



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB6237

by Rep. Greg Harris

#### SYNOPSIS AS INTRODUCED:

30 ILCS 500/1-10  
30 ILCS 500/45-35

Amends the Illinois Procurement Code. In a Section concerning facilities for persons with severe disabilities, provides that a participating not-for-profit agency must disclose to the committee any ownership interests, operating agreements, partnerships, or other relationships that exist between the not-for-profit agency and its related for profit owners, subsidiaries, partners, or affiliates. Sets forth requirements concerning the information provided in the disclosure. Makes corresponding changes in the Section concerning application of the Code. Effective immediately.

LRB097 23220 KMW 72078 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 Sections 1-10 and 45-35 as follows:

6 (30 ILCS 500/1-10)

7 Sec. 1-10. Application.

8 (a) This Code applies only to procurements for which  
9 contractors were first solicited on or after July 1, 1998. This  
10 Code shall not be construed to affect or impair any contract,  
11 or any provision of a contract, entered into based on a  
12 solicitation prior to the implementation date of this Code as  
13 described in Article 99, including but not limited to any  
14 covenant entered into with respect to any revenue bonds or  
15 similar instruments. All procurements for which contracts are  
16 solicited between the effective date of Articles 50 and 99 and  
17 July 1, 1998 shall be substantially in accordance with this  
18 Code and its intent.

19 (b) This Code shall apply regardless of the source of the  
20 funds with which the contracts are paid, including federal  
21 assistance moneys. This Code shall not apply to:

22 (1) Contracts between the State and its political  
23 subdivisions or other governments, or between State

1 governmental bodies except as specifically provided in  
2 this Code.

3 (2) Grants, except that: (i) all grants are subject to  
4 for the filing requirements of Section 20-80; and (ii) if a  
5 not-for-profit agency receives grants that would be exempt  
6 from this Code under this paragraph (2), then the  
7 not-for-profit agency must also disclose to the committee  
8 any ownership interests, operating agreements,  
9 partnerships, or other relationships that exist between  
10 the not-for-profit agency and its related for-profit  
11 owners, subsidiaries, partners, or affiliates. This  
12 disclosure shall at a minimum include business  
13 identification of the for-profit entity, a list of the  
14 services provided to the not-for-profit agency under the  
15 terms of the relationship, and whether more than 50% of the  
16 not-for-profit provider's management is delivered from the  
17 relationship.

18 (3) Purchase of care. However, if a not-for-profit  
19 agency provides services that would be exempt from this  
20 Code under this paragraph (3), then the not-for-profit  
21 agency must disclose to the committee any ownership  
22 interests, operating agreements, partnerships, or other  
23 relationships that exist between the not-for-profit agency  
24 and its related for-profit owners, subsidiaries, partners,  
25 or affiliates. This disclosure shall at a minimum include  
26 business identification of the for-profit entity, a list of

1       the services provided to the not-for-profit agency under  
2       the terms of the relationship, and whether more than 50% of  
3       the not-for-profit provider's management is delivered from  
4       the relationship.

5           (4) Hiring of an individual as employee and not as an  
6       independent contractor, whether pursuant to an employment  
7       code or policy or by contract directly with that  
8       individual.

9           (5) Collective bargaining contracts.

10          (6) Purchase of real estate, except that notice of this  
11       type of contract with a value of more than \$25,000 must be  
12       published in the Procurement Bulletin within 7 days after  
13       the deed is recorded in the county of jurisdiction. The  
14       notice shall identify the real estate purchased, the names  
15       of all parties to the contract, the value of the contract,  
16       and the effective date of the contract.

17          (7) Contracts necessary to prepare for anticipated  
18       litigation, enforcement actions, or investigations,  
19       provided that the chief legal counsel to the Governor shall  
20       give his or her prior approval when the procuring agency is  
21       one subject to the jurisdiction of the Governor, and  
22       provided that the chief legal counsel of any other  
23       procuring entity subject to this Code shall give his or her  
24       prior approval when the procuring entity is not one subject  
25       to the jurisdiction of the Governor.

26          (8) Contracts for services to Northern Illinois

1 University by a person, acting as an independent  
2 contractor, who is qualified by education, experience, and  
3 technical ability and is selected by negotiation for the  
4 purpose of providing non-credit educational service  
5 activities or products by means of specialized programs  
6 offered by the university.

7 (9) Procurement expenditures by the Illinois  
8 Conservation Foundation when only private funds are used.

