs, of products or
29 services that are subject to paragraph (1)(f), are exempt from
30 the competitive sealed bid requirements otherwise applying to
31 their purchases.

1 (c) Any person who files an action protesting a
2 decision or intended decision pertaining to contracts
3 administered by the department or a state agency pursuant to
4 s. 120.57(3)(b) shall post with the department or the state
5 agency at the time of filing the formal written protest a bond
6 payable to the department or state agency in an amount equal
7 to 1 percent of the department's or the state agency's
8 estimate of the total volume of the contract or \$5,000,
9 whichever is less, which bond shall be conditioned upon the
10 payment of all costs which may be adjudged against him or her
11 in the administrative hearing in which the action is brought
12 and in any subsequent appellate court proceeding. For protests
13 of decisions or intended decisions of the department
14 pertaining to agencies' requests for approval of exceptional
15 purchases, the bond shall be in an amount equal to 1 percent
16 of the requesting agency's estimate of the contract amount for
17 the exceptional purchase requested or \$5,000, whichever is
18 less. In lieu of a bond, the department or state agency may,
19 in either case, accept a cashier's check or money order in the
20 amount of the bond. If, after completion of the administrative
21 hearing process and any appellate court proceedings, the
22 agency prevails, it shall recover all costs and charges which
23 shall be included in the final order or judgment, excluding
24 attorney's fees. This section shall not apply to protests
25 filed by the ~~Minority Business Advocacy and Assistance~~ Office
26 of Supplier Diversity. Upon payment of such costs and charges
27 by the person protesting the award, the bond, cashier's check,
28 or money order shall be returned to him or her. If the person
29 protesting the award prevails, he or she shall recover from
30 the agency all costs and charges which shall be included in
31 the final order of judgment, excluding attorney's fees.

1 (4) To establish a system of coordinated, uniform
2 procurement policies, procedures, and practices to be used by
3 agencies in acquiring commodities and contractual services,
4 which shall include, but not be limited to:

5 (b) Development of procedures for the releasing of
6 requests for proposals, invitations to bid, and other
7 competitive acquisitions which procedures shall include, but
8 are not limited to, notice by publication in the Florida
9 Administrative Weekly, on Government Services Direct, or by
10 mail at least 10 days before the date set for submittal of
11 proposals or bids. The ~~Minority Business Advocacy and~~
12 ~~Assistance~~ Office of Supplier Diversity may consult with
13 agencies regarding the development of bid distribution
14 procedures to ensure that maximum distribution is afforded to
15 certified minority business enterprises as defined in s.
16 288.703.

17 (c) Development of procedures for the receipt and
18 opening of bids or proposals by an agency. Such procedures
19 shall provide the ~~Minority Business Advocacy and Assistance~~
20 ~~Office~~ of Supplier Diversity an opportunity to monitor and
21 ensure that the contract award is consistent with the original
22 request for proposal or invitation to bid, in accordance with
23 s. 287.0945(6), and subject to the review of bid responses
24 within standard timelines.

25 Section 11. Subsection (5) and paragraph (a) of
26 subsection (6) of section 287.057, Florida Statutes, are
27 amended to read:

28 287.057 Procurement of commodities or contractual
29 services.--

30 (5) Upon issuance of any invitation to bid or request
31 for proposals, an agency shall forward to the department one

1 copy of each invitation to bid or request for proposals for
2 all commodity and contractual services purchases in excess of
3 the threshold amount provided in s. 287.017 for CATEGORY TWO.
4 An agency shall also, upon request, furnish a copy of all
5 competitive sealed bid or competitive sealed proposal
6 tabulations. The ~~Minority Business Advocacy and Assistance~~
7 Office of Supplier Diversity may also request from the
8 agencies any information submitted to the department pursuant
9 to this subsection.

10 (6)(a) In order to strive to meet the minority
11 business enterprise procurement goals set forth in s.
12 287.0945, an agency may reserve any contract for competitive
13 sealed bidding only among certified minority business
14 enterprises. Agencies shall review all their contracts each
15 fiscal year and shall determine which contracts may be
16 reserved for bidding only among certified minority business
17 enterprises. This reservation may only be used when it is
18 determined, by reasonable and objective means, before the
19 invitation to bid that there are capable, qualified certified
20 minority business enterprises available to bid on a contract
21 to provide for effective competition. The ~~Minority Business~~
22 Advocacy and Assistance Office of Supplier Diversity shall
23 consult with any agency in reaching such determination when
24 deemed appropriate.

