

ILLINOIS REGISTER

CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT
AND PROPERTY MANAGEMENT

SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS

CHAPTER I: CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES

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CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES
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No Waiver of Sovereign Immunity

AUTHORITY: The Illinois Procurement Code [30 ILCS 500].

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SOURCE: Adopted at 7 Ill. Reg. 100, effective December 17, 1982; amended at 7 Ill. Reg. 13481, effective October 4, 1983; amended at 7 Ill. Reg. 13844, effective October 12, 1983; codified at 8 Ill. Reg. 14941; Sections 1.2210, 1.2220, 1.2230, 1.2240 recodified to Section 1.2210 at 9 Ill. Reg. 6118; amended at 10 Ill. Reg. 923, effective January 2, 1986; amended at 10 Ill. Reg. 18707, effective October 22, 1986; amended at 11 Ill. Reg. 7225, effective April 6, 1987; amended at 11 Ill. Reg. 7595, effective April 14, 1987; amended at 13 Ill. Reg. 17804, effective November 7, 1989; emergency amendment at 16 Ill. Reg. 13118, effective August 7, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 600, effective January 5, 1993; amended at 17 Ill. Reg. 14576, effective August 27, 1993; amended at 20 Ill. Reg. 9015, effective July 1, 1996; old Part repealed by emergency rulemaking at 22 Ill. Reg. 12632, effective July 1, 1998, for a maximum of 150 days, and new Part adopted by emergency rulemaking at 22 Ill. Reg. 12726, effective July 1, 1998, for a maximum of 150 days; old Part repealed and new Part adopted at 22 Ill. Reg. 20875, effective November 25, 1998; emergency amendment at 23 Ill. Reg. 2812, effective February 16, 1999, for a maximum of 150 days; emergency expired on July 15, 1999; emergency amendment at 23 Ill. Reg. 5869, effective April 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 7075, effective June 7, 1999; amended at 24 Ill. Reg. 1900, effective January 21, 2000; amended at 26 Ill. Reg. 13189, effective August 23, 2002; emergency amendment at 29 Ill. Reg. 20540, effective December 2, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 30 Ill. Reg. 5673, effective March 7, 2006, for the balance of the 150 days; emergency expired August 3, 2006; amended at 30 Ill. Reg. 138, effective December 22, 2005; amended at 30 Ill. Reg. 13378, effective July 25, 2006; amended at 30 Ill. Reg. 17305, effective October 20, 2006; amended at 30 Ill. Reg. 18635, effective November 17, 2006; emergency amendment at 33 Ill. Reg. 3205, effective January 28, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 9607, effective June 25, 2009; recodified, pursuant to PA 96-795, from Department of Central Management Services to Chief Procurement Officer for General Services at 35 Ill. Reg. 10143; amended at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 1.1 Title

This Part may be cited as the [General Services](#) Standard Procurement Rules.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.3 Authority

This Part is promulgated by the Chief Procurement Officer for General Services (CPO-GS) in accordance with the provisions of the Illinois Procurement Code (the Code) [30 ILCS 500]. This

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Part may be amended in accordance with the Code and the Illinois Administrative Procedure Act [5 ILCS 100/5].

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5 Policy

The principles of competitive bidding and economical procurement practices shall apply to all purchases and contracts by and for the State Agencies, except as otherwise provided by law, this Part and other applicable rules. It is the policy of the CPO-GS that all activities of the SPOs and other designees related to the procurement process maximize the value of the expenditure of public funds in procuring contracts, and that those appointed and designated act in a manner that maintains public trust in the integrity of the process.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.8 Implementation of This Part

a) This Part establishes rules necessary and appropriate to implement the authorities granted by the Code relating to the procurement, supplies, including inventory level, services, real estate leases and related capital improvement, concessions and, as applicable, construction, and necessary rulemaking under the authority of the Code.

b) Section 10-20 of the Code creates four Chief Procurement Officers: one for procurements for construction and construction-related services committed by law to the jurisdiction or responsibility of the Capital Development Board; one for procurements for all construction, construction-related services, operation of any facility, and the provision of any construction or construction related services or activity committed by law to the jurisdiction or responsibility of the Illinois Department of Transportation; one for all procurements made by a public institution of higher education; and one for all other procurement. For purposes of this Part the CPO for "all other procurements" shall be known as the Chief Procurement Officer for General Services (CPO-GS). This Part applies to all procurements and procurement rulemaking under the jurisdiction of the Chief Procurement Officer for General Services (CPO-GS) and any State Purchasing Officer (SPO) appointed by the CPO-GS.

c) This Part is intended to make procurement activities of State agencies uniform and consistent among and within the State agencies under the jurisdiction of the

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CPO-~~GS~~ in order to facilitate participation in State procurements, encourage competition, and ensure that procurements are conducted in a fair and open manner. Implementation by and within State agencies shall be consistent with this Part. Operational interpretations are to be made in a flexible manner designed to secure the State's needs and protect the interests of the State of Illinois.

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.10 Application

a) The Code and this Part do not apply to:

- 1) *contracts between the State and its political subdivisions or other governments, or between State governmental bodies, except as specifically provided in the Code. (For purposes of this subsection (a)(1), "governmental bodies" includes the State universities and their governing boards, community colleges and their governing boards and school districts. This provision applies to contracts between governmental entities; it does not apply to State agencies use of contracts established by other governmental entities.);*
- 2) *grants (except for the filing requirements of Section 20-80 of the Code);*
- 3) *purchase of care;*
- 4) *hiring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual;*
- 5) *collective bargaining contracts;*
- 6) *purchase of real estate, except that notice of this type of contract with a value of more than \$25,000 must be published in the Procurement Bulletin within 7 days after the deed is recorded in the county of jurisdiction. This applies to purchases whether outright or by means of an installment purchase. The exercise of an option to purchase in a real estate lease is exempt, but the underlying lease is not exempt from this Part. The notice shall identify the real estate purchased, the names of all parties to the contract, the value of the contract, and the effective date of the contract;*

Deleted: The Code and this Part apply to those procurements for which the vendors were first solicited on or after July 1, 1998.b)Procurements for which vendors were first solicited on or before June 30, 1998, shall be conducted pursuant to legal requirements in effect at the time of the solicitation. The terms and conditions and the rights and obligations under contracts resulting from such procurements shall not be impaired.c)A solicitation occurs on or before June 30, 1998, as follows:1)When advertising was required in the Official State Newspaper, the first advertisement must run no later than June 30, 1998.2)When advertising was not required:A)if the procurement was advertised, even though advertising was not required, the first advertisement must have run no later than June 30, 1998;B)if the procurement was by direct solicitation by mail, the solicitation must have been postmarked or placed in the control of a private carrier no later than June 30, 1998;C)if the procurement was by direct solicitation by fax, the fax must show a transmission date no later than June 30, 1998;D)if the procurement was solicited in-person or by telephone, the solicitation must have occurred no later than June 30, 1998, and the State officer or employee who made the solicitation must state in writing when the procurement was discussed and must name the party with whom the discussion took place.3)In all circumstances, the solicitations must be for the procurement of particular needs. A general discussion to determine if there is any interest on the part of a State agency in the supplies or services of a vendor or vendors, or on the part of a vendor or vendors in providing the supplies or services, is not considered a solicitation.d)

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- 7) *contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the chief legal counsel to the Governor shall give his or her prior approval when the procuring agency is one subject to the jurisdiction of the Governor, and provided that the chief legal counsel of any other procuring entity subject to the Code shall give his or her prior approval when the procuring entity is not one subject to the jurisdiction of the Governor. Anticipated litigation is that which a State agency may prosecute or defend before a court or administrative body and actions necessary to prepare for and conduct the effective legal prosecution or defense of litigation, including, but not limited to, the retention of counsel, investigators, expert witnesses and court reporters. This Section is applicable to equipment or services necessary in the furtherance of covert activities lawfully conducted by a State agency;*
- 8) *Contracts for services to Northern Illinois University by a person, acting as an independent contractor, who is qualified by education, experience, and technical ability and is selected by negotiation for the purpose of providing non-credit educational service activities or products by means of specialized programs offered by the university;*
- 9) *Procurement expenditures by the Illinois Conservation Foundation when only private funds are used;*
- 10) *Procurement expenditures by the Illinois Health Information Exchange Authority involving private funds from the Health Information Exchange Fund. "Private funds" means gifts, donations, and private grants. [30 ILCS 500/1-10(b)]*
- b) *This Part does not apply to the electric power procurement process provided for under Section 1-75 of the Illinois Power Agency Act [20 ILCS 3855] and Section 16-111.5 of the Public Utilities Act [220 ILCS 5]. [30 ILCS 500/1-10(c)]*
- c) *Except for Section 20-160 and Article 50 of the Code, and as expressly required by Section 9.1 of the Illinois Lottery Law [20 ILCS 1605], the provisions of the Code do not apply to the procurement process provided for under Section 9.1 of the Illinois Lottery Law. [30 ILCS 500/1-10(d)]*
- d) *This Part does not apply to the process used by the Capitol Development Board to retain a person or entity to assist the Capitol Development Board with its duties related to the determination of costs of clean coal SNG brownfield facility, as*

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defined by Section 1-10 of the Illinois Power Agency Act, as required in Section 9-220(h-3) of the Public Utilities Act, including calculating the range of capital costs or monitoring the construction of clean coal SNG brownfield facility for the full duration of construction. [30 ILCS 500/1-10(e)]

- e) This Part does not apply to the process used by the Illinois Power Agency to retain a mediator to mediate sourcing agreement disputes between gas utilities and the clean coal SNG brownfield facility, as defined in Section 1-10 of the Illinois Power Agency Act, as required under Section 9-220(h-1) of the Public Utilities Act. [30 ILCS 500/1-10(f)]

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.15 Definition of Terms Used in This Part

As used throughout this Part, terms defined in the Illinois Procurement Code shall have the same meaning as in the Code and as further defined in this Section, and each term listed in this Section shall have the meaning set forth unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

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"Amendment" – A written modification to a contract provision, as permitted by the original contract. These modifications shall alter the performance and completion of the contract, including, but not limited to, such matters as extra work and increases or decreases in quantities of goods not included within the scope of the original contract.

"Award" – The determination that a particular vendor has been selected from among other potential vendors to enter into negotiations for the purpose of finalizing a contract.

"Bid" – The response to an Invitation for Bids.

"Bidder" – Any person who submits a bid. A person or entity (other than an individual acting as a sole proprietor) may qualify as a bidder only if the person or entity is a legal entity authorized to do business in Illinois prior to submitting the bid.

"Brand Name or Equal Specification" – A specification that uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet State requirements, and that

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allows the submission of equivalent products.

"Brand Name Specification" – A specification limited to one or more items by manufacturers' names or catalogue numbers.

"Building Services" – Repairs to or maintenance of the structure, but does not include janitorial or window washing services.

"Bulletin" – The volume of the Illinois Procurement Bulletin assigned to the CPO-GS, unless the context clearly means the volume of another CPO or the Illinois Procurement Bulletin generally.

"Chief Procurement Officer" or "CPO-GS" – The Chief Procurement Officer for General Services, as created by Section 10-20(4), of the Code or a designee.

"Code" – The Illinois Procurement Code [30 ILCS 500].

"Concession" – The right granted by a license, lease or other agreement to use State property, and sell directly or indirectly to the public, whether tangible or intangible. Also includes the right to engage in a certain activity on the lessor's property (e.g., a refreshment or parking concession).

"Consulting Services" – Services provided by a business or person as an independent contractor to advise and assist an agency in solving specific management or programmatic problems involving the organization, planning, direction, control or operations of a State agency. The services may or may not rise to the level of professional and artistic as defined in the Code and this Part.

"Contract" – All types of State agreements, including change orders and renewals, regardless of what they may be called, for the procurement, use, or disposal of supplies, services, professional or artistic services, or construction or for leases of real property, whether the State is lessor or lessee, or capital improvements, and including master contracts, contracts for financing through use of installment or lease-purchase arrangements, renegotiated contracts, amendments to contracts, and change orders. [30 ILCS 500/1-15.30] The term "contract" includes, but is not limited to, purchase, installment purchase, lease and rental contracts. The term contract, as used in the Code and this Part, does not include: supplies or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission and for which there is no authorized competition, bond or contracts related to bonds

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issued by or on behalf of a State agency when the contractor or vendor is neither selected nor paid by the State agency.

"Contractor" or "Vendor" – The terms contractor and vendor are used interchangeably for purposes of the Code and this Part. The term shall also include subcontractors.

"Day" – Calendar day. In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a State holiday, as applicable, in which event the period shall run to the end of the next business day.

"Designee" – A person or category of persons identified by the CPO-GS or an SPO, in writing, to assist with the procurement process. A designee acts under procurement authority of the CPO-GS or SPO and has the responsibility for taking procurement actions in accordance with applicable laws, rules and policies.

"Domestic Product" – A product that meets the requirements of the Procurement of Domestic Products Act [30 ILCS 5/7].

"Grant" – The furnishing by the State of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award the primary purpose of which is to procure an end product for the direct benefit or use of the State agency making the grant, whether in the form of goods, services, or construction. A contract that results from such an award is not a grant and is subject to the Code. [30 ILCS 500/1-15.42] When a grantor provides a grant to a State agency with a stipulation that the State agency issue subgrants to named persons, the subgrant or subcontract award is also a grant and the subgrantee or subcontractor is made an agent of the grantor.

"Grounds Services" – Lawn care, landscaping and snow and ice removal services.

"Invitation for Bids" or "IFB" – *The process by which a purchasing agency requests information from bidders, including all documents, whether attached or incorporated by reference, used for soliciting bids.* [30 ILCS 500/1-15.45]

"Items" – Anything that may be procured under the Code and this Part.

"Natural Resources Services" – These are services provided to the Department of

Deleted: "Contract" – A contract may be in written or oral form. The term contract as used in the Code and this Part does not include: supplies or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission, bonds, or contracts relating to bonds issued by or on behalf of a State Agency when the contractor or vendor is neither selected nor paid by the State Agency. The term "contract" includes, but is not limited to purchase, installment purchase, lease and rental contracts.

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Natural Resources or the Historic Preservation Agency. Services consist of non-supervisory activities of a routine, repetitive, non-discretionary nature not needing special expertise, training or education. These services include, but are not limited to, assisting in the operation of tree nurseries, fish hatcheries, game farms and sanctuaries; cleaning and maintenance of specialized facilities; repairing fences and building cages; mowing; and trail and ancillary facility repair.

"Offer" or "Proposal" – The response to a Request for Proposal or Request for Information for real estate or capital improvement leases.

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"Offeror" or "Respondent" – A person who responds to a Request for Proposals or Request for Information for real estate or capital improvement leases. A person or entity (other than an individual acting as a sole proprietor) may qualify as an offeror only if the person or entity is a legal entity authorized to do business in Illinois prior to submitting the offer.

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"Person" – Any business, public or private corporation, partnership, individual, union, committee, club, unincorporated association or other organization or group of individuals, or other legal entity. [30 ILCS 500/1-15.55]

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"Procurement Compliance Monitor" or "PCM" – Person appointed by the Executive Ethics Commission (EEC) under Section 1-50 of the Code.

"Procurement Officer" – The Chief Procurement Officer (CPO) or appropriate State Purchasing Officer (SPO) who is responsible for the particular procurement,

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"Procurement Policy Board" or "PPB" – The body created by Section 5-5 of the Code.

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"Proposal" or "Offer" – The response to a Request for Proposal or Request for Information for real estate or capital improvement leases,

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"Protest Review Office" – The office of the person designated in the solicitation document to whom protests must be directed. This person will respond to or coordinate the response to the protest.

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"Purchase of Care" – A contract with a person for the furnishing of medical, educational, psychiatric, vocational, rehabilitation, social, or human services directly to a recipient of a State aid program. [30 ILCS 500/1-15.68] Purchase of care includes services provided or arranged to be provided by the vendor in

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conjunction with the purchase of care. Such services may include administrative services of patient recordkeeping and management services, enrollment, health education, grievance procedures, case management, utilization review, quality assurance, peer review, or marketing. Recipient of a State aid program includes applicants for a State aid program.

"Purchasing Agency" – A State agency that enters into a contract at the direction of a State purchasing officer authorized by a Chief Procurement Officer or the direction of a Chief Procurement Officer. [30 ILCS 500/1-15.70]

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"Qualified Products List" – An approved list of supplies described by model or catalog numbers that, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

"Request for Information" or "RFI" – The process of requesting information from interested parties to aid the State in decision making. This type of RFI is not a procurement method and will not result in a participant receiving a contract.

"Request for Information for Real Property or Capital Improvement Leases" or "RFI-Real Property Leases" – The process of seeking proposals for leases of real property or capital improvements as outlined under Article 40 of the Code.

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"Request for Proposals" or "RFP" – The process by which a purchasing agency requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals. [30 ILCS 500/1-15.75]

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"Requesting Agency" – The agency that requests that the CPO or SPO conduct a procurement for its use. All procurements reserved to the CPO that have not been delegated must be initiated by a purchase request.

"Responsible Bidder" or "Offeror" – A person who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability that will assure good faith performance. A responsible bidder or offeror shall not include a business or other entity that does not exist as a legal entity at the time a bid or proposal is submitted for a State contract. [30 ILCS 500/1-15.80]

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"Responsive Bidder" – A person who has submitted a bid that conforms in all material respects to the Invitation for Bids, [30 ILCS 500/1-15.85]

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"Responsive Offeror" – A person who has submitted an offer that conforms in all material respects to the Request for Proposals.

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"Scoring Tool" – The document used by the individuals evaluating the responses to a solicitation to show whether or how well the responses met requirements set forth in the solicitation.

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"Services" – *The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance and financing.* [30 ILCS 500/1-15.90]

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"Site Technician Services" – These are services provided to the Department of Natural Resources or the Historic Preservation Agency. These services consist of non-supervisory activities of a routine, repetitive, non-discretionary nature not needing special expertise, training or education. These services include, but are not limited to, the maintenance of the site, including operating small farm-type equipment and trucks that do not require a Class C or D driver's license.

"Solicitation" – The document (e.g., IFB, RFP or RFI-real property lease) posted to the Bulletin requesting interested parties to submit a response for evaluation by the State. A request for information to determine if there is any interest on the part of a State agency in the supplies or services of a vendor or vendors, or on the part of a vendor or vendors in providing the supplies or services, is not considered a solicitation.

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"Specification for a Common or General Use Item" – A specification that has been developed and approved for repeated use in procurements.

