

What All State Contractors Need to Know About New Procurement Legislation

Facts Sheet

This facts sheet is provided for informational purposes only. Questions regarding the applicability or requirements for compliance should be directed to your private counsel.

The Illinois legislature passed Public Acts 096-795 and Public Acts 096-920 (the “Acts”) which contain several new requirements for certain State contractors and bidders.

This facts sheet explains the basics regarding these new requirements. This is not a complete summary of every requirement of the new Acts. The full text of the Acts may be found on the Illinois Procurement Bulletin at <http://www.purchase.state.il.us>. Contractors and their counsel are encouraged to read the new Acts in their entirety. If you have questions about how the Acts may apply to you or how to comply with the Acts, please consult your private attorney. Failure to adhere to these new provisions could cause your organization to be ineligible for a contract award or cause a contract you were awarded to be voided. The Acts became effective on July 1, 2010.

Restrictions on Contractors/Bidders/Contracts

- ♦ No person or business is allowed to enter into a state contract if that person or business assisted the State in reviewing, drafting, or preparing a request for proposal or request for information.
- ♦ No person or business is allowed to enter into a state contract if that person or business assisted the State in determining whether there is a need for a contract except in response to a request for information.
- ♦ Payment will not be made to contractors for goods or services received before a contract is reduced to writing unless a waiver is obtained from the Comptroller and Treasurer.
- ♦ A business must be a legal entity and must be legally authorized to do business in Illinois before submission of a bid, offer, or proposal.
- ♦ New restrictions are placed on the amending of professional or artistic contracts.
- ♦ No contract or lease shall exceed a period of ten (10) years including all proposed renewals.
- ♦ No person or business shall retain a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent on the award of the procurement.

Subcontractor Requirements

- ♦ Contractors must disclose the names(s) and addresses of all first tier subcontractors and certain lower tier subcontractors if their expected subcontract is \$25,000 or more. They must also disclose the expected amount of money the subcontractors will receive. These disclosures must be made within 20 days after the execution of a contract or subcontract with the State.
- ♦ Contractors are responsible for promptly reporting any changes to their subcontractor information in writing to the Chief Procurement Officer (CPO)/State Procurement Officer (SPO).
- ♦ All contractors must include within each of their subcontracts all of the certifications and financial disclosures required by the Illinois Procurement Code or other Illinois law.
- ♦ All contractors and subcontractors are required to disclose in their financial disclosure statement that they have neither been debarred from any government contracts nor faced professional license discipline or tax evasion during the last ten (10) years.

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- ♦ The requirement that a contractor does not have delinquent debt is extended to all subcontractors.

New Disclosure and Transparency Provisions

- ♦ All contracts renewals will be posted to a public procurement bulletin.
- ♦ An explanation of any award to other than the low cost vendor will be published to a public procurement bulletin and filed with the Legislative Audit Commission and Procurement Policy Board.
- ♦ A public hearing will be held for all sole source procurements.
- ♦ A public hearing will be held for all emergency contracts with a term of more than 90 days.
- ♦ Any communication received by a State employee that imparts or requests material information or makes a material argument concerning a procurement matter shall be reported to the Procurement Policy Board which shall post the report on its website (effective January 1, 2011).

Restrictions and Disclosures Regarding Lobbyists

- ♦ A vendor may not reimburse itself within its state contract pricing for its costs and expenses of lobbyists.
- ♦ Any bidder using the services of a lobbyist to assist in obtaining a contract shall
 1. Disclose all costs, fees, compensation, reimbursements, and other remunerations paid or to be paid to the lobbyist related to the contract;
 2. Not bill or otherwise charge the State for such; and
 3. Certify that no such costs were billed to the State.

This information must be filed with the agency awarding the contract and with the Secretary of State. The CPO will post this information with the contract award notice on a public procurement bulletin.

- ♦ The name and address of each lobbyist or agent of the bidder, contractor, subcontractor who communicated with a state employee about a bid or potential bid must be reported to the Procurement Policy Board and posted by the Board on its website (effective January 1, 2011).

Miscellaneous Provisions

- ♦ Every contractor or subcontractor that has entered into a multi-year contract shall certify by July 1 of each fiscal year that they continue to meet all statutory requirements to hold a State contract.
- ♦ The definition of those vendors prohibited from political contributions to certain officeholders and certain reporting deadlines are revised.
- ♦ Grantor agencies may withhold or suspend distribution of grant funds for failure to file required reports.
- ♦ If a conflict of interest is found related to a particular contract, the Procurement Policy Board will recommend in writing whether to allow or void the contract. Once the Procurement Policy Board makes a recommendation to void a contract, the CPO will not move towards continuing the contract or establishing a contract without a public hearing. The outcome of such hearing will be posted to the Procurement Policy Board's bulletin.