25 Section 12. Section 287.09431, Florida Statutes, is
26 amended to read:

27 287.09431 Statewide and interlocal agreement on
28 certification of business concerns for the status of minority
29 business enterprise.--The statewide and interlocal agreement
30 on certification of business concerns for the status of
31 minority business enterprise is hereby enacted and entered

1 into with all jurisdictions or organizations legally joining
2 therein. If, within 2 years from the date that the
3 certification core criteria are approved by the Department of
4 Labor and Employment Security, the agreement included herein
5 is not executed by a majority of county and municipal
6 governing bodies that administer a minority business
7 assistance program on the effective date of this act, then the
8 Legislature shall review this agreement. It is the intent of
9 the Legislature that if the agreement is not executed by a
10 majority of the requisite governing bodies, then a statewide
11 uniform certification process should be adopted, and that said
12 agreement should be repealed and replaced by a mandatory state
13 government certification process.

14
15 ARTICLE I
16

17 PURPOSE, FINDINGS, AND POLICY.--

18 (1) The parties to this agreement, desiring by common
19 action to establish a uniform certification process in order
20 to reduce the multiplicity of applications by business
21 concerns to state and local governmental programs for minority
22 business assistance, declare that it is the policy of each of
23 them, on the basis of cooperation with one another, to remedy
24 social and economic disadvantage suffered by certain groups,
25 resulting in their being historically underutilized in
26 ownership and control of commercial enterprises. Thus, the
27 parties seek to address this history by increasing the
28 participation of the identified groups in opportunities
29 afforded by government procurement.

30 (2) The parties find that the State of Florida
31 presently certifies firms for participation in the minority

1 business assistance programs of the state. The parties find
2 further that some counties, municipalities, school boards,
3 special districts, and other divisions of local government
4 require a separate, yet similar, and in most cases redundant
5 certification in order for businesses to participate in the
6 programs sponsored by each government entity.

7 (3) The parties find further that this redundant
8 certification has proven to be unduly burdensome to the
9 minority-owned firms intended to benefit from the underlying
10 purchasing incentives.

11 (4) The parties agree that:

12 (a) They will facilitate integrity, stability, and
13 cooperation in the statewide and interlocal certification
14 process, and in other elements of programs established to
15 assist minority-owned businesses.

16 (b) They shall cooperate with agencies, organizations,
17 and associations interested in certification and other
18 elements of minority business assistance.

19 (c) It is the purpose of this agreement to provide for
20 a uniform process whereby the status of a business concern may
21 be determined in a singular review of the business information
22 for these purposes, in order to eliminate any undue expense,
23 delay, or confusion to the minority-owned businesses in
24 seeking to participate in the minority business assistance
25 programs of state and local jurisdictions.

26
27 ARTICLE II

28
29 DEFINITIONS.--As used in this agreement and contracts
30 made pursuant to it, unless the context clearly requires
31 otherwise:

1 (1) All awarding organizations shall accept a
2 certification granted by any participating organization which
3 has been approved according to s. 287.0943(3)~~(2)~~ and has
4 entered into this agreement, as valid status of minority
5 business enterprise.

6 (2) A participating organization shall certify a
7 business concern that meets the definition of minority
8 business enterprise in this agreement, in accordance with the
9 duly adopted eligibility criteria.

10 (3) All participating organizations shall issue notice
11 of certification decisions granting or denying certification
12 to all other participating organizations within 14 days of the
13 decision. Such notice may be made through electronic media.

14 (4) No certification will be granted without an onsite
15 visit to verify ownership and control of the prospective
16 minority business enterprise, unless verification can be
17 accomplished by other methods of adequate verification or
18 assessment of ownership and control.

19 (5) The certification of a minority business
20 enterprise pursuant to the terms of this agreement shall not
21 be suspended, revoked, or otherwise impaired except on any
22 grounds which would be sufficient for revocation or suspension
23 of a certification in the jurisdiction of the participating
24 organization.

