

AN ACT concerning finance.

WHEREAS, Generation after generation of Illinois' citizens has served our nation and the State of Illinois by serving in America's armed forces, often at great sacrifice; and military service by their citizenry is fundamental to the continuing freedom that America and the State of Illinois enjoy; and

WHEREAS, Accordingly, honoring the service of Illinois' military veterans, past, present, and future, must be a primary, cornerstone commitment of Illinois; and

WHEREAS, Inasmuch as the State of Illinois acknowledges the past and ongoing commitment of Illinois' military veterans, it is the intent of this Act to (i) foster economic opportunities for Illinois' military veterans by encouraging the establishment of service-disabled veteran-owned small businesses (SDVOSB) and veteran-owned small businesses (VOSB) and (ii) establish an annual, ongoing, percentage goal for all State agencies' award of goods and services contracts and construction-related State spending that shall be set aside for competitive bidding by verified Illinois SDVOSB and VOSB; and

WHEREAS, It is further intended that appropriate administrative procedures for the verification of SDVOSB, VOSB, bid solicitations, awards, and all matters pertaining thereto shall be established and implemented by the Department of Central Management Services; therefore

Be it enacted by the People of the State of Illinois,

represented in the General Assembly:

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

(30 ILCS 500/45-57)

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

(a) Set-aside goal. It is the goal of the State to promote and encourage the continued economic development of small businesses owned and controlled by qualified ~~service-disabled~~ veterans and that qualified service-disabled ~~service-disabled~~ veteran-owned small businesses (referred to as SDVOSB ~~SDVOB~~) and veteran-owned small businesses (referred to as VOSB) participate in the State's procurement process as both prime contractors and subcontractors. Not less than 3% of the total dollar amount of State contracts, as defined by the Director of Central Management Services, shall be established as a goal to be awarded to SDVOSB and VOSB. ~~A Task Force shall be established, appointed by the Directors or Secretaries of, and made up of representatives of, the Illinois Department of Veterans' Affairs, the Illinois Department of Transportation, the Department of Central Management Services, the Business Enterprise Program, and the Business Enterprise Council. The Department of Central Management Services shall provide administrative support to the Task Force. The purpose of this Task Force shall be to determine the appropriate percentage~~

~~goal for award each fiscal year of the State's total expenditures for contracts awarded under this Code to SDVOB. That portion of a contract under which the contractor subcontracts with a SDVOSB or VOSB ~~SDVOB~~ may be counted toward the goal of this subsection. The Department of Central Management Services shall adopt rules to implement compliance with this subsection by all State agencies. ~~In making that determination the Task Force shall consult with statewide veterans' service organizations and the business community, including businesses owned by qualified disabled veterans. The Task Force shall submit its report to the General Assembly concerning its recommendations regarding the appropriate percentage goal for award each fiscal year of the State's total expenditures for contracts awarded under this Code to qualified service disabled veterans no later than 90 days after the effective date of this amendatory Act of the 96th General Assembly.~~~~

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

- (1) The total number of VOSB, and the number of SDVOSB, ~~SDVOB~~ who submitted bids ~~a bid~~ for contracts ~~a contract~~

under this Code.

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

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

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

(e) Definitions. As used in this Section:

"Armed forces of the United States" means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or service in active duty as defined under 38 U.S.C. Section 101. Service in the Merchant Marine that constitutes active duty under Section

401 of federal Public Act 95-202 shall also be considered service in the armed forces for purposes of this Section.

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

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

"Control" means the exclusive, ultimate, majority, or sole control of the business, including but not limited to capital investment and all other financial matters, property, acquisitions, contract negotiations, legal matters, officer-director-employee selection and comprehensive hiring,

operation responsibilities, cost-control matters, income and dividend matters, financial transactions, and rights of other shareholders or joint partners. Control shall be real, substantial, and continuing, not pro forma. Control shall include the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management, and operations. Control shall be exemplified by possessing the requisite knowledge and expertise to run the particular business, and control shall not include simple majority or absentee ownership.

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

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

"Qualified veteran-owned small business" or "VOSB" means a small business (i) that is at least 51% owned by one or more

qualified veterans living in Illinois or, in the case of a corporation, at least 51% of the stock of which is owned by one or more qualified veterans living in Illinois; (ii) that has its home office in Illinois; and (iii) for which items (i) and (ii) are factually verified annually by the Department of Central Management Services.

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

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

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

"State agency" has the same meaning as in Section 2 of the

Business Enterprise for Minorities, Females, and Persons with Disabilities Act.