Deleted: "Specification" – Any description of the physical, functional, or performance characteristics, or of the nature of a supply or service. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply or service item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this Part. ¶

"Specifications" – Any description, provision, or requirement pertaining to the physical or functional characteristics or of the nature of a supply, service, or other item to be procured under a contract. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service, professional or artistic service, construction, or other item for delivery. [30 ILCS 500/1-15.95]

"State" – The State of Illinois, a State agency as defined in this Section, and all officers and employees of the foregoing, as appropriate, collectively or individually.

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"State Agency" – Generally the term "State agency" includes all boards,

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commissions, agencies, institutions, authorities, and bodies politic and corporate of the State, created by or in accordance with the constitution or statute, of the executive branch of State government. However, this term does not apply to public employee retirement systems or investment boards that are subject to fiduciary duties imposed by the Illinois Pension Code [40 ILCS 5] or to the University of Illinois Foundation. "State agency" does not include units of local government, school districts, community colleges under the Public Community College Act [110 ILCS 805], and the Illinois Comprehensive Health Insurance Board. [30 ILCS 500/1-15.100] For purposes of this Part, however, only those State agencies that are under the jurisdiction of the CPO-GS, are encompassed by the term State agency.

"State Purchasing Officer" or "SPO" – A person as defined in Section 1-15.105 of the Code.

"State Witness" – An employee of the State, designated by the CPO or SPO of the procuring agency, to observe the opening of bids or sealed proposals.

"Subcontract" – A contract between a person and another person who has or is seeking a contract subject to the Code, pursuant to which the subcontractor provides to the contractor or another subcontractor some or all of the goods, services, property, remuneration, or other forms of consideration that are the subject of the primary contract and includes, among other things, subleases from a lessee of a State agency. [30 ILCS 500/1-15.107]

"Subcontractor" – A person or entity who enters into a contractual agreement with a total value of \$25,000 or more with a person or entity who has or is seeking a contract subject to the Code pursuant to which the person or entity provides some or all of the goods, services, property, remuneration, or other forms of consideration that are the subject of the primary State contract, including subleases from a lessee of a State contract. [30 ILCS 500/1-15.108]

"Subfactor" – A subset of a main evaluation factor. Main evaluation factors are identified in the solicitation. Subfactors that are separately evaluated within a factor are also identified in the solicitation.

"Supplies" – All personal property, including but not limited to equipment, materials, printing, and insurance, and the financing of those supplies. [30 ILCS 500/1-15.110]

Deleted: and does include colleges, universities, 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 Board of Higher Education

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"Unsolicited Bid or "Unsolicited Offer" or "Unsolicited Proposal" – Any bid, offer or proposal other than one submitted in response to a solicitation.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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"Zone of Contention" – A vendor is considered in the Zone of Contention if, after evaluation of qualification/technical response factors and the addition of maximum price evaluation points, the vendor could potentially win the award.¶

Section 1.25 Property Rights

No person shall have any right to a specific contract with the State unless that person has a contract that has been signed by an officer or employee of the purchasing agency with appropriate signature authority. The State shall be under no obligation to issue an award or execute a contract. [30 ILCS 500/1-25] No person who participates in a procurement action has any right to an award or subsequent contract. No notice of award can be issued and no contract can be executed without the determination of the CPO-GS, SPO or designee. Receipt of a solicitation or procurement document, or submission of any response to a solicitation or other procurement request, solicited or otherwise, confers no right to receive an award or contract, nor does it obligate the State in any manner.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 1.30 Constitutional Officers, and Legislative and Judicial Branches (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

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Deleted: Upon request by a constitutional officer or by a representative of the legislative or judicial branches, the CPO may, subject to staff availability and time constraints, conduct procurements on behalf of those constitutional officers or branches. These procurements will be conducted in accordance with the Code and this Part unless the requesting entity delegates its authority, in which case the requirements applicable to such entity may be followed. ¶

SUBPART B: PROCUREMENT RULES, POLICIES AND PROCEDURES

Section 1.525 Rules

- a) Procurement under the jurisdiction of the CPO-GS or an appointed SPO shall be conducted in accordance with the Code and this Part, except as provided in this Section.
- b) If legislation or court decision invalidates any Section of this Part or requires a different interpretation, the rules will be implemented in accordance with the legislation or court decision.
- c) An agency that has procurement needs not adequately addressed by this Part may provide a written request to the CPO-GS to address those procurement needs. The request shall include a statement explaining that the particular program needs of the agency require a rule different from or in addition to this Part. The CPO-

Deleted: Agencies with rules regarding procurement on file with the Secretary of State as of the effective date of this Part shall, within 30 days after the effective date of this Part, submit those rules to the CPO for review and approval. If the CPO does not approve those rules, the agency shall begin rulemaking to repeal or modify them in accordance with the Standard Procurement Rules and the Code within 90 days after the CPO's decision.

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but not limited to, pre-solicitation activities, solicitation preparation, source selection, evaluation, award, contracts, dispute resolution and records subsequent to identification of need, except as otherwise provided for in the Code.

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c) Any reference in the Code or this Part directing or authorizing a State agency to take procurement action is subject to the general procurement authority of the CPO-GS and SPO as set forth in the Code and this Part.

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d) The CPO-GS exercises procurement authority through one or more SPOs or temporary acting SPOs and other agency staff assigned to the procurement function. Those assigned to assist shall recognize the role and authority of the CPO-GS. The CPO-GS may assign a SPO to one or more State agencies or may make assignments on a functional basis. The CPO-GS may appoint a temporary acting SPO with limited authority to act with an appointed SPO. In the absence of an appointed SPO, the CPO-GS may exercise the procurement authority of an SPO or may appoint a temporary acting SPO. The CPO-GS may reserve certain procurement activities to the CPO-GS and reserves the right to review and modify or overturn any action of an SPO, or any other designee.

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e) An SPO will exercise procurement authority in accordance with direction and limitations established by the CPO-GS. The SPO will act primarily to review, authorize and approve State agency procurement activities and, to that end, exercises procurement authority with the assistance of the State agency procurement staff. The CPO-GS and SPO will determine and identify in writing, procurement activities that must be conducted by the CPO-GS or SPO. Activities not so identified will be conducted by the State agency staff with CPO-GS/SPO oversight.

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f) Each State agency shall determine and provide an appropriate number of qualified staff and related resources to assist the SPO in meeting the procurement needs of the State agency. State agency staffs, while acting to assist the SPO, remain State agency employees.

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g) The State agency is responsible for determining need, and upon direction or request to provide a rationale to the SPO for the proposed transaction or activity before the procurement may commence. Additional justification may be required by the SPO at later stages of the procurement process. The SPO may require that the justification include a statement that the proposed activity or transaction meets legal requirements and State agency policies and is in the best interests of the State of Illinois and the State agency.

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h) State agency procurement staff are responsible:

- 1) for ensuring that all procurement activities, including those submitted to the SPO or CPO-GS for review, authorization or approval are in accordance with the Code, this Part, other applicable laws and rules, the internal policies of the State, the internal policies of the State agency; and
- 2) for obtaining all State and State agency approvals applicable to the particular stage of the procurement process.

i) The CPO-GS has the authority to enter into contracts for a State agency. In addition to this authority the CPO-GS may direct an SPO to enter into contracts for a State agency, authorize an SPO to further authorize a State agency to enter into contracts, or authorize a State agency to enter into contracts.

- 1) The CPO-GS shall determine in writing which contracts, if any, must be signed by the CPO-GS. The CPO-GS shall determine in writing which contracts may be signed by an SPO or State agency. These signature authorities may be modified or revoked at any time by the CPO-GS or the SPO, when appropriate. In the absence of written direction, the State agency shall enter into contracts for its needs.
- 2) Any written determination regarding signature authorization shall be maintained by the CPO-GS and distributed to the SPO, State agency head, agency purchasing director and the State Comptroller.
- 3) If the CPO-GS or SPO signs a contract, the State agency must also sign in order for the contract to be legally binding on the agency. The State agency may decline to sign a contract even if signed and approved by the CPO-GS or SPO.
- 4) If the CPO-GS and SPO does sign a contract for a State agency, in no event shall the CPO-GS or SPO assume any responsibility or obligation under the contract, financial or otherwise, to any party or person.

j) Procurement Compliance Monitors (PCMs)

- 1) PCMs have roles and responsibilities established in Section 10-15 of the Code. This includes overseeing and reviewing the procurement processes,

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having access to records and systems, and attending any procurement meeting.

- 2) Each State agency shall recognize these statutory roles and shall cooperate with PCMs in the conduct of their actions. Cooperation includes notice of and access to, procurement meetings, and access to all procurement related records in whatever format they may exist, including documents, databases and systems. Failure to cooperate and resolve issues may be reported to the chief executive officer of the State agency and in certain cases may require reporting to the Office of the Executive Inspector General for the agencies of the Illinois Governor.

- 3) Should a PCM request review of a contract before final execution, the State agency shall not execute the contract until approval by the SPO.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.1010 Appointment of State Purchasing Officer (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 1.1040 Central Procurement Authority of the CPO-GS

- a) The CPO-GS may establish master, scheduled or open-ended contracts for any item, and those contracts shall be utilized by State agencies in accordance with the terms of those contracts.
- b) The CPO-GS shall authorize an appropriate SPO to procure the following items. These items may be procured by an SPO only as provided in this Subpart or in a letter of delegation from the CPO-GS authorizing the procurement activity.
 - 1) Supplies. The CPO-GS or authorized SPO shall procure all supplies exceeding the small purchase threshold. In addition, the CPO-GS or authorized SPO shall procure:
 - A) printing exceeding \$10,000; and
 - B) regardless of price:
 - i) Employee benefits authorized under the State Employees

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b)

Deleted: In the absence of a recommended, approved, and appointed SPO, the CPO may exercise all procurement authority on behalf of the agency. Should the executive head fail to recommend an acceptable SPO candidate, the CPO may appoint the executive head of the State agency as SPO. ¶

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Group Insurance Act or the Personnel Code;

- ii) Financing of any procurement;
- iii) Paper, stationery, envelopes;
- iv) Postage stamps;
- v) Property, casualty, liability and other insurance, and bonds;
- vi) All telecommunications material, equipment, software and related goods. (Equipment used to provide data communications internal to a building is considered to be Local Area Network equipment and is therefore excluded from this provision.);
- vii) Utilities for buildings owned and operated by the State;
- viii) Vehicles.

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2) Services. The CPO-GS or authorized SPO shall procure the following services:

- A) Electronic data processing services including, but not limited to, consulting and professional and artistic services, exceeding the small purchase threshold;
- B) Regardless of price, all telecommunications related services including, but not limited to:
 - i) voice, data, video, and internet working services delivered from private and or public network services, dedicated and/or virtual networking. Wide Area Networking and/or Metropolitan Area Networking, local exchange services, long distance services, radio frequency derived communications services (e.g., cellular, PCS, land mobile, microwave, etc., service);
 - ii) repairs, additions, relocations, or related changes to telecommunication services;

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- iii) consulting, professional and artistic services relating to telecommunications issues;
- C) Vehicles related services, including but not limited to, fleet management and repairs, regardless of price.
- 3) Real Estate. The CPO-GS shall procure all leases of real estate and any capital improvements to the leased real estate for the use of State agencies, regardless of price.
- c) Central Procurement Procedures
 - 1) Purchase Requests
For purchases that are reserved to the CPO-GS, each agency must initiate the procurement process through submission of a purchase request to the CPO-GS. The CPO-GS shall designate the format and requirements for submission through a CPO Notice to the agencies.
 - 2) Chief Procurement Officer's Authority to Reject
When the CPO-GS, after consultation with the requesting agency, decides that processing the requested procurement is clearly not in the best interest of the State, or that further review is needed, the CPO-GS shall return such purchase request to the requesting agency. A written statement of the reasons for its return shall accompany the returned request.
 - 3) Determination of Contractual Terms and Conditions
The CPO-GS has authority to determine the terms and conditions of solicitations and contracts. The CPO-GS will consult with the requesting agency if the agency requests special terms and conditions.
- d) The CPO-GS may, after consultation with and notice to any affected SPO, use central procurement procedures for items in addition to those listed in this Section upon its determination that such procedures are likely to result in significant efficiencies or economies.
- e) The CPO-GS and the CPOs of the construction agencies will determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

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f) The CPO-GS has additional duties and responsibilities established in statute apart from the Code, and nothing in this Part shall be interpreted to limit those other statutory duties and responsibilities.

g) Expedited Response
Any offeror, respondent, SPO, State agency, subcontractor or person may contact the CPO-GS at cpo@illinois.gov concerning any procurement matter and obtain information concerning the procurement process or a pending procurement, particularly in an effort to meet the objectives of Section 1-5 of the Code and Section 1.5 of this Part. The CPO-GS shall take all measures within its means and resources, in conformity with the Code and this Part, to address any inquiries in order to effectuate the aims of the Code and this Part. All contacts shall be placed in the procurement file in compliance with Section 50-39 of the Code.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.1050 Procurement Authority of the SPO; Limitations (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 1.1060 Delegation

a) The CPO-GS may delegate to any SPO or, in consultation with a State agency head, to a State agency, authority to conduct certain named activities or functions. The CPO-GS may also delegate to any SPO the CPO-GS's authority to conduct on behalf of the CPO-GS specific procurements or classes of procurements for multiple agency use. An SPO may request that the CPO-GS delegate authority to that SPO. The State agency delegated authority shall remain subject to CPO-GS and SPO authority.

b) Any exercise of delegated authority shall be in accordance with the Code and this Part.

c) Delegations shall be in writing and shall specify:

- 1) the activity or function authorized;
- 2) any limits or restrictions on the exercise of the delegated authority;

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The SPOs appointed by the CPO shall have authority to make all procurements for the use of the SPO's agency that are not under the central procurement authority of the CPO, another CPO appointed under Section 5-115.15 of the Code. Such procurements shall be conducted in accordance with applicable statute, this Part and any limitations set by th...

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Each SPO shall have authority, subject to th...

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Each SPO shall have authority to procure ...

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SPOs do not have the authority to procure ...

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Any procurement related activity of an SPO...

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- 3) whether the authority may be further delegated;
- 4) the duration of the delegation; and
- 5) any reporting requirements.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.1070 Toll Highway Authority

For activities related to the construction and operation of the toll highways under the jurisdiction of the Illinois Toll Highway Authority, the construction rules promulgated by the CPO-DOT shall be followed.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.1075 Department of Natural Resources (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 1.1080 Illinois Mathematics and Science Academy (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section 1.1501 Illinois Procurement Bulletin

- a) The Illinois Procurement Bulletin consists of four Bulletins, one for each of the Chief Procurement Officers designated in the Code. Each Bulletin will contain information relating to procurements under the authority of the appropriate CPO. References in this Part to Bulletin means the General Services volume, unless the context indicates a different meaning.
- b) The CPO-GS shall have all rights in and to his or her volume of the Bulletin and shall determine the content, form, function, organization and structure and shall make revisions as necessary or desirable.

Deleted: The CPO delegates to the Illinois Toll Highway Authority and its SPO authority to procure construction and construction-related services for the construction and operation of the toll highways under the jurisdiction of the Illinois Toll Highway Authority. For those activities, the SPO shall follow the construction rules promulgated by the Illinois Department of Transportation and the Capital Development Board, as applicable. Rules issued by the SPO shall be consistent with rules promulgated by the CPO designated under the Code for construction agencies. The CPO may delegate to the CPO of the Department of Transportation authority to publish in its volume of the Bulletin all notices that must be published relating to the procurement of construction and construction-related services by the Illinois Toll Highway Authority.

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(Source: Old Section 1.1510 renumbered to Section 1.1501 and amended at 36 Ill. Reg. _____, effective _____)

Section 1.1510 Publication of Illinois Procurement Bulletin

At the direction of the CPO-GS, Central Management Services, at least one time per month, will publish the Illinois Procurement Bulletin in electronic form and will update the Bulletin as needed. Central Management Services may publish the Bulletin in print. The Bulletin can be found at <http://www.purchase.state.il.us>.

(Source: Old Section 1.1510 renumbered to Section 1.1501 and new Section 1.1510 added at 36 Ill. Reg. _____, effective _____)

Section 1.1515 Registration

Prospective vendors and other interested parties must complete the Bulletin registration screens in order to download solicitations and other procurement-related documents.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.1525 Bulletin Content

- a) The Bulletin will contain all content required by the Code. The Bulletin may include reference information of general interest (e.g., how to access the other volumes of the Illinois Procurement Bulletin, notice of new legislation, announcements and determinations) and may serve as the CPO-GS's official website.
- b) Notice of each procurement shall contain at least the following information:
 - 1) the name of the purchasing agency (and using agency, if different);
 - 2) a brief purchase description;
 - 3) a procurement reference number, if used;
 - 4) the date the procurement is first offered (procurements that require notice shall not be distributed to vendors prior to the date the notice is first published in the Bulletin);

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- 5) the date, time, and location for making submissions;
- 6) the method of source selection;
- 7) the name of the State Purchasing Officer in charge;
- 8) instructions on how to obtain a comprehensive purchase description and any disclosure and contract forms;
- 9) encouragement to prospective vendors to hire qualified veterans; and
- 10) encouragement to prospective vendors to hire qualified Illinois minorities, women, persons with disabilities and residents discharged from any Illinois adult correctional center.

