

HB3546



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3546

Introduced 2/17/2023, by Rep. Charles Meier

SYNOPSIS AS INTRODUCED:

30 ILCS 575/7

from Ch. 127, par. 132.607

Amends the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Provides that a waiver shall be deemed granted if the Business Enterprise Council for Minorities, Women, and Persons with Disabilities does not make a determination on the waiver within 30 business days after the initial request for a waiver by the contractor. Effective immediately.

LRB103 28733 HLH 55115 b

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 Business Enterprise for Minorities, Women,
5 and Persons with Disabilities Act is amended by changing
6 Section 7 as follows:

7 (30 ILCS 575/7) (from Ch. 127, par. 132.607)

8 (Section scheduled to be repealed on June 30, 2024)

9 Sec. 7. Exemptions; waivers; publication of data.

10 (1) Individual contract exemptions. The Council, at the
11 written request of the affected agency, public institution of
12 higher education, or recipient of a grant or loan of State
13 funds of \$250,000 or more complying with Section 45 of the
14 State Finance Act, may permit an individual contract or
15 contract package, (related contracts being bid or awarded
16 simultaneously for the same project or improvements) be made
17 wholly or partially exempt from State contracting goals for
18 businesses owned by minorities, women, and persons with
19 disabilities prior to the advertisement for bids or
20 solicitation of proposals whenever there has been a
21 determination, reduced to writing and based on the best
22 information available at the time of the determination, that
23 there is an insufficient number of businesses owned by

1 minorities, women, and persons with disabilities to ensure
2 adequate competition and an expectation of reasonable prices
3 on bids or proposals solicited for the individual contract or
4 contract package in question. Any such exemptions shall be
5 given by the Council to the Bureau on Apprenticeship Programs
6 and Clean Energy Jobs.

7 (a) Written request for contract exemption. A written
8 request for an individual contract exemption must include,
9 but is not limited to, the following:

10 (i) a list of eligible businesses owned by
11 minorities, women, and persons with disabilities;

12 (ii) a clear demonstration that the number of
13 eligible businesses identified in subparagraph (i)
14 above is insufficient to ensure adequate competition;

15 (iii) the difference in cost between the contract
16 proposals being offered by businesses owned by
17 minorities, women, and persons with disabilities and
18 the agency or public institution of higher education's
19 expectations of reasonable prices on bids or proposals
20 within that class; and

21 (iv) a list of eligible businesses owned by
22 minorities, women, and persons with disabilities that
23 the contractor has used in the current and prior
24 fiscal years.

25 (b) Determination. The Council's determination
26 concerning an individual contract exemption must consider,

1 at a minimum, the following:

2 (i) the justification for the requested exemption,
3 including whether diligent efforts were undertaken to
4 identify and solicit eligible businesses owned by
5 minorities, women, and persons with disabilities;

6 (ii) the total number of exemptions granted to the
7 affected agency, public institution of higher
8 education, or recipient of a grant or loan of State
9 funds of \$250,000 or more complying with Section 45 of
10 the State Finance Act that have been granted by the
11 Council in the current and prior fiscal years; and

12 (iii) the percentage of contracts awarded by the
13 agency or public institution of higher education to
14 eligible businesses owned by minorities, women, and
15 persons with disabilities in the current and prior
16 fiscal years.

17 (2) Class exemptions.

18 (a) Creation. The Council, at the written request of
19 the affected agency or public institution of higher
20 education, may permit an entire class of contracts be made
21 exempt from State contracting goals for businesses owned
22 by minorities, women, and persons with disabilities
23 whenever there has been a determination, reduced to
24 writing and based on the best information available at the
25 time of the determination, that there is an insufficient
26 number of qualified businesses owned by minorities, women,

1 and persons with disabilities to ensure adequate
2 competition and an expectation of reasonable prices on
3 bids or proposals within that class. Any such exemption
4 shall be given by the Council to the Bureau on
5 Apprenticeship Programs and Clean Energy Jobs.

6 (a-1) Written request for class exemption. A written
7 request for a class exemption must include, but is not
8 limited to, the following:

9 (i) a list of eligible businesses owned by
10 minorities, women, and persons with disabilities;

11 (ii) a clear demonstration that the number of
12 eligible businesses identified in subparagraph (i)
13 above is insufficient to ensure adequate competition;

14 (iii) the difference in cost between the contract
15 proposals being offered by eligible businesses owned
16 by minorities, women, and persons with disabilities
17 and the agency or public institution of higher
18 education's expectations of reasonable prices on bids
19 or proposals within that class; and

20 (iv) the number of class exemptions the affected
21 agency or public institution of higher education
22 requested in the current and prior fiscal years.

