



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3830

Introduced 1/21/2022, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

30 ILCS 500/50-35

30 ILCS 575/2

30 ILCS 575/4

30 ILCS 575/5

from Ch. 127, par. 132.604

from Ch. 127, par. 132.605

Amends the Illinois Procurement Code. Requires disclosure of financial interests for all bids and offers from responsive bidders, offerors, vendors, or contractors with an annual value in excess of the specified small purchase threshold under the Code (currently, more than \$50,000). Amends the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Provides that business firms with gross sales in excess of \$75,000,000 that are granted certification by the Business Enterprise Council shall be granted certification for the life of the contract including available renewals. Provides further requirements concerning the cure of deficiencies in specified solicitations. Provides for automatic certification under the Act. Requires the Business Enterprise Council to develop and maintain a repository for specified non-certified vendors. Makes conforming and other changes.

LRB102 23880 RJF 33074 b

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Procurement Code is amended by
5 changing Section 50-35 as follows:

6 (30 ILCS 500/50-35)

7 Sec. 50-35. Financial disclosure and potential conflicts
8 of interest.

9 (a) All bids and offers from responsive bidders, offerors,
10 vendors, or contractors with an annual value in excess of the
11 identified small purchase threshold established under
12 subsection (a) of Section 20-20 ~~of more than \$50,000~~, and all
13 submissions to a vendor portal, shall be accompanied by
14 disclosure of the financial interests of the bidder, offeror,
15 potential contractor, or contractor and each subcontractor to
16 be used. In addition, all subcontracts identified as provided
17 by Section 20-120 of this Code with an annual value of more
18 than \$50,000 shall be accompanied by disclosure of the
19 financial interests of each subcontractor. The financial
20 disclosure of each successful bidder, offeror, potential
21 contractor, or contractor and its subcontractors shall be
22 incorporated as a material term of the contract and shall
23 become part of the publicly available contract or procurement

1 file maintained by the appropriate chief procurement officer.
2 Each disclosure under this Section shall be signed and made
3 under penalty of perjury by an authorized officer or employee
4 on behalf of the bidder, offeror, potential contractor,
5 contractor, or subcontractor, and must be filed with the
6 Procurement Policy Board and the Commission on Equity and
7 Inclusion.

8 (b) Disclosure shall include any ownership or distributive
9 income share that is in excess of 5%, or an amount greater than
10 60% of the annual salary of the Governor, of the disclosing
11 entity or its parent entity, whichever is less, unless the
12 bidder, offeror, potential contractor, contractor, or
13 subcontractor (i) is a publicly traded entity subject to
14 Federal 10K reporting, in which case it may submit its 10K
15 disclosure in place of the prescribed disclosure, or (ii) is a
16 privately held entity that is exempt from Federal 10k
17 reporting but has more than 100 shareholders, in which case it
18 may submit the information that Federal 10k reporting
19 companies are required to report under 17 CFR 229.401 and list
20 the names of any person or entity holding any ownership share
21 that is in excess of 5% in place of the prescribed disclosure.
22 The form of disclosure shall be prescribed by the applicable
23 chief procurement officer and must include at least the names,
24 addresses, and dollar or proportionate share of ownership of
25 each person identified in this Section, their instrument of
26 ownership or beneficial relationship, and notice of any

1 potential conflict of interest resulting from the current
2 ownership or beneficial relationship of each individual
3 identified in this Section having in addition any of the
4 following relationships:

5 (1) State employment, currently or in the previous 3
6 years, including contractual employment of services.

7 (2) State employment of spouse, father, mother, son,
8 or daughter, including contractual employment for services
9 in the previous 2 years.

10 (3) Elective status; the holding of elective office of
11 the State of Illinois, the government of the United
12 States, any unit of local government authorized by the
13 Constitution of the State of Illinois or the statutes of
14 the State of Illinois currently or in the previous 3
15 years.

16 (4) Relationship to anyone holding elective office
17 currently or in the previous 2 years; spouse, father,
18 mother, son, or daughter.

19 (5) Appointive office; the holding of any appointive
20 government office of the State of Illinois, the United
21 States of America, or any unit of local government
22 authorized by the Constitution of the State of Illinois or
23 the statutes of the State of Illinois, which office
24 entitles the holder to compensation in excess of expenses
25 incurred in the discharge of that office currently or in
26 the previous 3 years.

