

House Bill No. 2127

An act relating to state procurement; amending s. 287.094, F.S.; revising provisions relating to minority business enterprise programs; providing for revoking the certification of certain minority businesses under certain circumstances; providing exceptions; prohibiting agencies from denying contractors, firms, or individuals an opportunity to compete in public procurement of commodities and services under certain circumstances; providing for filing of certain complaints; providing procedures and requirements; providing a penalty for certain discrimination; amending s. 287.0943, F.S.; requiring the Office of Supplier Diversity to accept certain businesses as certified minority businesses for certain purposes under certain circumstances; revising the appointment criteria for the Minority Business Certification Task Force; revising criteria for certification of minority business enterprises; requiring businesses to comply with state licensing requirements for certain certification; providing for review or audit of certain businesses under certain circumstances; providing for random reviews or audits of certain business by the Office of Supplier Diversity; authorizing the Auditor General to review or audit certain minority businesses for certain purposes; transferring the Minority Business Advocacy and Assistance Office from the Department of Labor and Employment Security to the Department of Management Services and renaming the office as the Office of Supplier Diversity; amending s. 287.09451, F.S., to conform to such transfer and renaming; amending s. 288.703, F.S.; revising certain definitions; creating s. 287.134, F.S.; providing definitions; prohibiting certain entities or affiliates from bidding on certain contracts; prohibiting public entities from accepting certain bids from, awarding certain contracts to, or transacting business with certain entities; requiring invitations to bid, requests for proposals, and certain written contracts to contain notice of provisions; providing requirements, procedures, and limitations for determinations of discrimination by certain entities; providing for notice and administrative hearings; providing for nonapplication to certain activities; amending ss. 17.11, 255.102, 287.012, 287.042, 287.057, and 287.9431, F.S., to conform; providing an effective date.

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

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

287.094 Minority business enterprise programs; penalty for discrimination and false representation.—

(1) It is unlawful for any individual to falsely ~~claim to be represent any entity~~ as a minority business enterprise for purposes of qualifying for certification with any governmental certifying organization as a minority business enterprise in order to participate under a program of a state agency which is designed to assist certified minority business enterprises in the receipt of

contracts with the agency for the provision of goods or services. The certification of any contractor, firm, or individual obtained by such false representation shall be permanently revoked and the entity shall be barred from doing business with state government for a period of 36 months. Any person who violates this section is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

(4) No agency shall deny any contractor, firm, or individual a fair opportunity to compete in the public procurement of commodities and services based on race, national origin, gender, religion, or physical disability, which for purposes of this subsection constitutes prohibited discrimination. Complaints alleging prohibited discrimination by an agency in its public procurement may be filed with the Office of Supplier Diversity within 60 days after the facts giving rise to the complaint are known, or reasonably should have been discovered. Any complaint shall be filed in writing, and must set forth the specific facts giving rise to the claim of prohibited discrimination. The

Office of Supplier Diversity shall, within 10 days, refer the complaint to the Inspector General for the agency that is the subject of the complaint, who shall coordinate a prompt investigation and issue written findings of fact. These findings shall be reviewed by the Chief Inspector General or his or her designee, who is authorized to conduct any further investigation deemed necessary or appropriate. Upon a final determination that an agency has abused its discretion by engaging in prohibited discrimination, the Chief Inspector General shall refer any state employee determined to have participated in the prohibited discrimination for disciplinary action in accordance with Chapter 60K(9), Florida Administrative Code, and subsequently enacted rules, up to and including termination.

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

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

287.0943 Certification of minority business enterprises.—

(1) A business certified by any local governmental jurisdiction or organization shall be accepted by the Department of Management Services, Office of Supplier Diversity, as a certified minority business enterprise for purposes of doing business with state government when the Office of Supplier Diversity determines that the state's minority business enterprise certification criteria are applied in the local certification process.

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

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

1. The Florida League of Cities, Inc.
2. The Florida Association of Counties.
3. The Florida School Boards Association, Inc.
4. The Association of Special Districts.
5. The Florida Association of Minority Business Enterprise Officials.
6. The Florida Association of Government Purchasing Officials.

