



Rep. Linda Chapa LaVia

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1 AMENDMENT TO SENATE BILL 1270

2 AMENDMENT NO. _____. Amend Senate Bill 1270 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Procurement Code is amended by
5 changing Section 45-57 as follows:

6 (30 ILCS 500/45-57)

7 Sec. 45-57. Veterans ~~Disabled veterans~~.

8 (a) Set-aside goal. It is the goal of the State to promote
9 and encourage the continued economic development of small
10 businesses owned and controlled by qualified ~~service-disabled~~
11 veterans and that qualified service-disabled ~~service-disabled~~
12 veteran-owned small businesses (referred to as SDVOSB ~~SDVOB~~)
13 and veteran-owned small businesses (referred to as VOSB)
14 participate in the State's procurement process as both prime
15 contractors and subcontractors. Not less than 3% of the total
16 dollar amount of State contracts, as defined by the Director of

1 Central Management Services, shall be established as a goal to
2 be awarded to SDVOSB and VOSB. A Task Force shall be
3 ~~established, appointed by the Directors or Secretaries of, and~~
4 ~~made up of representatives of, the Illinois Department of~~
5 ~~Veterans' Affairs, the Illinois Department of Transportation,~~
6 ~~the Department of Central Management Services, the Business~~
7 ~~Enterprise Program, and the Business Enterprise Council. The~~
8 ~~Department of Central Management Services shall provide~~
9 ~~administrative support to the Task Force. The purpose of this~~
10 ~~Task Force shall be to determine the appropriate percentage~~
11 ~~goal for award each fiscal year of the State's total~~
12 ~~expenditures for contracts awarded under this Code to SDVOB.~~
13 That portion of a contract under which the contractor
14 subcontracts with a SDVOSB or VOSB ~~SDVOB~~ may be counted toward
15 the goal of this subsection. The Department of Central
16 Management Services shall adopt rules to implement compliance
17 with this subsection by all State agencies. ~~In making that~~
18 ~~determination the Task Force shall consult with statewide~~
19 ~~veterans' service organizations and the business community,~~
20 ~~including businesses owned by qualified disabled veterans. The~~
21 ~~Task Force shall submit its report to the General Assembly~~
22 ~~concerning its recommendations regarding the appropriate~~
23 ~~percentage goal for award each fiscal year of the State's total~~
24 ~~expenditures for contracts awarded under this Code to qualified~~
25 ~~service disabled veterans no later than 90 days after the~~
26 ~~effective date of this amendatory Act of the 96th General~~

1 ~~Assembly.~~

2 (b) Fiscal year reports. By ~~Once the appropriate goal is~~
3 ~~established, then by~~ each September 1, each chief procurement
4 officer shall report to the Department of Central Management
5 Services on all of the following for the immediately preceding
6 fiscal year, and by each October 1 the Department of Central
7 Management Services shall compile and report that information
8 to the General Assembly:

9 (1) The total number of VOSB, and the number of SDVOSB,
10 ~~SDVOB~~ who submitted bids ~~a bid~~ for contracts ~~a contract~~
11 under this Code.

12 (2) The total number of VOSB, and the number of SDVOSB,
13 ~~SDVOB~~ who entered into contracts with the State under this
14 Code and the total value of those contracts.

15 (c) Yearly review and recommendations. Each year, each
16 chief procurement officer shall review the progress of all
17 State agencies under its jurisdiction in meeting the goal
18 described in subsection (a), with input from statewide
19 veterans' service organizations and from the business
20 community, including businesses owned by qualified ~~disabled~~
21 veterans, and shall make recommendations to be included in the
22 Department of Central Management Services' report to the
23 General Assembly regarding continuation, increases, or
24 decreases of the percentage goal. The recommendations shall be
25 based upon the number of businesses that are owned by qualified
26 ~~disabled~~ veterans and on the continued need to encourage and

1 promote businesses owned by qualified ~~disabled~~ veterans.