1 (6) Relationship to anyone holding appointive office
2 currently or in the previous 2 years; spouse, father,
3 mother, son, or daughter.

4 (7) Employment, currently or in the previous 3 years,
5 as or by any registered lobbyist of the State government.

6 (8) Relationship to anyone who is or was a registered
7 lobbyist in the previous 2 years; spouse, father, mother,
8 son, or daughter.

9 (9) Compensated employment, currently or in the
10 previous 3 years, by any registered election or
11 re-election committee registered with the Secretary of
12 State or any county clerk in the State of Illinois, or any
13 political action committee registered with either the
14 Secretary of State or the Federal Board of Elections.

15 (10) Relationship to anyone; spouse, father, mother,
16 son, or daughter; who is or was a compensated employee in
17 the last 2 years of any registered election or re-election
18 committee registered with the Secretary of State or any
19 county clerk in the State of Illinois, or any political
20 action committee registered with either the Secretary of
21 State or the Federal Board of Elections.

22 (b-1) The disclosure required under this Section must also
23 include the name and address of each lobbyist required to
24 register under the Lobbyist Registration Act and other agent
25 of the bidder, offeror, potential contractor, contractor, or
26 subcontractor who is not identified under subsections (a) and

1 (b) and who has communicated, is communicating, or may
2 communicate with any State officer or employee concerning the
3 bid or offer. The disclosure under this subsection is a
4 continuing obligation and must be promptly supplemented for
5 accuracy throughout the process and throughout the term of the
6 contract if the bid or offer is successful.

7 (b-2) The disclosure required under this Section must also
8 include, for each of the persons identified in subsection (b)
9 or (b-1), each of the following that occurred within the
10 previous 10 years: suspension or debarment from contracting
11 with any governmental entity; professional licensure
12 discipline; bankruptcies; adverse civil judgments and
13 administrative findings; and criminal felony convictions. The
14 disclosure under this subsection is a continuing obligation
15 and must be promptly supplemented for accuracy throughout the
16 process and throughout the term of the contract if the bid or
17 offer is successful.

18 (c) The disclosure in subsection (b) is not intended to
19 prohibit or prevent any contract. The disclosure is meant to
20 fully and publicly disclose any potential conflict to the
21 chief procurement officers, State purchasing officers, their
22 designees, and executive officers so they may adequately
23 discharge their duty to protect the State.

24 (d) When a potential for a conflict of interest is
25 identified, discovered, or reasonably suspected, the chief
26 procurement officer or State procurement officer shall send

1 the contract to the Procurement Policy Board and the
2 Commission on Equity and Inclusion. In accordance with the
3 objectives of subsection (c), if the Procurement Policy Board
4 or the Commission on Equity and Inclusion finds evidence of a
5 potential conflict of interest not originally disclosed by the
6 bidder, offeror, potential contractor, contractor, or
7 subcontractor, the Board or the Commission on Equity and
8 Inclusion shall provide written notice to the bidder, offeror,
9 potential contractor, contractor, or subcontractor that is
10 identified, discovered, or reasonably suspected of having a
11 potential conflict of interest. The bidder, offeror, potential
12 contractor, contractor, or subcontractor shall have 15
13 calendar days to respond in writing to the Board or the
14 Commission on Equity and Inclusion, and a hearing before the
15 Board or the Commission on Equity and Inclusion will be
16 granted upon request by the bidder, offeror, potential
17 contractor, contractor, or subcontractor, at a date and time
18 to be determined by the Board or the Commission on Equity and
19 Inclusion, but which in no event shall occur later than 15
20 calendar days after the date of the request. Upon
21 consideration, the Board or the Commission on Equity and
22 Inclusion shall recommend, in writing, whether to allow or
23 void the contract, bid, offer, or subcontract weighing the
24 best interest of the State of Illinois. All recommendations
25 shall be submitted to the Executive Ethics Commission. The
26 Executive Ethics Commission must hold a public hearing within

1 30 calendar days after receiving the Board's or the Commission
2 on Equity and Inclusion's recommendation if the Procurement
3 Policy Board or the Commission on Equity and Inclusion makes a
4 recommendation to (i) void a contract or (ii) void a bid or
5 offer and the chief procurement officer selected or intends to
6 award the contract to the bidder, offeror, or potential
7 contractor. A chief procurement officer is prohibited from
8 awarding a contract before a hearing if the Board or the
9 Commission on Equity and Inclusion recommendation does not
10 support a bid or offer. The recommendation and proceedings of
11 any hearing, if applicable, shall be available to the public.

