



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1479

Introduced 2/13/2019, by Sen. Ann Gillespie

SYNOPSIS AS INTRODUCED:

30 ILCS 500/45-37 new
30 ILCS 575/2
220 ILCS 5/5-117

Amends the Illinois Procurement Code. Creates a procurement preference for not-for-profit organizations owned by women, minorities, and persons with a disability. Amends the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Allows for the certification of and the preference in awarding of State contracts to not-for-profit organizations owned by women, minorities, and persons with a disability under the Act. Amends the Public Utilities Act. Provides that specified supplier diversity goal requirements under the Act apply to not-for-profit female-owned (women-owned), minority-owned, veteran-owned, and person with a disability-owned companies or businesses.

LRB101 09440 RJF 54538 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 45-37 as follows:

6 (30 ILCS 500/45-37 new)

7 Sec. 45-37. Not-for-profit organizations owned by women,
8 minorities, and persons with a disability.

9 (a) Qualification. Supplies and services may be procured
10 from any qualified not-for-profit organization owned by women,
11 minorities, or persons with a disability that:

12 (1) complies with applicable Illinois laws governing
13 private not-for-profit organizations and is recognized by
14 the United States Internal Revenue Service as a tax-exempt
15 entity described in Section 501(c)(3) of the Internal
16 Revenue Code of 1986; and

17 (2) is certified as a "women-owned business", a
18 "minority-owned business", or a "business owned by a person
19 with a disability" as defined under Section 2 of the
20 Business Enterprise for Minorities, Women, and Persons
21 with Disabilities Act.

22 (b) Participation. To participate, the not-for-profit
23 organization must have indicated an interest in providing the

1 supplies and services, must meet the specifications and needs
2 of the using agency, and must set a fair and reasonable price.

3 (c) Conditions for Use. Each chief procurement officer
4 shall, in consultation with the Department of Central
5 Management Services, determine which articles, materials,
6 services, food stuffs, and supplies that are produced,
7 manufactured, or provided by a qualified not-for-profit
8 organization under this Section shall be given preference by
9 purchasing agencies procuring those items.

10 (d) Subcontracts. Subcontracts shall be permitted for
11 agreements authorized under this Section. For the purposes of
12 this subsection (d), "subcontract" means any acquisition from
13 another source of supplies, not including raw materials, or
14 services required by a qualified not-for-profit organization
15 to provide the supplies or services that are the subject of the
16 contract between the State and the qualified not-for-profit
17 organization.

18 The Department of Central Management Services shall
19 develop guidelines to be followed by qualified not-for-profit
20 organizations under this Section when seeking and establishing
21 subcontracts in order to fulfill State contract requirements.
22 These guidelines shall include the following:

23 (A) The Department must approve all subcontracts and
24 substantive amendments to subcontracts prior to execution
25 or amendment of the subcontract.

26 (B) A qualified not-for-profit organization shall not

1 enter into a subcontract, or any combination of
2 subcontracts, to fulfill an entire requirement, contract,
3 or order without the written approval of the Department.

4 (C) A qualified not-for-profit organization shall make
5 reasonable efforts to utilize subcontracts with other
6 not-for-profit organizations owned by women, minorities,
7 or persons with a disability.

8 (D) For any subcontract not currently performed by a
9 qualified not-for-profit organization, the primary
10 qualified not-for-profit organization must provide to the
11 Department the following: (i) a written explanation as to
12 why the subcontract is not performed by a qualified
13 not-for-profit organization; and (ii) a written plan to
14 transfer the subcontract to a qualified not-for-profit
15 agency, as reasonable.

16 (e) Annual report. Beginning January 1, 2021, and for each
17 year thereafter, the Department of Central Management Services
18 shall submit a report to the Governor and the General Assembly
19 concerning qualified not-for-profit organizations
20 participating under this Section, and the report shall include,
21 but not be limited to: (i) the services provided by
22 participating qualified not-for-profit organizations,
23 including the cost for such services; (ii) the State agencies
24 to which such services were provided; (iii) whether a
25 subcontractor was used in providing the services; and (iv) any
26 other information the Department may deem necessary.

1 (f) Rules. The Department of Central Management Services
2 shall adopt rules to implement and administer the procurement
3 preference provided under this Section.

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

7 (30 ILCS 575/2)

8 (Section scheduled to be repealed on June 30, 2020)

9 Sec. 2. Definitions.

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

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

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

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

1 (c) Black or African American (a person having
2 origins in any of the black racial groups of Africa).
3 Terms such as "Haitian" or "Negro" can be used in
4 addition to "Black or African American".

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

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

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

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

18 (2.1) "Person with a disability" means a person with a
19 severe physical or mental disability that:

20 (a) results from:

21 amputation,

22 arthritis,

23 autism,

24 blindness,

25 burn injury,

26 cancer,

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

25 Another disability or combination of disabilities may
26 also be considered as a severe disability for the purposes

1 of item (a) of this subdivision (2.1) if it is determined
2 by an evaluation of rehabilitation potential to cause a
3 comparable degree of substantial functional limitation
4 similar to the specific list of disabilities listed in item
5 (a) of this subdivision (2.1).