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- c) Notice of each contract let that was subject of a notice in subsection (b) shall be placed in the Bulletin and shall be immediately issued electronically to those bidders or offerors submitting responses to the solicitation. Once notice of award is posted, the State agency shall also email the notice to all bidders. Bidders and offerors must register (see Section 1.515) and sign up for email notices. Should the Bulletin or State agency fail to send notice to bidders or offerors submitting responses to the solicitation, the time for filing a bid protest will be extended up to 5 business days. This notice shall contain at least the following information:

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- 1) the information published in subsection (b);
- 2) the name of the vendor selected for award;
- 3) the contract price;
- 4) the number of unsuccessful responsive vendors;
- 5) the bid's percentage of disadvantaged business utilization plan;
- 6) the bid's percentage of business enterprise program utilization plan;
- 7) the total number of veteran owned small businesses and the number of service disabled veteran owned small businesses who submitted bids for contracts; and

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- 8) other disclosures required to be published in the Bulletin.
- d) Notice of each contract awarded that was subject of a notice in subsection (b) shall be placed in the Bulletin and shall be issued electronically to those offerors submitting responses to the solicitation. Once notice of award is posted, the State agency shall also email the notice to all offerors. Offerors must register (see Section 1.515) and sign up for email notices. Should the Bulletin or State agency fail to send notice to offerors submitting responses to the solicitation, the time for filing a protest will be extended up to 5 business days. This notice shall contain at least the following information:
- 1) the information published in subsection (b);
 - 2) the name of the vendor selected for award;
 - 3) the contract price;
 - 4) the number of unsuccessful responsive vendors;
 - 5) the proposal's percentage of disadvantaged business utilization plan;
 - 6) the proposal's percentage of business enterprise program utilization plan;
 - 7) the total number of veteran owned small businesses and the number of service disabled veteran owned small businesses who submitted offers for contracts; and
 - 8) other disclosures required to be published in the Bulletin.
- e) In addition to the notice requirements of subsections (c) and (d), the name and price submitted by the apparent low bidder and all other bids from bidders responding to solicitations shall be posted on the agency's website the next day and may include a link to the Bulletin for the detailed information. In addition to the notice requirements of subsection (d), the notice of award shall be posted on the agency's website the next business day.
- f) Notice of each contract renewal shall be posted in the Bulletin within 10 days after the determination by the purchasing agency to renew the contract. The date of determination to renew shall be the date of the last approval required by the State agency to move forward with the renewal. Each State agency shall identify

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the renewal approval process and shall ensure the renewal notice contains the required information and is posted to the Bulletin within the prescribed time. The notice shall require all of the information required under subsection (b).

g) The following information regarding emergency procurements shall be published in the Bulletin within 3 business days after commencement of performance under the emergency contract:

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1) name of the procuring agency (and using agency, if different);

2) name of the vendor selected for award;

3) brief description of what services or supplies the vendor intends to provide;

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4) total price (if only an estimate is known, it shall be published, but a subsequent notice repeating all required information shall be published when the final amount is known);

5) reasons for using the emergency method of source selection;

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6) name of the SPO in charge of the procurement;

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7) name of the State agency person who authorized the emergency contract action; and

8) affidavit of emergency procurement, if available, and, if not available, to be filed as an amendment to the notice within 10 days after the emergency procurement.

h) In addition to the requirements of subsection (g), the notice of hearing to extend an emergency contract must be posted electronically in the Bulletin at least 14 days prior to hearing.

i) The following information in regard to sole source procurements shall be published in the Bulletin at least 14 days prior to entering into the contract with the designated sole source vendor:

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1) name of the purchasing agency (or using agency, if different);

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- 2) name of the intended sole source vendor;
- 3) a description of what services or supplies the vendor intends to provide;
- 4) name of the SPO in charge of the procurement;
- 5) the date, time and location of the public hearing; and
- 6) a completed sole source justification form as prescribed by the PPB.

j) Each purchasing agency shall post in the Bulletin a copy of its annual report of utilization of businesses owned by minorities, females and persons with disabilities. Posting is due within 10 days after the purchasing agency submits its report to the Business Enterprise Council pursuant to Section 6(c) of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575].

k) Other notices shall be published on the Bulletin as provided by the Code, including notices related to suspensions and debarment, Business Enterprise Program and Small Business Set-Aside waivers, and other matters of public interest.

l) The CPO-GS may allow another CPO or another governmental entity to publish procurement related notices and other matters of public interest to the Bulletin.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.1550 Official State Newspaper (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 1.1560 Alternate and Supplemental Notice

a) If the electronic Bulletin cannot be published, the CPO-GS may publish notices in one of the other CPOs' Procurement Bulletins on an interim basis. If no electronic version of the Bulletin can be published, the CPO-GS may designate its website as its volume of the Bulletin. If necessary, the CPO-GS may designate the Official State Newspaper or other newspaper of general circulation as its volume of the Bulletin. All newspaper notices will be published in the Bulletin when it becomes available, but that publication will not extend any procurement-related

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timeframes.

b) Publication in the Bulletin may be supplemented by publication elsewhere at the discretion of the CPO-GS or SPO. Examples include publication in:

- 1) the Official State Newspaper;
- 2) a newspaper of general circulation;
- 3) a newspaper of local circulation in the area pertinent to the procurement;
- 4) industry media; or
- 5) agency website.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.1570 Error in Notice

When a required publication contains an error, the error may be corrected by a single notice published in the Bulletin within a reasonable time after the original publication.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.1580 Direct Solicitation

In addition to giving notice in the Bulletin, the SPO or State agency staff authorized by the SPO, may directly contact prospective vendors by providing copies of solicitations or other procurement information. Direct solicitation may be oral or in writing, but all vendors shall receive the same information as provided in the Bulletin. No direct solicitation shall be made prior to the date any required notice first appears in the Bulletin.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.1585 Notice Time

Each solicitation shall be published in the Bulletin at least 14 days prior to the date set for opening, unless a shorter time is authorized by the Code or this Part.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 1.1590 Retention of Bulletin Information (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 1.1595 Availability of Solicitation Document

Procurements that require notice shall not be distributed to vendors prior to the date the notice is first published in the Bulletin. A copy of the solicitation shall be made available for public inspection at the State agency procurement office. This copy shall be available as of the date and time the solicitation is published in the Bulletin.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

Section 1.2005 General Provisions

a) Solicitation Response
A solicitation may contain forms that must be returned or may require compliance in a prescribed format. If a form or format is prescribed, prospective vendors shall submit those forms as instructed.

b) Late Bids or Proposals, Late Withdrawals and Late Modifications

1) Any bid or proposal (including any modification, withdrawal or other procurement-related submission) received after the time and date for receipt, or at other than the specified location, is late. A submission that is delivered to the wrong location but that is subsequently delivered to the correct location by the date and time specified shall be considered. State employees shall not be responsible for ensuring subsequent delivery of misdelivered items. Delivery at the specified location and time shall be the sole responsibility of the bidder or offeror.

2) No late submission will be considered unless the SPO, and not a designee, determines it would have been timely but for the action or inaction of State personnel directly serving the procurement activity (e.g., providing the wrong address). It is the responsibility of the bidder or offeror to ensure delivery at the time and to the place specified. Vendors submitting a late response will be notified and given the opportunity to retrieve the

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submission at their cost. Late submissions not returned to the vendor will be destroyed after all related procurement activity is complete and the resulting contract has been executed.

- 3) Records shall be made and kept for each late bid or proposal, late modification, or late withdrawal.
- 4) Other Submissions. Any other submission that has a time or date deadline shall be treated in the same manner as a late bid.

c) Extension of Solicitation Due Date,

The SPO may, prior to the date or time for submitting or modifying a bid or proposal, extend the date or time for the convenience of the State.

d) Bid/Proposal Firm Time

- 1) Unless otherwise provided in the solicitation, the vendor's bid/proposal must be kept firm for at least 30 days after the opening date.
- 2) After opening bids or proposals, the SPO may request bidders or offerors to extend the time during which the State agency may accept the bids or proposals, provided that, with regard to bids, no other change is permitted. This extension shall not exceed 180 days after the bid opening and does not provide an opportunity for others to submit bids or proposals.

e) Electronic and Fax Submissions

- 1) The solicitation may state that electronic and fax submissions will be considered if they are received at the designated location by the time and date set for receipt. Any required attachments will be submitted as stated in the solicitation.
- 2) Electronic submissions authorized by specific language in the solicitation will be opened in accordance with electronic security measures in effect at the purchasing agency at the time of opening.
- 3) Fax submissions authorized by specific language in the solicitation will be placed in a sealed container upon receipt and opened with other submissions. Vendor assumes risk of premature disclosure due to

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submission in unsealed form.

f) Intent to Submit

The solicitation may require that vendors submit, by a certain time and date, a notice of their intent to submit a bid or proposal in response to the solicitation. Bids and proposals submitted without complying with the notice of intent requirement may be rejected.

g) Only One Bid or Proposal Received

If only one bid or proposal is received, and if it meets all requirements, the SPO may award to the single bidder or offeror if the SPO finds that the price submitted is fair and reasonable, and that other prospective bidders or offerors had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the SPO may cancel the procurement.

h) Alternate or Multiple Bids or Proposals

1) Alternate bids or proposals may be accepted if:

- A) permitted by the solicitation and in accordance with instructions in the solicitation; or
- B) only one vendor responded, in which case the alternate submission may be evaluated and treated in accordance with Section 1.2025 (Sole Economically Feasible Source Procurement); or
- C) the low bidder, who has met all requirements of the solicitation has provided a lower cost alternative that meets all of the material requirements of the solicitation.

2) Multiple bids or proposals may be accepted if permitted by the solicitation and submitted in accordance with instructions in the solicitation.

i) Multiple Items

A solicitation may call for pricing of multiple items of similar or related type. Award shall be as specified in the solicitation based on an individual line item, a group total of certain items, a core list, a "market basket" of related items representative of the total requirement, a grand total of all items, or other grouping method.

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- j)** "All or None" Bids or Proposals
All or none bids or proposals may be accepted if the evaluation shows an all or none award to be the lowest cost or best value of those submitted.
- k)** Conditioning Bids or Proposals Upon Other Awards
Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall be rejected.
- l)** Unsolicited Bids or Offers
An award may not be made based on an unsolicited offer in place of the notice and competition requirements of the Code and this Part.
- m)** Clarification of Bids and Proposals
The SPO may request that a vendor clarify its bid or proposal as a part of the evaluation process. A vendor shall not be allowed to change its bid or proposal in response to a request for clarification. A clarification is not an opportunity to make changes or for submission of best and finals offers, as authorized elsewhere in this Part.
- n)** Extension of Time on Indefinite Quantity Contracts
The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the SPO determines in writing that it is not practical to award another contract at the time of the extension.
- o)** Increase in Quantity on Definite Quantity Contracts

 - 1) This subsection (o) applies to procurements other than those for construction or construction-related professional services. Within 90 days after awarding a definite quantity contract using the sealed bid or sealed proposal procedure, additional purchase orders, contracts or amendments may be issued to the same vendor at the same unit price and on the same terms and conditions if:

 - A)** The vendor indicates that the additional purchase orders or contracts will be accepted if issued;
 - B)** The market price of the commodities, services or equipment in question has not gone down since the original purchase; and

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- C) The additional quantity does not exceed 20% of the original definite quantity.
- 2) Notices of supplemental purchases in excess of the small purchase limits of Sections 20-20 and 35-35 of the Code shall be published in the Illinois Procurement Bulletin.
- 3) The quantity may be increased by any percentage, provided the dollar value of the increase does not exceed the applicable small purchase (Section 1.2020) threshold.
- p) Assignment, Novation or Change of Name
- 1) Assignment. No State contract is transferable, or otherwise assignable, without the prior written consent of the CPO-GS or SPO, provided, however, that a vendor may assign money receivable under a contract after due notice to the State. The assignee, except in the case of assignment for payment only, must meet all requirements for contracting with the State. Any purported assignment without prior written consent shall be null and void.
- 2) Recognition of a Successor in Interest; Novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that:
- A) the transferee assumes all of the transferor's obligations;
- B) the transferee meets all requirements for contracting with the State;
- C) the transferor waives all rights under the contract as against the State; and
- D) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required by the State, furnish a satisfactory performance bond.
- 3) Change of Name. A vendor may submit to the SPO a written request to change the name in which it holds a contract with the State. The name change shall not alter any of the terms and conditions of the contract or the obligations of the vendor.

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q) Contracting for Installment Purchase Payments, Including Interest
Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].

r) Incorporation by Reference
A solicitation may incorporate documents by reference provided that the solicitation specifies where the documents can be obtained.

s) Use of Source Selection Method that is Not Required
If a purchasing agency uses a method of source selection that it is not, by law, required to use (e.g., use of a competitive sealed bid for a small purchase), the purchasing agency is bound to compliance with the Code and rules governing the method of source selection used.

t) Vendor Signature
A bid or proposal submitted unsigned will be evaluated if the vendor submits a written signature acceptable to the SPO within the time specified by that officer.

u) Stringing
Dividing or planning procurements to avoid use of competitive procedures (stringing) is prohibited. Periodic purchases of similar supplies from several different vendors to maintain inventory is not stringing unless the purchases are planned to avoid the use of competitive procedures.

v) Confidential Data
Vendors must clearly identify, by page and paragraph, any information submitted to the State claimed to be exempt from the disclosure requirement of the Illinois Freedom of Information Act [5 ILCS 140] (FOIA) and must identify the basis of the claimed exemption and show how that basis applies to the request for exemption. Information submitted without a claim of exemption may be disclosed to the public without notice or permission. Information submitted with a claimed exemption may still be disclosed to the public if determined by a court or the Public Access Counselor for the Illinois Attorney General that the claimed exemption does not meet the requirements for withholding the information under FOIA. The agency in receipt of the claim of FOIA exemption will determine whether the offered exemption is appropriate. The agency in receipt of the claim of FOIA exemption shall attempt to provide reasonable notice and opportunity to object to the vendor prior to disclosure of any material claimed by the vendor to

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be exempt from FOIA,

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Notice of Subcontractor

Any contract entered into under this Part shall state whether the services of a subcontractor will be used. If, at any time during the term of the contract, a contractor adds or changes any subcontractors, the contractor shall promptly notify the SPO, in writing, of the names and addresses of the subcontractors and the expected amount of money each new or replaced subcontractor will receive. The contractor shall provide the SPO with a copy of any subcontract with an annual value of more than \$25,000 within 20 days after the execution of the State contract and after the execution of the subcontract, whichever is later.

1) For professional and artistic contracts, the contract shall state the names and addresses of all subcontractors and the expected amounts each will receive under the contract.

2) For contracts other than professional and artistic contracts, the contract shall include:

A) the names and addresses of all subcontractors known at the time of execution who are party to a subcontract with an annual value of more than \$25,000; and

B) the expected amount of money each will receive under the contract.

x)

Pre-Solicitation Assistance

1) *For purposes of this subsection (x), "business" includes all individuals with whom a business is affiliated, including, but not limited to, any officer, agent, employee, consultant, independent contractor, director, partner, manager or shareholder of a business. [30 ILCS 500/50-10.5(e)]*

2) Prohibited Bidders. Except as provided in subsection (x)(5), Section 50-10.5(e) of the Code prohibits any person or business from bidding or entering into a contract if the person or business assisted the State of Illinois or a State agency in determining whether there was a need for a contract or assisted the State of Illinois or a State agency by reviewing, drafting or preparing any invitation for bids, request for proposal or request for information or provided similar assistance.

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- 3) Non-Prohibited Acts. This Section does not prohibit a person or business from submitting a bid or proposal or entering into a contract if the person or business:
- A) Initiated a communication to provide general information about products, services or industry best practices and, if applicable, that communication is documented in accordance with Section 50-39 of the Code.
 - B) Responded to a communication initiated by an employee of the State for the purposes of providing information to evaluate new products, services or technologies.
 - C) Received or possessed written material obtained from a State employee from public sources, such as through an internet search, or literature packets obtained in conjunction with an event such as a trade show.
 - D) Provided, at the request of the State, general marketing material or makes a general sales presentation to show the person's qualifications or product capabilities. Material may be personalized for the procuring agency provided any personalization is obtained from publically available sources.
- 4) Prohibited Acts
- A) Determination of Need. Any person or business who, at the request of the State or with the consent of the State, reviews or analyzes the State's assets, activities, documents, functions, organization, programs or anything of similar nature to aid in the determination of whether the State has a need for some good or service is prohibited from bidding on or receiving a contract to meet that need.
 - B) Preparation of Procurement Documents. A person or business is prohibited from bidding on a solicitation and from having a contract arising from any of the following activities if the person or business, at the request of the State or with the consent of the State,

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assisted in the preparation of procurement documents in any of the following ways:

- i) Draft (writes or assists the State with writing all or part of the procurement document);
- ii) Review (reads the document or comments on the procurement document);
- iii) Prepare (any activity relating to organizing or distributing the documents, including through the Procurement Bulletin); or
- iv) Provides similar assistance, e.g., conducting research or providing any advice used in drafting, reviewing or preparing procurement documents.

5) Exceptions. Any person or business who responds to an advertised request for information or other publically available opportunity to provide information related to the procurement need or to review drafts of all or part of proposed procurement documents shall not be disqualified by virtue of responding to the State's publically advertised request.

y) Pre-Submission Conference

A pre-submission conference may be conducted to enhance potential vendors' understanding of the procurement requirements. The pre-submission conference shall be announced as part of the solicitation notice. The conference may be designated as "attendance mandatory" or "attendance optional". The conference should be held long enough after the solicitation has been issued to allow potential vendors to become familiar with it, but sufficiently before solicitation opening to allow consideration by vendors of conference results in preparing their responses. Supporting documentation of the conference shall be supplied to all prospective vendors known to have received a solicitation by posting the information on the Bulletin. Nothing stated at the pre-submission conference shall change the solicitation unless a change is made by written modification to the solicitation. Information conveyed in pre-submission conferences is not reportable under Section 50-39 of the Code, but any amendments resulting from the conference shall be supplied to all those prospective vendors through posting on the Bulletin.

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z) Federally Funded Purchases
For purchases funded in whole or in part by United States Government funds, the solicitation will identify the federal statutes and regulations with which the vendor must comply.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2010 Competitive Sealed Bidding

a) Application
Competitive sealed bidding is the required method of source selection, except as allowed by the Code and this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.

b) Invitation for Bids

- 1) Use. An IFB is used to initiate a competitive sealed bid procurement.
- 2) Content. An IFB shall include, at a minimum, the following:
 - A) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the location to which bids are to be delivered, and the maximum time for bid acceptance by the State;
 - B) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; and
 - C) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable and State mandated certifications.

3) Delivery-Related Costs
Unless otherwise provided in the solicitation, the bid price includes transportation, transit insurance, delivery, installation and any other costs.

c) Amendments to Invitations for Bids

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- 1) Form. Amendments to IFBs shall be clearly identified and shall reference the portion of the IFB being amended.
- 2) Distribution. Amendments shall be made available to all prospective bidders known to have received an IFB through posting on the Bulletin.
- 3) Timeliness. Amendments shall be made available within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit that preparation, the amendment shall extend the response time. If necessary, the response time may be extended by written announcement posted at the opening location or as announced at the scheduled opening time and confirmed in the amendment.

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d) Pre-Opening Modification or Withdrawal of Bids

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- 1) Procedure. Bids may be modified or withdrawn by written notice received in the location designated in the IFB prior to the time and date set for bid opening.
- 2) Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.
- 3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

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e) Receipt, Opening and Recording of Bids

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- 1) Receipt. Upon its receipt, each bid and modification shall be date and time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened for identification purposes or in error, the file shall state the reason for the breach.
- 2) Opening and Recording. Bids and modifications shall be opened publicly at the time, date and place designated in the IFB in the presence of a State witness. The person opening bids shall not serve as witness. The CPO-GS shall determine information that shall be recorded, read and made available at the opening, including items such as the name of each bidder, the bid price and such other information the CPO-GS determines is appropriate.

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f) Bid Evaluation and Award

1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB, except as permitted in the Code and this Part. The IFB shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria for price or responsiveness that are not disclosed in the IFB.

2) Responsibility. Responsibility of prospective vendors is covered by Section 1.2046 (Responsibility).

3) Responsiveness. A bid must conform in all material respects to the IFB.