12 (e) These thresholds and disclosure do not relieve the
13 chief procurement officer, the State purchasing officer, or
14 their designees from reasonable care and diligence for any
15 contract, bid, offer, or submission to a vendor portal. The
16 chief procurement officer, the State purchasing officer, or
17 their designees shall be responsible for using any reasonably
18 known and publicly available information to discover any
19 undisclosed potential conflict of interest and act to protect
20 the best interest of the State of Illinois.

21 (f) Inadvertent or accidental failure to fully disclose
22 shall render the contract, bid, offer, proposal, subcontract,
23 or relationship voidable by the chief procurement officer if
24 he or she deems it in the best interest of the State of
25 Illinois and, at his or her discretion, may be cause for
26 barring from future contracts, bids, offers, proposals,

1 subcontracts, or relationships with the State for a period of
2 up to 2 years.

3 (g) Intentional, willful, or material failure to disclose
4 shall render the contract, bid, offer, proposal, subcontract,
5 or relationship voidable by the chief procurement officer if
6 he or she deems it in the best interest of the State of
7 Illinois and shall result in debarment from future contracts,
8 bids, offers, proposals, subcontracts, or relationships for a
9 period of not less than 2 years and not more than 10 years.
10 Reinstatement after 2 years and before 10 years must be
11 reviewed and commented on in writing by the Governor of the
12 State of Illinois, or by an executive ethics board or
13 commission he or she might designate. The comment shall be
14 returned to the responsible chief procurement officer who must
15 rule in writing whether and when to reinstate.

16 (h) In addition, all disclosures shall note any other
17 current or pending contracts, bids, offers, proposals,
18 subcontracts, leases, or other ongoing procurement
19 relationships the bidder, offeror, potential contractor,
20 contractor, or subcontractor has with any other unit of State
21 government and shall clearly identify the unit and the
22 contract, offer, proposal, lease, or other relationship.

23 (i) The bidder, offeror, potential contractor, or
24 contractor has a continuing obligation to supplement the
25 disclosure required by this Section throughout the bidding
26 process during the term of any contract, and during the vendor

1 portal registration process.

2 (Source: P.A. 101-657, eff. 1-1-22.)

3 Section 10. The Business Enterprise for Minorities, Women,
4 and Persons with Disabilities Act is amended by changing
5 Sections 2, 4, and 5 as follows:

6 (30 ILCS 575/2)

7 (Section scheduled to be repealed on June 30, 2024)

8 Sec. 2. Definitions.

9 (A) For the purpose of this Act, the following terms shall
10 have the following definitions:

11 (1) "Minority person" shall mean a person who is a
12 citizen or lawful permanent resident of the United States
13 and who is any of the following:

14 (a) American Indian or Alaska Native (a person
15 having origins in any of the original peoples of North
16 and South America, including Central America, and who
17 maintains tribal affiliation or community attachment).

18 (b) Asian (a person having origins in any of the
19 original peoples of the Far East, Southeast Asia, or
20 the Indian subcontinent, including, but not limited
21 to, Cambodia, China, India, Japan, Korea, Malaysia,
22 Pakistan, the Philippine Islands, Thailand, and
23 Vietnam).

24 (c) Black or African American (a person having

1 origins in any of the black racial groups of Africa).

2 (d) Hispanic or Latino (a person of Cuban,
3 Mexican, Puerto Rican, South or Central American, or
4 other Spanish culture or origin, regardless of race).

5 (e) Native Hawaiian or Other Pacific Islander (a
6 person having origins in any of the original peoples
7 of Hawaii, Guam, Samoa, or other Pacific Islands).

8 (2) "Woman" shall mean a person who is a citizen or
9 lawful permanent resident of the United States and who is
10 of the female gender.

11 (2.05) "Person with a disability" means a person who
12 is a citizen or lawful resident of the United States and is
13 a person qualifying as a person with a disability under
14 subdivision (2.1) of this subsection (A).