2 (d) Governor's recommendations. To assist the State in
3 reaching the goal described in subsection (a), the Governor
4 shall recommend to the General Assembly changes in programs to
5 assist businesses owned by qualified ~~disabled~~ veterans.

6 (e) Definitions. As used in this Section:

7 "Armed forces of the United States" means the United States
8 Army, Navy, Air Force, Marine Corps, Coast Guard, or service in
9 active duty as defined under 38 U.S.C. Section 101. Service in
10 the Merchant Marine that constitutes active duty under Section
11 401 of federal Public Act 95-202 shall also be considered
12 service in the armed forces for purposes of this Section.

13 ~~"Business" means a business that has average annual gross~~
14 ~~sales over the 3 most recent calendar years of less than~~
15 ~~\$31,000,000 as evidenced by the federal income tax returns of~~
16 ~~the business.~~

17 "Certification" means a determination made by the Illinois
18 Department of Veterans' Affairs and the Department of Central
19 Management Services that a business entity is a qualified
20 service-disabled veteran-owned small business or a qualified
21 veteran-owned small business for whatever purpose. A SDVOSB or
22 VOSB owned and controlled by females, minorities, or persons
23 with disabilities, as those terms are defined in Section 2 of
24 the Business Enterprise for Minorities, Females, and Persons
25 with Disabilities Act, shall select and designate whether that
26 business is to be certified as a "female-owned business",

1 "minority-owned business", or "business owned by a person with
2 a disability", as defined in Section 2 of the Business
3 Enterprise for Minorities, Females, and Persons with
4 Disabilities Act, or as a qualified SDVOSB or qualified VOSB
5 under this Section.

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

22 "Qualified service-disabled ~~service-disabled~~ veteran"
23 means a veteran who has been found to have 10% or more a
24 service-connected disability by the United States Department
25 of Veterans Affairs or the United States Department of Defense.

26 "Qualified service-disabled veteran-owned small business"

1 or "SDVOSB" means a small business (i) that is at least 51%
2 owned by one or more qualified service-disabled veterans living
3 in Illinois or, in the case of a corporation, at least 51% of
4 the stock of which is owned by one or more qualified
5 service-disabled veterans living in Illinois; (ii) that has its
6 home office in Illinois; and (iii) for which items (i) and (ii)
7 are factually verified annually by the Department of Central
8 Management Services.

9 "Qualified veteran-owned small business" or "VOSB" means a
10 small business (i) that is at least 51% owned by one or more
11 qualified veterans living in Illinois or, in the case of a
12 corporation, at least 51% of the stock of which is owned by one
13 or more qualified veterans living in Illinois; (ii) that has
14 its home office in Illinois; and (iii) for which items (i) and
15 (ii) are factually verified annually by the Department of
16 Central Management Services.

17 ~~"Qualified disabled veteran owned business" means a~~
18 ~~business entity that is at least 51% owned by one or more~~
19 ~~qualified disabled veterans, or in the case of a corporation,~~
20 ~~at least 51% of the stock of which is owned by one or more~~
21 ~~qualified disabled veterans; and the management and daily~~
22 ~~business operations of which are controlled by one or more of~~
23 ~~the qualified disabled veterans who own it.~~

24 "Service-connected disability" means a disability incurred
25 in the line of duty in the active military, naval, or air
26 service as described in 38 U.S.C. 101(16).

1 "Small business" means a business that has annual gross
2 sales of less than \$75,000,000 as evidenced by the federal
3 income tax return of the business. A firm with gross sales in
4 excess of this cap may apply to the Department of Central
5 Management Services for certification for a particular
6 contract if the firm can demonstrate that the contract would
7 have significant impact on SDVOSB or VOSB as suppliers or
8 subcontractors or in employment of veterans or
9 service-disabled veterans.

10 "State agency" has the same meaning as in Section 2 of the
11 Business Enterprise for Minorities, Females, and Persons with
12 Disabilities Act.