6 (3) "Minority-owned business" means a business which
7 is at least 51% owned by one or more minority persons, or
8 in the case of a corporation, at least 51% of the stock in
9 which is owned by one or more minority persons; and the
10 management and daily business operations of which are
11 controlled by one or more of the minority individuals who
12 own it. A not-for-profit organization whose Board of
13 Directors consists of at least 51% minority persons or
14 whose Executive Director is a minority person and that is
15 exempt from taxation under Section 501 of the Internal
16 Revenue Code of 1986 is also considered a "minority-owned
17 business".

18 (4) "Women-owned business" means a business which is at
19 least 51% owned by one or more women, or, in the case of a
20 corporation, at least 51% of the stock in which is owned by
21 one or more women; and the management and daily business
22 operations of which are controlled by one or more of the
23 women who own it. A not-for-profit organization whose Board
24 of Directors consists of at least 51% women or whose
25 Executive Director is a woman and that is exempt from
26 taxation under Section 501 of the Internal Revenue Code of

1 1986 is also considered a "women-owned business".

2 (4.1) "Business owned by a person with a disability"
3 means a business that is at least 51% owned by one or more
4 persons with a disability and the management and daily
5 business operations of which are controlled by one or more
6 of the persons with disabilities who own it. A
7 not-for-profit agency for persons with disabilities or a
8 not-for-profit organization whose Board of Directors
9 consists of at least 51% persons with a disability or whose
10 Executive Director is a person with a disability and that
11 is exempt from taxation under Section 501 of the Internal
12 Revenue Code of 1986 is also considered a "business owned
13 by a person with a disability".

14 (4.2) "Council" means the Business Enterprise Council
15 for Minorities, Women, and Persons with Disabilities
16 created under Section 5 of this Act.

17 (5) "State contracts" means all contracts entered into
18 by the State, any agency or department thereof, or any
19 public institution of higher education, including
20 community college districts, regardless of the source of
21 the funds with which the contracts are paid, which are not
22 subject to federal reimbursement. "State contracts" does
23 not include contracts awarded by a retirement system,
24 pension fund, or investment board subject to Section
25 1-109.1 of the Illinois Pension Code. This definition shall
26 control over any existing definition under this Act or

1 applicable administrative rule.

2 "State construction contracts" means all State
3 contracts entered into by a State agency or public
4 institution of higher education for the repair,
5 remodeling, renovation or construction of a building or
6 structure, or for the construction or maintenance of a
7 highway defined in Article 2 of the Illinois Highway Code.

8 (6) "State agencies" shall mean all departments,
9 officers, boards, commissions, institutions and bodies
10 politic and corporate of the State, but does not include
11 the Board of Trustees of the University of Illinois, the
12 Board of Trustees of Southern Illinois University, the
13 Board of Trustees of Chicago State University, the Board of
14 Trustees of Eastern Illinois University, the Board of
15 Trustees of Governors State University, the Board of
16 Trustees of Illinois State University, the Board of
17 Trustees of Northeastern Illinois University, the Board of
18 Trustees of Northern Illinois University, the Board of
19 Trustees of Western Illinois University, municipalities or
20 other local governmental units, or other State
21 constitutional officers.

22 (7) "Public institutions of higher education" means
23 the University of Illinois, Southern Illinois University,
24 Chicago State University, Eastern Illinois University,
25 Governors State University, Illinois State University,
26 Northeastern Illinois University, Northern Illinois

1 University, Western Illinois University, the public
2 community colleges of the State, and any other public
3 universities, colleges, and community colleges now or
4 hereafter established or authorized by the General
5 Assembly.

6 (8) "Certification" means a determination made by the
7 Council or by one delegated authority from the Council to
8 make certifications, or by a State agency with statutory
9 authority to make such a certification, that a business
10 entity is a business owned by a minority, woman, or person
11 with a disability for whatever purpose. A business owned
12 and controlled by women shall be certified as a
13 "woman-owned business". A business owned and controlled by
14 women who are also minorities shall be certified as both a
15 "women-owned business" and a "minority-owned business".

16 (9) "Control" means the exclusive or ultimate and sole
17 control of the business including, but not limited to,
18 capital investment and all other financial matters,
19 property, acquisitions, contract negotiations, legal
20 matters, officer-director-employee selection and
21 comprehensive hiring, operating responsibilities,
22 cost-control matters, income and dividend matters,
23 financial transactions and rights of other shareholders or
24 joint partners. Control shall be real, substantial and
25 continuing, not pro forma. Control shall include the power
26 to direct or cause the direction of the management and

1 policies of the business and to make the day-to-day as well
2 as major decisions in matters of policy, management and
3 operations. Control shall be exemplified by possessing the
4 requisite knowledge and expertise to run the particular
5 business and control shall not include simple majority or
6 absentee ownership.