15 (2.1) "Person with a disability" means a person with a
16 severe physical or mental disability that:

17 (a) results from:

18 amputation,

19 arthritis,

20 autism,

21 blindness,

22 burn injury,

23 cancer,

24 cerebral palsy,

25 Crohn's disease,

26 cystic fibrosis,

1 deafness,
2 head injury,
3 heart disease,
4 hemiplegia,
5 hemophilia,
6 respiratory or pulmonary dysfunction,
7 an intellectual disability,
8 mental illness,
9 multiple sclerosis,
10 muscular dystrophy,
11 musculoskeletal disorders,
12 neurological disorders, including stroke and
13 epilepsy,
14 paraplegia,
15 quadriplegia and other spinal cord conditions,
16 sickle cell anemia,
17 ulcerative colitis,
18 specific learning disabilities, or
19 end stage renal failure disease; and
20 (b) substantially limits one or more of the
21 person's major life activities.

22 Another disability or combination of disabilities may
23 also be considered as a severe disability for the purposes
24 of item (a) of this subdivision (2.1) if it is determined
25 by an evaluation of rehabilitation potential to cause a
26 comparable degree of substantial functional limitation

1 similar to the specific list of disabilities listed in
2 item (a) of this subdivision (2.1).

3 (3) "Minority-owned business" means a business which
4 is at least 51% owned by one or more minority persons, or
5 in the case of a corporation, at least 51% of the stock in
6 which is owned by one or more minority persons; and the
7 management and daily business operations of which are
8 controlled by one or more of the minority individuals who
9 own it.

10 (4) "Women-owned business" means a business which is
11 at least 51% owned by one or more women, or, in the case of
12 a corporation, at least 51% of the stock in which is owned
13 by one or more women; and the management and daily
14 business operations of which are controlled by one or more
15 of the women who own it.

16 (4.1) "Business owned by a person with a disability"
17 means a business that is at least 51% owned by one or more
18 persons with a disability and the management and daily
19 business operations of which are controlled by one or more
20 of the persons with disabilities who own it. A
21 not-for-profit agency for persons with disabilities that
22 is exempt from taxation under Section 501 of the Internal
23 Revenue Code of 1986 is also considered a "business owned
24 by a person with a disability".

25 (4.2) "Council" means the Business Enterprise Council
26 for Minorities, Women, and Persons with Disabilities

1 created under Section 5 of this Act.

2 (4.3) "Commission" means, unless the context clearly
3 indicates otherwise, the Commission on Equity and
4 Inclusion created under the Commission on Equity and
5 Inclusion Act.

6 (5) "State contracts" means all contracts entered into
7 by the State, any agency or department thereof, or any
8 public institution of higher education, including
9 community college districts, regardless of the source of
10 the funds with which the contracts are paid, which are not
11 subject to federal reimbursement. "State contracts" does
12 not include contracts awarded by a retirement system,
13 pension fund, or investment board subject to Section
14 1-109.1 of the Illinois Pension Code. This definition
15 shall control over any existing definition under this Act
16 or applicable administrative rule.

17 "State construction contracts" means all State
18 contracts entered into by a State agency or public
19 institution of higher education for the repair,
20 remodeling, renovation or construction of a building or
21 structure, or for the construction or maintenance of a
22 highway defined in Article 2 of the Illinois Highway Code.

23 (6) "State agencies" shall mean all departments,
24 officers, boards, commissions, institutions and bodies
25 politic and corporate of the State, but does not include
26 the Board of Trustees of the University of Illinois, the

1 Board of Trustees of Southern Illinois University, the
2 Board of Trustees of Chicago State University, the Board
3 of Trustees of Eastern Illinois University, the Board of
4 Trustees of Governors State University, the Board of
5 Trustees of Illinois State University, the Board of
6 Trustees of Northeastern Illinois University, the Board of
7 Trustees of Northern Illinois University, the Board of
8 Trustees of Western Illinois University, municipalities or
9 other local governmental units, or other State
10 constitutional officers.

11 (7) "Public institutions of higher education" means
12 the University of Illinois, Southern Illinois University,
13 Chicago State University, Eastern Illinois University,
14 Governors State University, Illinois State University,
15 Northeastern Illinois University, Northern Illinois
16 University, Western Illinois University, the public
17 community colleges of the State, and any other public
18 universities, colleges, and community colleges now or
19 hereafter established or authorized by the General
20 Assembly.

21 (8) "Certification" means a determination made by the
22 Council or by one delegated authority from the Council to
23 make certifications, or by a State agency with statutory
24 authority to make such a certification, that a business
25 entity is a business owned by a minority, woman, or person
26 with a disability for whatever purpose. A business owned

1 and controlled by women shall be certified as a
2 "woman-owned business". A business owned and controlled by
3 women who are also minorities shall be certified as both a
4 "women-owned business" and a "minority-owned business".