13 "Time of hostilities with a foreign country" means any
14 period of time in the past, present, or future during which a
15 declaration of war by the United States Congress has been or is
16 in effect or during which an emergency condition has been or is
17 in effect that is recognized by the issuance of a Presidential
18 proclamation or a Presidential executive order and in which the
19 armed forces expeditionary medal or other campaign service
20 medals are awarded according to Presidential executive order.

21 "Veteran" means a person who (i) has been a member of the
22 armed forces of the United States or, while a citizen of the
23 United States, was a member of the armed forces of allies of
24 the United States in time of hostilities with a foreign country
25 and (ii) has served under one or more of the following
26 conditions: (a) the veteran served a total of at least 6

1 months; (b) the veteran served for the duration of hostilities
2 regardless of the length of the engagement; (c) the veteran was
3 discharged on the basis of hardship; or (d) the veteran was
4 released from active duty because of a service connected
5 disability and was discharged under honorable conditions.
6 ~~served in the active military, naval, or air service and who~~
7 ~~was discharged or released from his or her service under~~
8 ~~conditions other than dishonorable.~~

9 (f) Certification program. The Illinois Department of
10 Veterans' Affairs and the Department of Central Management
11 Services ~~Business Enterprise Program~~ shall work together to
12 devise a certification procedure to assure that businesses
13 taking advantage of this Section ~~Act~~ are legitimately
14 classified as qualified service-disabled ~~service disabled~~
15 veteran-owned small businesses or qualified veteran-owned
16 small businesses.

17 (g) Penalties.

18 (1) Administrative penalties. The Department of
19 Central Management Services shall suspend any person who
20 commits a violation of Section 17-10.3 or subsection (d) of
21 Section 33E-6 of the Criminal Code of 1961 relating to this
22 Section from bidding on, or participating as a contractor,
23 subcontractor, or supplier in, any State contract or
24 project for a period of not less than 3 years, and, if the
25 person is certified as a service-disabled veteran-owned
26 small business or a veteran-owned small business, then the

1 Department shall revoke the business's certification for a
2 period of not less than 3 years. An additional or
3 subsequent violation shall extend the periods of
4 suspension and revocation for a period of not less than 5
5 years. The suspension and revocation shall apply to the
6 principals of the business and any subsequent business
7 formed or financed by, or affiliated with, those
8 principals.

9 (2) Reports of violations. Each State agency shall
10 report any alleged violation of Section 17-10.3 or
11 subsection (d) of Section 33E-6 of the Criminal Code of
12 1961 relating to this Section to the Department of Central
13 Management Services. The Department of Central Management
14 Services shall subsequently report all such alleged
15 violations to the Attorney General, who shall determine
16 whether to bring a civil action against any person for the
17 violation.

18 (3) List of suspended persons. The Department of
19 Central Management Services shall monitor the status of all
20 reported violations of Section 17-10.3 or subsection (d) of
21 Section 33E-6 of the Criminal Code of 1961 relating to this
22 Section and shall maintain and make available to all State
23 agencies a central listing of all persons that committed
24 violations resulting in suspension.

25 (4) Use of suspended persons. During the period of a
26 person's suspension under paragraph (1) of this

1 subsection, a State agency shall not enter into any
2 contract with that person or with any contractor using the
3 services of that person as a subcontractor.

4 (5) Duty to check list. Each State agency shall check
5 the central listing provided by the Department of Central
6 Management Services under paragraph (3) of this subsection
7 to verify that a person being awarded a contract by that
8 State agency, or to be used as a subcontractor or supplier
9 on a contract being awarded by that State agency, is not
10 under suspension pursuant to paragraph (1) of this
11 subsection.

12 (Source: P.A. 96-96, eff. 1-1-10.)