A) Product or Service Acceptability. The IFB shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:

i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;

ii) examination of such elements as appearance, finish, taste, or feel;

iii) other examinations to determine whether the product or service conforms to any other purchase description requirements.

B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering that does not meet the acceptability requirements shall be rejected.

4) Determination of Lowest Bidder. Following determination of product or

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service acceptability as set forth in this subsection (f), bids will be evaluated to determine which bidder offers the lowest cost to the State in accordance with the evaluation criteria set forth in the ~~IFB~~. Only objectively measurable criteria that are set forth in the ~~IFB~~ shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, administrative cost and ownership or life-cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, ~~the~~ evaluation factors shall be reasonable estimates based upon information the State has available concerning future use and shall treat all bids equitably. Pricing for optional supplies or services, or for renewal terms, may be considered, particularly when the pricing for those items or terms is unbalanced when compared to other pricing in the bid.

5) Price Negotiation. Negotiations are permitted with the low bidder to obtain a lower price for the item bid.

g) Award to Other Than Low Responsible and Responsive Bidder
The SPO, but not a designee, may authorize the State to award to other than the lowest responsible and responsive bidder upon a written determination that award to another bidder is in the State's best interest. A description of the agency's needs, a determination that the anticipated cost will be fair and reasonable, a listing of all responsible and responsive bidders, and the name of the bidder selected, pricing and the reasons for selecting this bidder instead of the low bidder must be published in the Bulletin. The SPO shall file notice with the Legislative Audit Commission and PPB. This information shall be made available for inspection by the public within 30 days after the agency's decision to award the contract.

h) Publicizing Award

1) Bidders shall be notified of contract award. The Notification shall be issued electronically and, additionally, may be in the form of a letter, purchase order or other clear communication. Notices of awards through the Invitation for Bids process shall be published in the Bulletin prior to the execution of a contract. Failure to provide this notice to all bidders shall result in extending the time for filing a bid protest up to 5 business days. If the contract is awarded to other than the lowest bidder, the notice shall include an explanation of the award. Notice of the award shall be posted on the State agency's website the next business day. The winning

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bid shall be available for public inspection after award, along with a record of each unsuccessful bid.

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2) Notice of award must include at least the following information:

- A) date solicitation was first offered;
- B) due date for submission of offers;
- C) location for submission of offers;
- D) name of purchasing agency;
- E) name of responsible SPO;
- F) brief description of supplies/services being purchased;
- G) method of source selection;
- H) name of the successful responsible bidder;
- I) contract price;
- J) number of unsuccessful responsive bidders;
- K) percentage of disadvantaged business utilization plan;
- L) percentage of business enterprise program utilization plan;
- M) total number of veteran owned small businesses and the number of service disabled veteran owned small businesses that submitted bids for contracts;
- N) any other disclosure required by the Code.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 1.2012 Multi-Step Sealed Bidding

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- a) Definition
Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the State, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
- b) Conditions for Use
The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description that will be suitable to permit an award based on price. Multi-step sealed bidding may be used when it is considered desirable:
 - 1) to invite and evaluate possible diverse technical offers to determine their acceptability to fulfill the purchase description requirements; and
 - 2) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, **when**, appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description.
- c) Pre-Submission Conference in Multi-Step Sealed Bidding
Prior to the submission or evaluation of unpriced technical offers, a pre-submission conference as contemplated by Section 1.2005(y), may be conducted by the SPO or designee.
- d) Procedure for Phase One of Multi-Step Sealed Bidding
 - 1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Section 1.2010 (Competitive Sealed Bidding), except as otherwise provided in this subsection (d). In addition to the requirements set forth in Section 1.2010, the multi-step IFB shall state:
 - A) that it is a multi-step sealed bid procurement, that only unpriced technical offers are requested and that priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

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- B) the criteria to be used in the evaluation of the unpriced technical offers;
 - C) that the SPO or designee may conduct oral or written discussions of the unpriced technical offers; and
 - D) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the IFB.
- 2) Amendments to the IFB. After receipt of unpriced technical offers, amendments to the IFB shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the SPO, a contemplated amendment will significantly change the nature of the procurement, the IFB may be canceled in accordance with Section 1.2040 (Cancellation of Solicitation; Rejection of Bids or Proposals) of this Part and a new IFB issued.
- 3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers submitted by bidders shall be opened in the presence of at least one State witness. Technical offers shall not be disclosed to unauthorized persons.
- 4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the IFB.
- 5) Unacceptable Unpriced Technical Offer
When the SPO determines a bidder's unpriced technical offer does not meet criteria, the offer shall be rejected.
- e) Procedure for Phase Two
- 1) Initiation. Upon the completion of phase one, the SPO or designee shall either:
 - A) open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or

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- B) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.
- 2) Conduct. Phase two shall be conducted as any other competitive sealed bid procurement.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2013 Reverse Auctions

- a) CPO-GS Authorization
A State agency may procure supplies or services (other than for professional and artistic services, telecommunications services, communication services, Internet services, and information services and construction services) through means of a reverse auction if the CPO-GS has made a determination that use of a reverse auction is in the best interests of the State. The CPO-GS shall publish in the Bulletin that bids will be received in an electronic auction manner as part of the notice of Invitation for Bid.
- b) Reverse Auction Process
The SPO or designee shall conduct a reverse auction through a two step Invitation for Bids process consisting of bid prequalification and price submission.
 - 1) Prequalification
 - A) An invitation to prequalify shall be issued requesting the submission of information addressing vendor qualifications and responsibility; vendor specifications and/or samples; confirming acceptance of auction procedures; and requiring agreement to accept a contract using State contract terms and conditions if selected for award in the price only part of the process. No pricing information shall be submitted or considered in the prequalification step of the process.
 - B) The prequalification bids shall not be opened publicly, but the opening shall be recorded and witnessed by a State witness. Prequalification information will be evaluated on a pass/fail basis and vendors will be notified directly as to whether they met or did not meet the prequalification criteria.

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2) Price

- A) An Invitation for Bids shall be sent to those vendors who passed prequalification. The response shall be limited to the submission of prices in the form specified in the Invitation for Bids. The Invitation for Bids shall establish any minimum bid increments.
- B) Prices shall be submitted electronically. The SPO shall cause the prices to be displayed as submitted, but the prices as displayed will not identify the name of the vendor. Vendors may reduce their price at any time during the active period of the auction.
- C) When the low price is substantially lower than other prices submitted, the SPO or designee may request that the bidder confirm the price and, if an error has occurred, may allow withdrawal in accordance with the Code and this Part.

c) Technical Difficulties

- 1) The auction time may be extended or rescheduled by the SPO or designee if technical difficulties at the State site do not allow the auction to be conducted as intended. Participants will be notified of an extension or a rescheduling.
- 2) If technical difficulties occur at a vendor site such that the vendor cannot electronically submit a price, the SPO may accept a fax and will then enter the price for the vendor. Faxed prices will not be accepted later than 5 minutes before the originally scheduled end of the auction or if the faxed prices are higher than the then-existing low price.

d) Reverse Auction Training

The SPO may provide instructions or training to prequalified vendors regarding auction procedures and technology.

e) Disclosure of Reverse Auction Information

After the end of the reverse auction, the names of those who participated in either step of the process shall be disclosed and the final price submitted by each participant.

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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.2015 Competitive Sealed Proposals

- a) Competitive Sealed Proposals may be used whenever permitted by the Code and as described in this Part.
- b) The Competitive Sealed Proposal method of source selection may be used to procure the following categories (note that the following services, if they are professional and artistic, must be procured pursuant to Section 1.2035):
 - 1) electronic data processing equipment, software and services;
 - 2) telecommunications equipment, software and services;
 - 3) consulting services; and
 - 4) employee benefits and management of those benefits.
- c) Competitive Sealed Proposals may be used on a case-by-case basis when it is determined by the SPO that competitive sealed bidding is either not practicable or advantageous. The Competitive Sealed Proposal method differs from competitive sealed bidding in two ways: it permits discussions with competing offerors and changes in their proposals, including price and it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract. Factors to be considered in determining whether competitive sealed bidding is either not practical or advantageous include:
 - 1) when evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, when the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or when the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration;
 - 2) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
 - 3) whether offerors may need to be afforded the opportunity to revise their proposals, including price;

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- 4) whether award may need to be based upon a comparative evaluation, as stated in the Request for Proposals, of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal;
- 5) whether the primary consideration in determining award may not be price; and
- 6) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State.
- d) Content of the Request for Proposals
The RFP shall be prepared in accordance with Section 1.2010 (Competitive Sealed Bidding), provided that it shall also include:
- 1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without those discussions; and
 - 2) a statement of when and how price should be submitted.
- e) Receipt and Registration of Proposals
- 1) Upon its receipt, each proposal or modification shall be date- and time-stamped but not opened and shall be stored in a secure place until the time and date set for opening. If a proposal is opened for identification purposes or opened in error, the file shall state the reason for the error.
 - 2) Proposals and modifications shall be opened publicly at the time, date and place designated in the RFP. Opening shall be witnessed by a State employee or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror, the number of modifications received, if any, a description sufficient to identify the supply or service item offered, and a notation that the package contains a price proposal. The record of proposals shall be open to public inspection after award of the contract.
 - 3) Proposals and modifications shall be opened in a manner to avoid

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disclosing contents to competitors. Only authorized State personnel and contractual agents may review the proposals prior to award.

f) Evaluation of Proposals

- 1) Evaluation Factors in the RFP. The RFP shall state all of the evaluation factors, including price, and their relative importance. Evaluation subfactors, if any, and their relative importance must be finalized prior to the opening and made available for inspection and copying upon opening. However, all price subfactors and their relative ranking must be shown in the RFP.
- 2) Evaluation. The evaluation shall be based solely on the evaluation factors set forth in the RFP, except as communicated in advance to each proposer with opportunity to make necessary adjustments to the proposal. Numerical rating systems shall be used unless another scoring tool is authorized by the SPO. Any scoring tool shall reflect the evaluation criteria and ranking set forth in the RFP, and any subfactors available at the opening. Proposals shall be submitted in two parts: the first, covering issues other than price, and the second, covering price. The first part shall be evaluated and ranked independent of the second part of all proposals. Each member of the evaluation committee must evaluate the first part individually. After completion of the individual evaluations, the SPO shall determine whether the evaluation committee should meet to confirm the individual scores. Factors the SPO should consider in determining whether the evaluation committee should meet include whether there is a significant or substantial variance of scores, divergent scoring comments, or other information that suggests the need for further discussion. The price proposal shall be opened in the presence of a State witness and distributed to the appropriate evaluators.

g) Proposal Discussions with Individual Offerors

- 1) Purposes of Discussions. Discussions are held to:
 - A) promote understanding of the State's requirements and the offerors' proposals; and
 - B) facilitate arriving at a contract that will be most advantageous to the State, taking into consideration price and the other evaluation

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Deleted: Evaluation shall be conducted in two initial stages. All factors other than price shall be evaluated first and then price factors shall be evaluated. However, evaluation may proceed simultaneously provided different evaluators are used to evaluate price and the other factors and no information is exchanged between the sets of evaluators prior to the completion of the initial evaluation.

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C)

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factors set forth in the RFP,

- 2) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and clarifications of proposals. If during discussions it is determined there is a need for substantial revision of, or change to, the RFP, the RFP shall be cancelled and may be resolicited to incorporate the clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.
- 3) Best and Final Offers. The SPO or designee may request best and final offers from those offerors deemed acceptable after completion of any discussions. Best and final offers shall be submitted by a specified date and time. The SPO or designee may conduct additional discussions or require another submission of best and final offers. The scope of the best and final offer and the number of vendors allowed to participate shall be defined by the SPO. If an offeror does not submit either a notice of withdrawal or another best and final offer, the offeror's immediately previous offer will be construed as its best and final offer.

- h) Award
An award shall be made by the SPO, pursuant to a written determination showing the basis on which the award was found to be most advantageous to the State, taking into consideration price and evaluation factors set forth in the RFP. The contract file shall contain the basis on which the award is made.

- i) Publicizing Awards
Immediately upon contract award, offerors shall be notified. The notification shall be issued electronically and additionally may be in the form of a letter, purchase order or other clear communication. Notices of awards through the Sealed Bid Proposal process shall be published in the Bulletin prior to the execution of a contract. Notice of the award shall be posted on the State agency's website the next business day. Notice of award must include at least the following information:

- 1) date solicitation first offered;
- 2) due date for submission of offers;

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- 3) location for submission of offers;
- 4) name of purchasing agency;
- 5) name of responsible SPO;
- 6) brief description of supplies/services being purchased;
- 7) method of source selection;
- 8) name of the successful responsible offeror;
- 9) contract price;
- 10) number of unsuccessful responsive offerors;
- 11) percentage of disadvantaged business utilization plan;
- 12) percentage of business enterprise program utilization plan;
- 13) total number of veteran owned small businesses and the number of service disabled veteran owned small businesses that submitted bids for contracts; and
- 14) any other disclosure required by the Code.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2020 Small Purchase Limits

a) Application

- 1) Individual procurements of \$35,000 or less for supplies or services, other than professional and artistic, may be made without notice or competition. These small purchase maximums shall be subject to the annual cost of living increases set forth in subsection (a)(3).
- 2) Procurements for construction and construction related services of \$40,700 or less, or as increased to reflect increases in the consumer price index as determined by the CPO-GS,

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- 3) The CPO-GS shall announce any change identified by the United States Department of Labor in the Consumer Price Index for All Urban Consumers for the period ending each December 31. That percentage change shall be used to recalculate the small purchase maximums applicable for the fiscal year beginning the following July 1.
- 4) Procurements of less than \$20,000 for professional and artistic services and that have a non-renewable term of one year or less may be made without notice of competition.
- b) Determination of Small Purchase Status
- 1) In determining whether a contract is under the small purchase limit, the stated value of the supplies or services plus any optional supplies and services, determined in good faith, shall be utilized. When the value is calculated month-to-month or in a similar fashion, the amount shall be calculated for a 12 month period.
- 2) If only a unit price or hourly rate is known, the contract shall be considered small and shall have a not to exceed limit applicable to the type of procurement (see subsection (a)).
- 3) If, after signing the contract, the actual cost of completing the contract is determined to exceed the small purchase amount, and the SPO determines that a supplemental procurement is not economically feasible or practicable because of the immediacy of the agency's needs or other circumstances, the SPO must follow the procedures for sole source or emergency procurement, whichever is applicable, to complete the contract.
- c) The CPO-GS may establish policies and procedures to manage the use of the small purchase method of source selection. The SPO may establish additional policies and procedures applicable to State agencies under the SPO's jurisdiction.
- d) If there is a repetitive need for small procurements of the same type, the State agency shall notify the SPO who shall consider whether issuing a competitive sealed bid or proposal for procurement of those needs is in the best interests of the State.
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- Deleted:** Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 20-5 of the Illinois Procurement Code. ¶
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Section 1.2025 Sole Economically Feasible Source Procurement

a) Application

The provisions of this Part apply to procurement from a sole economically feasible source (referred to as sole source) unless the estimated amount of the procurement is within the limit authorized in Section 1.2020 (Small Purchases) or unless emergency conditions exist as defined in Section 1.2030 (Emergency Procurements), in which case those other procedures may be used.

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b) Conditions for Use of Sole Source Procurement

Sole source procurement is permissible when a requirement is available from only a single supplier or when only one supplier is deemed economically feasible. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one vendor authorized to provide that item. The following are examples of circumstances that could necessitate sole source procurement:

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1) compatibility of equipment, accessories, replacement parts or service is a paramount consideration;

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2) items are needed for trial use or testing of that specific product or service;

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3) item is for commercial resale;

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4) non-competitive, public utility services;

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5) item is copyrighted or patented and the item or service is not available except from the holder of the copyright or patent;

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6) media for advertising;

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7) art, entertainment services or athletic events;

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8) radio and television broadcast rights;

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9) procurements related to participation in mandated educational, professional, research, public service or athletic activities of organizations

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of which the State agency is a member. These procurements may include, but are not limited to, dues and membership fees, travel and lodging and facility usage fees:

10) federal or State grant requires contract with named vendor;

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11) changes to existing contracts (see subsection (c)).

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c) Changes

1) Changes to an existing contract that are germane and reasonable in scope and cost in relation to the original contract or program, that are necessary or desirable to ensure success of the program, and that can be best accomplished by the contract holder may be procured under this Section. The SPO must determine that the cost of delay or disruption to the contract or program, and the cost of a new solicitation, clearly indicate that the existing vendor is the sole economically feasible source.

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2) As provided in Section 20-25(b) of the Code, changes to a contract for professional or artistic services that would result in an increase in the amount paid under the contract of more than 5% of the initial award, or would extend the contract term beyond the time reasonably needed for a competitive procurement, not to exceed two months, may not be made on a sole source basis.

3) A change (whether in cost or rate) that does not exceed the applicable small purchase limit as defined in Section 1.2020, or that is an emergency as defined in Section 1.2030, may be made in accordance with procedures governing those Sections and need not comply with these sole source procedures. A change in the length of the contract that does not exceed 30 days and other minor, immaterial changes to the scope or administrative provisions of a contract shall not be considered changes subject to these sole source procedures.

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d) Sole Source Determination

The determination as to whether a procurement shall be made as a sole source procurement shall be made by the SPO, based on a request made by a State agency. The request shall be in writing and shall include the basis for the sole source determination. Prior to authorizing the State agency to enter into a contract based on the sole source request, the CPO-GS shall require a public

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hearing to be held and make a final determination as required by Section 20-25(a) of the Code.

- e) Hearing
Any hearing required shall be conducted in accordance with Subpart V.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2030 Emergency Procurements

- a) Authority to Make Emergency Procurements
The provisions of this Part apply to every procurement over the small purchase limit set in Section 1.2020 (Small Purchases) made under emergency conditions. The SPO, or a State agency through written designation, shall have the authority to make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods.

- b) Emergency Conditions

- 1) A statutory emergency condition exists;
 - A) if there exists a threat to public health or public safety;
 - B) when immediate expenditure is needed for repairs to State property in order to protect against further loss or damage to State property;
 - C) to prevent or minimize serious disruption in critical State services that affect health, safety, or collection of substantial State revenues; or
 - D) to ensure the integrity of State records.

- c) Quick Purchase
The emergency method of source selection is allowed in additional situations. These include, but are not limited to:

- 1) protect the health and safety of any person;

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2)...Any purchase request submitted to th...

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1)...If no challenge to this determination (...)