5 (9) "Control" means the exclusive or ultimate and sole
6 control of the business including, but not limited to,
7 capital investment and all other financial matters,
8 property, acquisitions, contract negotiations, legal
9 matters, officer-director-employee selection and
10 comprehensive hiring, operating responsibilities,
11 cost-control matters, income and dividend matters,
12 financial transactions and rights of other shareholders or
13 joint partners. Control shall be real, substantial and
14 continuing, not pro forma. Control shall include the power
15 to direct or cause the direction of the management and
16 policies of the business and to make the day-to-day as
17 well as major decisions in matters of policy, management
18 and operations. Control shall be exemplified by possessing
19 the requisite knowledge and expertise to run the
20 particular business and control shall not include simple
21 majority or absentee ownership.

22 (10) "Business" means a business that has annual gross
23 sales of less than \$75,000,000 as evidenced by the federal
24 income tax return of the business. A firm with gross sales
25 in excess of this cap may apply to the Council for
26 certification for a particular contract if the firm can

1 demonstrate that the contract would have significant
2 impact on businesses owned by minorities, women, or
3 persons with disabilities as suppliers or subcontractors
4 or in employment of minorities, women, or persons with
5 disabilities. Firms with gross sales in excess of this cap
6 that are granted certification by the Council shall be
7 granted certification for the life of the contract
8 including available renewals.

9 (11) "Utilization plan" means a form and additional
10 documentations included in all bids or proposals that
11 demonstrates a vendor's proposed utilization of vendors
12 certified by the Business Enterprise Program to meet the
13 targeted goal. The utilization plan shall demonstrate that
14 the Vendor has either: (1) met the entire contract goal or
15 (2) requested a full or partial waiver and made good faith
16 efforts towards meeting the goal.

17 (12) "Business Enterprise Program" means the Business
18 Enterprise Program of the Commission on Equity and
19 Inclusion.

20 (B) When a business is owned at least 51% by any
21 combination of minority persons, women, or persons with
22 disabilities, even though none of the 3 classes alone holds at
23 least a 51% interest, the ownership requirement for purposes
24 of this Act is considered to be met. The certification
25 category for the business is that of the class holding the
26 largest ownership interest in the business. If 2 or more

1 classes have equal ownership interests, the certification
2 category shall be determined by the business.

3 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;
4 102-29, eff. 6-25-21.)

5 (30 ILCS 575/4) (from Ch. 127, par. 132.604)

6 (Section scheduled to be repealed on June 30, 2024)

7 Sec. 4. Award of State contracts.

8 (a) Except as provided in subsection (b), not less than
9 30% of the total dollar amount of State contracts, as defined
10 by the Secretary of the Council and approved by the Council,
11 shall be established as an aspirational goal to be awarded to
12 businesses owned by minorities, women, and persons with
13 disabilities; provided, however, that of the total amount of
14 all State contracts awarded to businesses owned by minorities,
15 women, and persons with disabilities pursuant to this Section,
16 contracts representing at least 16% shall be awarded to
17 businesses owned by minorities, contracts representing at
18 least 10% shall be awarded to women-owned businesses, and
19 contracts representing at least 4% shall be awarded to
20 businesses owned by persons with disabilities.

21 (a-5) In addition to the aspirational goals in awarding
22 State contracts set under subsection (a), the Commission shall
23 by rule further establish targeted efforts to encourage the
24 participation of businesses owned by minorities, women, and
25 persons with disabilities on State contracts. Such efforts

1 shall include, but not be limited to, further concerted
2 outreach efforts to businesses owned by minorities, women, and
3 persons with disabilities.

4 The above percentage relates to the total dollar amount of
5 State contracts during each State fiscal year, calculated by
6 examining independently each type of contract for each agency
7 or public institutions of higher education which lets such
8 contracts. Only that percentage of arrangements which
9 represents the participation of businesses owned by
10 minorities, women, and persons with disabilities on such
11 contracts shall be included. State contracts subject to the
12 requirements of this Act shall include the requirement that
13 only expenditures to businesses owned by minorities, women,
14 and persons with disabilities that perform a commercially
15 useful function may be counted toward the goals set forth by
16 this Act. Contracts shall include a definition of
17 "commercially useful function" that is consistent with 49 CFR
18 26.55(c).

