



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2869

by Rep. Greg Harris

SYNOPSIS AS INTRODUCED:

30 ILCS 500/1-10
30 ILCS 500/1-15.120 new
30 ILCS 500/1-15.125 new
30 ILCS 500/1-15.130 new
30 ILCS 500/45-35
30 ILCS 500/50-2

Amends the Illinois Procurement Code. Provides that if a form, schedule to a form, or line item in a form issued by the United States Internal Revenue Service (IRS) is mentioned in this Code and that form, schedule to a form, or line item in a form is renumbered, then any reference to that renumbered form, schedule to a form, or line item in a form in this Code shall be construed as though the renumbering had not occurred. Provides that a not-for-profit organization shall not be exempt from this Code if it receives a grant subject to continuing disclosure requirements or was previously exempt under a purchase of care exemption. Sets forth documentation that must be disclosed by these organizations. Adds a Section that sets forth disclosure requirements for not-for-profit organizations subject to this Code. Sets forth additional disclosure requirements, including a copy of the organization's IRS Form 990, for not-for-profit organizations in Sections regarding facilities for persons with severe disabilities and continuing disclosure requirements. Defines terms. Effective immediately.

LRB098 09369 HLH 39510 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 changing Sections 1-10, 45-35, and 50-2 and by adding Sections
6 1-15.120, 1-15.125, and 1-15.130 as follows:

7 (30 ILCS 500/1-10)

8 Sec. 1-10. Application.

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

20 (a-5) If a form, schedule to a form, or line item in a form
21 issued by the United States Internal Revenue Service is
22 specifically cited by number or letter in a provision of this
23 Code and if, after the effective date of the Public Act that

1 established that citation, the United States Internal Revenue
2 Service form, schedule to a form, or line item in a form cited
3 is redesignated without any other change whatever being made to
4 it, then the provision of this Code containing that citation
5 shall be construed as though the redesignation of the form,
6 schedule to a form, or line item in a form of the United States
7 Internal Revenue Service had not occurred.

8 (a-10) For purposes of this Section, the terms "interested
9 persons" and "related for-profit organization" have the
10 meanings ascribed to those terms in Sections 1-15.120 and
11 1-15.125 of this Code.

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

15 (1) Contracts between the State and its political
16 subdivisions or other governments, or between State
17 governmental bodies except as specifically provided in
18 this Code.

19 (2) Grants, except all grants that are subject to for
20 the filing requirements of Section 20-80 and the
21 not-for-profit organization continuing disclosure
22 requirements of Section 50-2 of this Code. If a
23 not-for-profit organization receives any grant that would
24 be exempt from this Code under this paragraph (2), then the
25 not-for-profit organization must also submit a copy of the
26 IRS Form 990, including, but not limited to, the following

1 sections and corresponding schedules that require the
2 reporting of any ownership interests, operating
3 agreements, partnerships, or other duties, activities, or
4 transactions that exist between the not-for-profit
5 organization, interested persons, and its related
6 for-profit owners, subsidiaries, partners, affiliates, or
7 unrelated organizations: (A) Part IV, Line 28, Schedule L;
8 (B) Part IV, Line 34, Schedule R; and (C) Part VI, Line 3,
9 Schedule O. This disclosure shall, at a minimum, include
10 business identification of the for-profit organization, a
11 list of the business transactions between the related
12 for-profit organization and the not-for-profit
13 organization under the terms of the relationship, and
14 whether more than 50% of the not-for-profit organization's
15 management, including current or former officers,
16 directors, trustees, family members, or key employees, is
17 delivered from the relationship. The not-for-profit
18 organization shall also furnish an affidavit stating that
19 the copy of the IRS Form 990 (and its accompanying
20 schedules) is an authentic copy of the IRS Form 990
21 submitted to the IRS. If a not-for-profit organization has
22 entered into a multi-year grant, then, by July 1 of each
23 fiscal year covered by the grant after the initial fiscal
24 year, the not-for-profit organization must submit a copy of
25 the IRS Form 990 for the most recent fiscal year along with
26 an affidavit verifying the same.

