



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB3880

by Rep. Juliana Stratton

#### SYNOPSIS AS INTRODUCED:

30 ILCS 500/45-85 new

Amends the Illinois Procurement Code. Creates a small and mid-sized business enterprise initiative program. Provides that the program shall apply to construction contracts and contracts for goods and services by the Department of Transportation and Capital Development Board. Establishes a race and gender-neutral program to increase small and mid-sized business participation in those contracts. Allows the applicable chief procurement officer to set aside certain contracts for exclusive participation of small and mid-sized businesses. Sets forth reporting requirements and penalties for violations of the provisions. Allows the Department of Central Management Services to adopt rules to implement the program. Includes severability provisions.

LRB100 10949 MLM 21186 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 adding Section 45-85 as follows:

6 (30 ILCS 500/45-85 new)

7 Sec. 45-85. Small and mid-sized business enterprise  
8 initiative program.

9 (a) As used in this Section,

10 "Construction contract" means a contract, purchase order,  
11 or agreement (other than a lease of real property) for the  
12 construction, repair, or improvement of any building, bridge,  
13 roadway, sidewalk, alley, railroad, or other structure or  
14 infrastructure, awarded by State agency, and whose cost is to  
15 be paid from funds belonging to the State.

16 "Department" means Department of Central Management  
17 Services.

18 "Local business enterprise" means a business entity  
19 located within the State, which has the majority of its  
20 regular, full time work force located within the State.

21 "Program" means the Small and Mid-sized Business  
22 Initiative program established under this Section.

23 "Small and mid-sized business" means a local business

1 enterprise that has gross receipts, averaged over its previous  
2 5 fiscal years, or number of employees, per pay period averaged  
3 over the past 12 months, that do not exceed 1.5 times the size  
4 standards set forth in 13 CFR Part 121.

5 (b) This Section shall apply to construction contracts and  
6 contracts for goods and services by the Department of  
7 Transportation and the Capital Development Board. This Section  
8 supersedes any inconsistent provision of any law or regulation  
9 of the State of Illinois to the extent such inconsistency is  
10 necessary. This Section shall not apply to any contract to the  
11 extent that it is inconsistent with procedures or standards  
12 required by any law or regulation of the United States or the  
13 State of Illinois to the extent the inconsistency is not  
14 permitted. In connection with any contract funded in whole or  
15 in part from State or federal sources, State or federal  
16 standards and regulations shall control to the extent this  
17 Section is inconsistent with such federal or State standards.

18 (c) Unless otherwise prohibited by any federal, State, or  
19 local law, the applicable chief procurement officer shall  
20 establish a race and gender-neutral program to increase small  
21 and mid-sized business participation in construction and other  
22 goods and services contracts. The applicable chief procurement  
23 officer is authorized to identify and offer construction  
24 contract projects for exclusive participation of small and  
25 mid-sized businesses. The estimated costs of such projects  
26 shall not be less than \$3,000,000 nor more than \$10,000,000.

1       (d) To be eligible for the program, a business enterprise  
2 must:

3           (1) be a small or mid-sized local business enterprise;

4           (2) be in business for at least 2 years at the time the  
5 business enterprise claims to be eligible for the program;

6           (3) perform more than 50% of the work on the  
7 construction project with its own work force or  
8 subcontractors that are small or mid-sized local business  
9 enterprises; and

10          (4) be independent, and must not be an affiliate or  
11 subsidiary of any other business enterprise. For purposes  
12 of this subsection (d), the applicable chief procurement  
13 officer shall have the sole authority to determine the  
14 independence of a business enterprise.

15       (e) Minority owned business enterprises and women owned  
16 business enterprises, as defined in the Business Enterprise for  
17 Minorities, Females, and Persons with Disabilities Act, shall  
18 be presumed to be small or mid-sized business enterprises under  
19 this Section.

20       (f) Except as otherwise provided in subsection (e) of this  
21 Section, any business enterprise that claims to be a small or  
22 mid-sized business enterprise shall at the time of the claim,  
23 and annually thereafter, submit an affidavit, in a form  
24 prescribed by the chief procurement officer, attesting that it  
25 meets the small or mid-sized business enterprise eligibility  
26 requirements in this Section. The applicable chief procurement

1 officer is authorized to investigate the accuracy of the  
2 information provided in, and require documents and information  
3 in support of, the affidavits.

4 (g) Small or mid-sized businesses and business enterprises  
5 presumed to be small or mid-sized businesses shall notify the  
6 Department of any change that affects the enterprises' small or  
7 mid-sized business enterprise status within 5 business days of  
8 the occurrence of the change.

9 (h) The applicable chief procurement officer is authorized  
10 to impose reasonable reporting requirements on participants in  
11 the program. The reporting requirements shall be designed and  
12 used to evaluate the effectiveness of the program. Any program  
13 participant shall comply with the reporting requirements as  
14 required by the applicable chief procurement officer.

15 (i) If the applicable chief procurement officer  
16 determines, after notice and a hearing before the chief  
17 procurement officer, that any small or mid-sized business  
18 enterprise has made fraudulent misrepresentations to the State  
19 regarding its small or mid-sized business enterprise status, or  
20 has colluded with another making such fraudulent  
21 misrepresentations, the small or mid-sized business enterprise  
22 shall be declared ineligible to contract or subcontract on  
23 additional contracts. Upon making a finding of ineligibility,  
24 the applicable chief procurement officer shall determine the  
25 period of ineligibility imposed, which may include permanent or  
26 indefinite ineligibility, or ineligibility for a lesser

1 duration. No small or mid-sized business enterprise shall be  
2 disqualified for collusive misrepresentations unless all  
3 parties with which the small or mid-sized business enterprise  
4 was found to have colluded with are also disqualified. The  
5 State shall regard as nonresponsive any bid submitted during  
6 such period of ineligibility which includes a disqualified  
7 entity as a contractor, subcontractor, or member of a joint  
8 venture. In the event that a contractor submitting a bid is  
9 determined by the Department not to have been involved in any  
10 misrepresentation of the status of a disqualified  
11 subcontractor included in the bid, the Department may allow the  
12 contractor to discharge the disqualified subcontractor and, if  
13 possible, identify and engage a qualified subcontractor as its  
14 replacement for inclusion in the bid. The consequences provided  
15 herein shall be in addition to any other criminal or civil  
16 liability to which such entities may be subject. The Department  
17 shall inform the appropriate state's attorney of instances of  
18 fraudulent misrepresentation and collusion.

19 (j) In addition to any other penalty imposed by law, any  
20 person who knowingly obtains, or knowingly assists another in  
21 obtaining, a contract with the State by falsely representing  
22 that the entity, or the entity assisted, is a small or  
23 mid-sized business enterprise is guilty of a Class C  
24 misdemeanor.

25 (k) Except as otherwise provided in subsections (i) and (j)  
26 of this Section, any person who violates this Section shall be

1 fined not less than \$1,000 nor more than \$5,000 for each  
2 offense.

3 (1) The Department is authorized to adopt rules for the  
4 proper administration and enforcement of this Section.

5 Section 97. Severability. The provisions of this Act are  
6 severable under Section 1.31 of the Statute on Statutes.