23 (a-2) Determination. The Council's determination
24 concerning class exemptions must consider, at a minimum,
25 the following:

26 (i) the justification for the requested exemption,

1 including whether diligent efforts were undertaken to
2 identify and solicit eligible businesses owned by
3 minorities, women, and persons with disabilities;

4 (ii) the total number of class exemptions granted
5 to the requesting agency or public institution of
6 higher education that have been granted by the Council
7 in the current and prior fiscal years; and

8 (iii) the percentage of contracts awarded by the
9 agency or public institution of higher education to
10 eligible businesses owned by minorities, women, and
11 persons with disabilities the current and prior fiscal
12 years.

13 (b) Limitation. Any such class exemption shall not be
14 permitted for a period of more than one year at a time.

15 (3) Waivers. Where a particular contract requires a
16 contractor to meet a goal established pursuant to this Act,
17 the contractor shall have the right to request a waiver from
18 such requirements prior to the contract award. The Council
19 shall grant the waiver when the contractor demonstrates that
20 there has been made a good faith effort to comply with the
21 goals for participation by businesses owned by minorities,
22 women, and persons with disabilities. Any such waiver shall
23 also be transmitted in writing to the Bureau on Apprenticeship
24 Programs and Clean Energy Jobs. A waiver shall be deemed
25 granted if the Council does not make a determination on the
26 waiver within 30 business days after the initial request for a

1 waiver by the contractor.

2 (a) Request for waiver. A contractor's request for a
3 waiver under this subsection (3) must include, but is not
4 limited to, the following, if available:

5 (i) a list of eligible businesses owned by
6 minorities, women, and persons with disabilities that
7 pertain to the scope of work of the contract. Eligible
8 businesses are only eligible if the business is
9 certified for the products or work advertised in the
10 solicitation;

11 (ii) (blank);

12 (iia) a clear demonstration that the contractor
13 selected portions of the work to be performed by
14 eligible businesses owned by minorities, women, and
15 persons with disabilities, solicited through all
16 reasonable and available means eligible businesses,
17 and negotiated in good faith with interested eligible
18 businesses;

19 (iib) documentation demonstrating that businesses
20 owned by minorities, women, and persons with
21 disabilities are not rejected as being unqualified
22 without sound reasons based on a thorough
23 investigation of their capabilities;

24 (iii) documentation demonstrating that the
25 contract proposals being offered by businesses owned
26 by minorities, women, and persons with disabilities

1 are excessive or unreasonable; and

2 (iv) a list of businesses owned by minorities,
3 women, and persons with disabilities that the
4 contractor has used in the current and prior fiscal
5 years.

6 (b) Determination. The Council's determination
7 concerning waivers must include following:

8 (i) the justification for the requested waiver,
9 including whether the requesting contractor made a
10 good faith effort to identify and solicit eligible
11 businesses owned by minorities, women, and persons
12 with disabilities;

13 (ii) the total number of waivers the contractor
14 has been granted by the Council in the current and
15 prior fiscal years;

16 (iii) (blank); and

17 (iv) the contractor's use of businesses owned by
18 minorities, women, and persons with disabilities in
19 the current and prior fiscal years.

20 (3.5) (Blank).

21 (4) Conflict with other laws. In the event that any State
22 contract, which otherwise would be subject to the provisions
23 of this Act, is or becomes subject to federal laws or
24 regulations which conflict with the provisions of this Act or
25 actions of the State taken pursuant hereto, the provisions of
26 the federal laws or regulations shall apply and the contract

1 shall be interpreted and enforced accordingly.

2 (5) Each chief procurement officer, as defined in the
3 Illinois Procurement Code, shall maintain on his or her
4 official Internet website a database of the following: (i)
5 waivers granted under this Section with respect to contracts
6 under his or her jurisdiction; (ii) a State agency or public
7 institution of higher education's written request for an
8 exemption of an individual contract or an entire class of
9 contracts; and (iii) the Council's written determination
10 granting or denying a request for an exemption of an
11 individual contract or an entire class of contracts. The
12 database, which shall be updated periodically as necessary,
13 shall be searchable by contractor name and by contracting
14 State agency.

15 (6) Each chief procurement officer, as defined by the
16 Illinois Procurement Code, shall maintain on its website a
17 list of all firms that have been prohibited from bidding,
18 offering, or entering into a contract with the State of
19 Illinois as a result of violations of this Act.

20 Each public notice required by law of the award of a State
21 contract shall include for each bid or offer submitted for
22 that contract the following: (i) the bidder's or offeror's
23 name, (ii) the bid amount, (iii) the name or names of the
24 certified firms identified in the bidder's or offeror's
25 submitted utilization plan, and (iv) the bid's amount and
26 percentage of the contract awarded to businesses owned by

1 minorities, women, and persons with disabilities identified in
2 the utilization plan.

3 (Source: P.A. 101-170, eff. 1-1-20; 101-601, eff. 1-1-20;
4 101-657, eff. 1-1-22; 102-29, eff. 6-25-21; 102-662, eff.
5 9-15-21.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.