25 (6) The certification determination of a party may be
26 challenged by any other participating organization by the
27 issuance of a timely written notice by the challenging
28 organization to the certifying organization's determination
29 within 10 days of receiving notice of the certification
30 decision, stating the grounds therefor.

31

1 AGREEMENT EVALUATION.--The designated state and local
2 officials may meet from time to time as a group to evaluate
3 progress under the agreement, to formulate recommendations for
4 changes, or to propose a new agreement.

5
6 ARTICLE VII
7

8 OTHER ARRANGEMENTS.--Nothing in this agreement shall be
9 construed to prevent or inhibit other arrangements or
10 practices of any party in order to comply with federal law.

11
12 ARTICLE VIII
13

14 EFFECT AND WITHDRAWAL.--

15 (1) This agreement shall become effective when
16 properly executed by a legal representative of the
17 participating organization, when enacted into the law of the
18 state and after an ordinance or other legislation is enacted
19 into law by the governing body of each participating
20 organization. Thereafter it shall become effective as to any
21 participating organization upon the enactment of this
22 agreement by the governing body of that organization.

23 (2) Any party may withdraw from this agreement by
24 enacting legislation repealing the same, but no such
25 withdrawal shall take effect until one year after the
26 governing body of the withdrawing party has given notice in
27 writing of the withdrawal to the other parties.

28 (3) No withdrawal shall relieve the withdrawing party
29 of any obligations imposed upon it by law.

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31 ARTICLE IX

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FINANCIAL RESPONSIBILITY.--

(1) A participating organization shall not be financially responsible or liable for the obligations of any other participating organization related to this agreement.

(2) The provisions of this agreement shall constitute neither a waiver of any governmental immunity under Florida law nor a waiver of any defenses of the parties under Florida law. The provisions of this agreement are solely for the benefit of its executors and not intended to create or grant any rights, contractual or otherwise, to any person or entity.

ARTICLE X

VENUE AND GOVERNING LAW.--The obligations of the parties to this agreement are performable only within the county where the participating organization is located, and statewide for the ~~Minority Business Advocacy and Assistance~~ Office of Supplier Diversity, and venue for any legal action in connection with this agreement shall lie, for any participating organization except the ~~Minority Business Advocacy and Assistance~~ Office of Supplier Diversity, exclusively in the county where the participating organization is located. This agreement shall be governed by and construed in accordance with the laws and court decisions of the state.

ARTICLE XI

CONSTRUCTION AND SEVERABILITY.--This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any

1 phrase, clause, sentence, or provision of this agreement is
2 declared to be contrary to the State Constitution or the
3 United States Constitution, or the application thereof to any
4 government, agency, person, or circumstance is held invalid,
5 the validity of the remainder of this agreement and the
6 applicability thereof to any government, agency, person, or
7 circumstance shall not be affected thereby. If this agreement
8 shall be held contrary to the State Constitution, the
9 agreement shall remain in full force and effect as to all
10 severable matters.

11 Section 13. This act shall take effect July 1, 2000.

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LEGISLATIVE SUMMARY

15

16 Transfers the Minority Business Advocacy and Assistance
17 Office from the Department of Labor and Employment
18 Security to the Department of Management Services and
19 renames the office as the Office of Supplier Diversity.
20 Revises provisions relating to minority business
21 enterprise programs to provide for revoking the
22 certification of minority businesses, prohibit agencies
23 from denying contractors, firms, or individuals an
24 opportunity to compete in public procurement of
25 commodities and services. Provides a penalty for
26 discrimination. Requires the Office of Supplier Diversity
27 to accept approved businesses as certified minority
28 businesses, revises criteria for certification of
29 minority business enterprises, and requires businesses to
30 comply with state licensing requirements for
31 certification as a minority business enterprise. Provides
for review or audit of such businesses by the Office of
Supplier Diversity and the Auditor General. Prohibits
discriminating entities or affiliates from bidding on
contracts and prohibits public entities from accepting
bids from, awarding contracts to, or transacting business
with discriminating entities. Provides requirements,
procedures, and limitations for determinations of
discrimination by entities. Provides for notice and
administrative hearings. Provides for nonapplication to
specified activities. (See bill for details.)

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