



STATE OF ILLINOIS

EXECUTIVE ETHICS COMMISSION

The Ethics of Influence

Procurement Communications Reporting Prohibited Campaign Contributions

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Procurement Communication Reporting

ILLINOIS PROCUREMENT CODE

Procurement Communications Reporting
30 ILCS 500/50-39

ILLINOIS ADMINISTRATIVE CODE

Communications Related to Procurement
2 ILL. ADMIN. CODE 1620.825

Communications Related to Power Procurement by the Illinois Power Agency

2 ILL. ADMIN. CODE 1620.826

Procurement Communications Reporting (PPB)

2 ILL. ADMIN. CODE 3002.1400

Procurement Communication Reporting: Who Must Report?

1. Communications with State Employees

- Any written or oral communication received by a State employee who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract

2. Communications with the Illinois Power Agency

- Any person communicating orally, in writing, electronically, or otherwise with the Director or any person employed by, or associated with, the Illinois Power Agency

30 ILCS 500/50-39(a)

Procurement Communication Reporting: Who Must Report?

3. Communications with Lobbyists

When an oral communication made by a person required to register under the Lobbyist Registration Act is received by a State employee that is covered under this Section, all individuals who initiate or participate in the oral communication shall submit a written report to that State employee that memorializes the communication and includes the information required to be reported to the Procurement Policy Board.

30 ILCS 500/50-39(c)

Procurement Communication Reporting: Who Must Report?

3. Communications with Lobbyists

- Any State employee engaging in material communication with a registered lobbyist shall make every attempt to obtain the written statement of the lobbyist regarding the communication that took place, as required by Section 50-39(c) of the Code. Executive Ethics Commission rule 2 Ill. Adm. Code 1620.825(b)(1) defines materiality.
- Should the lobbyist fail to provide the State employee with a written report within 30 days, the employee shall attach a document stating the dates of attempted request for information and affirmation he/she made every attempt to obtain the required lobbyist report. This document shall be provided, in place of the lobbyist report required by Section 50-39(c) of the Code, to the Illinois Procurement Policy Board.

2 ILL. ADMIN. CODE 3002.1400(b)

Procurement Communication Reporting: What is a Reportable Communication?

To require reporting, a communication must:

- (1) Be material
- (2) Be regarding a potential action
- (3) Pertain to an active procurement matter

30 ILCS 500/50-39(a)

Procurement Communication Reporting: Note: Prohibited Bidders

- The reporting of a communication with a vendor DOES NOT mean that vendor will be prohibited from bidding on any State contract.
- Vendor communications are generally allowed, within certain boundaries.

30 ILCS 500/50-10.5(e)

Procurement Communication Reporting: What is a Reportable Communication?

- “Material information” means information that a reasonable person would deem important in determining his or her course of action and pertains to significant issues, including, but not limited to, price, quantity, and terms of payment or performance.
- “Material argument” means a communication that a reasonable person would believe was made for the purpose of influencing a decision relating to a procurement matter.
- “Material argument” does not include general information about products, services, or industry best practices or a response to a communication initiated by an employee of the State for the purposes of providing information to evaluate new products, trends, services, or technologies.

30 ILCS 500/50-39(g)

Procurement Communication Reporting: What is a Reportable Communication?

In determining whether a communication is material, the State employee must consider:

- i. whether the information conveyed is new or already known to the State agency (or repeated or restated privately) and other participants in the communication; and
- ii. the likelihood that the information would influence a pending procurement matter.

2 ILL. ADMIN. CODE 1620.825 (b)(1)(C)

Procurement Communication Reporting: What is a Reportable Communication?

A “potential action” is one that a reasonable person would believe could affect the initiation, development or outcome of a procurement matter.

2 ILL. ADMIN. CODE 1620.825 (b)(2)

Procurement Communication Reporting: What is a Reportable Communication?

- “Active procurement matter” means a procurement process beginning with requisition or determination of need by an agency and continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or Procurement Policy Board review period, if applicable.
- “Active procurement matter” also includes communications relating to change orders, renewals, or extensions.