9 (10) Procurement expenditures by the Illinois Health  
10 Information Exchange Authority involving private funds  
11 from the Health Information Exchange Fund. "Private funds"  
12 means gifts, donations, and private grants.

13 (11) Public-private agreements entered into according  
14 to the procurement requirements of Section 20 of the  
15 Public-Private Partnerships for Transportation Act and  
16 design-build agreements entered into according to the  
17 procurement requirements of Section 25 of the  
18 Public-Private Partnerships for Transportation Act.

19 (c) This Code does not apply to the electric power  
20 procurement process provided for under Section 1-75 of the  
21 Illinois Power Agency Act and Section 16-111.5 of the Public  
22 Utilities Act.

23 (d) Except for Section 20-160 and Article 50 of this Code,  
24 and as expressly required by Section 9.1 of the Illinois  
25 Lottery Law, the provisions of this Code do not apply to the  
26 procurement process provided for under Section 9.1 of the

1 Illinois Lottery Law.

2 (e) This Code does not apply to the process used by the  
3 Capital Development Board to retain a person or entity to  
4 assist the Capital Development Board with its duties related to  
5 the determination of costs of a clean coal SNG brownfield  
6 facility, as defined by Section 1-10 of the Illinois Power  
7 Agency Act, as required in subsection (h-3) of Section 9-220 of  
8 the Public Utilities Act, including calculating the range of  
9 capital costs, the range of operating and maintenance costs, or  
10 the sequestration costs or monitoring the construction of clean  
11 coal SNG brownfield facility for the full duration of  
12 construction.

13 (f) This Code does not apply to the process used by the  
14 Illinois Power Agency to retain a mediator to mediate sourcing  
15 agreement disputes between gas utilities and the clean coal SNG  
16 brownfield facility, as defined in Section 1-10 of the Illinois  
17 Power Agency Act, as required under subsection (h-1) of Section  
18 9-220 of the Public Utilities Act.

19 (g) This Code does not apply to the processes used by the  
20 Illinois Power Agency to retain a mediator to mediate contract  
21 disputes between gas utilities and the clean coal SNG facility  
22 and to retain an expert to assist in the review of contracts  
23 under subsection (h) of Section 9-220 of the Public Utilities  
24 Act. This Code does not apply to the process used by the  
25 Illinois Commerce Commission to retain an expert to assist in  
26 determining the actual incurred costs of the clean coal SNG

1 facility and the reasonableness of those costs as required  
2 under subsection (h) of Section 9-220 of the Public Utilities  
3 Act.

4 (h) This Code does not apply to the process to procure or  
5 contracts entered into in accordance with Sections 11-5.2 and  
6 11-5.3 of the Illinois Public Aid Code.

7 (i) ~~(h)~~ Each chief procurement officer may access records  
8 necessary to review whether a contract, purchase, or other  
9 expenditure is or is not subject to the provisions of this  
10 Code, unless such records would be subject to attorney-client  
11 privilege.

12 (Source: P.A. 96-840, eff. 12-23-09; 96-1331, eff. 7-27-10;  
13 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-502, eff. 8-23-11;  
14 97-689, eff. 6-14-12; 97-813, eff. 7-13-12; 97-895, eff.  
15 8-3-12; revised 8-23-12.)

16 (30 ILCS 500/45-35)

17 Sec. 45-35. Facilities for persons with severe  
18 disabilities.

19 (a) Qualification. Supplies and services may be procured  
20 without advertising or calling for bids from any qualified  
21 not-for-profit agency for persons with severe disabilities  
22 that:

23 (1) complies with Illinois laws governing private  
24 not-for-profit organizations;

25 (2) is certified as a sheltered workshop by the Wage

1 and Hour Division of the United States Department of Labor  
2 or is an accredited vocational program that provides  
3 transition services to youth between the ages of 14 1/2 and  
4 22 in accordance with individualized education plans under  
5 Section 14-8.03 of the School Code and that provides  
6 residential services at a child care institution, as  
7 defined under Section 2.06 of the Child Care Act of 1969,  
8 or at a group home, as defined under Section 2.16 of the  
9 Child Care Act of 1969; and

10 (3) meets the applicable Illinois Department of Human  
11 Services just standards.