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- 2) items are available on the spot market or at discounted prices for a limited time so that good business judgment mandates a "quick purchase" immediately to take advantage of the availability and price;
 - 3) rare items, such as articles of historical value or art collections, that are available for a limited time;
 - 4) the opportunity to obtain entertainment, speakers and athletic and other events or performances is available for a limited time;
 - 5) immediate action is necessary to avoid lapsing or loss of federal or donated funds.
- d) Scope of Emergency Conditions
Emergency procurement shall be limited to the supplies, services, construction or other items necessary to meet the emergency need. In certain situations the purchase to meet the immediate need (i.e., the temporary solution) may, by necessity, also be the permanent solution. In this event, the notice shall describe that circumstance.
- e) Source Selection Methods
Any method of source selection, whether or not identified in this Part, may be used to conduct the procurement in emergency situations provided that, whenever practical, existing State contracts shall be utilized and competitive sources shall be considered if practical. The procedure used shall be selected to assure that the required items are procured in time to meet the emergency. Such competition as is practicable shall be obtained.
- f) Determination and Record of Emergency Procurement
- 1) Determination. The SPO shall make a written determination stating the basis for an emergency procurement and for the selection of the particular vendor. These determinations shall be kept in the contract file.
 - 2) Record. In a manner acceptable to the receiving parties, the CPO-GS shall designate the method of filing affidavits of each emergency procurement with the PPB and Auditor General. An affidavit of each emergency procurement (including extensions of emergency contracts beyond 90 days) shall be filed by the SPO with the CPO-GS, PPB and the Auditor General within 10 days after the procurement and shall include the

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A)
- Deleted:** A supplier announces bankruptcy, cessation of business, or loss of franchise, or gives other similar reason such that making a purchase immediately is more advantageous to the State than instituting a competitive procurement under the provisions of this Code for the supplies or services: ¶
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following information:

- A) the vendor's name;
- B) the amount and type of the contract, (if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known);
- C) a description of what the vendor will do or provide;
- D) the reasons for using the emergency method of source selection.

- 3) Notice of the Emergency Procurement
Notice of the emergency procurement shall be published in the Bulletin by the SPO as specified in Sections 15-25(c) and 20-30 of the Code no later than 3 business days after the contract is awarded and shall include a description of the procurement, the reasons for the emergency procurement and the total cost. When only an estimate of the total cost is known at the time of publication, the estimate shall be identified as an estimate and published. When the total cost is determined, it shall also be published in like manner before the 10th day of the next succeeding month.

- 4) The State agency shall be responsible for preparing the filings required in Section 20-30 of the Code.

g) Duration of Emergency Contract

- 1) The term of the temporary solution emergency contract shall be limited to the time reasonably needed for a competitive procurement for the permanent solution, not to exceed 90 days. A temporary solution emergency contract may be extended beyond 90 days if the CPO-GS determines additional time is necessary and the contract scope and duration are limited to the emergency. Prior to execution of the extension, a public hearing shall be held at which PPB and members of the public may present testimony.

- 2) Notice of Extension
Notice of intent to extend an emergency contract shall be published in the Bulletin no later than 14 days prior to a public hearing. Notice shall include at least a description of the need for the emergency extension, the

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contractor, and, if applicable, the date, time and location of the public hearing.

- 3) The initial determination as to whether an emergency shall be extended for a term longer than 90 days shall be made by an SPO in the form of an extension request submitted to the CPO-GS. The request shall be in writing and shall include the justification for the extension. Prior to execution of the extension, a public hearing shall be held at which PPB and members of the public may present testimony and the CPO-GS shall make a final determination as required by Section 20-30(a), (b) and (c) of the Code. The final determination shall be published in the Bulletin.

- h) Contract Extension Hearing
The hearing shall be conducted in accordance with Subpart V.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2035 Competitive Selection Procedures for Professional and Artistic Services

- a) Application
- 1) The provisions of this Section apply to every procurement of professional and artistic services, except those subject to the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535] and except as provided in subsection (e).
 - 2) *"Professional and artistic services" means those services provided under contract to a State agency by a person or business, acting as an independent contractor, qualified by education, experience, and technical ability [30 ILCS 525/1-15.60].*
- b) Professional and artistic services are further defined as follows:
- 1) "Qualified by education" means the individual who would perform the services must have obtained the level of education specified in the Request for Proposals.
 - 2) "Qualified by experience" means the individual who would perform the services must have the level of general experience specified in the Request

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for Proposals.

- 3) "Qualified by technical ability" means the individual who would perform the services must demonstrate a high degree of skill or ability in performing services that are the same, similar or closely related in nature to those specified in the Request for Proposals.
 - 4) An essential element distinguishing professional and artistic services from other services is confidence, trust, and belief in not only the ability, but the talent, of the individual performing the service.
 - 5) Professional and artistic services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional and artistic services contracts.
 - 6) If the professional or artistic contract is with a firm or other business entity, the individuals whose education, experience and technical ability provided the basis on which the firm or other business entity was selected must meet the qualifications.
 - 7) When a State agency requires services that meet the requirements of this subsection (b), the competitive selection procedures described in this Section must be followed. Services that do not meet the requirements of this Section must be procured in accordance with other methods of source selection authorized by the Code and this Part.
- c) The categories of services enumerated in this subsection (c) shall be considered and procured as professional and artistic services. With regard to other services, the SPO may determine whether the factors identified in subsection (b), when applied to particular services to be procured, require these services to be procured as professional and artistic under these competitive selection procedures, or as services that are subject to one of the other methods of source selection authorized by the Code and this Part. The following categories are examples of disciplines that would always be professional and artistic services:

- 1) law;
- 2) accounting;
- 3) medicine;

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- 4) dentistry; and
 - 5) clinical psychology.
- d) Architect, engineering and land surveying services shall be procured pursuant to the procedures of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535]. These procurements are not subject to the procedures for other professional services established in the Code or this Part.
- e) Conditions for Use of Competitive Selection Procedures
Except as authorized under Section 20-25 (Sole Source Procurement) or Section 20-30 (Emergency Procurements) of the Code, these competitive selection procedures shall be used for all procurements of professional and artistic services of \$20,000 or more. Services less than \$20,000 and for a nonrenewable term of one year or less may be procured in accordance with Section 1.2020 (Small Purchase Limits).
- f) Request for Proposals
Professional and artistic services shall be procured using an RFP.
- 1) Contents. The RFP shall be in the form specified by the CPO-GS and shall contain at least the following information:
 - A) the type of services required;
 - B) a description of the work involved;
 - C) an estimate of when and for how long the services will be required;
 - D) the type of contract to be used;
 - E) a date by which proposals for the performance of the services shall be submitted;
 - F) a statement of the minimum information that the proposal shall contain, which may, by way of example, include:
 - i) the name of the offeror, the location of the offeror's

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The CPO shall maintain a list of prequalified professional and artistic vendors in accordance with Section 1.2045 of this Part. Persons may amend statements of qualifications at any time by filing a new statement. Failure of a professional and artistic vendor to prequalify shall not be cause for rejection of a proposal provided that the responsive offeror supplies with its proposal all information defined by the prequalification process. ¶
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¶
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¶
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principal place of business and, if different, the place of performance of the proposed contract;

ii) if deemed relevant, the age of the offeror's business and average number of employees over a previous period of time, as specified in the RFP;

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iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;

iv) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFP;

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v) a plan, giving as much detail as is practical, explaining how the services will be performed;

G) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package);

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H) the factors to be used in the evaluation and selection process and their relative importance; and

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I) a plan for post-performance review to be conducted by the State agency after completion of services and before final payment and made part of the procurement file.

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2) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the RFP. Price will not be evaluated until ranking of all proposals and identification of the most qualified vendor. The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:

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A) the plan for performing the required services;

B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;

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- C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
- D) a record of past performance of similar work.

g) Delivery, Receipt and Handling of Proposals

1) Receipt. Upon its receipt, each proposal and modification shall be date and time-stamped but not opened and shall be stored in a secure place until the time and date set for opening. If a proposal is opened for identification purposes or opened in error, the file should state the reason for the error.

2) Proposals shall be submitted to and opened by the CPO-GS, SPO or a designee on behalf of the CPO-GS.

A) Proposals and modifications shall be opened publicly at the time, date and place designated in the RFP.

B) Opening shall be witnessed by a State witness or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

C) Proposals and modifications shall be opened in a manner designed to avoid disclosing contents to competitors. Only authorized State personnel and contractual agents may review the proposals prior to award.

3) Transmission to SPO. The CPO-GS or designee will forward timely proposals to the responsible SPO of the purchasing agency along with any pertinent information contained in the files of the CPO-GS regarding the vendors who submitted proposals.

4) The CPO-GS may require that the SPO be present at and assist in the opening and registration of proposals and the transportation of proposals

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A pre-proposal conference, if appropriate, shall be conducted in accordance with Section 1.2010(f) (Pre-Bid Conference). Such a conference may be held anytime prior to the date established for submission of proposals.

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NOTICE OF ADOPTED AMENDMENTS

to the SPO.

h) Discussions

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1) Discussions Permissible. The CPO-GS, SPO or designee on behalf of the CPO-GS may conduct discussions with any offeror to:

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A) determine in greater detail the offeror's qualifications; and

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B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach. The SPO or designee may allow changes to the proposal based on those discussions.

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2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract.

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i) Selection of the Best Qualified Offerors

After conclusion of validation of qualifications, evaluation and discussion, the SPO shall rank the acceptable offerors in the order of their respective qualifications.

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j) Evaluation of Pricing Data

Pricing submitted for all acceptable proposals timely submitted shall be opened and ranked.

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1) If the low price is submitted by the most qualified vendor, the SPO may award to that vendor.

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2) If the price of the most qualified vendor is not low and if it does not exceed \$25,000, the SPO, but not a designee, may award to that vendor.

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3) If the price of the best qualified vendor exceeds \$25,000, the SPO, but not a designee, must state why a vendor other than the low priced vendor was selected and that determination shall be published in the Bulletin.

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k) Negotiation and Award of Contract

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- 1) General. The purchasing agency, in consultation with the SPO, shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The purchasing agency, in consultation with the SPO, may, in the interest of efficiency, negotiate with the next highest ranked vendor, while negotiating with the best qualified vendor.
- 2) Elements of Negotiation. At a minimum, contract negotiations shall be directed toward:
 - A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
 - B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
 - C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity, and nature of those services.
- 3) Successful Negotiation of Contract with Best Qualified Offeror
 - A) If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is canceled.
 - B) Compensation must be determined in writing to be fair and reasonable. Fair and reasonable compensation shall be determined by the purchasing agency, in consultation with SPO, based on the circumstances of the particular procurement, including but not limited to the nature of the services needed, qualifications of the offerors, consideration of range of prices received in the course of the procurement, other available pricing information and the agency's identified budget.
- 4) Failure to Negotiate Contract with Best Qualified Offeror

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- A) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons shall be placed in the file. The purchasing agency, in consultation with the SPO, shall advise such offeror of the termination of negotiations.
- B) Upon failure to negotiate a contract with the best qualified offeror, the purchasing agency, in consultation with the SPO, may enter into negotiations with the next most qualified offeror.

l) Multiple Awards
The purchasing agency, in consultation with the SPO, may enter into negotiations with the next most qualified vendor or vendors when the purchasing agency has a need that requires multiple vendors under contract.

m) Notice of Award
Written notice of award shall be public information and made a part of the contract file. The CPO-GS shall publish the names of the responsible decision makers of the purchasing agency, the name of the agency, the successful vendor, a contract reference number or other identifier, and the value of the contract. Publication shall be in the next available issue of the Bulletin.

n) Prequalification
Prequalification of professional and artistic vendors shall not be used to bar or prevent an otherwise qualified person from responding to a request for proposal for professional and artistic services.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2036 Other Methods of Source Selection

a) Split Award
An award of a definite quantity requirement may be split between bidders or offerors if necessary to obtain the total quantity needed. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required.

b) Multiple Award

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Deleted: Nothing in this Section shall prohibit the Procurement Officer from making a selection that represents the best value, qualifications, price and other relevant factors established in the request for proposals being considered. The Procurement Officer may, in considering best value, determine the proposal from a fully qualified vendor that submitted the lowest price to be the best value without further evaluation.

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Deleted: The Procurement Officer procuring professional and artistic services, including those under an exception described in subsection (e), shall provide to the CPO the information necessary for publication in the Bulletin. ¶

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Deleted: Small, sole source and emergency procurements of professional and artistic services under the jurisdiction of an SPO do not require approval of the CPO to proceed. Any notices shall be published by the SPO. (...)

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The SPO of the using agency shall provide (...)

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- 1) A multiple award ~~may be made for~~ an indefinite quantity ~~solicitation~~, when award to two or more bidders or offerors for similar products ~~or services~~ is necessary for adequate delivery ~~or service~~.
- 2) If a multiple award is anticipated, the solicitation shall state this fact as well as the criteria for award.
- 3) In a multiple award situation, one vendor ~~shall~~ be designated as the primary recipient of orders. The other awardees may receive orders in the event the primary vendor is unable to deliver or for other reasons as determined by the ~~SPO~~.
- 4) ~~The State agency shall reserve the right to take bids separately if a particular quantity requirement arises that exceeds its normal requirement or an amount specified in the contract.~~
- 5) Multiple Award with Set Rate
 - A) Notwithstanding anything to the contrary in this Part, the ~~CPO-GS~~, but not a designee, may, on a case-by-case basis, authorize ~~an appropriate purchasing agency~~, to issue a competitive solicitation and to enter into contracts with multiple vendors under a process that provides for prequalification, agreement to perform at a set rate, and final selection based on random and equitable distribution of work among qualified vendors.
 - B) The ~~CPO-GS~~ may authorize use of this source selection procedure upon a determination in writing that use of the methods of source selection set forth in Article 20 of the ~~Code~~ is either not practicable or advantageous because, for example, the program needs of State agencies cannot reasonably be met within the normal procurement timeframes, or that the type and variety of State agency needs are such that a single award will not assure the needed availability or diversity of vendors.
 - C) This authorization shall be limited to contracts for information technology services. No other categories of supplies or services may be acquired using this method of source selection unless this subsection (b)(5) is amended.

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- Deleted:** contract to more than one bidder or offeror when the State is obligated to order all of its actual requirements from those vendors.B)A multiple award may be made
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- Deleted:** , or product compatibility. Any multiple award shall be made in accordance with the provisions of Section 1.2010 (Competitive Sealed Bidding), Section 1.2015 (Competitive Sealed Proposals), Section 1.2020 (Small Purchases), and Section 1.2030 (Emergency Procurements), as applicable. Awards shall not be made for the purpose of simply dividing the business or to select products or suppliers to allow for user preference unrelated to utility or economy. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of State agencies.
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D) Vendors shall be prequalified once per fiscal year, or as often as necessary, through use of a competitive sealed proposal. The minimum qualifications (including performance standards and agreement to provide services at a set rate determined by the State), any desirable additional qualifications, and the method of obtaining and setting rates shall be stated in the solicitation advertised in the Bulletin. Those vendors meeting minimum qualifications shall be offered non-exclusive indefinite quantity master contracts against which a procuring agency may later place one or more orders on an as needed basis in accordance with the vendor selection procedure set forth in subsection (b)(5)(G). Implementing Article 45 of the Code and subsection (b)(5)(G) of this Section, the solicitation shall contain a provision alerting vendors that the random selection process used to meet a specific using agency's needs may be limited to those master contract holders who qualify as small businesses.

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E) The purchasing agency shall establish the set rate by one of the following methods. The lowest rate identified will not necessarily be the set rate, but will be a consideration in determining the set rate.

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i) Set in the solicitation the rate that vendors must agree to bill. In general, this rate shall be the lowest rate at which a sufficient number of vendors are ready, willing and able to meet the State's needs. The solicitation shall show the selected purchasing agency has conducted sufficient research (such as reviewing past State contract rates, reference to GSA or other governmental contract rates, or private sector rates determined by internal or industry expert surveys) that the public can have confidence the rate provides overall advantage to the State.

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ii) Require as part of the solicitation that vendors submit rates (prices), including disclosable rates, and inform them the selected purchasing agency will use this rate information and additional rate information received through use of the best and final process, from other contracts and from research to establish the set rate that vendors must bill.

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F) Vendors not willing to agree to bill at the set rate may be rejected or may have their contracts restricted to use in special circumstances approved by the CPO-GS,

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G) Using agency needs will be met by the selected purchasing agency, selecting a master contract holder on a random basis. If the using agency determines that it has specific programmatic needs that require additional qualifications (e.g., specialized programming knowledge or specific educational requirements) or conditions (e.g., geographic limitations) or State policy considerations (e.g., promotion of small business), such that random vendor selection from among all master contract holders would not meet its needs, the using agency may submit an alternate selection request to the CPO-GS. This request shall set forth all reasons, including the additional qualifications or conditions, why a random vendor selection would not reasonably meet the needs of the agency, or the policy of the State. If at least 3 of the master contract holders meet those additional qualifications or conditions, the selected purchasing agency shall conduct a random selection limited to that subset of the master contract holders. If the using agency's request does not show a need for additional qualifications or if there are not 3 master contract holders with the needed qualifications, the using agency may not utilize the method of source selection set forth in this Section.

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H) In order to ensure the continued availability of the set of master contract holders, all potential orders shall be monitored by the selected purchasing agency to ensure the equitable distribution of work and that no single vendor has an unwarranted disproportionate share of the available work. The selected purchasing agency shall, to avoid a disproportionate distribution of work, remove a vendor from consideration for a period of time sufficient to minimize dollar value discrepancies among vendors. In addition, any vendor so removed may be reinstated for consideration to meet a particular using agency's need if only 3 or fewer otherwise eligible vendors are available to meet the using agency's need.

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I) The selected purchasing agency shall conduct the random selection using a drawing, mechanical device or software driven selection.

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The specific process used shall ensure that final selection is influenced only by chance, after taking into consideration, as applicable and as allowed in this Part, the policy of equitable distribution, use of small businesses, and specific requests from agencies to meet special needs.

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J) It shall be the affirmative obligation of each vendor with a master contract to update information provided to the State regarding its continued ability to provide the contracted service. Master contracts may provide that vendors who cannot perform the required services when contacted and who have not provided the updated information may be taken out of consideration for orders for a period of time, including until the next prequalification.

K) The procurement file shall contain justification for the selection of the master contract vendors and each selection to meet the particular need of a using agency including the determination in subsection (b)(5)(B) of this Section; the research papers, reports, contract rates and internal or industry expert surveys, "additional rate information" and identification of "other contracts and research" in subsections (b)(5)(E)(i) and (ii); the alternate selection documents required by subsection (b)(5)(G), the 3 or more master contract holders for the alternate random selection in subsection (b)(5)(G) and updated information required of contractors pursuant to subsection (b)(5)(J). The selected purchasing agency shall publish the names of the vendors selected to receive master contracts and the name of each vendor selected to receive an order to meet the using agency's particular need.