35 ILCS 500/50-39

Procurement Communication Reporting: What is a Reportable Communication?

“Procurement processes” includes the processes of procuring specific goods, supplies, services, professional or artistic services, construction, leases of real property (whether the State is the lessor or lessee), or capital improvements, and includes master contracts, contracts for financing through use of installment or lease–purchase arrangements, renegotiated contracts, amendments to contracts, and change orders.

2 ILL. ADMIN. CODE 1620.825 (b)(3)

Procurement Communication Reporting: What is a Reportable Communication?

Active procurement matters include:

Any person communicating orally, in writing, electronically, or otherwise with the Director or any person employed by, or associated with, the Illinois Power Agency to impart, solicit, or transfer any information related to the content of any power procurement plan, the manner of conducting any power procurement process, the procurement of any power supply, or the method or structure of contracting with power suppliers must disclose to the Procurement Policy Board the full nature, content, and extent of any such communication in writing by submitting a report with the following information:

- 1) The names of any party to the communication.
- 2) The date on which the communication occurred.
- 3) The time at which the communication occurred.
- 4) The duration of the communication.
- 5) The method (written, oral, etc.) of the communication.
- 6) A summary of the substantive content of the communication.

2 ILL. ADMIN. CODE 1620.825 (b)(3)

Procurement Communication Reporting: What is a Reportable Communication?

Illinois Power Agency Communications:

Any person communicating orally, in writing, electronically, or otherwise with the Director or any person employed by, or associated with, the Illinois Power Agency to impart, solicit, or transfer any information related to the content of any power procurement plan, the manner of conducting any power procurement process, the procurement of any power supply, or the method or structure of contracting with power suppliers must disclose to the Procurement Policy Board the full nature, content, and extent of any such communication in writing by submitting a report with the following information:

- 1) The names of any party to the communication.
- 2) The date on which the communication occurred.
- 3) The time at which the communication occurred.
- 4) The duration of the communication.
- 5) The method (written, oral, etc.) of the communication.
- 6) A summary of the substantive content of the communication.

30 ILCS 500/50-39(a)

What Is Not Reportable Communication?

Communications that do not have to be reported include the following:

- i. statements by a person publicly made in a public forum;
- ii. statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter;

What Is Not Reportable Communication?

- iii. statements made by a State employee of the agency to the agency head or other employees of that agency, to the employees of the Executive Ethics Commission, or to an employee of another State agency who, through the communication, is either
 - a) exercising his or her experience or expertise in the subject matter of the particular procurement in the normal course of business, for official purposes, and at the initiation of the purchasing agency or the appropriate State purchasing officer, or
 - b) exercising oversight, supervisory, or management authority over the procurement in the normal course of business and as part of official responsibilities;

What Is Not Reportable Communication?

- iv. unsolicited communications providing general information about products, services, or industry best practices before those products or services become involved in a procurement matter;

What Is Not Reportable Communication?

- v. communications received in response to procurement solicitations, including, but not limited to, vendor responses to a request for information, request for proposal, request for qualifications, invitation for bid, or a small purchase, sole source, or emergency solicitation, or questions and answers posted to the Illinois Procurement Bulletin to supplement the procurement action, provided that the communications are made in accordance with the instructions contained in the procurement solicitation, procedures, or guidelines;

What Is Not Reportable Communication?

- vi. communications that are privileged, protected, or confidential under law; and
- vii. communications that are part of a formal procurement process as set out by statute, rule, or the solicitation, guidelines, or procedures, including, but not limited to, the posting of procurement opportunities, the process for approving a procurement business case or its equivalent, fiscal approval, submission of bids, the finalizing of contract terms and conditions with an awardee or apparent awardee, and similar formal procurement processes.

What Is Not Reportable Communication?

- The provisions of this Section shall not apply to communications regarding the administration and implementation of an existing contract.
 - Except communications regarding change orders or the renewal or extension of a contract.

30 ILCS 500/50-39(a)

- No trade secrets or other proprietary or confidential information shall be included in any communication reported to the Procurement Policy Board.