In addition, the ~~Minority Business Advocacy and Assistance~~ Office of Supplier Diversity shall appoint seven members consisting of three representatives of minority business enterprises, one of whom should be a woman

business owner, two officials of the office, and two at-large members to ensure ~~balance regional, gender, racial, and ethnic balance among the groups specified in s. 288.703(3)~~. The chairperson of the Legislative Committee on Intergovernmental Relations or a designee shall be a member of the task force, ex officio. A quorum shall consist of one-third of the current members, and the task force may take action by majority vote. Any vacancy may only be filled by the organization or agency originally authorized to appoint the position.

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

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

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

1. Link ownership by a minority person, as defined in s. 288.703(3), or as dictated by the legal obligations of a certifying organization, to day-to-day control and financial risk by the qualifying minority owner, and to demonstrated expertise or licensure ~~licensure~~ of a minority owner in any trade or profession that the minority business enterprise will offer to the state when certified; ~~however, the minority licenseholder need not be the controlling owner of the enterprise, but must hold an ownership interest. Minority business enterprises presently certified by the state will not be subject to the licensure requirement until 5 years after the effective date of this act. Businesses must comply with all state licensing requirements prior to becoming certified as a minority business enterprise.~~

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

3. Require that prospective certified minority business enterprises be currently performing or seeking to perform a useful business function. A “useful business function” is defined as a business function which results in the provision of materials, supplies, equipment, or services to customers ~~other than state or local government~~. Acting as a conduit to transfer funds to a nonminority business does not constitute a useful business function unless it is done so in a normal industry practice. As used in this section, the term “acting as a conduit” means, in part, not acting as a regular dealer by making sales of material, goods, or supplies from items bought, kept in stock, and regularly sold to the public in the usual course of business. Brokers, manufacturer’s representatives, sales representatives, and non-stocking distributors are considered as conduits that do not perform a useful business function, unless normal industry practice dictates.

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

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

(h) The certification procedures should allow an applicant seeking certification to designate on the application form the information the applicant considers to be proprietary, confidential business information. As used in this paragraph, “proprietary, confidential business information” includes, but is not limited to, any information that would be exempt from public inspection pursuant to the provisions of s. 119.07(3); trade secrets; internal auditing controls and reports; contract costs; or other information the disclosure of which would injure the affected party in the marketplace or otherwise violate s. 286.041. The executor in receipt of the application shall issue written and final notice of any information for which noninspection is requested but not provided for by law.

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

(j) The statewide and interlocal agreement shall be guided by the terms and conditions found therein and may be amended at any meeting of the task force and subsequently adopted by the secretary of the Department of Management Services Labor and Employment Security. The amended agreement must be enacted, initialed, and legally executed by at least two-thirds of the certifying entities party to the existing agreement and adopted by the state as originally executed in order to bind the certifying entity.

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

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

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

(c) Any firms certified by organizations or governmental entities determined not to meet the state certification criteria ~~standards of the agreement~~ shall not be eligible to participate as certified minority business enterprises in the minority business assistance programs of the state ~~or of the executors of the agreement~~. For a period of 1 year from the effective date of this legislation, the executor of the statewide and interlocal agreement may elect to accept only minority business enterprises certified pursuant to criteria in place at the time the agreement was signed. After the 1-year period, either party may elect to withdraw from the agreement without further notice. Such a firm may subsequently apply to an executor of the agreement for certification.

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

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

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

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

~~(5)~~⁽⁴⁾(a) The secretary of the Department of Management Services Labor and Employment Security shall execute the statewide and interlocal agreement established under s. 287.09431 on behalf of the state. The office shall certify minority business enterprises in accordance with the laws of this state agreement and, by affidavit, shall recertify such minority business enterprises not less than once each year.

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

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

(b) The office shall establish and administer a computerized data bank to carry out the requirements of paragraph (a), to be available to all executors of the statewide and interlocal agreement. Data maintained in the data bank shall be sufficient to allow each executor to reasonably monitor certifications it has issued.

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

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

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

~~(10)~~(9) Any transfer of ownership or permanent change in the management and daily operations of a certified minority business enterprise which may affect certification must be reported to the original certifying jurisdiction or entity and to the office within 14 days of the transfer or change taking place. In the event of a transfer of ownership, the transferee seeking to do business with the state as a certified minority business enterprise is responsible for such reporting. In the event of a permanent change in the management and daily operations, owners seeking to do business with the state as a certified minority business enterprise are responsible for reporting such change to the office. Any person violating the provisions of this subsection shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

~~(11)~~(40) To deter fraud in the program, the Auditor General may review the criteria by which a business became certified as a certified minority business enterprise ~~these certifications pursuant to s. 11.45.~~

~~(12)~~(44) Any executor of the statewide and interlocal agreement may revoke the certification or recertification of a firm doing business as a certified minority business enterprise if the minority business enterprise does not meet the requirements of the jurisdiction or certifying entity that certified or recertified the firm as a certified minority business enterprise, or the requirements of subsection (1), s. 288.703, and any rule of the office or the Department of Management Services or if the business acquired certification or recertification by means of falsely representing any entity as a minority business enterprise for purposes of qualifying for certification or recertification.