7 (10) "Business" means a business that has annual gross
8 sales of less than \$75,000,000 as evidenced by the federal
9 income tax return of the business. A firm with gross sales
10 in excess of this cap may apply to the Council for
11 certification for a particular contract if the firm can
12 demonstrate that the contract would have significant
13 impact on businesses owned by minorities, women, or persons
14 with disabilities as suppliers or subcontractors or in
15 employment of minorities, women, or persons with
16 disabilities.

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

25 (12) "Business Enterprise Program" means the Business
26 Enterprise Program of the Department of Central Management

1 Services.

2 (B) When a business is owned at least 51% by any
3 combination of minority persons, women, or persons with
4 disabilities, even though none of the 3 classes alone holds at
5 least a 51% interest, the ownership requirement for purposes of
6 this Act is considered to be met. When a not-for-profit
7 organization's Board of Directors consists of at least 51% of
8 any combination of minority persons, women, or persons with
9 disabilities even though none of the 3 classes alone holds at
10 least 51% share, the Board membership requirement for purposes
11 of this Act is considered to be met. The certification category
12 for the business or not-for-profit organization is that of the
13 class holding the largest ownership interest in the business.
14 If 2 or more classes have equal ownership interests, the
15 certification category shall be determined by the business or
16 not-for-profit organization.

17 (Source: P.A. 99-143, eff. 7-27-15; 99-462, eff. 8-25-15;
18 99-642, eff. 7-28-16; 100-391, eff. 8-25-17.)

19 Section 15. The Public Utilities Act is amended by changing
20 Section 5-117 as follows:

21 (220 ILCS 5/5-117)

22 Sec. 5-117. Supplier diversity goals.

23 (a) The public policy of this State is to collaboratively
24 work with companies that serve Illinois residents to improve

1 their supplier diversity in a non-antagonistic manner.

2 (b) The Commission shall require all gas, electric, and
3 water companies with at least 100,000 customers under its
4 authority, as well as suppliers of wind energy, solar energy,
5 hydroelectricity, nuclear energy, and any other supplier of
6 energy within this State, to submit an annual report by April
7 15, 2015 and every April 15 thereafter, in a searchable Adobe
8 PDF format, on all procurement goals and actual spending for
9 female-owned, minority-owned, veteran-owned, person with a
10 disability-owned, and small business enterprises in the
11 previous calendar year. These goals shall be expressed as a
12 percentage of the total work performed by the entity submitting
13 the report, and the actual spending for all female-owned,
14 minority-owned, veteran-owned, person with a disability-owned,
15 and small business enterprises shall also be expressed as a
16 percentage of the total work performed by the entity submitting
17 the report.

18 (c) Each participating company in its annual report shall
19 include the following information:

20 (1) an explanation of the plan for the next year to
21 increase participation;

22 (2) an explanation of the plan to increase the goals;

23 (3) the areas of procurement each company shall be
24 actively seeking more participation in in the next year;

25 (4) an outline of the plan to alert and encourage
26 potential vendors in that area to seek business from the

1 company;

2 (5) an explanation of the challenges faced in finding
3 quality vendors and offer any suggestions for what the
4 Commission could do to be helpful to identify those
5 vendors;

6 (6) a list of the certifications the company
7 recognizes;

8 (7) the point of contact for any potential vendor who
9 wishes to do business with the company and explain the
10 process for a vendor to enroll with the company as a
11 minority-owned, women-owned, ~~or~~ veteran-owned, or person
12 with a disability-owned company; and

13 (8) any particular success stories to encourage other
14 companies to emulate best practices.

15 (d) Each annual report shall include as much State-specific
16 data as possible. If the submitting entity does not submit
17 State-specific data, then the company shall include any
18 national data it does have and explain why it could not submit
19 State-specific data and how it intends to do so in future
20 reports, if possible.

21 (e) Each annual report shall include the rules,
22 regulations, and definitions used for the procurement goals in
23 the company's annual report.

24 (f) The Commission and all participating entities shall
25 hold an annual workshop open to the public in 2015 and every
26 year thereafter on the state of supplier diversity to

1 collaboratively seek solutions to structural impediments to
2 achieving stated goals, including testimony from each
3 participating entity as well as subject matter experts and
4 advocates. The Commission shall publish a database on its
5 website of the point of contact for each participating entity
6 for supplier diversity, along with a list of certifications
7 each company recognizes from the information submitted in each
8 annual report. The Commission shall publish each annual report
9 on its website and shall maintain each annual report for at
10 least 5 years.

11 (g) For the purposes of this Section, female-owned
12 (women-owned), minority-owned, veteran-owned, and person with
13 a disability-owned companies or businesses include
14 not-for-profit organizations that are exempt from taxation
15 under Section 501(c)(3) of the Internal Revenue Code of 1986,
16 in which at least 50% of the managing board are women,
17 minorities, veterans, or persons with a disability, or in which
18 the executive director is a woman, minority, veteran, or person
19 with a disability.

20 (Source: P.A. 98-1056, eff. 8-26-14; 99-906, eff. 6-1-17.)