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

"Veteran" means a person who (i) has been a member of the armed forces of the United States or, while a citizen of the United States, was a member of the armed forces of allies of the United States in time of hostilities with a foreign country and (ii) has served under one or more of the following conditions: (a) the veteran served a total of at least 6 months; (b) the veteran served for the duration of hostilities regardless of the length of the engagement; (c) the veteran was discharged on the basis of hardship; or (d) the veteran was released from active duty because of a service connected disability and was discharged under honorable conditions.
~~served in the active military, naval, or air service and who was discharged or released from his or her service under conditions other than dishonorable.~~

(f) Certification program. The Illinois Department of Veterans' Affairs and the Department of Central Management

Services ~~Business Enterprise Program~~ shall work together to devise a certification procedure to assure that businesses taking advantage of this Section Act are legitimately classified as qualified service-disabled ~~service-disabled~~ veteran-owned small businesses or qualified veteran-owned small businesses.

(g) Penalties.

(1) Administrative penalties. The Department of Central Management Services shall suspend any person who commits a violation of Section 17-10.3 or subsection (d) of Section 33E-6 of the Criminal Code of 1961 relating to this Section from bidding on, or participating as a contractor, subcontractor, or supplier in, any State contract or project for a period of not less than 3 years, and, if the person is certified as a service-disabled veteran-owned small business or a veteran-owned small business, then the Department shall revoke the business's certification for a period of not less than 3 years. An additional or subsequent violation shall extend the periods of suspension and revocation for a period of not less than 5 years. The suspension and revocation shall apply to the principals of the business and any subsequent business formed or financed by, or affiliated with, those principals.

(2) Reports of violations. Each State agency shall report any alleged violation of Section 17-10.3 or

subsection (d) of Section 33E-6 of the Criminal Code of 1961 relating to this Section to the Department of Central Management Services. The Department of Central Management Services shall subsequently report all such alleged violations to the Attorney General, who shall determine whether to bring a civil action against any person for the violation.

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

(4) Use of suspended persons. During the period of a person's suspension under paragraph (1) of this subsection, a State agency shall not enter into any contract with that person or with any contractor using the services of that person as a subcontractor.

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

subsection.

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

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

(720 ILCS 5/17-10.3)

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

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

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

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

(c) Willfully obstructing or impeding an official or

employee of any agency in his or her investigation. Any person who, in the course of business, willfully obstructs or impedes an official or employee of any State agency or the Minority and Female Business Enterprise Council who is investigating the qualifications of a business entity which has requested certification as a minority owned business, ~~or a~~ female owned business, service-disabled veteran-owned small business, or veteran-owned small business commits a Class 2 felony.

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

(e) Definitions. As used in this Article, "minority owned business", "female owned business", "State agency" with respect to minority owned businesses and female owned businesses, and "certification" with respect to minority owned businesses and female owned businesses shall have the meanings ascribed to them in Section 2 of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act. As used in this Article, "service-disabled veteran-owned small business", "veteran-owned small business", "State agency" with respect to service-disabled veteran-owned small businesses and veteran-owned small businesses, and "certification" with

respect to service-disabled veteran-owned small businesses and veteran-owned small businesses have the same meanings as in Section 45-57 of the Illinois Procurement Code.

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

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

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

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

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

(c) "Change order" means a change in a contract term other than as specifically provided for in the contract which authorizes or necessitates any increase or decrease in the cost of the contract or the time to completion.

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

(e) "Person employed by any unit of State or local government" means any employee of a unit of State or local government and any person defined in subsection (d) who is authorized by such unit of State or local government to act on

its behalf in relation to any public contract.

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

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

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

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

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

(j) "Subcontract" means a contract or contractual action entered into by a prime contractor or subcontractor for the

purpose of obtaining goods or services of any kind under a prime contract.

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

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

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

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

Sec. 33E-6. Interference with contract submission and award by public official. (a) Any person who is an official of or employed by any unit of State or local government who knowingly conveys, either directly or indirectly, outside of the publicly available official invitation to bid, pre-bid conference, solicitation for contracts procedure or such procedure used in any sheltered market procurement adopted pursuant to law or ordinance by that unit of government, to any person any information concerning the specifications for such contract or the identity of any particular potential subcontractors, when inclusion of such information concerning the specifications or contractors in the bid or offer would

influence the likelihood of acceptance of such bid or offer, commits a Class 4 felony. It shall not constitute a violation of this subsection to convey information intended to clarify plans or specifications regarding a public contract where such disclosure of information is also made generally available to the public.

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

(c) It shall not constitute a violation of subsection (a) of this Section where any person who is an official of or employed by any unit of State or local government follows procedures established (i) by federal, State or local minority or female owned business enterprise programs or (ii) pursuant to Section 45-57 of the Illinois Procurement Code.

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

(e) Any public official who knowingly awards a contract based on criteria which were not publicly disseminated via the

invitation to bid, when such invitation to bid is required by law or ordinance, the pre-bid conference, or any solicitation for contracts procedure or such procedure used in any sheltered market procurement procedure adopted pursuant to statute or ordinance, commits a Class 3 felony.

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

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

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