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c) Term and Condition Contracts

1) A term and condition contract contains agreed contractual terms and conditions established for the convenience of the parties to be used in conjunction with a subsequent procurement and processed in accordance with the requirements of the Code and this Part. A term and condition contract is not a procurement. It creates no obligation on the part of the State to procure from the vendor, nor does it create an authorization for a State agency to order based on that term and condition contract, except as provided in subsection (c)(2).

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- 2) Orders may be placed against term and condition contracts without use of any method of source selection specified in the Code for convenience of processing sole source, emergency or small procurements.

- d) Auction
Purchases may be made at auction in accordance with the procedural requirements applicable to the particular auction. Notice and competition is not required and the amount payable shall be the amount bid and accepted plus any required buyer's premium. Individual purchases at auction exceeding the small purchase maximum shall be posted in the Bulletin.

- e) Non-governmental Joint Purchase
If the CPO-GS determines in writing that joint procurement with an organization not eligible under the Governmental Joint Purchasing Act is in the best interests of the State agency, the CPO-GS may authorize a State agency to enter into an agreement with such an organization for the joint procurement of any item covered by the Code. Any method of source selection may be used and may be modified or adapted to meet the needs of the non-State entity.

- f) Federal Requirements
The State agency, in consultation with the SPO, for any State agency receiving federal aid funds, grants or loans or otherwise subject to federal entity requirements may conduct procurements in accordance with federal requirements that are necessary to receive or maintain those federal aid funds, grants or loans or to remain in compliance with federal requirements.

- g) Foreign Country Procurement
Procurements to meet the needs of State agency offices located in foreign countries shall comply with the Code and this Part whenever practicable. The SPO shall maintain a record of the action taken.

- h) Donations
 - 1) When a procurement will have the majority of funding from a donation, the terms of which require use of particular procurement or contracting procedures, the SPO may follow those procedures, but shall follow the Code and this Part whenever practicable.

 - 2) Donations may be acknowledged by the donee agency in a manner appropriate to the type of donation and the program activity associated

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with the donation. Acknowledgment may include, but need not be limited to, public announcement at the event or in donee agency publications, and inviting the donor to attend the program activity associated with the donation.

i) Broker Method for Obtaining Certain Insurance Coverages

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1) Notwithstanding anything to the contrary in this Part, the CPO-GS, but not a designee, may, on a case-by-case basis, authorize the use of this broker method to obtain insurance coverages when use of the methods of source selection set forth in Article 20 of the Code is not practicable or advantageous because, for example:

A) Due to the structure of the insurance industry, the types of insurance coverages needed cannot reasonably be obtained from "direct writers" who would provide quotes directly to State agencies in a bid or RFP process; or

B) The process of obtaining quotes for needed insurance coverages cannot be accomplished within the normal procurement timeframes.

2) If the CPO-GS determines that this broker method is preferable for designated coverages, a two-part procurement process will be used to obtain the coverages.

A) A broker will be selected in accordance with the RFP process for procuring professional services authorized by Section 20-35 and Article 35 of the Code, and the resulting contract will be subject to all requirements of the Code. The broker contract will be issued for a term of years, and during the term of the contract the broker will assist the State agency in obtaining coverages as set forth in subsection (j)(2)(B) as well as providing customary services such as issuing certificates of insurance and servicing policies.

B) The broker will assist the State agency by serving as broker of record in obtaining insurance coverages through the industry process of going to market to obtain quotes. The State agency will use an evaluation team to test the market for competitiveness, review the quotes, and select the insurers and products best fitting

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its needs. The solicitation, evaluation and selection process will be documented in writing and become a part of the public procurement file. The insurance coverages obtained, the term of coverage, and the premiums charged will be posted on the Bulletin as attachments to the broker award notice.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2037 Tie Bids and Proposals

a) Tie bids or proposals are those from responsive and responsible vendors that are, in the case of bids, identical in price, and, in the case of proposals, identical in rank after evaluation.

b) Tie bids or proposals will be resolved as follows:

1) If the tied vendors include only one Illinois resident vendor, the Illinois resident vendor shall be given the award. "Illinois resident vendor" has the meaning ascribed in Section 1.4510 (Resident Vendor Preference).

2) In all other situations, the award shall be made by lot unless the SPO determines that:

A) awarding to one of the vendors is in the State's best interest because, for example, that vendor is likely to be more reliable or responsive to the State's needs, based on past performance; provides a better quality of the supply or service; provides quicker delivery; or, in the case of proposals, because of a desire to take advantage of the lower price; or

B) splitting the award is in the State's best interest because of a need to ensure delivery of the supply or service, or is necessary or desirable to promote future competition, and provided the affected vendors agree to the split award.

c) Records
Records shall be made of all procurements on which the tie bids or proposals are received, showing at least the following information:

1) The identification number of the solicitation:

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2) A description of what was procured; and

3) A listing of all bidders or offerors and the prices submitted.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2038 Modification or Withdrawal of Bids or Proposals.

a) Modification or Withdrawal

A bidder or offeror may withdraw or modify a bid or proposal if notice of the withdrawal or modification is received by the SPO before the latest time specified for receipt of bids or proposals. Any modification or withdrawal, however, must be made in writing and received by the SPO prior to the scheduled bid or proposal opening. When time is of the essence, the SPO may agree to receive modifications or withdrawals by printed form conveyed by electronic mail, fax or telephone. An originally signed written confirmation of a telephone modification or withdrawal shall be mailed or delivered by the bidder or offeror on the same day. Withdrawals of bids or proposals after bid or proposal opening will not ordinarily be permitted; however, in those cases in which the judgment of the SPO, based on clear and demonstrable evidence, the bidder or offeror has made a bona fide error in the preparation of the bid or proposal and that error will result in a substantial loss to the bidder or offeror, an exception may be made.

b) Minor informalities

A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to the State (i.e., the effect on price, quality, quantity, delivery or contractual conditions is negligible). The SPO shall waive these informalities or allow the bidder to correct them, depending on which is in the best interest of the State. Minor informalities include insignificant mistakes that have an effect on price, quantity, quality, delivery or contractual conditions is negligible.

c) Documentation Required

When a bid or proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared by the SPO showing that relief was granted or denied in accordance with this Part.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting as provided in this Section.c)Confirmation of MistakeWhen the Procurement Officer knows or has reason to conclude that a mistake has been made, such officer shall request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake, ¶

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Section 1.2039 Mistakes

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- a) General
Corrections to bids, proposals or other procurement processes are allowed, but only to the extent not contrary to the best interest of the State or the fair treatment of other offerors.
- b) Mistakes Discovered Before Opening
A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting the error in writing, or in person at the opening location, before the time and date set for opening.
- c) Confirmation of Mistake After Opening
When the SPO knows or has reason to conclude that a mistake has been made, the SPO shall request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake, the bid or proposal may be corrected or withdrawn if the conditions set forth in this Section, as applicable, are met.
- d) Mistakes Discovered After Opening but Before Award
 - 1) Minor Informalities
A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to the State (i.e., the effect on price, quality, quantity, delivery or contractual conditions is negligible). The SPO shall waive these informalities or allow correction depending on which is in the best interest of the State. Examples of minor informalities as to form include the failure to:
 - A) return the required number of signed copies required by the IFB;
 - B) acknowledge receipt of an amendment to the solicitation, but only if:
 - i) it is clear from the bid that the offeror received the amendment and intended to be bound by its terms; or

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- ii) the amendment involved had a negligible effect on price, quantity, quality or delivery.
- 2) Mistakes in Which the Intended Correct Information Is Evident
If the mistake and the intended correct information are clearly evident on the face of the bid document, the information shall be corrected and the bid may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the solicitation document are typographical errors, errors in extending unit prices, transposition errors and arithmetical errors.
- 3) Mistakes in Which the Intended Correct Information Is Not Evident
The bid or proposal may be withdrawn if:
 - A) a mistake is clearly evident on the face of the bid or proposal document but the intended correct bid or proposal is not similarly evident; or
 - B) there is proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.
- e) During Discussions; Prior to Best and Final Offers
Once discussions are commenced with any offeror or after best and final offers are requested, an offeror may propose to correct any mistake, prior to the date set for conclusion of discussions or for receipt of best and final offers, provided the correction would not be contrary to the fair and equal treatment of other offerors.
- f) Mistakes Discovered After Award
Mistakes shall not be corrected after award of the contract except when the SPO finds it would be unconscionable (e.g., if the mistake resulted in a windfall to the State) not to allow the mistake to be corrected.
- g) Documentation Required
The reason for allowing correction or withdrawal of bids or proposals shall be made part of the procurement file and shall be available for public inspection.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

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a) Policy
Any solicitation may be canceled before or after opening when the SPO believes cancellation to be in the State's best interest. Nothing shall compel the award of a contract.

b) Cancellation of Solicitation; Rejection of All Bids or Proposals

1) A solicitation may be canceled in whole or in part when the SPO determines in writing that the action is in the State's best interest for reasons, including, but not limited to:

- A) the State no longer requires the supplies or services;
- B) the State no longer can reasonably expect to fund the procurement;
- C) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
- D) ambiguous or otherwise inadequate specifications;
- E) the solicitation did not provide for consideration of all factors of significance to the State;
- F) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- G) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
- H) there is reason to question whether the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

2) When a solicitation is canceled, notice of cancellation shall be posted to the Bulletin.

3) The notice of cancellation shall:

- A) identify the solicitation;

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The provisions of this Section shall govern the cancellation of any solicitations whether issued by the State under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.b)

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- B) briefly explain the reason for cancellation or rejection; and
- C) when appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar supplies or services.

c) Rejection of Individual Bids or Proposals

- 1) Individual bids or proposals may be rejected for reasons including, but not limited to:
 - A) the bid or proposal is not responsive (i.e., it does not conform in all material respects to the submission requirements for the solicitation);
 - B) the vendor that submitted the bid or proposal is nonresponsive as determined under Section 1.2046 (Responsibility);
 - C) the supply or service item offered in the bid or proposal is unacceptable by reason of its failure to meet the announced requirements of the solicitation, including, but not limited to, specifications or permissible alternates or other acceptability criteria set forth in the solicitation, statement of work or quotation; or
 - D) the proposed price, including options, is clearly unreasonable.
- 2) Notice of Rejection. Upon request, bidders or offerors whose bids or proposals have been rejected shall be advised of the reasons for rejection.

- d) Documentation
The reason for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section 1.2043 Suppliers

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The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

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An agency may contract with any qualified source of supply, but shall use or consider, as applicable, the following special sources, from which procurements may be made without notice and competition;

a) Correctional Industries in accordance with Subpart O. The CPO-GS, after consulting with Illinois Correctional Industries, a division of the Department of Corrections, shall determine the type and extent of the preference purchasing agencies shall give to supplies produced or services performed by Correctional Industries. Factors to be considered in determining the preference include, but are not limited to, the ability of Correctional Industries to meet the State's requirements, the price charged and the reason for the Correctional Industries program. This information shall be provided to each SPO and purchasing and using agencies.

b) State and Federal Surplus Warehouses under the jurisdiction of the Department of Central Management Services. (The State Property Control Act [30 ILCS 605/7a] requires that surplus furniture be considered before any purchase of new furniture valued at \$500 or more per piece.)

c) Qualified workshops for the disabled in accordance with Subpart O,

d) State agencies and other governmental units described in Section 1-10(b)(1) of the Code.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2044 Vendor List

Each State agency may maintain a list of vendors who have expressed interest in contracting with the State. This list may be used to solicit for small purchases and to supplement Bulletin notices.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2045 Vendor Prequalification

a) The SPO may prequalify prospective vendors when determination of a vendor's prequalifications or preliminary evaluation of supplies or services prior to procurement would promote the effective conduct a procurement.

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- b) The SPO shall identify by publication in the Bulletin the qualifications or categories of supplies and services (including professional and artistic services) for which vendors of those supplies and services may prequalify.
- c) An opportunity to prequalify shall be allowed at least one time each fiscal year. The opportunity to prequalify shall be announced in the Bulletin. The notice shall alert vendors that fail to participate in the prequalification process of the consequences.
- d) When prequalifying a vendor, the SPO may limit prequalification to particular matters (e.g., determining whether a vendor has been and is likely to be "responsible" or whether the vendor manufactures domestically).
- e) The fact that a prospective vendor has been prequalified generally does not necessarily represent a definitive finding of responsibility for a particular procurement.
- f) When prequalifying a vendor, the SPO may consider factors tailored to a specific procurement or type of procurement, which shall be announced in the prequalification notice in the Bulletin.
- g) Except in the case of professional and artistic services, distribution of and responses to the solicitation may be limited to prequalified vendors and award of a contract may be denied because a vendor was not prequalified. If eligibility for the procurement will be limited to prequalified vendors, the solicitation shall state that fact.
- h) The prequalification may provide that any vendor who completes prequalification may refer to that prequalification when submitting responses to solicitation or in other procurement situations instead of submitting the same information with a response. This does not alleviate a vendor from providing updated certifications as part of the prequalification process.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2046 Responsibility

- a) Application
Before making an award or signing a contract, the SPO must be satisfied the

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prospective vendor is responsible. If there is doubt about responsibility, and if a bond or other security would adequately protect the State's interests, then that vendor may receive an award or contract upon receipt of the bond or other security.

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b) Standards of Responsibility

Factors to be considered in determining whether the standard of responsibility has been met include financial responsibility, insurability, effective equal opportunity compliance, payment of prevailing wages if required by law, capacity to produce or sources of supply, performance record in the business or industry, ability to provide required maintenance service or other matters relating to the bidder's probable ability to deliver in the quality and quantity and within the time and price required under the contract, if it is awarded to the bidder. The vendor must be a legal entity authorized to do business in Illinois prior to submitting the bid, offer or proposal and qualified legally to contract with the State.

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c) Information Pertaining to Responsibility

The prospective vendor shall supply information requested concerning the vendor's responsibility. The State may supplement this information from other sources and may require additional documentation at any time. If the vendor fails to supply the requested information, the SPO may disqualify the vendor or may base the determination of responsibility upon any available information.

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d) Written Determination of Nonresponsibility Required

If a vendor that otherwise would have been awarded a contract is found non-responsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the agency purchasing director or his or her designee and approved by the SPO. The final determination shall be made part of the procurement file.

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e) Affiliated Companies

Vendors that are newly formed business concerns having substantially the same owners, officers, directors or beneficiaries as a previously existing vendor that has been determined not responsible or has been suspended or debarred will also be determined not to be responsible.

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

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Section 1.2047 Security Requirements

- a) Vendors shall furnish bid, proposal or performance security as specified in the solicitation or contract. The cost of providing security will be borne by the vendor unless otherwise stated in the solicitation.
- b) Security, unless otherwise specified, may be in the form of cashier's check, certified check, money order, irrevocable letter of credit or bond. Any bond must be issued by a surety company authorized to do business in the State of Illinois and having a rating acceptable to the State agency.
- c) Unless the amount is set by law, the State agency, in consultation with the SPO, will determine the amount, in dollars or percentage of contract price, that will adequately protect the State's interests. That amount will vary depending on the type of procurement and the risks and potential losses associated with delay or failure to complete the project, and for other such reasons.
- d) A vendor may be required to furnish up to 100% performance security at any time during contract performance and at its cost, if it appears that delivery or production schedules cannot be met, quality is poor, responsibility is questioned and for similar reasons.
- e) The vendor's subcontractor may also be required to furnish security. If the vendor does not have a stock of the supplies in question in the amount required or the facilities to produce the item in that amount, the State agency may, in addition, require the vendor to have the subcontractor furnish security acceptable to the State agency, conditioned on the source supplying the vendor as required in the solicitation.
- f) Bid or Proposal Security
 - 1) The bid or proposal will be used to ensure the bidder or offeror meets all obligations imposed under the solicitation, including the obligation to keep the price, bid or proposal firm for as long a period as specified in the solicitation to enter into a contract and the obligation to file a performance security. If required, when the contract is awarded, the State agency may retain the bid or proposal security as damages of the bidder or offeror fails to meet its obligations.

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2) The bid of proposal security will be returned to the vendor as soon as is practicable after the bid or proposal opening. The three lowest qualified vendors' security will be returned as soon as possible after the contract is awarded or, if performance security is required, as soon as the successful vendor has filed acceptable performance security. Security will be returned to the unsuccessful vendors upon expiration of the bid/proposal time of execution of the contract, whichever is earlier.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART H: SPECIFICATIONS AND SAMPLES

Section 1.2050 Specifications and Samples

- a) Responsibilities Regarding Specifications
Subject to the SPO's direction, the State agency shall draft the necessary specifications.
- b) Procedures for the Development of Specifications
 - 1) All procurements shall be based on specifications that accurately reflect the State's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements and shall be written in such a manner as to describe the requirements to be met, without being unduly restrictive or having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.
 - 2) Any specifications or standards adopted by business, industry, not-for-profit organization or governmental unit may be adopted by reference.
 - 3) A specification may provide alternate descriptions when two or more design, functional or performance criteria will satisfactorily meet the State's requirements.
 - 4) Article 45 of the Code shall be considered and applied when required or appropriate.

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5) A solicitation or specification for a contract, or a contract, may not require, stipulate, suggest or encourage a monetary or other financial contribution or donation, cash bonus or incentive, or economic investment as an explicit or implied term or condition of awarding or completing the contract. [30 ILCS 500/20-50]

c) Brand Name or Equal Specification

1) Brand name or equal specifications may be used in a competitive solicitation when;

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A) no specification for a common or general use specification or qualified products list is available;

B) time does not permit the preparation of another form of specification;

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C) the nature of the product or the nature of the State's requirement makes use of a brand name or equal specification suitable for the procurement; or

D) use of a brand name or equal specification is in the State's best interest.

2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.

3) Unless the State agency determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.

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4) When a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the

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suitability of the product for its intended use. Burden of proof that the product is equal is on the bidder.

d) Brand Name Only Specification

1) A "brand name only" specification may be used in a competitive solicitation provided the SPO makes a written determination that only the identified brand name item will satisfy the State's needs.

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2) Brand name alone may be specified in order to fill medical prescription needs, to stock State retail-type operations, to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the CPO-GS. An agency may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time, and for that period the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.

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3) The SPO shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit those sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 1.2025 (Sole Economically Feasible Source Procurement).

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e) Qualified Products List

1) A qualified products list may be developed by the SPO when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy State requirements.

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2) When developing a qualified products list, a notice shall be posted to the Bulletin soliciting potential suppliers to submit products for testing and examination to determine acceptability for inclusion in a qualified products list.

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3) Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements.

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f) Proven Products

The supply or service may be rejected if it has not been offered to other

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governmental or commercial accounts for at least one year prior to the notice date of a solicitation. Specifications may require that the supply or services must have been used in governmental or commercial venues for a specified period of time to be considered.