30 ILCS 500/50-39(b)

What Is Not Reportable Communication? Exclusions from the Exclusions

Attempts to influence through duress, coercion or the direct or indirect offer or promise of anything of value to any person or entity in consideration for any benefit or preference in the procurement process.

If the employee reasonably believes a communication was made for any improper purpose, including, but not limited to, providing an improper benefit, monetary or non-monetary, to any person or entity.

2 ILL. ADMIN. CODE 1620.825(d)and (e)

WHAT TO REPORT?

Details including:

Date, time, and duration of each communication;

Identities of persons and individuals or entities represented, communicating, receiving, and responding;

Action requested or recommended;

Summary of the points made;

Location of all persons involved in the communication;

Telephone numbers if the communication occurred by telephone;

Any other pertinent information.

30 ILCS 500/50-39(b)

WHERE AND WHEN TO REPORT?

Reports are made on the Procurement Policy Board website
at
<http://www2.illinois.gov/ppb/Pages/default.aspx>

Reportable communications must be reported as soon
as practicable,

but in no event more than 30 days after receipt of the
communication,

or the first in a series of communications.

PENALTIES?

State employees who
knowingly and intentionally
fail to comply with the reporting requirements
shall be subject to suspension or discharge.

30 ILCS 500/50-39(e)

Synopsis of Procurement Communications Reporting: The 5 Ws

- Who: Employees who participate personally and substantially in decision to award. Lobbyists must also file written report of communications with state employee.
- What: Communications that are material, regard a potential action, and relate to an active procurement matter.

Synopsis of Procurement Communications Reporting: The 5 Ws

- When: Within 30 days after receipt of the communication.
- Where: illinois.gov/ppb/Pages/default.aspx
- Why: For transparency and to ensure a level playing field for vendors.

Prohibited Political Contributions

ILLINOIS PROCUREMENT CODE

Prohibition of Political Contributions
30 ILCS 500/50-37

ILLINOIS ADMINISTRATIVE CODE

CPO Rules re Prohibition on Political Contributions
44 ILL. ADMIN CODE 1.5037 (General Services)
44 ILL. ADMIN CODE 4.5037 (Higher Education)

Business Entity Registration Procedures
26 ILL. ADMIN. CODE 100.180

Prohibited Contributions

(b) Any business entity whose contracts with State agencies, in the aggregate, annually total more than \$50,000, and any affiliated entities or affiliated persons of such business entity, are prohibited from making any contributions to any political committees established to promote the candidacy of (i) the officeholder responsible for awarding the contracts or (ii) any other declared candidate for that office. This prohibition shall be effective for the duration of the term of office of the incumbent officeholder awarding the contracts or for a period of 2 years following the expiration or termination of the contracts, whichever is longer.

ILCS 500/50-37(b) (effective Jan. 1, 2010)

Prohibited Contributions

(c) Any business entity whose aggregate pending bids and proposals on State contracts total more than \$50,000, or whose aggregate pending bids and proposals on State contracts combined with the business entity's aggregate annual total value of State contracts exceed \$50,000, and any affiliated entities or affiliated persons of such business entity, are prohibited from making any contributions to any political committee established to promote the candidacy of the officeholder responsible for awarding the contract on which the business entity has submitted a bid or proposal during the period beginning on the date the invitation for bids or request for proposals is issued and ending on the day after the date the contract is awarded.

30 ILCS 500/50-37(c) (effective Jan. 1, 2010)

Who is Prohibited?

Prohibition Applies to Business Entities:

- whose contracts with State agencies, in the aggregate, annually total more than \$50,000.
- whose aggregate pending bids and proposals on State contracts total more than \$50,000

OR

- whose aggregate pending bids and proposals on State contracts combined with the business entity's aggregate annual total value of State contracts exceed \$50,000
- The value is calculated on a calendar-year basis.

44 ILL. ADMIN. CODE 1.5037(b)(1)(D)

44 ILL. ADMIN. CODE 4.5037(b)(1)(D)

Who is Prohibited?

What is a “contract with State agencies”?