~~(13)~~(42) Unless permanently revoked, a certified minority business enterprise for which certification or recertification has been revoked may not apply or reapply for certification or recertification for a minimum of 36 months after the date of the notice of revocation.

~~(14)~~(43)(a) Except for certification decisions issued by the Office of Supplier Diversity, an executor to the statewide and interlocal agreement shall, in accordance with its rules and procedures:

1. Give reasonable notice to affected persons or parties of its decision to deny certification based on failure to meet eligibility requirements of the statewide and interlocal agreement of s. 287.09431, together with a summary of the grounds therefor.

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

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

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

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

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

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

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

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

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

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

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

(a) To adopt rules to determine what constitutes a “good faith effort” for purposes of state agency compliance with the minority business enterprise procurement goals set forth in s. 287.042. Factors which shall be considered

by the Minority Business Enterprise Assistance Office in determining good faith effort shall include, but not be limited to:

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

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

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

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

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

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

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

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

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

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

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

7. Whether the contractor negotiated in good faith with interested minority business enterprises or minority persons, not rejecting minority business enterprises or minority persons as unqualified without sound reasons based on a thorough investigation of their capabilities.

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

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

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

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

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

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

(h) To develop procedures to investigate complaints against minority business enterprises or contractors alleged to violate any provision related to this section or s. 287.0943, that may include visits to worksites or business premises, and to refer all information on businesses suspected of misrepresenting minority status to the Department of Management Services ~~Labor and Employment Security~~ for investigation. When an investigation is completed and there is reason to believe that a violation has occurred, the Department of Labor and Employment Security shall refer the matter to the office of the Attorney General, Department of Legal Affairs, for prosecution.

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

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

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

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

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

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

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

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

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

(n)1. To develop procedures to be used by an agency in identifying commodities, contractual services, architectural and engineering services, and construction contracts, except those architectural, engineering, construction, or other related services or contracts subject to the provisions of chapter 339, that could be provided by minority business enterprises. Each agency is encouraged to spend 21 percent of the moneys actually expended for construction contracts, 25 percent of the moneys actually expended for architectural and engineering contracts, 24 percent of the moneys actually expended for commodities, and 50.5 percent of the moneys actually expended for contractual services during the previous fiscal year, except for the state university construction program which shall be based upon public education capital outlay projections for the subsequent fiscal year, and reported to the Legislature pursuant to s. 216.023, for the purpose of entering into contracts with certified minority business enterprises as defined in s. 288.703(2), or approved joint ventures. However, in the event of budget reductions pursuant to s. 216.221, the base amounts may be adjusted to reflect such reductions. The overall spending goal for each industry category shall be subdivided as follows:

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

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

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

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

2. For the purposes of commodities contracts for the purchase of equipment to be used in the construction and maintenance of state transportation facilities involving the Department of Transportation, “minority business enterprise” has the same meaning as provided in s. 288.703. “Minority person” has the same meaning as in s. 288.703(3). In order to ensure that the goals established under this paragraph for contracting with certified minority business enterprises are met, the department, with the assistance of the ~~Minority Business Advocacy and Assistance Office~~ of Supplier Diversity, shall make recommendations to the Legislature on revisions to the goals, based on an updated statistical analysis, at least once every 5 years. Such recommendations shall be based on statistical data indicating the availability of and disparity in the use of minority businesses contracting with the state. The results of the first updated disparity study must be presented to the Legislature no later than December 1, 1996.

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

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

- a. Size and complexity of the project.
- b. The concentration of transactions with minority business enterprises for the commodity or contractual services in question in prior agency contracting.
- c. The specificity and definition of work allocated to participating minority business enterprises.
- d. The capacity of participating minority business enterprises to complete the tasks identified in the project.
- e. The available pool of minority business enterprises as prime contractors, either alone or as partners in an approved joint venture that serves as the prime contractor.