19 (b) Not less than 20% of the total dollar amount of State
20 construction contracts is established as an aspirational goal
21 to be awarded to businesses owned by minorities, women, and
22 persons with disabilities; provided that, contracts
23 representing at least 11% of the total dollar amount of State
24 construction contracts shall be awarded to businesses owned by
25 minorities; contracts representing at least 7% of the total
26 dollar amount of State construction contracts shall be awarded

1 to women-owned businesses; and contracts representing at least
2 2% of the total dollar amount of State construction contracts
3 shall be awarded to businesses owned by persons with
4 disabilities.

5 (c) (Blank).

6 (c-5) All goals established under this Section shall be
7 contingent upon the results of the most recent disparity study
8 conducted by the State.

9 (d) Within one year after April 28, 2009 (the effective
10 date of Public Act 96-8), the Department of Central Management
11 Services shall conduct a social scientific study that measures
12 the impact of discrimination on minority and women business
13 development in Illinois. Within 18 months after April 28, 2009
14 (the effective date of Public Act 96-8), the Department shall
15 issue a report of its findings and any recommendations on
16 whether to adjust the goals for minority and women
17 participation established in this Act. Copies of this report
18 and the social scientific study shall be filed with the
19 Governor and the General Assembly.

20 By December 1, 2020, the Department of Central Management
21 Services shall conduct a new social scientific study that
22 measures the impact of discrimination on minority and women
23 business development in Illinois. By June 1, 2022, the
24 Department shall issue a report of its findings and any
25 recommendations on whether to adjust the goals for minority
26 and women participation established in this Act. Copies of

1 this report and the social scientific study shall be filed
2 with the Governor and the General Assembly. By December 1,
3 2022, the Commission on Equity and Inclusion Business
4 Enterprise Program shall develop a model for social scientific
5 disparity study sourcing for local governmental units to adapt
6 and implement to address regional disparities in public
7 procurement.

8 (e) All State contract solicitations that include Business
9 Enterprise Program participation goals shall require bidders
10 or offerors to include utilization plans. Utilization plans
11 are due at the time of bid or offer submission. Failure to
12 complete and include a utilization plan, including
13 documentation demonstrating good faith efforts when requesting
14 a waiver, shall render the bid or offer non-responsive.

15 Except as permitted under this Act or as otherwise
16 mandated by federal regulation, those who submit bids or
17 proposals for State contracts, whose bids or proposals are
18 successful and include a completed utilization plan with an
19 established goal, but fail to meet the goals set forth in the
20 solicitation, shall be notified of the deficiency by the
21 contracting agency or public institution of higher education
22 allowing the cure and shall be afforded a period not to exceed
23 10 calendar days from the date of notification to cure that
24 deficiency in the bid or proposal. The deficiency in the bid or
25 proposal may only be cured by contracting with additional
26 subcontractors who are certified by the Business Enterprise

1 Program, or by increasing the work to be performed by
2 previously identified vendors certified by the Business
3 Enterprise Program.

4 Deficiencies that may be cured include: (i) obvious
5 mistakes, such as transposed numbers; (ii) correct information
6 submitted in the wrong form or format; (iii) failure to use or
7 adequately document all good faith effort actions identified
8 in the utilization plan or instructions; or (iv) proposing a
9 firm whose certification has lapsed or whose certification is
10 not yet recognized by the Business Enterprise Program. Cure is
11 not authorized if the bidder or offeror submits a blank
12 utilization plan, a utilization plan that shows lack of
13 reasonable effort to complete the form on time, or a
14 utilization plan that states the contract will be
15 self-performed, by a non-certified vendor, without showing
16 good faith effort and request for waiver. All cure activity
17 shall address the deficiencies identified by the procuring
18 agency and shall require clear documentation, including that
19 of good faith efforts, to address those deficiencies. Any
20 increase in cost to a contract for the addition of a
21 subcontractor to cure a bid's deficiency shall not affect the
22 bid price, shall not be used in the request for an exemption
23 under this Act, and in no case shall an identified
24 subcontractor with a Business Enterprise Program certification
25 made under this Act be terminated from the contract without
26 the written consent of the State agency or public institution

1 of higher education entering into the contract. The procuring
2 agency or public institution of higher education shall make
3 the determination whether the cure is adequate.