1 (3) Purchase of care. However, if a not-for-profit
2 organization provides services that would be exempt from
3 this Code under this paragraph (3), then the not-for-profit
4 organization must also submit a copy of the IRS Form 990,
5 including, but not limited to, the following sections and
6 corresponding schedules that require the reporting of any
7 ownership interests, operating agreements, partnerships,
8 or other duties, activities, or transactions that exist
9 between the not-for-profit organization, interested
10 persons, and its related for-profit owners, subsidiaries,
11 partners, affiliates, or unrelated organizations: (A) Part
12 IV, Line 28, Schedule L; (B) Part IV, Line 34, Schedule R;
13 and (C) Part VI, Line 3, Schedule O. This disclosure shall,
14 at a minimum, include business identification of the
15 for-profit organization, a list of the business
16 transactions between the related for-profit organization
17 and the not-for-profit organization under the terms of the
18 relationship, and whether more than 50% of the
19 not-for-profit organization's management, including
20 current or former officers, directors, trustees, family
21 members, or key employees, is delivered from the
22 relationship. The not-for-profit organization shall also
23 furnish an affidavit stating that the copy of the IRS Form
24 990 (and its accompanying schedules) is an authentic copy
25 of the IRS Form 990 submitted to the IRS. If a
26 not-for-profit organization has entered into a multi-year

1 purchase of care contract, then, by July 1 of each fiscal
2 year covered by the purchase of care contract after the
3 initial fiscal year, the not-for-profit organization must
4 submit a copy of the IRS Form 990 for the most recent
5 fiscal year along with an affidavit verifying the same.

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

10 (5) Collective bargaining contracts.

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

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

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

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

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

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

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

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

1 procurement process provided for under Section 9.1 of the
2 Illinois Lottery Law.

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

14 (f) This Code does not apply to the process used by the
15 Illinois Power Agency to retain a mediator to mediate sourcing
16 agreement disputes between gas utilities and the clean coal SNG
17 brownfield facility, as defined in Section 1-10 of the Illinois
18 Power Agency Act, as required under subsection (h-1) of Section
19 9-220 of the Public Utilities Act.

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

1 determining the actual incurred costs of the clean coal SNG
2 facility and the reasonableness of those costs as required
3 under subsection (h) of Section 9-220 of the Public Utilities
4 Act.

5 (h) This Code does not apply to the process to procure or
6 contracts entered into in accordance with Sections 11-5.2 and
7 11-5.3 of the Illinois Public Aid Code.

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

13 (Source: P.A. 96-840, eff. 12-23-09; 96-1331, eff. 7-27-10;
14 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-502, eff. 8-23-11;
15 97-689, eff. 6-14-12; 97-813, eff. 7-13-12; 97-895, eff.
16 8-3-12; revised 8-23-12.)

17 (30 ILCS 500/1-15.120 new)

18 Sec. 1-15.120. Interested persons. For the purposes of
19 non-for-profit organization disclosures, "interested persons"
20 has the same meaning as "interested persons" used by the
21 Internal Revenue Service in Schedule L of Form 990.

22 (30 ILCS 500/1-15.125 new)

23 Sec. 1-15.125. Related for-profit organization. For
24 purposes of not-for-profit organization disclosures, "related

1 for-profit organization" has the same meaning as "related
2 organization" used by the Internal Revenue Service in Schedule
3 R of Form 990.