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

(o)1. To establish a system to record and measure the use of certified minority business enterprises in state contracting. This system shall maintain information and statistics on certified minority business enterprise participation, awards, dollar volume of expenditures and agency goals, and other appropriate types of information to analyze progress in the access of certified minority business enterprises to state contracts and to monitor agency compliance with this section. Such reporting must include, but is not limited to, the identification of all subcontracts in state contracting by dollar amount and by number of subcontracts and the identification of the utilization of certified minority business enterprises as prime contractors and subcontractors by dollar amounts of contracts and subcontracts, number of contracts and subcontracts, minority status, industry, and any conditions or circumstances that significantly affected the performance of subcontractors. Agencies shall report their compliance with the requirements of this reporting system at least annually and at the request of the office. All agencies shall cooperate with the office in establishing this reporting system. Except in construction contracting, all agencies shall review contracts costing in excess of CATEGORY FOUR as defined in s. 287.017 to determine if such contracts could be divided into smaller contracts to be separately bid and awarded, and shall, when economical, offer such smaller contracts to encourage minority participation.

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

- a. Total expenditures of each agency by industry.
- b. The dollar amount and percentage of contracts awarded to certified minority business enterprises by each state agency.

c. The dollar amount and percentage of contracts awarded indirectly to certified minority business enterprises as subcontractors by each state agency.

d. The total dollar amount and percentage of contracts awarded to certified minority business enterprises, whether directly or indirectly, as subcontractors.

e. A statement and assessment of good faith efforts taken by each state agency.

f. A status report of agency compliance with subsection (6), as determined by the Minority Business Enterprise Office.

(5)(a) Each agency shall, at the time the specifications or designs are developed or contract sizing is determined for any proposed procurement costing in excess of CATEGORY FOUR, as defined in s. 287.017, forward a notice to the ~~Minority Business Advocacy and Assistance Office of Supplier Diversity~~ Minority Business Advocacy and Assistance Office of Supplier Diversity of the proposed procurement and any determination on the designs of specifications of the proposed procurement that impose requirements on prospective vendors, no later than 30 days prior to the issuance of a solicitation, except that this provision shall not apply to emergency acquisitions. The 30-day notice period shall not toll the time for any other procedural requirements.

(b) If the ~~Minority Business Advocacy and Assistance Office of Supplier Diversity~~ Minority Business Advocacy and Assistance Office of Supplier Diversity determines that the proposed procurement will not likely allow opportunities for minority business enterprises, the office may, within 20 days after it receives the information specified in paragraph (a), propose the implementation of minority business enterprise utilization provisions or submit alternative procurement methods that would significantly increase minority business enterprise contracting opportunities.

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

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

(e) An agency may presume that a bidder offering no minority participation has not made a good faith effort when other bidders offer minority

participation of firms listed as relevant to the agency's purchasing needs in the pertinent locality or statewide to complete the project.

(f) Paragraph (a) will not apply when the ~~Minority Business Advocacy and Assistance Office~~ of Supplier Diversity determines that an agency has established a work plan to allow advance consultation and planning with minority business enterprises and where such plan clearly demonstrates:

1. A high level of advance planning by the agency with minority business enterprises.
2. A high level of accessibility, knowledge, and experience by minority business enterprises in the agency's contract decisionmaking process.
3. A high quality of agency monitoring and enforcement of internal implementation of minority business utilization provisions.
4. A high quality of agency monitoring and enforcement of contractor utilization of minority business enterprises, especially tracking subcontractor data, and ensuring the integrity of subcontractor reporting.
5. A high quality of agency outreach, agency networking of major vendors with minority vendors, and innovation in techniques to improve utilization of minority business enterprises.
6. Substantial commitment, sensitivity, and proactive attitude by the agency head and among the agency minority business staff.

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

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

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

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

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

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

(1) “Small business” means an independently owned and operated business concern that employs 200 ~~100~~ or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 \$3 million or any firm based in this state which has a Small Business Administration 8(a) certification and an average net income after federal income taxes, excluding any carryover losses, for the preceding 2 years of not more than \$2 million. As applicable to sole proprietorships, the ~~\$5 \$3 million~~ net worth requirement shall include both personal and business investments.

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

(5) “Department” means the Department of Management Services ~~Labor and Employment Security.~~

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

(8) “Secretary” means the secretary of the Department of Management Services ~~Labor and Employment Security.~~

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

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

(1) As used in this section:

(a) “Affiliate” means:

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

2. An entity under the control of any natural person or entity that is active in the management of the entity that discriminated. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one entity of shares constituting a controlling interest in another entity, or a pooling of equipment or income among entities when not for fair market value under an arm’s length agreement, shall be a prima facie case that one entity controls another entity.