4 ~~Except as permitted under this Act or as otherwise~~
5 ~~mandated by federal law or regulation, in response those who~~
6 ~~submit bids or proposals for State contracts subject to the~~
7 ~~provisions of this Act, whose bids or proposals are successful~~
8 ~~but include a utilization plan that fails to demonstrate good~~
9 ~~faith efforts to meet the goals set forth in the solicitation~~
10 ~~of that deficiency and may allow the bidder or offeror a period~~
11 ~~not to exceed 10 calendar days from the date of notification to~~
12 ~~cure that deficiency in the bid or proposal. The deficiency in~~
13 ~~the bid or proposal may only be cured by contracting with~~
14 ~~additional subcontractors who are certified by the Business~~
15 ~~Enterprise Program at the time of bid submission. Any increase~~
16 ~~in cost to a contract for the addition of a subcontractor to~~
17 ~~cure a bid's deficiency or to ensure diversity participation~~
18 ~~on the contract shall not affect the bid price, shall not be~~
19 ~~used in the request for an exemption in this Act, and in no~~
20 ~~case shall an identified subcontractor with a certification~~
21 ~~made pursuant to this Act be terminated from the contract~~
22 ~~without the written consent of the State agency or public~~
23 ~~institution of higher education entering into the contract.~~
24 ~~Submission of a blank utilization plan renders a bid or offer~~
25 ~~non-responsive and is not curable. The Commission on Equity~~
26 ~~and Inclusion shall be notified of all bids or offers that fail~~

1 ~~to include a utilization plan or that include a utilization~~
2 ~~plan with deficiencies.~~

3 (f) (Blank).

4 (g) (Blank).

5 (h) State agencies and public institutions of higher
6 education shall notify the Commission on Equity and Inclusion
7 of all non-responsive bids or proposals for State contracts.

8 (Source: P.A. 101-170, eff. 1-1-20; 101-601, eff. 1-1-20;
9 101-657, Article 1, Section 1-5, eff. 1-1-22; 101-657, Article
10 40, Section 40-130, eff. 1-1-22; 102-29, eff. 6-25-21;
11 102-558, eff. 8-20-21.)

12 (30 ILCS 575/5) (from Ch. 127, par. 132.605)

13 (Section scheduled to be repealed on June 30, 2024)

14 Sec. 5. Business Enterprise Council.

15 (1) To help implement, monitor, and enforce the goals of
16 this Act, there is created the Business Enterprise Council for
17 Minorities, Women, and Persons with Disabilities, hereinafter
18 referred to as the Council, composed of the Chairperson of the
19 Commission on Equity and Inclusion, the Secretary of Human
20 Services and the Directors of the Department of Human Rights,
21 the Department of Commerce and Economic Opportunity, the
22 Department of Central Management Services, the Department of
23 Transportation and the Capital Development Board, or their
24 duly appointed representatives, with the Comptroller, or his
25 or her designee, serving as an advisory member of the Council.

1 Ten individuals representing businesses that are
2 minority-owned, women-owned, or owned by persons with
3 disabilities, 2 individuals representing the business
4 community, and a representative of public institutions of
5 higher education shall be appointed by the Governor. These
6 members shall serve 2-year terms and shall be eligible for
7 reappointment. Any vacancy occurring on the Council shall also
8 be filled by the Governor. Any member appointed to fill a
9 vacancy occurring prior to the expiration of the term for
10 which his or her predecessor was appointed shall be appointed
11 for the remainder of such term. Members of the Council shall
12 serve without compensation but shall be reimbursed for any
13 ordinary and necessary expenses incurred in the performance of
14 their duties.

15 The Chairperson of the Commission shall serve as the
16 Council chairperson and shall select, subject to approval of
17 the Council, a Secretary responsible for the operation of the
18 program who shall serve as the Division Manager of the
19 Business Enterprise for Minorities, Women, and Persons with
20 Disabilities Division of the Commission on Equity and
21 Inclusion.

22 The Director of each State agency and the chief executive
23 officer of each public institution of higher education shall
24 appoint a liaison to the Council. The liaison shall be
25 responsible for submitting to the Council any reports and
26 documents necessary under this Act.

1 (2) The Council's authority and responsibility shall be
2 to:

3 (a) Devise a certification procedure to assure that
4 businesses taking advantage of this Act are legitimately
5 classified as businesses owned by minorities, women, or
6 persons with disabilities and a registration procedure to
7 recognize, without additional evidence of Business
8 Enterprise Program eligibility, the certification of
9 businesses owned by minorities, women, or persons with
10 disabilities certified by the City of Chicago, Cook
11 County, or other jurisdictional programs with requirements
12 and procedures equaling or exceeding those in this Act.