13 Section 10. The Criminal Code of 1961 is amended by
14 changing Sections 17-10.3, 33E-2, and 33E-6 as follows:

15 (720 ILCS 5/17-10.3)

16 (This Section may contain text from a Public Act with a
17 delayed effective date)

18 Sec. 17-10.3. Deception relating to certification of
19 disadvantaged business enterprises.

20 (a) Fraudulently obtaining or retaining certification. A
21 person who, in the course of business, fraudulently obtains or
22 retains certification as a minority owned business, ~~or~~ female
23 owned business, service-disabled veteran-owned small business,
24 or veteran-owned small business commits a Class 2 felony.

1 (b) Willfully making a false statement. A person who, in
2 the course of business, willfully makes a false statement
3 whether by affidavit, report or other representation, to an
4 official or employee of a State agency or the Minority and
5 Female Business Enterprise Council for the purpose of
6 influencing the certification or denial of certification of any
7 business entity as a minority owned business, ~~or~~ female owned
8 business, service-disabled veteran-owned small business, or
9 veteran-owned small business commits a Class 2 felony.

10 (c) Willfully obstructing or impeding an official or
11 employee of any agency in his or her investigation. Any person
12 who, in the course of business, willfully obstructs or impedes
13 an official or employee of any State agency or the Minority and
14 Female Business Enterprise Council who is investigating the
15 qualifications of a business entity which has requested
16 certification as a minority owned business, ~~or a~~ female owned
17 business, service-disabled veteran-owned small business, or
18 veteran-owned small business commits a Class 2 felony.

19 (d) Fraudulently obtaining public moneys reserved for
20 disadvantaged business enterprises. Any person who, in the
21 course of business, fraudulently obtains public moneys
22 reserved for, or allocated or available to, minority owned
23 businesses, ~~or~~ female owned businesses, service-disabled
24 veteran-owned small businesses, or veteran-owned small
25 businesses commits a Class 2 felony.

26 (e) Definitions. As used in this Article, "minority owned

1 business", "female owned business", "State agency" with
2 respect to minority owned businesses and female owned
3 businesses, and "certification" with respect to minority owned
4 businesses and female owned businesses shall have the meanings
5 ascribed to them in Section 2 of the Business Enterprise for
6 Minorities, Females, and Persons with Disabilities Act. As used
7 in this Article, "service-disabled veteran-owned small
8 business", "veteran-owned small business", "State agency" with
9 respect to service-disabled veteran-owned small businesses and
10 veteran-owned small businesses, and "certification" with
11 respect to service-disabled veteran-owned small businesses and
12 veteran-owned small businesses have the same meanings as in
13 Section 45-57 of the Illinois Procurement Code.

14 (Source: P.A. 96-1551, eff. 7-1-11.)

15 (720 ILCS 5/33E-2) (from Ch. 38, par. 33E-2)

16 Sec. 33E-2. Definitions. In this Act:

17 (a) "Public contract" means any contract for goods,
18 services or construction let to any person with or without bid
19 by any unit of State or local government.

20 (b) "Unit of State or local government" means the State,
21 any unit of state government or agency thereof, any county or
22 municipal government or committee or agency thereof, or any
23 other entity which is funded by or expends tax dollars or the
24 proceeds of publicly guaranteed bonds.

25 (c) "Change order" means a change in a contract term other

1 than as specifically provided for in the contract which
2 authorizes or necessitates any increase or decrease in the cost
3 of the contract or the time to completion.

4 (d) "Person" means any individual, firm, partnership,
5 corporation, joint venture or other entity, but does not
6 include a unit of State or local government.

7 (e) "Person employed by any unit of State or local
8 government" means any employee of a unit of State or local
9 government and any person defined in subsection (d) who is
10 authorized by such unit of State or local government to act on
11 its behalf in relation to any public contract.

12 (f) "Sheltered market" has the meaning ascribed to it in
13 Section 8b of the Business Enterprise for Minorities, Females,
14 and Persons with Disabilities Act; except that, with respect to
15 State contracts set aside for award to service-disabled
16 veteran-owned small businesses and veteran-owned small
17 businesses pursuant to Section 45-57 of the Illinois
18 Procurement Code, "sheltered market" means procurements
19 pursuant to that Section.