- Any contract, as defined in this Code, between a business entity and a State agency let or awarded pursuant to this Code.
- Does not include cost reimbursement contracts; purchase of care agreements as defined in Section 1-15.68 of this Code; contracts for projects eligible for full or partial federal-aid funding reimbursements authorized by the Federal Highway Administration; grants, including but are not limited to grants for job training or transportation; and grants, loans, or tax credit agreements for economic development purposes.

30 ILCS 500/50-37(a)

Who is Prohibited?

“State agency” means and includes all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the State, created by or in accordance with the Illinois Constitution or State statute, of the executive branch of State government and does include colleges, universities, public employee retirement systems, and institutions under the jurisdiction of the governing boards of the University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governors State University, Northeastern Illinois University, and the Illinois Board of Higher Education.

30 ILCS 500/50-37(a)

Who is Prohibited?

The prohibition extends to the Business Entity that holds the State contracts or is making the bid or proposal, and any affiliated entities or affiliated persons of such business entity.

“Business entity” means any entity doing business for profit, whether organized as a corporation, partnership, sole proprietorship, limited liability company or partnership, or otherwise.

30 ILCS 500/50-37(a)

Who is Prohibited?

“Affiliated Entity” means

- (i) any corporate parent and each operating subsidiary of the bidding or contracting business entity
- (ii) each operating subsidiary of the corporate parent of the bidding or contracting business entity
- (iii) any organization recognized by the United States Internal Revenue Service as a tax-exempt organization described in Section 501(c) of the Internal Revenue Code of 1986 (or any successor provision of federal tax law) established by the bidding or contracting business entity, any affiliated entity of that business entity, or any affiliated person of that business entity, or
- (iv) any political committee for which the bidding or contracting business entity, or any 501(c) organization described in item (iii) related to that business entity, is the sponsoring entity.

30 ILCS 500/50-37(a)

Who is Prohibited?

“Affiliated entity” does not include an entity prohibited by federal law from making contributions or expenditures in connection with a federal, state, or local election.

30 ILCS 500/50-37(a)

Who is Prohibited?

“Affiliated person” means (i) any person with any ownership interest or distributive share of the bidding or contracting business entity in excess of 7.5%, (ii) executive employees of the bidding or contracting business entity, and (iii) the spouse of any such persons.

“Affiliated person” does not include a person prohibited by federal law from making contributions or expenditures in connection with a federal, state, or local election.

30 ILCS 500/50-37(a)

Who is Prohibited?

“Executive employee” means

- (i) the President, Chairman of the Board, or Chief Executive Officer of a business entity and any other individual that fulfills equivalent duties as the President, Chairman of the Board, or Chief Executive Officer of a business entity; and
- (ii) any employee of a business entity whose compensation is determined directly, in whole or in part, by the award or payment of contracts by a State agency to the entity employing the employee. A regular salary that is paid irrespective of the award or payment of a contract with a State agency shall not constitute “compensation” under item (ii) of this definition.

“Executive employee” does not include any person prohibited by federal law from making contributions or expenditures in connection with a federal, state, or local election.

30 ILCS 500/50-37(a)

What is Prohibited?

Business Entities that have contracts with State agencies, in the aggregate, annually total more than \$50,000 cannot contribute to:

- political committees established to promote the candidacy of
 - (i) the officeholder responsible for awarding the contracts or
 - (ii) any other declared candidate for that office.

Business Entities whose aggregate pending bids and proposals, or whose aggregate pending bids and proposals on State contracts combined with the business entity's aggregate annual total value of State contracts, exceed \$50,000 cannot contribute to:

- any political committee established to promote the candidacy of the officeholder responsible for awarding the contract on which the business entity has submitted a bid or proposal.

What is Prohibited?

“Officerholder” means the Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller, or Treasurer.

The Governor shall be considered the officerholder responsible for awarding all contracts by all officers and employees of, and vendors and others doing business with, executive branch State agencies under the jurisdiction of the Executive Ethics Commission and not within the jurisdiction of the Attorney General, the Secretary of State, the Comptroller, or the Treasurer.

30 ILCS 500/50-37(a)

When is it Prohibited?