(b) “Discrimination” or “discriminated” means a determination of liability by a state circuit court or federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity; if an appeal is made, the

determination of liability does not occur until the completion of any appeals to a higher tribunal.

(c) “Discriminatory vendor list” means the list required to be kept by the department pursuant to paragraph (3)(d).

(d) “Department” means the Department of Management Services.

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

(f) “Public entity” means this state and any department or agency of this state.

(g) “Senior Management” includes chief executive officers; assistant chief executive officers, including, but not limited to, assistant presidents, vice presidents, or assistant treasurers; chief financial officers; chief personnel officers; or any employee of an entity performing similar functions.

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

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

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

(b) An entity must notify the department within 30 days after a final determination of discrimination. Any public entity which receives information that an entity has discriminated shall transmit that information to the department in writing within 10 days. Before entering into any contract with the state, all entities shall disclose to the department whether they

have been found liable, in a state circuit court or federal court, for violation of any state or federal law prohibiting discrimination based on race, gender, national origin, disability, or religion.

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

(d)1. Upon receiving reasonable information from any source that an entity has discriminated, the department shall investigate the information and determine whether good cause exists to place that entity or an affiliate of that entity on the discriminatory vendor list. If good cause exists, the department shall notify the entity or affiliate in writing of its intent to place the name of that entity or affiliate on the discriminatory vendor list, and of the entity's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the entity or affiliate does not request a hearing, the department shall enter a final order placing the name of the entity or affiliate on the discriminatory vendor list. No entity or affiliate may be placed on the discriminatory vendor list without receiving an individual notice of intent from the department.

2. Within 21 days after receipt of the notice of intent, the entity or affiliate may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57(1) to determine whether it is in the public interest for that entity or affiliate to be placed on the discriminatory vendor list. An entity or affiliate may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this section except where they are in conflict with the following provisions:

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

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

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

d. Within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule

to be contained in the final order. Such final order shall place or not place the entity or affiliate on the discriminatory vendor list.

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

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

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

a. Discrimination did not occur;

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

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

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

a. The nature and details of the discrimination.

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

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

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

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

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

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

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

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

(e)1. An entity on the discriminatory vendor list may petition for removal from the list no sooner than 6 months from the date a final order is entered disqualifying that entity from the public purchasing and contracting process pursuant to this section. The petition shall be filed with the department and the proceeding shall be conducted pursuant to the procedures and requirements of this subsection.

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

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

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

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

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

17.11 To report disbursements made.—

(2) The Comptroller shall also cause to have reported from the Florida Accounting Information Resource Subsystem no less than quarterly the disbursements which agencies made to small businesses, as defined in the Florida Small and Minority Business Assistance Act of 1985; to certified minority business enterprises in the aggregate; and to certified minority business enterprises broken down into categories of minority persons, as well as gender and nationality subgroups. This information shall be made

available to the agencies, the ~~Minority Business Advocacy and Assistance Office of Supplier Diversity~~, the Governor, the President of the Senate, and the Speaker of the House of Representatives. Each agency shall be responsible for the accuracy of information entered into the Florida Accounting Information Resource Subsystem for use in this reporting.

Section 8. Subsections (1) and (2) of section 255.102, Florida Statutes, are amended to read:

255.102 Contractor utilization of minority business enterprises.—

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

(2) The ~~Minority Business Advocacy and Assistance Office of Supplier Diversity~~, in collaboration with the ~~Department of Management Services~~ and the State University System, shall adopt rules to determine what is a “good faith effort” for purposes of contractor compliance with minority participation goals established for competitively awarded building and construction projects. Pro forma efforts shall not be considered good faith. Factors which shall be considered by the state agency in determining whether a contractor has made good faith efforts shall include, but not be limited to:

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

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

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

(d) Whether the contractor followed up initial solicitations of interest by contacting minority business enterprises, the ~~Minority Business Advocacy and Assistance Office of Supplier Diversity~~, or minority persons who responded and provided detailed information about prebid meetings, access to plans, specifications, contractor’s project manager, subcontractor bonding, if any, payment schedule, bid addenda, and other assistance provided by the contractor to enhance minority business enterprise participation.