4 (30 ILCS 500/1-15.130 new)

5 Sec. 1-15.130. Not-for-profit organizations disclosure.
6 All bids and offers from responsive bidders or offerors, all
7 subcontracts identified under Section 20-120 of this Code that
8 are not-for-profit organizations, and not-for-profit
9 organization contracts subject to this Code shall be
10 accompanied by a copy of the not-for-profit organization's IRS
11 Form 990, including, but not limited to, the following sections
12 and corresponding schedules that require the reporting of any
13 ownership interests, operating agreements, partnerships, or
14 other duties, activities, or transactions that exist between
15 the not-for-profit organization, interested persons, and its
16 related for-profit owners, subsidiaries, partners, affiliates,
17 or unrelated organizations: (A) Part IV, Line 28, Schedule L;
18 (B) Part IV, Line 34, Schedule R; and (C) Part VI, Line 3,
19 Schedule O. This disclosure shall, at a minimum, include
20 business identification of the for-profit organization, a list
21 of the business transactions between the related for-profit
22 organization and the not-for-profit organization under the
23 terms of the relationship, and whether more than 50% of the
24 not-for-profit organization's management, including current or
25 former officers, directors, trustees, family members, or key

1 employees, is delivered from the relationship. The
2 not-for-profit organization shall also furnish an affidavit
3 stating that the copy of the IRS Form 990 (and its accompanying
4 schedules) is an authentic copy of the IRS Form 990 submitted
5 to the IRS.

6 (30 ILCS 500/45-35)

7 Sec. 45-35. Facilities for persons with severe
8 disabilities.

9 (a) Qualification. Supplies and services may be procured
10 without advertising or calling for bids from any qualified
11 not-for-profit agency for persons with severe disabilities
12 that:

13 (1) complies with Illinois laws governing private
14 not-for-profit organizations;

15 (2) is certified as a sheltered workshop by the Wage
16 and Hour Division of the United States Department of Labor
17 or is an accredited vocational program that provides
18 transition services to youth between the ages of 14 1/2 and
19 22 in accordance with individualized education plans under
20 Section 14-8.03 of the School Code and that provides
21 residential services at a child care institution, as
22 defined under Section 2.06 of the Child Care Act of 1969,
23 or at a group home, as defined under Section 2.16 of the
24 Child Care Act of 1969; and

25 (3) meets the applicable Illinois Department of Human

1 Services just standards.

2 (b) Participation. To participate, the not-for-profit
3 agency must

4 (1) have indicated an interest in providing the
5 supplies and services,

6 (2) must meet the specifications and needs of the using
7 agency, and must set a fair market price.

8 (3) submit a copy of the IRS Form 990, including, but
9 not limited to, the following sections and corresponding
10 schedules that require the reporting of any ownership
11 interests, operating agreements, partnerships, or other
12 duties, activities, or transactions that exist between the
13 not-for-profit organization, interested persons, and its
14 related for-profit owners, subsidiaries, partners,
15 affiliates, or unrelated organizations: (A) Part IV, Line
16 28, Schedule L; (B) Part IV, Line 34, Schedule R; and (C)
17 Part VI, Line 3, Schedule O. This disclosure shall, at a
18 minimum, include business identification of the for-profit
19 organization, a list of the business transactions between
20 the related for-profit organization and the not-for-profit
21 organization under the terms of the relationship, and
22 whether more than 50% of the not-for-profit organization's
23 management, including current or former officers,
24 directors, trustees, family members, or key employees, is
25 delivered from the relationship. The not-for-profit
26 organization shall also furnish an affidavit stating that

1 the copy of the IRS Form 990 (and its accompanying
2 schedules) is an authentic copy of the IRS Form 990
3 submitted to the IRS.

4 (c) Committee. There is created within the Department of
5 Central Management Services a committee to facilitate the
6 purchase of products and services of persons so severely
7 disabled by a physical, developmental, or mental disability or
8 a combination of any of those disabilities that they cannot
9 engage in normal competitive employment. This committee is
10 called the State Use Committee. The committee shall consist of
11 the Director of the Department of Central Management Services
12 or his or her designee, the Director of the Department of Human
13 Services or his or her designee, one public member representing
14 private business who is knowledgeable of the employment needs
15 and concerns of persons with developmental disabilities, one
16 public member representing private business who is
17 knowledgeable of the needs and concerns of rehabilitation
18 facilities, one public member who is knowledgeable of the
19 employment needs and concerns of persons with developmental
20 disabilities, one public member who is knowledgeable of the
21 needs and concerns of rehabilitation facilities, and 2 public
22 members from a statewide association that represents
23 community-based rehabilitation facilities, all appointed by
24 the Governor. The public members shall serve 2 year terms,
25 commencing upon appointment and every 2 years thereafter. A
26 public member may be reappointed, and vacancies shall be filled