Business Entities that have contracts with State agencies, in the aggregate, annually total more than \$50,000:

- the duration of the term of office of the incumbent officeholder awarding the contracts or for a period of 2 years following the expiration or termination of the contracts, whichever is longer.

Business Entities whose aggregate pending bids and proposals, or whose aggregate pending bids and proposals on State contracts combined with the business entity's aggregate annual total value of State contracts, exceed \$50,000:

- the period beginning on the date the invitation for bids or request for proposals is issued and ending on the day after the date the contract is awarded.

Where?

Navigating the Information

<http://www.elections.il.gov/Default.aspx>

The screenshot shows the Illinois State Board of Elections website. At the top, there is a navigation bar with the Illinois State Board of Elections logo and the text "Next Election: Tuesday, March 18, 2014". Below this, there are icons for "Voters", "Candidates", "Committees", "Businesses", "Reporters", "Educators", and "L.E.O.'s". A search bar is located in the center of the navigation bar. Below the navigation bar, there is a "Home" link and a "Return to Previous Page" link. The main content area is titled "Information for Businesses" and features a "Business Entity Registration" section. This section includes links for "BEREP", "Search Registered Businesses" (highlighted with a red arrow), "Existing Contracts", "How to Register", "Create Business Account/Access Existing Account", "Search Affiliates of Registered Businesses", and "Available Contracts". Below the "Business Entity Registration" section, there are three columns: "Systems", "Business Registration FAQ" (with questions like "How is 'business entity' defined in this act?"), and "Referenda" (with a "Search Referenda" button).

Search Business Registration

By Business | By Affiliates

Business ID:

Business Name: Starts With

Address: Starts With

City:

Country other than the United States of America?

State: Select a State

Zip:

Why?

What is the Consequence?

- All contracts between State agencies and a business entity that violate subsection (b) or (c) shall be voidable under Section 50–60.
- If a business entity violates subsection (b) 3 or more times within a 36-month period, then all contracts between State agencies and that business entity shall be void, and that business entity shall not bid or respond to any invitation to bid or request for proposals from any State agency or otherwise enter into any contract with any State agency for 3 years from the date of the last violation.

30 ILCS 500/50–37(d)

Why?

What is the Process?

A notice of each violation and the penalty imposed shall be published in both the Procurement Bulletin and the Illinois Register.

30 ILCS 500/50-37(d)

Any political committee that has received a contribution in violation of subsection (b) or (c) shall pay an amount equal to the value of the contribution to the State no more than 30 days after notice of the violation concerning the contribution appears in the Illinois Register. Payments received by the State pursuant to this subsection shall be deposited into the general revenue fund.

30 ILCS 500/50-37(e)

Synopsis of Prohibited Political Contributions: The 5 Ws

- **Who**: Business Entities, including Affiliated Entities and Affiliated Persons of the Business Entities, whose contracts with State agencies annually exceed \$50,000, whose pending bids and proposals exceed \$50,000, or whose pending bids and proposals combined with State contracts exceed \$50,000. 30 ILCS 500/50-37(b)-(c)
- **What**: cannot contribute to political committees established to promote the candidacy of the officeholder responsible for awarding the contracts or, sometimes, any other declared candidate for that office. 30 ILCS 500/50-37(b)-(c)
- **Where**: Board of Elections Website
<http://www.elections.il.gov/Default.aspx>

Synopsis of Prohibited Political Contributions: The 5 Ws

- **When**: the duration of the term of office of the incumbent officeholder awarding the contracts or for a period of 2 years following the expiration or termination of the contracts, whichever is longer (30 ILCS 500/50-37(b)) or the period beginning on the date the invitation for bids or request for proposals is issued and ending on the day after the date the contract is awarded. (30 ILCS 500/50-37(c))
- **Why**: Stop “Pay to Play” in State Procurement.
 - Consequences:
 - Notice Published in Illinois Register and Procurement Bulletin
 - Political Committee Shall Pay the Value of Contribution to State
 - State Contracts Affected Voidable or if Three or more violations in 36 Months = All State Contracts VOID

Questions?