12 (b) Participation. To participate, the not-for-profit  
13 agency must have indicated an interest in providing the  
14 supplies and services, must meet the specifications and needs  
15 of the using agency, and must set a fair market price. The  
16 not-for-profit agency must also disclose to the committee any  
17 ownership interests, operating agreements, partnerships, or  
18 other relationships that exist between the not-for-profit  
19 agency and its related for-profit owners, subsidiaries,  
20 partners, or affiliates. This disclosure shall at a minimum  
21 include business identification of the for-profit entity, a  
22 list of the services provided to the not-for-profit agency  
23 under the terms of the relationship, and whether more than 50%  
24 of the not-for-profit provider's management is delivered from  
25 the relationship.

26 (c) Committee. There is created within the Department of



1 Central Management Services a committee to facilitate the  
2 purchase of products and services of persons so severely  
3 disabled by a physical, developmental, or mental disability or  
4 a combination of any of those disabilities that they cannot  
5 engage in normal competitive employment. This committee is  
6 called the State Use Committee. The committee shall consist of  
7 the Director of the Department of Central Management Services  
8 or his or her designee, the Director of the Department of Human  
9 Services or his or her designee, one public member representing  
10 private business who is knowledgeable of the employment needs  
11 and concerns of persons with developmental disabilities, one  
12 public member representing private business who is  
13 knowledgeable of the needs and concerns of rehabilitation  
14 facilities, one public member who is knowledgeable of the  
15 employment needs and concerns of persons with developmental  
16 disabilities, one public member who is knowledgeable of the  
17 needs and concerns of rehabilitation facilities, and 2 public  
18 members from a statewide association that represents  
19 community-based rehabilitation facilities, all appointed by  
20 the Governor. The public members shall serve 2 year terms,  
21 commencing upon appointment and every 2 years thereafter. A  
22 public member may be reappointed, and vacancies shall be filled  
23 by appointment for the completion of the term. In the event  
24 there is a vacancy on the Committee, the Governor must make an  
25 appointment to fill that vacancy within 30 calendar days after  
26 the notice of vacancy. The members shall serve without

1 compensation but shall be reimbursed for expenses at a rate  
2 equal to that of State employees on a per diem basis by the  
3 Department of Central Management Services. All members shall be  
4 entitled to vote on issues before the committee.

5 The committee shall have the following powers and duties:

6 (1) To request from any State agency information as to  
7 product specification and service requirements in order to  
8 carry out its purpose.

9 (2) To meet quarterly or more often as necessary to  
10 carry out its purposes.

11 (3) To request a quarterly report from each  
12 participating qualified not-for-profit agency for persons  
13 with severe disabilities describing the volume of sales for  
14 each product or service sold under this Section.

15 (4) To prepare a report for the Governor annually.

16 (5) To prepare a publication that lists all supplies  
17 and services currently available from any qualified  
18 not-for-profit agency for persons with severe  
19 disabilities. This list and any revisions shall be  
20 distributed to all purchasing agencies.

21 (6) To encourage diversity in supplies and services  
22 provided by qualified not-for-profit agencies for persons  
23 with severe disabilities and discourage unnecessary  
24 duplication or competition among facilities.

25 (7) To develop guidelines to be followed by qualifying  
26 agencies for participation under the provisions of this

1 Section. The guidelines shall be developed within 6 months  
2 after the effective date of this Code and made available on  
3 a nondiscriminatory basis to all qualifying agencies.

4 (8) To review all bids submitted under the provisions  
5 of this Section and reject any bid for any purchase that is  
6 determined to be substantially more than the purchase would  
7 have cost had it been competitively bid.

8 (9) To develop a 5-year plan for increasing the number  
9 of products and services purchased from qualified  
10 not-for-profit agencies for persons with severe  
11 disabilities, including the feasibility of developing  
12 mandatory set-aside contracts. This 5-year plan must be  
13 developed no later than 180 calendar days after the  
14 effective date of this amendatory Act of the 96th General  
15 Assembly.

16 (c-5) Conditions for Use. Each chief procurement officer  
17 shall, in consultation with the State Use Committee, determine  
18 which articles, materials, services, food stuffs, and supplies  
19 that are produced, manufactured, or provided by persons with  
20 severe disabilities in qualified not-for-profit agencies shall  
21 be given preference by purchasing agencies procuring those  
22 items.

23 (d) Former committee. The committee created under  
24 subsection (c) shall replace the committee created under  
25 Section 7-2 of the Illinois Purchasing Act, which shall  
26 continue to operate until the appointments under subsection (c)

1 are made.

2 (Source: P.A. 96-634, eff. 8-24-09; 97-895, eff. 8-3-12.)

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.