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g) State Required Samples

1) Samples or descriptive literature may be requested when it is necessary to evaluate required characteristics of the items bid. Any required samples must be submitted as instructed in the solicitation, with transportation prepaid by the vendor. Each sample must be labeled with the vendor's name, address and a means of matching the sample with the applicable bid or proposal.

2) Any sample submitted must be representative of the item that would be delivered if a contract were awarded for that item. Samples submitted by a successful vendor will be retained to check continuing quality. Submission of samples will not limit the State's right to require adherence to specifications.

3) No payment will be made for samples. Samples not destroyed or consumed by examination or testing will be returned upon request and at vendor's expense. ~~The~~ request must be made at time of submission with return collect or prepayment provisions and instructions for return accompanying the samples.

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4) Unsolicited bid samples or descriptive literature are submitted at the vendor's risk, may or may not be examined or tested, will not be deemed to vary any of the provisions of the solicitation, and may not be utilized by the vendor to contest a decision or understanding with the State agency.

h) Product Demonstration

Subject to the requirements of Section 50-39 of the Code, a vendor may request to demonstrate a product or service. Agreement to allow a demonstration will be solely at the State's discretion and will not entitle the bidder to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration. No payment will be made for the product demonstration period. The product demonstration will be returned upon request and at the vendor's expense. The request must be made prior to the time of product demonstration with return collect or prepayment provisions and

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instructions for return accompanying the product demonstration.

i) Specifications Prepared by Other Than State Personnel

1) Specifications may be prepared by other than State agency personnel, including, but not limited to, consultants, architects, engineers, designers or other drafters of specifications for public contracts when the SPO determines that there will be no conflict of interest involved and is otherwise in the best interest of the State agency. The SPO retains the authority for final approval of the specifications. Contracts for the preparations of specifications by other than State agency personnel shall require the specification writer to adhere to State agency requirements and the terms of the Code and this Part.

2) The person who prepared the specifications shall not submit a bid or proposal or receive a contract to meet the procurement need.

3) Prohibited Bidder and Contractors

A) No person or business shall bid or enter into a contract if the person or business:

i) Assisted the State agency in determining whether there is a need for a contract, except as part of a response to a publicly issued RFI; or

ii) Assisted the State agency by reviewing, drafting or preparing any IFB, a RFP, or RFI, provided similar assistance, except as part of a publicly issued opportunity to review drafts of all or part of these documents.

B) This subsection (i)(3) does not prohibit a person or business from submitting a bid or proposal or entering into a contract if the person or business:

i) Initiates a communication to provide general information about products, services or industry best practice and, if applicable, that communications is documented; or

Deleted: Any vendor may request time and space to demonstrate a product or service. Agreement to allow such demonstration will be solely at the State's discretion and will not entitle the bidder to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration.

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Deleted: An SPO, as pre-solicitation activities, may utilize the services of any person to conduct research, analyze requirements, or provide general design or other assistance to help the State develop its procurement strategy, specifications, documents and other related needs.

Deleted: A State agency may contract for our utilize the services of any non-state person to provide specifically defined pre-solicitation assistance, whether or not compensated. This contract shall address confidentiality and conflict of interest. However, nothing shall preclude minimal and sporadic telephone communications, (...)

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ii) *Responds to a communication initiated by an employee of the State agency for the purposes of providing information to evaluate new products, trends, services or technologies. [30 ILCS 500/50-10.5(e)]*

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iii) *Has an existing contract with the State for the same products that are the subject of the solicitation.*

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j) Pre-Solicitation Request for Information
When the SPO does not have sufficient information about available supplies or services to issue a solicitation, he or she may issue a pre-solicitation request for information inviting vendors to submit non-price information about the availability of specified types of supplies and services. Vendors may be provided an opportunity to comment on the RFI itself and make non-proprietary suggestions as to the scope and information being requested that would facilitate the best possible responses from the vendor community. Public notice of the pre-solicitation request for information shall be published in the Bulletin at least 14 days before the date set for the receipt of information. The submission of information by a vendor in response to a pre-solicitation request for information is not a prerequisite for that vendor to respond to a subsequent solicitation for the types of supplies and services for which information was solicited, and the issuance of a pre-solicitation request for information does not commit the State agency to make any procurement of supplies or services of any kind. Confidential information will not be accepted from a vendor in response to a pre-solicitation request for information. All information received through a pre-solicitation request for information will be available for public review.

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Deleted: The person who provided pre-solicitation assistance or who prepared the specifications shall not submit a bid or proposal to meet the procurement need unless the agency head, and not a designee, determines in writing that it would be in the best interest to accept such a bid or proposal from that person. In determining best interest, the agency head and CPO shall consider factors such as the effect on competition of including or excluding this person and whether the person recommended procuring supplies or services sold by that person. A notice to that effect shall be provided to the CPO and, if approved by the CPO, published in the Bulletin. This waiver notice shall include the project name; vendor name; a description of the work performed; and a statement that the work product will be available upon issuance of a solicitation. In addition, the solicitation itself shall include a section identifying the waiver, a detailed justification and a statement that the work product shall be available for review and copying.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART I: CONTRACTS

Section 1.2055 Types of Contracts

- a) Scope
This Section contains descriptions of types of contracts and limitations as to when they may be utilized by the State in its procurements. Types of contracts not mentioned in this Section may also be utilized.
- b) Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting

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The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Code. This type of contracting may not be used alone or in conjunction with an authorized type of contract. A cost-plus-percentage-of-cost contract is one in which the vendor selects the supply or service on which the vendor's percentage is applied.

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- 1) A percentage mark-up from an agreed price list is not a cost-plus-a-percentage-of-cost contract.
- 2) A percentage mark-up from the cost of a supply or service selected by the State or another vendor under contract to the State is not a cost-plus-a-percentage-of-cost contract.

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3) A percentage mark-up from the cost of parts needed in relation to a contract for services does not convert the services contract to a prohibited cost-plus-a-percentage-of-cost contract, provided the parts supplied under the cost-plus-a-percentage-of-cost method do not exceed 20% of the value of the contract.

c) Types of Fixed-Price Contracts

- 1) Firm Fixed-Price Contract. A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the vendor's cost of performing the work specified in the contract.
- 2) Fixed-Price Contract with Price Adjustment
 - A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in the vendor's price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:
 - i) changes in the vendor's labor agreement rates as applied to an industry or area (such as are frequently found in contracts for the purchase of coal);

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ii) changes due to rapid and substantial price fluctuations that can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloy); and

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iii) in requirement contracts in which, a vendor is selected to provide all of the State's needs for the items specified in the contract, when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

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B) If the contract permits unilateral action by the vendor to bring about the condition under which a price increase may occur, the State shall have the right to reject the price increase and terminate without cost the future performance of the contract.

d) Cost-Reimbursement Contracts

1) Determination Prior to Use

A) The State agency must submit to the SPO a justification for using any type of cost-reimbursement contract. This justification must be sufficient to show that such a contract is likely to be less costly to the State than any other type or that it is impracticable to obtain the items through any other type of contract. The SPO will consider the justification and any other relevant factors before making a written determination to authorized use of the cost-reimbursement contract.

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B) Reimbursement of travel expenses in accordance with applicable travel control board regulations is authorized without further determinations.

2) Cost-Reimbursement Contract. A cost-reimbursement contract provides that the vendor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee.

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3) Cost-Plus-Fixed-Fee Contract. This cost-reimbursement type contract provides for payment to the vendor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract.

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4) Cost Incentive Contracts

A) General. A cost-incentive type of contract provides for the reimbursement to the vendor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the vendor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the vendor controls cost in the performance of the contract).

B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The vendor is obligated to complete performance of the contract and, if actual costs exceed the ceiling price, the vendor suffers a loss.

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C) Cost-Reimbursement Contract with Cost-Incentive Fee. In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of

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performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the State is obligated to reimburse the vendor. The vendor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the vendor.

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e) Performance Incentive Contracts

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the vendor to a bonus, while late completion may entitle the State to a price decrease.

f) Time and Materials Contracts; Labor Hour Contracts

Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Labor hour contracts provide only for the payment of labor performed. The contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior State approval.

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g) Definite Quantity and Indefinite Quantity Contracts

1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally, an estimated quantity based on the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the State is obligated to order and may also provide for a maximum quantity provision that limits the State's ability to order. If the contract identifies an estimated quantity, the State agency may order up to 20% more than the estimate without additional procurement authorization or activity.

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- 3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the State to order all the actual requirements of designated State agencies during a specified period of time. If identified in the solicitation as a requirements contract, all needed quantity, regardless of any stated estimate, must be ordered from that contract.

- h) Leases
A lease is a contract for the use of supplies or real property under which title will not pass to the State at any time, except pursuant to an option to purchase.

- i) Recovery Contracts
Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the State. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.

- j) Option Provisions
A solicitation or contract may contain options for renewal, extension or purchase, and shall also include the requirements for exercising this option, and shall determine the term and the price or shall include the formula for establishing the price. Contracts based on a solicitation may include only those options included in the solicitation. Exercise of options shall be performed in accordance with the solicitation, the Code and other provisions of this Part.

- k) State Produced Supplies and Services
Notwithstanding any provision in any contract, supplies or services available in-house or from State programs, such as the Correctional Industries Programs, may be ordered without violating any contract.

- l) Extraordinary Quantities
Notwithstanding any provision in any contract, the State reserves the right to take bids separately if a particular quantity requirement arises that exceeds the State's normal needs or ordering requirements.

- m) Energy Conservation
State agency procurements of energy conservation measures, including guaranteed energy savings contracts, shall be made in accordance with the Code and this Part, except as otherwise authorized by the Code.

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Deleted: The CPO may authorize an IFB, RFP or sole source negotiation for energy conservation measures whereby the State would make payment based on utility cost savings. Such contract shall require a clearly defined baseline of energy usage and method of measuring cost savings taking into account at least differing weather conditions, changes in facility, usage and cost of energy.

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n) Sale of Advertising in State Publications

- 1) Pursuant to Section 20-110 of the Code, an SPO may sell ads or advertising space in certain State publications.
- 2) These arrangements shall be made pursuant to specifications included in an IFB or, if appropriate, an RFP.
- 3) The advertising in, or authorized use of, State publications shall be appropriate to the type of publication and the program operations of the agency.
- 4) This procedure is authorized in conjunction with, for example, publications that promote tourism, conservation, recycling and the State Fairs. The executive head of the agency must concur in writing for the agency to accept advertising from a person the agency regulates.
- 5) Proceeds from the sale of the advertisements shall be paid as stated in the IFB or RFP, including, but not limited to, the following:
 - A) to the General Revenue Fund;
 - B) to a special fund authorized to receive the proceeds;
 - C) as free or additional copies; or
 - D) directly to the printer by the advertiser.

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- o) [Contracting for Installment Purchase Payments, Including Interest](#) Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2060 Duration of Contracts – General

a) General

The term of a contract, including potential renewals, may not exceed 10 years

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~~except:~~

~~1) A software license designated as a perpetual license is not considered a multi-term contract; it is instead a one-time purchase.~~

~~2) The length of a lease for real property or capital improvement shall be in accordance with Section 40-25 of the Code.~~

b) ~~Subject to Appropriation~~

~~Each contract is contingent upon and subject to the availability of funds. The State, at its sole option, may terminate or suspend a contract, in whole or in part, without penalty or further payment being required, if the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay that obligation or if funds needed are insufficient for any reason. Each contract payable in whole or in part by any funds appropriated by the Illinois General Assembly shall recite that the contract is subject to termination and cancellation for lack of, or insufficiency in, funding. A vendor will be notified in writing by the State agency of a failure to receive or a reduction or decrease in any appropriation affecting the contract. This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.~~

c) ~~Conditions for Use of Multi-Year Contracts~~

~~A multi-year contract may be used when:~~

~~1) special production of definite quantities or the furnishing of long-term services is required to meet State needs; or~~

~~2) a multi-year contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in State procurement. The following factors are among those relevant to such a determination:~~

~~A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping costs during the period of contract performance;~~

~~B) lower production costs because of a larger quantity of service requirements, and substantial continuity of production or~~

Deleted: Except in an emergency, or where immediate performance is necessary to protect the programmatic interest of the agency and all required approvals have been obtained, the vendor selected for award shall not begin any billable work or charge expenses prior to final execution of the contract by the State. The procuring agency's SPO must approve any pre-contract work and shall report the circumstances to the Chief Procurement Officer. Each solicitation and contract shall contain a provision alerting vendors that they will not be eligible for reimbursement for work performed prior to execution of the contract by the State, except as provided in this subsection (a)(1). Only the SPO, the CPO or designee of the CPO, may authorize work prior to execution.

Deleted: 2) A multi-term contract for a term up to 10 years is authorized when determined by the Procurement Officer to be in the best interest of the State. ¶
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3) The length of the payment term of bonds issued by or on behalf of a State agency shall be limited as provided in the statute authorizing the issuance of the bonds. ¶
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Deleted: A software license may have a term longer than 10 years, including for a perpetual term, provided the payment term is limited to no more than 10 years;

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performance over a longer period of time, can be expected to result in lower unit prices;

- C) stabilization of the vendor's work force over a longer period of time may promote economy and consistent quality; or
- D) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

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- d) Multi-Year Contract Procedure
The solicitation shall state:

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- 1) the proposed term;
- 2) the amount of supplies or services required for the proposed contract period;
- 3) the type of pricing requested (e.g., firm for term); and
- 4) how award will be determined.

- e) Renewals

- 1) The initial term of a contract plus available renewals may not exceed 10 years. When the original procurement specifically called for an initial term plus renewals, the renewals may be exercised without further procurement activity, except for the publication of the renewal in the Bulletin as required by Section 15-25 of the Code and Section 1.1525 of this Part and subject to review by the PPB under Section 5-30 of the Code. The renewal, terms and conditions shall not change except as provided in the contract (such as price escalations tied to an index). Renewal options may be exercised by the State or by mutual agreement, but shall not be exercised solely at the option of the vendor. Any renewal that requires modification to a material term or condition of the contract shall be treated as a new contract and shall be subject to competitive procurement procedures established by the Code and this Part.

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- 2) When the original procurement was silent as to renewals, the renewal must be procured using one of the methods of source selection authorized by the Code and this Part. The renewal shall start a new term not to exceed 10

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years, except the term of a sole source contract renewal shall include previous sole source contracts and shall in total not exceed 10 years.

- 3) When a renewal will result in the total term, counting the initial term and any previous renewals, exceeding 10 years, the State agency's need must be procured using one of the methods of source selection authorized by the Code and this Part.

- f) Filing of Proposed Renewals and Extensions Exceeding \$249,999
Prior to executing a renewal or extension with a cost estimated to exceed \$249,999, the proposed renewal or extension must be submitted to PPB. The PPB shall have up to 30 days to review and comment on the proposal. The SPO assigned the agency may request a waiver of the review for reasons set forth in Section 20-60(c) of the Code.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2065 Cancellation of Contracts

- a) In any of the following cases, the State agency, in consultation with the SPO, shall have the right to terminate or rescind any contract entered into under this Part without penalty:
- 1) The successful vendor inexcusably fails to furnish a satisfactory performance bond within the time specified.
 - 2) The vendor inexcusably fails to make delivery at the place or within the time specified in the contract or as ordered by the purchasing agency.
 - 3) Any supplies or services provided under the contract are rejected (for not meeting specification, not conforming to sample, or not being in good condition when delivered) and are not promptly replaced by the vendor. If there are repeated rejections of the vendor's supplies or services, this shall be grounds for termination or rescission, even though the vendor offers to replace the supplies or services promptly.
 - 4) The vendor is guilty of misrepresentation (e.g., misbranding of food or drugs) in connection with another contract for the sale of supplies or services to the State such that the vendor cannot reasonably be depended

Deleted: A contract may contain a renewal provision that binds the vendor, but not the State, for a term beyond the maximum 10-year term of a contract.

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upon to fulfill obligations as a responsible vendor under other contracts with the State.

- 5) The vendor should be adjudged bankrupt; enter into receivership or make a general assignment for the benefit of creditors due to insolvency; disregard laws, rules, or instructions of the SPO; or act in violation of any provision of the contract; or if the contract conflicts with any statutory or constitutional provision of the State of Illinois or of the United States.
- 6) Any other breach of contract or other unlawful act by the vendor.
- 7) The contract was obtained by fraud, collusion, conspiracy or other unlawful means; or
- 8) The contract conflicts with any statutory provision of the State of Illinois or of the United States.

b) Damages

The damages for which the State may be compensated as provided in this Section or by a suit on the vendor's performance bond or by other legal remedy shall include, but are not limited to, the following:

- 1) the additional cost of supplies or services bought elsewhere;
- 2) cost of repeating the procurement procedure;
- 3) any expenses incurred because of delay in receipt of supplies or services; and
- 4) any other damages caused by the vendor's breach of contract or unlawful act.

c) Withholding Money to Compensate State for Damages

If a contract is terminated or rescinded under this Section, the State agency may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the State agency for any damage resulting from termination or rescission.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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SUBPART J: PROCUREMENT FILES

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Section 1.2080 Public Procurement File

- a) *A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids and proposals, all evaluation materials, score sheets and all other documentation related to or prepared in conjunction with evaluation, negotiation and the award process. The procurement file shall contain a written determination, signed by the SPO, setting forth the reasoning for the contract award decision. The procurement file shall be open to public inspection within 7 days following award of contract. [30 ILCS 500/20-155(b)]*
- b) The procurement files shall be maintained by or under the jurisdiction of the CPO-GS.
- c) Documentation of Procurement Actions
Each purchasing agency, under the direction of the SPO, shall maintain in the procurement or associated contract file all substantive documents and records of communications that pertain to the procurement and any resulting contract. This shall include, as applicable, but is not limited to:
- 1) The form of decision memo showing approvals to proceed at all stages;
 - 2) Procurement Bulletin Postings;
 - 3) Solicitation document (e.g., IFB) and all amendments, clarifications and Best & Final requests;
 - 4) Vendors' responses, including clarifications and responses to Best & Final requests (losing responses may be stored elsewhere);
 - 5) Evaluation material (e.g., scoring guidelines and forms; completed score sheets for individual evaluators, including notes; evaluation committee's combined score sheets; evaluation committee's recommendation; and management's decision);
 - 6) Protest and resolution;
 - 7) Contract and any order, change, amendments, renewal or extension;

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- 8) Contractor Performance reviews;
- 9) All information from subsections (b)(1) through (b)(8), less information exempt from disclosure under the Freedom of Information Act [5 ILCS 140], shall be prepared and available for inspection and copying, with information from subsections (b)(1) through (b)(5) available within 7 business days following the award being posted to the Procurement Bulletin.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.2084 Record Retention

- a) Retention of Bulletin Information. Information published in the Bulletin shall be retained in electronic format for the current fiscal year plus one additional year, then transferred to media storage and maintained for 13 years after which it may be disposed of providing all audits have been completed and no litigation is pending or anticipated.
- b) Books and records that relate to performance of a State agency contract, including subcontracts, and that support amounts charged shall be maintained:
 - 1) by a vendor, for 3 years from the date of final payment under the prime contract; and for such longer period of time as is necessary to complete ongoing or announced audits or to comply with federal requirements.
 - 2) by the State agency for 3 years from the date of final payment under the prime contract; and for such longer period of time as is necessary to complete ongoing or announced audits.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.2086 Filing with the Comptroller

- a) *Filing with Comptroller*
Whenever a grant, defined pursuant to accounting standards established by the State Comptroller, or a contract liability, except for contracts paid for from personal services or contracts between the State and its employees to defer compensation in accordance with Article 24 of the Illinois Pension Code,

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exceeding \$10,000 is incurred by any State agency, a copy of the contract, purchase order, grant or lease shall be filed with the Comptroller within 15 days. For each State contract for goods, supplies, or services awarded on or after July 1, 2010, the contracting agency shall provide the applicable rate and unit of measurement of the goods, supplies, or services on the contract obligation document as required by the Comptroller. Any cancellation or modification to any such contract liability shall be filed with the Comptroller within 15 days after its execution. [30 ILCS 500/20-80]

b) Late Filing Affidavits

When a contract, purchase order, grant or lease required to be filed by this Section has not been filed within 30 days after execution, the State agency must file with the Comptroller an affidavit, signed by the chief executive officer of the State agency or a designee, setting forth an explanation of why the contract liability was not filed within 30 days after the execution. A copy of this affidavit shall be filed with the Auditor General and the CPO-GS.

c) Timely Execution of Contracts

1) No voucher shall be submitted to the Comptroller for a warrant to be drawn for the payment of money from the State Treasury or from other funds held by the State Treasurer on account of any contract unless the contract is reduced to writing before the services are performed and filed with the Comptroller. Vendors shall not be paid for any goods that were received or services that were rendered before the contract was reduced to writing and signed by all the necessary parties.