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

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

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

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

(i) Whether the contractor effectively used the services of available minority community organizations; minority contractors' groups; local, state, and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons.

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

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

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

287.012 Definitions.—The following definitions shall apply in this part:

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

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

287.042 Powers, duties, and functions.—The department shall have the following powers, duties, and functions:

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

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

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

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

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

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

287.057 Procurement of commodities or contractual services.—

(5) Upon issuance of any invitation to bid or request for proposals, an agency shall forward to the department one copy of each invitation to bid or request for proposals for all commodity and contractual services purchases in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO. An agency shall also, upon request, furnish a copy of all competitive sealed bid or competitive sealed proposal tabulations. The ~~Minority Business Advocacy and Assistance Office~~ of Supplier Diversity may also request from the agencies any information submitted to the department pursuant to this subsection.

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

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

287.09431 Statewide and interlocal agreement on certification of business concerns for the status of minority business enterprise.—The statewide

and interlocal agreement on certification of business concerns for the status of minority business enterprise is hereby enacted and entered into with all jurisdictions or organizations legally joining therein. If, within 2 years from the date that the certification core criteria are approved by the Department of Labor and Employment Security, the agreement included herein is not executed by a majority of county and municipal governing bodies that administer a minority business assistance program on the effective date of this act, then the Legislature shall review this agreement. It is the intent of the Legislature that if the agreement is not executed by a majority of the requisite governing bodies, then a statewide uniform certification process should be adopted, and that said agreement should be repealed and replaced by a mandatory state government certification process.

ARTICLE I

PURPOSE, FINDINGS, AND POLICY.—

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

(2) The parties find that the State of Florida presently certifies firms for participation in the minority business assistance programs of the state. The parties find further that some counties, municipalities, school boards, special districts, and other divisions of local government require a separate, yet similar, and in most cases redundant certification in order for businesses to participate in the programs sponsored by each government entity.

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

(4) The parties agree that:

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

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

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

ARTICLE II

DEFINITIONS.—As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(1) “Awarding organization” means any political subdivision or organization authorized by law, ordinance, or agreement to enter into contracts and for which the governing body has entered into this agreement.

(2) “Department” means the Department of Labor and Employment Security.

(3) “Minority” means a person who is a lawful, permanent resident of the state, having origins in one of the minority groups as described and adopted by the Department of Labor and Employment Security, hereby incorporated by reference.

(4) “Minority business enterprise” means any small business concern as defined in subsection (6) that meets all of the criteria described and adopted by the Department of Labor and Employment Security, hereby incorporated by reference.

(5) “Participating state or local organization” means any political subdivision of the state or organization designated by such that elects to participate in the certification process pursuant to this agreement, which has been approved according to s. 287.0943(3)(2) and has legally entered into this agreement.

(6) “Small business concern” means an independently owned and operated business concern which is of a size and type as described and adopted by vote related to this agreement of the commission, hereby incorporated by reference.

ARTICLE III

STATEWIDE AND INTERLOCAL CERTIFICATIONS.—

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

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

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

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

(5) The certification of a minority business enterprise pursuant to the terms of this agreement shall not be suspended, revoked, or otherwise impaired except on any grounds which would be sufficient for revocation or

suspension of a certification in the jurisdiction of the participating organization.

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

(7) The sole accepted grounds for challenge shall be the failure of the certifying organization to adhere to the adopted criteria or the certifying organization's rules or procedures, or the perpetuation of a misrepresentation or fraud by the firm.

(8) The certifying organization shall reexamine its certification determination and submit written notice to the applicant and the challenging organization of its findings within 30 days after the receipt of the notice of challenge.

(9) If the certification determination is affirmed, the challenging agency may subsequently submit timely written notice to the firm of its intent to revoke certification of the firm.

ARTICLE IV

APPROVED AND ACCEPTED PROGRAMS.—Nothing in this agreement shall be construed to repeal or otherwise modify any ordinance, law, or regulation of a party relating to the existing minority business assistance provisions and procedures by which minority business enterprises participate therein.

ARTICLE V

TERM.—The term of the agreement shall be 5 years, after which it may be reexecuted by the parties.

ARTICLE VI

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

ARTICLE VII

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

ARTICLE VIII

EFFECT AND WITHDRAWAL.—

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

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

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

ARTICLE IX

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

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

Approved by the Governor June 14, 2000.

Filed in Office Secretary of State June 14, 2000.