1 by appointment for the completion of the term. In the event
2 there is a vacancy on the Committee, the Governor must make an
3 appointment to fill that vacancy within 30 calendar days after
4 the notice of vacancy. The members shall serve without
5 compensation but shall be reimbursed for expenses at a rate
6 equal to that of State employees on a per diem basis by the
7 Department of Central Management Services. All members shall be
8 entitled to vote on issues before the committee.

9 The committee shall have the following powers and duties:

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

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

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

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

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

25 (6) To encourage diversity in supplies and services
26 provided by qualified not-for-profit agencies for persons

1 with severe disabilities and discourage unnecessary
2 duplication or competition among facilities.

3 (7) To develop guidelines to be followed by qualifying
4 agencies for participation under the provisions of this
5 Section. The guidelines shall be developed within 6 months
6 after the effective date of this Code and made available on
7 a nondiscriminatory basis to all qualifying agencies.

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

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

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

1 (d) Former committee. The committee created under
2 subsection (c) shall replace the committee created under
3 Section 7-2 of the Illinois Purchasing Act, which shall
4 continue to operate until the appointments under subsection (c)
5 are made.

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

7 (30 ILCS 500/50-2)

8 Sec. 50-2. Continuing disclosure; false certification.

9 (a) Multi-year contracts. Every person that has entered
10 into a multi-year contract and every subcontractor with a
11 multi-year subcontract shall certify, by July 1 of each fiscal
12 year covered by the contract after the initial fiscal year, to
13 the responsible chief procurement officer whether it continues
14 to satisfy the requirements of this Article pertaining to
15 eligibility for a contract award. If a contractor or
16 subcontractor is not able to truthfully certify that it
17 continues to meet all requirements, it shall provide with its
18 certification a detailed explanation of the circumstances
19 leading to the change in certification status. A contractor or
20 subcontractor that makes a false statement material to any
21 given certification required under this Article is, in addition
22 to any other penalties or consequences prescribed by law,
23 subject to liability under the Illinois False Claims Act for
24 submission of a false claim.

25 (b) Not-for-profit organizations; multi-year contracts. If

1 a not-for-profit organization has entered into a multi-year
2 contract to supply or provide goods or services, then, by July
3 1 of each fiscal year covered by the contract after the initial
4 fiscal year, the not-for-profit organization must also submit a
5 copy of the IRS Form 990, including, but not limited to, the
6 following sections and corresponding schedules that require
7 the reporting of any ownership interests, operating
8 agreements, partnerships, or other duties, activities, or
9 transactions that exist between the not-for-profit
10 organization, interested persons, and its related for-profit
11 owners, subsidiaries, partners, affiliates, or unrelated
12 organizations: (A) Part IV, Line 28, Schedule L; (B) Part IV,
13 Line 34, Schedule R; and (C) Part VI, Line 3, Schedule O. This
14 disclosure shall, at a minimum, include business
15 identification of the for-profit organization, a list of the
16 business transactions between the related for-profit
17 organization and the not-for-profit organization under the
18 terms of the relationship, and whether more than 50% of the
19 not-for-profit organization's management, including current or
20 former officers, directors, trustees, family members, or key
21 employees, is delivered from the relationship. The
22 not-for-profit organization shall also furnish an affidavit
23 stating that the copy of the IRS Form 990 (and its accompanying
24 schedules) is an authentic copy of the IRS Form 990 submitted
25 to the IRS.

26 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793

1 for the effective date of P.A. 96-795); 96-1304, eff. 7-27-10.)

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