

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 Section 45-45 as follows:

6 (30 ILCS 500/45-45)

7 Sec. 45-45. Small businesses.

8 (a) Set-asides. The chief procurement officer has
9 authority to designate as small business set-asides a fair
10 proportion of construction, supply, and service contracts for
11 award to small businesses in Illinois. Advertisements for bids
12 or offers for those contracts shall specify designation as
13 small business set-asides. In awarding the contracts, only bids
14 or offers from qualified small businesses shall be considered.

15 (b) Small business. "Small business" means a business that
16 is independently owned and operated and that is not dominant in
17 its field of operation. The chief procurement officer shall
18 establish a detailed definition by rule, using in addition to
19 the foregoing criteria other criteria, including the number of
20 employees and the dollar volume of business. When computing the
21 size status of a bidder, annual sales and receipts of the
22 bidder and all of its affiliates shall be included. The maximum
23 number of employees and the maximum dollar volume that a small

1 business may have under the rules promulgated by the chief
2 procurement officer may vary from industry to industry to the
3 extent necessary to reflect differing characteristics of those
4 industries, subject to the following limitations:

5 (1) No wholesale business is a small business if its
6 average annual sales over the 3 most recent calendar years
7 ~~for its most recently completed fiscal year~~ exceed
8 \$10,000,000.

9 (2) No retail business or business selling services is
10 a small business if its average annual sales and receipts
11 over the 3 most recent calendar years exceed \$6,000,000.

12 (3) (Blank). ~~No manufacturing business is a small~~
13 ~~business if it employs more than 250 persons.~~

14 (4) No construction business is a small business if:

15 (A) its average annual sales and receipts over the
16 3 most recent calendar years exceed \$10,000,000; or

17 (B) its average annual sales and receipts over the
18 3 most recent calendar years exceed \$2,000,000 and it
19 has received a cumulative total of \$5,000,000 or more
20 from State construction and construction-related
21 professional services contracts.

22 (c) Fair proportion. For the purpose of subsection (a), for
23 State agencies of the executive branch, a fair proportion of
24 construction contracts shall be no less than 25% nor more than
25 40% of the annual total contracts for construction and
26 construction-related professional services. The construction

1 agency must designate under which category set forth in item
2 (4) of subsection (b) the set-asides are made in the agency's
3 procurement notices.

4 (d) Withdrawal of designation. A small business set-aside
5 designation may be withdrawn by the purchasing agency when
6 deemed in the best interests of the State. Upon withdrawal, all
7 bids or offers shall be rejected, and the bidders or offerors
8 shall be notified of the reason for rejection. The contract
9 shall then be awarded in accordance with this Code without the
10 designation of small business set-aside.

11 (e) Small business specialist. The chief procurement
12 officer shall designate a State purchasing officer who will be
13 responsible for engaging an experienced contract negotiator to
14 serve as its small business specialist, whose duties shall
15 include:

16 (1) Compiling and maintaining a comprehensive bidders
17 list of small businesses. In this duty, he or she shall
18 cooperate with the Federal Small Business Administration
19 in locating potential sources for various products and
20 services.

21 (2) Assisting small businesses in complying with the
22 procedures for bidding on State contracts.

23 (3) Examining requests from State agencies for the
24 purchase of property or services to help determine which
25 invitations to bid are to be designated small business
26 set-asides.

1 (4) Making recommendations to the chief procurement
2 officer for the simplification of specifications and terms
3 in order to increase the opportunities for small business
4 participation.

5 (5) Assisting in investigations by purchasing agencies
6 to determine the responsibility of bidders on small
7 business set-asides.

8 (f) Small business annual report. The State purchasing
9 officer designated under subsection (e) shall annually before
10 December 1 report in writing to the General Assembly concerning
11 the awarding of contracts to small businesses. The report shall
12 include the total value of awards made in the preceding fiscal
13 year under the designation of small business set-aside. The
14 report shall also include the total value of awards made to
15 businesses owned by minorities, females, and persons with
16 disabilities, as defined in the Business Enterprise for
17 Minorities, Females, and Persons with Disabilities Act, in the
18 preceding fiscal year under the designation of small business
19 set-aside.

20 The requirement for reporting to the General Assembly shall
21 be satisfied by filing copies of the report as required by
22 Section 3.1 of the General Assembly Organization Act.

23 (g) Rulemaking. Notwithstanding any other rulemaking
24 authority that may exist, neither the Governor nor any agency
25 or agency head under the jurisdiction of the Governor has any
26 authority to make or promulgate rules to implement or enforce

1 the provisions of this amendatory Act of the 95th General
2 Assembly. If, however, the Governor believes that rules are
3 necessary to implement or enforce the provisions of this
4 amendatory Act of the 95th General Assembly, the Governor may
5 suggest rules to the General Assembly by filing them with the
6 Clerk of the House and the Secretary of the Senate and by
7 requesting that the General Assembly authorize such rulemaking
8 by law, enact those suggested rules into law, or take any other
9 appropriate action in the General Assembly's discretion.
10 Nothing contained in this amendatory Act of the 95th General
11 Assembly shall be interpreted to grant rulemaking authority
12 under any other Illinois statute where such authority is not
13 otherwise explicitly given. For the purposes of this amendatory
14 Act of the 95th General Assembly, "rules" is given the meaning
15 contained in Section 1-70 of the Illinois Administrative
16 Procedure Act, and "agency" and "agency head" are given the
17 meanings contained in Sections 1-20 and 1-25 of the Illinois
18 Administrative Procedure Act to the extent that such
19 definitions apply to agencies or agency heads under the
20 jurisdiction of the Governor.

21 (Source: P.A. 92-60, eff. 7-12-01; 93-769, eff. 1-1-05.)