13 (b) Maintain a list of all businesses legitimately
14 classified as businesses owned by minorities, women, or
15 persons with disabilities to provide to State agencies and
16 public institutions of higher education.

17 (c) Review rules and regulations for the
18 implementation of the program for businesses owned by
19 minorities, women, and persons with disabilities.

20 (d) Review compliance plans submitted by each State
21 agency and public institution of higher education pursuant
22 to this Act.

23 (e) Make annual reports as provided in Section 8f to
24 the Governor and the General Assembly on the status of the
25 program.

26 (f) Serve as a central clearinghouse for information

1 on State contracts, including the maintenance of a list of
2 all pending State contracts upon which businesses owned by
3 minorities, women, and persons with disabilities may bid.
4 At the Council's discretion, maintenance of the list may
5 include 24-hour electronic access to the list along with
6 the bid and application information.

7 (g) Establish a toll-free telephone number to
8 facilitate information requests concerning the
9 certification process and pending contracts.

10 (h) Adopt a procedure to grant automatic certification
11 to businesses holding a certification from at least one of
12 the following entities: (i) the Illinois Unified
13 Certification Program; (ii) the Women's Business
14 Development Center in Chicago; (iii) the Chicago Minority
15 Supplier Development Council; or (iv) any other similar
16 entity offering such certification to businesses.

17 (i) Develop and maintain a repository for
18 non-certified vendors that: (i) have applied for
19 certification and have been denied; (ii) have started, but
20 not completed, the certification process; (iii) have
21 achieved certification, but did not seek renewal; or (iv)
22 are known businesses owned by minorities, women, or
23 persons with disabilities.

24 (3) No premium bond rate of a surety company for a bond
25 required of a business owned by a minority, woman, or person
26 with a disability bidding for a State contract shall be higher

1 than the lowest rate charged by that surety company for a
2 similar bond in the same classification of work that would be
3 written for a business not owned by a minority, woman, or
4 person with a disability.

5 (4) Any Council member who has direct financial or
6 personal interest in any measure pending before the Council
7 shall disclose this fact to the Council and refrain from
8 participating in the determination upon such measure.

9 (5) The Secretary shall have the following duties and
10 responsibilities:

11 (a) To be responsible for the day-to-day operation of
12 the Council.

13 (b) To serve as a coordinator for all of the State's
14 programs for businesses owned by minorities, women, and
15 persons with disabilities and as the information and
16 referral center for all State initiatives for businesses
17 owned by minorities, women, and persons with disabilities.

18 (c) To establish an enforcement procedure whereby the
19 Council may recommend to the appropriate State legal
20 officer that the State exercise its legal remedies which
21 shall include (1) termination of the contract involved,
22 (2) prohibition of participation by the respondent in
23 public contracts for a period not to exceed 3 years, (3)
24 imposition of a penalty not to exceed any profit acquired
25 as a result of violation, or (4) any combination thereof.
26 Such procedures shall require prior approval by Council.

1 All funds collected as penalties under this subsection
2 shall be used exclusively for maintenance and further
3 development of the Business Enterprise Program and
4 encouragement of participation in State procurement by
5 minorities, women, and persons with disabilities.

6 (d) To devise appropriate policies, regulations, and
7 procedures for including participation by businesses owned
8 by minorities, women, and persons with disabilities as
9 prime contractors, including, but not limited to: (i)
10 encouraging the inclusions of qualified businesses owned
11 by minorities, women, and persons with disabilities on
12 solicitation lists, (ii) investigating the potential of
13 blanket bonding programs for small construction jobs, and
14 (iii) investigating and making recommendations concerning
15 the use of the sheltered market process.

16 (e) To devise procedures for the waiver of the
17 participation goals in appropriate circumstances.

18 (f) To accept donations and, with the approval of the
19 Council or the Chairperson of the Commission on Equity and
20 Inclusion, grants related to the purposes of this Act; to
21 conduct seminars related to the purpose of this Act and to
22 charge reasonable registration fees; and to sell
23 directories, vendor lists, and other such information to
24 interested parties, except that forms necessary to become
25 eligible for the program shall be provided free of charge
26 to a business or individual applying for the Business

1 Enterprise Program.

2 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;

3 102-29, eff. 6-25-21; 102-558, eff. 8-20-21.)