20 (g) "Kickback" means any money, fee, commission, credit,
21 gift, gratuity, thing of value, or compensation of any kind
22 which is provided, directly or indirectly, to any prime
23 contractor, prime contractor employee, subcontractor, or
24 subcontractor employee for the purpose of improperly obtaining
25 or rewarding favorable treatment in connection with a prime
26 contract or in connection with a subcontract relating to a

1 prime contract.

2 (h) "Prime contractor" means any person who has entered
3 into a public contract.

4 (i) "Prime contractor employee" means any officer,
5 partner, employee, or agent of a prime contractor.

6 (i-5) "Stringing" means knowingly structuring a contract
7 or job order to avoid the contract or job order being subject
8 to competitive bidding requirements.

9 (j) "Subcontract" means a contract or contractual action
10 entered into by a prime contractor or subcontractor for the
11 purpose of obtaining goods or services of any kind under a
12 prime contract.

13 (k) "Subcontractor" (1) means any person, other than the
14 prime contractor, who offers to furnish or furnishes any goods
15 or services of any kind under a prime contract or a subcontract
16 entered into in connection with such prime contract; and (2)
17 includes any person who offers to furnish or furnishes goods or
18 services to the prime contractor or a higher tier
19 subcontractor.

20 (l) "Subcontractor employee" means any officer, partner,
21 employee, or agent of a subcontractor.

22 (Source: P.A. 92-16, eff. 6-28-01.)

23 (720 ILCS 5/33E-6) (from Ch. 38, par. 33E-6)

24 Sec. 33E-6. Interference with contract submission and
25 award by public official. (a) Any person who is an official of

1 or employed by any unit of State or local government who
2 knowingly conveys, either directly or indirectly, outside of
3 the publicly available official invitation to bid, pre-bid
4 conference, solicitation for contracts procedure or such
5 procedure used in any sheltered market procurement adopted
6 pursuant to law or ordinance by that unit of government, to any
7 person any information concerning the specifications for such
8 contract or the identity of any particular potential
9 subcontractors, when inclusion of such information concerning
10 the specifications or contractors in the bid or offer would
11 influence the likelihood of acceptance of such bid or offer,
12 commits a Class 4 felony. It shall not constitute a violation
13 of this subsection to convey information intended to clarify
14 plans or specifications regarding a public contract where such
15 disclosure of information is also made generally available to
16 the public.

17 (b) Any person who is an official of or employed by any
18 unit of State or local government who, either directly or
19 indirectly, knowingly informs a bidder or offeror that the bid
20 or offer will be accepted or executed only if specified
21 individuals are included as subcontractors commits a Class 3
22 felony.

23 (c) It shall not constitute a violation of subsection (a)
24 of this Section where any person who is an official of or
25 employed by any unit of State or local government follows
26 procedures established (i) by federal, State or local minority

1 or female owned business enterprise programs or (ii) pursuant
2 to Section 45-57 of the Illinois Procurement Code.

3 (d) Any bidder or offeror who is the recipient of
4 communications from the unit of government which he reasonably
5 believes to be proscribed by subsections (a) or (b), and fails
6 to inform either the Attorney General or the State's Attorney
7 for the county in which the unit of government is located,
8 commits a Class A misdemeanor.

9 (e) Any public official who knowingly awards a contract
10 based on criteria which were not publicly disseminated via the
11 invitation to bid, when such invitation to bid is required by
12 law or ordinance, the pre-bid conference, or any solicitation
13 for contracts procedure or such procedure used in any sheltered
14 market procurement procedure adopted pursuant to statute or
15 ordinance, commits a Class 3 felony.

16 (f) It shall not constitute a violation of subsection (a)
17 for any person who is an official of or employed by any unit of
18 State or local government to provide to any person a copy of
19 the transcript or other summary of any pre-bid conference where
20 such transcript or summary is also made generally available to
21 the public.

22 (Source: P.A. 86-150.)

23 Section 99. Effective date. This Act takes effect July 1,
24 2011."