2) Upon request of the State agency and with justification required by the CPO-GS, the CPO-GS may request an exception to this subsection (c) by submitting a written statement to the Comptroller and Treasurer setting forth the circumstances and reasons why the contract could not be reduced to writing before the supplies were received or services were performed. A waiver of this subsection (c) must be approved by the Comptroller and Treasurer. This Section 20-80(e) of the Code does not apply to emergency purchases if notice of the emergency purchase is filed with the PPB and published in the Bulletin as required by the Code. [30 ILCS 500/20-80]

(Source: Added at 36 Ill. Reg. _____, effective _____)

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SUBPART K: WORKING CONDITIONS

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Section 1.2560 Prevailing Wage

a) Responsible Vendors

1) In order to be considered responsible under Section 1.2046, vendors of the following classifications of services must certify that wages to be paid to their employees are no less, and fringe benefits and working conditions of employees are not less favorable, than those prevailing in the locality where the proposed contract is to be performed;

A) Printing.

B) Janitorial cleaning services, window cleaning services, building and grounds services, site technician services, natural resources services, food services and security guard services having a total value of \$2,000 or more or \$200 or more per month.

2) This Section does not apply to services furnished under contracts for professional or artistic services or to vocational programs of training for persons with physical or mental disabilities or to qualified not-for-profit agencies for persons with severe disabilities;

Deleted: For the following classifications and if competition exists, no bidder will be awarded a contract unless its employees are paid wages and benefits and are working under conditions prevalent in the location where the work is to be performed, if a prevailing wage has been determined by the Illinois Department of Labor.

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b) Vendors awarded contracts or subcontracts on public works projects shall comply with the requirements of the Prevailing Wage Act [820 ILCS 130].

Prevailing wages, benefits and conditions will be determined by the Illinois Department of Labor.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Deleted: Prevailing wage and conditions prevalent means the hourly wage rate, overtime, holiday pay, pension, welfare, premium differential, vacation pay and other benefits received by employees and the environmental conditions under which they work. ¶
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c)...Prevailing Wage Rates...¶

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Section 1.2570 Equal Employment Opportunity; Affirmative Action

Pursuant to Section 7-105A of the Illinois Human Rights Act (IHRA) [775 ILCS 5/7-105A], the Department of Human Rights (DHR) has promulgated rules (44 Ill. Adm. Code 750) that requires certain bidders or offerors to register with DHR in order to be eligible for the award of certain public contracts.

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.2575 Subcontractors (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

SUBPART L: CONTRACT PRICING

Section 1.2800 All Costs Included (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

SUBPART M: CONSTRUCTION AND
CONSTRUCTION RELATED PROFESSIONAL SERVICES

Section 1.3005 Construction and Construction Related Professional Services

a) General Procedures

1) In the case of contracts for construction of buildings or for other construction work in or about buildings or grounds where the entire estimated cost of the work exceeds the amount stipulated by Section 20-20 of the Code, prospective contractors employed in connection with those projects may be prequalified to determine their responsibility (for architects, engineers and land surveyors, see the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535]). If the total estimated cost of the work exceeds the amount stipulated by Section 30-30 of the Code, separate specifications shall be prepared for all equipment, labor and materials in connection with the following five subdivisions of work to be performed:

- A) Plumbing.
- B) Heating, piping, refrigeration and automatic temperature control systems, including the testing and balancing of such systems.
- C) Ventilating and distribution systems for conditioned air, including the testing and balancing of those systems.
- D) Electrical wiring.

Deleted: All competitive sealed proposals, including proposals for professional and artistic services, shall include a provision to require each offeror to identify, either in its proposal or prior to award, the identity of any subcontractor that will be used in the performance of the contract, as well as the amounts expected to be paid to each subcontractor. For purposes of this Section, subcontractors are those specifically hired to perform all or part of the services or to provide the supplies requested by the State. ¶

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Deleted: The IFB or RFP and any resulting contract shall define whether prices cover transportation, transit insurance, delivery, installation, taxes, expenses and any other costs. ¶

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- E) General contract work.
- 2) The specifications shall be drawn so as to permit separate and independent competitive bidding upon each of the above five subdivisions of work. All contracts awarded for any part of the work shall award the subdivisions separately to responsible and reliable contractors engaged in these classes of work. These contracts, at the discretion of the State agency, may be assigned to the successful bidder on the general contract work or to the successful bidder on the subdivision of work designated by the State agency prior to the bidding as the prime subdivision of work, with the provision that all payments will be made directly to the contractors for the five subdivisions upon compliance with the conditions of the contract. Any contract may be let for one or more buildings in any project to the same contractor. Specifications shall require, however, that, unless the buildings are identical, a separate price shall be submitted for each building. The contract may be awarded to the lowest responsible bidder for all of the buildings included in the specifications.
- b) Request for Payment Form Specified by the State Agency
To bill a State agency for remodeling, renovation or construction work done, the vendor must submit a payment request in the form specified by the State agency.
- c) Periodic Payments
When provided in the contract, periodic payments can be made during the course of the work, upon a certificate of a licensed architect or engineer indicating the proportionate amount of total work completed satisfactorily.
- d) Retained Percentage
When periodic payments are made and if specified in the contract, the State agency shall retain a fixed percentage of the contract price to insure faithful completion of the contract.
- e) Additional Work
No amount of funds, in addition to those provided for in a contract for repairs, maintenance, remodeling, renovation or construction, may be obligated or expended unless the additional work to be performed or materials to be furnished are germane to the original contract. Even if germane to the original contract, no additional expenditure or obligations may, in their total combined amount, be in excess of the percentages of the original contract amount as provided in Section

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30-35(b) of the Code unless they have received the prior written approval of the construction agency. In the event the total of the combined additional expenditures or obligations exceeds the percentages of the original contract amount set forth in Section 30-35(b) of the Code, the construction agency shall investigate the additional expenditures or obligations in excess of the original contract amount and shall, in writing, approve or disapprove subsequent expenditures or obligations and state in detail the reasons for the approval or disapproval. Notices of additional expenditures or obligations in excess of the small purchase limit of Section 202-20 of the Code shall be published in the Bulletin.

- f) Improvements to Leased Real Estate
The procedures set forth in this Part shall apply, as appropriate, to contracts for improvements to real estate leased to State agencies.
- g) Construction Manager Services
 - 1) Procurement of Construction Manager Services, under the jurisdiction of the Capital Development Board (CDB) will be performed by CDB or through delegation from CDB.
 - 2) Construction Manager Services for projects not under the jurisdiction of CDB shall be procured by State agencies in accordance with Section 1.2035 of this Part.

a))
(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section 1.4005 Real Property Leases and Capital Improvement Leases

Real property leases and capital improvement leases are subject to and shall be procured in accordance with, the Code and this Part and those in 44 Ill. Adm. Code 5000. In the event of a conflict, Subpart N shall prevail.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.4010 Authority

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Construction and construction-related services are procured by the CPO for Department of Transportation (CPO-DOT) and the CPO for Capital Development Board (CPO-CDB) under rules promulgated by those CPOs. This Part does not apply to those procurements except as may be specifically adopted by those CPOs in their rules. Rules promulgated by these CPOs may be found in: ¶

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The CPO-GS will use standards and criteria for State occupancy established in 44 Ill. Adm. Code 5000. Procurement of leased space will be conducted in the most efficient and effective manner to provide adequate space for the operation of State agencies in accordance with their missions.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4015 Method of Source Selection

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- a) Leases shall be procured by using a Request for Information for Real Property or Capital Improvement Leases (RFI-Real Property Leases) process, except as provided in subsection (b).
- b) The RFI-Real Property Leases process is not required in the following circumstances. Written summaries of any negotiations shall be maintained in lease files.
 - 1) Property of less than 10,000 square feet with rent of less than \$100,000 per year.
 - 2) Duration of less than one year that cannot be renewed.
 - 3) Specialized space available at only one location. Specialized space is defined as space or unique function or configuration, not generally available on the market on an as built or turnkey basis. Examples of specialized space include, but are not limited to, laboratories, vehicle testing stations, correctional facilities, medical facilities, boat docks and evidence storage facilities.
 - 4) Renewal or extension of leases provided that:
 - A) The CPO-GS determines in writing that the renewal or extension is in the best interest of the State agency;
 - B) The CPO-GS submits his or her written determination and the renewal or extension to PPB;
 - C) PPB does not object in writing to the renewal or extension within 30 days after its submission; and

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- D) The CPO-GS publishes notice of the renewal or extension in the Bulletin at least 60 days prior to the exercise of the renewal or extension option.
- 5) Leases with other governmental units may be negotiated without using the RFI-Real Property Leases process when deemed by the CPO-GS to be in the best interest of the State. [30 ILCS 500/40-15]
- c) None of the provisions of this Section shall prohibit the State from ordering a lease procurement to be made under the RFI-Real Property Leases provisions if the CPO-GS deems it to be in the best interests of the State.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4020 Request for Information-Real Property and Capital Improvement Leases

- a) RFI-Real Property Leases Form
When required, an RFI-Real Property Lease shall be issued and include, but not be limited to, the following:
 - 1) The type of property to be leased;
 - 2) The proposed uses of the property;
 - 3) The duration of the lease;
 - 4) The preferred location of the property, including acceptable geographic boundaries;
 - 5) A general description of the configuration desired [30 ILCS 500/40-20(b)];
 - 6) Special and standard lease terms and conditions, qualifications and responsibility requirements, disclosures and certifications;
 - 7) The address to which responses are to be sent; and
 - 8) The criteria for evaluating responses based on the minimum standards and conditions for occupancy.

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- b) All required documents of the RFI-Real Property Leases will be available in electronic format from the Bulletin. Notice shall begin when first published electronically. RFI-Real Property Leases document packages may also be mailed to owners of property that may meet the State's needs after the RFI-Real Property Leases have been published in the Bulletin.
- c) Unless the RFI-Real Property Leases are exclusively designated to accept only electronically prepared documents, RFI-Real Property Leases document packages shall, at a minimum, include:
 - 1) Response forms and instructions for completing forms;
 - 2) A copy of spatial and performance guidelines required to meet the needs of the State agency to occupy the real property being procured; and
 - 3) The date and time responses must be submitted.
- d) Public Notice
Public notice of the RFI-Real Property Leases shall be published in the Bulletin at least 14 days before the date set forth in the request for receipt of responses and shall also be published in a similar manner in a newspaper of general circulation in the community or communities where the State agency is seeking space [30 ILCS 500/40-20(c)].
- e) Response
The RFI-Real Property Leases response shall consist of written information sufficient to show that the respondent can meet minimum criteria set forth in the RFI-RPL. [30 ILCS 500/40-20(d)] All responses to the RFI-Real Property Leases will be publicly opened on the announced date. Names of all parties submitting proposals will be made available to the public immediately following the opening of the proposals.
- f) Negotiation and Determination
 - 1) The CPO-GS, SPO or designee may enter into discussions with respondents to the RFI-Real Property Leases for the purpose of clarifying State agency needs and the information supplied by the respondents. On the basis of the information supplied and discussions, if any, the CPO-GS, SPO or designee shall make a written determination identifying the

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responses that meet the minimum criteria set forth in the RFI-Real Property Leases. Negotiations shall be entered into with all qualified respondents for the purpose of securing a lease that is in the best interest of the State. [30 ILCS 500/40-20(d)]

- 2) The CPO-GS reserves the right to reject any proposals and to request and evaluate "best and final" proposals. Best and final offers shall be sought after a written determination is made by the SPO or designee that it is in the best interest of the State to request best and final proposals. A best and final proposal shall not be requested from any vendor deemed non-responsive or who does not meet the minimum criteria set forth in the RFI.

g) Contract Award, Reporting and Filing

- 1) The SPO or designee shall review all relevant information and shall recommend to the CPO-GS which proposal shall be accepted based on the evaluation of all responsive proposals. The CPO-GS shall make the final award, which will be published in the Bulletin. Notification of award will be sent to all respondents.
- 2) When the lowest response by price is selected, a written report of the negotiation shall be retained in the lease files and shall include the reasons for the final selection.
- 3) When the lowest response by price is not recommended, the SPO or designee shall forward to the CPO-GS, along with the lease, notice of the identity of the lowest respondent by price and written reasons for the recommendation of a different award. The CPO-GS shall publish the written reasons for selection in the next volume of the Bulletin. [30 ILCS 500/40-20(d)] The written reasons for the selection of the vendor shall be retained in the lease files.

h) PPB Review

PPB shall review any proposed lease of real property of more than 10,000 square feet or any proposed lease of real property with annual rent payments of \$100,000 or more. The PPB shall have 30 days to review the proposed lease. No contract may be entered into until the 30-day period has expired, unless the State agency requests in writing that the PPB waive the period and the PPB grants the waiver in writing. If the PPB does not

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object within 30 days, the proposed lease shall become effective. [30 ILCS 500/40-20(e)]

- i) State Agency Cooperation
A State agency shall provide any materials or provide any assistance the PPB determines is required for its review. PPB may request in writing from the State agency and the State agency shall promptly, but in no event later than 5 business days after receipt of the request, provide to PPB documentation of information in the possession of the State agency.
- j) Actions and determination made in this subsection shall be made in consultation with the Department of Central Management Services, the State agency responsible for the purchasing and leasing of real property as defined in 20 ILCS 405/405-300.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 1.4025 Lease Requirements

- a) Length of Leases
 - 1) Maximum Term. Except when a longer term is authorized by law, leases, inclusive of renewals, shall be for a term not to exceed 10 years and shall include a termination option in favor of the State after 5 years.
 - 2) Renewal Option. Leases may include a renewal option. An option to renew may be exercised only when the CPO-GS determines in writing that renewal is in the best interest of the State. The CPO-GS shall publish a notice of the intent to exercise the option in the Bulletin at least 60 days prior to the exercise of the option. [30 ILCS 500/40-25(b)]
 - 3) All leases shall include a provision that they are subject to termination and cancellation in any year the General Assembly fails to make an appropriation to make payments under the terms of the lease. [30 ILCS 500/40-25(c)]
 - 4) Month-to-Month and Holdover. No lease may continue on a month-to-month or other holdover basis for a total of more than 6 months. [30 ILCS 500/40-25(d)]

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- b) Lessor's Failure to Make Improvements
Each lease that includes a provision for the lessor to make improvements must provide for a penalty upon the lessor's failure to make improvements agreed upon in the lease. The penalty shall consist of a reduction on lease payments equal to the corresponding percentage of the improvement value to the lease value. The penalty shall continue until the lessor complies with the lease and the improvements are accepted by the leasing State agency. [30 ILCS 500/40-55] The penalty amount shall be retained by the State agency.
- c) All leases shall be accompanied by a full written disclosure of the identity of every owner or beneficiary having an interest in the premises being leased.
- 1) The disclosure shall be subscribed and sworn or otherwise affirmed on oath by an owner, authorized trustee, corporate official, partner, managing agent or other authorized person.
 - 2) The disclosure shall set forth all ownership interests. By way of example, the disclosure should identify the names of the beneficiaries of a land trust in addition to the trustee, the names of all partners whether general or limited in nature, the names of all members or managers of a limited liability company and the names of all shareholders in a corporation who are entitled to receive more than 7½% of the total distributable income of the entity. If the entity is publicly traded and no readily known individual owns more than a 7½% interest, then the requirements of this subsection (e) may be met by an officer or managing agent of the entity making an affirmative statement to this effect under oath.
 - 3) The disclosure shall set forth the identity of any State officer, employee or elected official, or the wife, husband or minor child of that person, having an ownership or beneficial interest under the lease. In the event a person is so set forth, the disclosure shall include a specific designation of the percentage of total distributable income to the person, together with that of the wife, husband or minor child of that person, is entitled to receive from any firm, partnership, association or corporation that is the lessor.
 - 4) It shall be the responsibility of the lessor to notify the CPO-GS, CMS, SPO or designee of any changes in ownership or beneficial interest and to submit updated disclosure statements reflecting the changes within 30 days after the change.

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d) Space that is not in compliance with accessibility regulations, or is not capable of being brought in compliance with the installation of minimum essential features of accessibility by the time of occupancy, shall not be considered for use. Each RFI will contain specifications for accessibility.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 1.4030 Purchase Option

Initial leases of all space in free-standing buildings shall include an option to purchase exercisable by the State agency unless the CPO-GS, SPO or designee, in consultation with CMS, determines in writing that inclusion of that purchase option is not in the State's best interest. The determination, including the reasons for making the determination, shall be published in the Bulletin. Leases with governmental units and not-for-profit entities are exempt from the requirements of this Section.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 1.4035 Rent Without Occupancy

Except when deemed by PPB to be in the best interest of the State, no State agency may incur rental obligations before having occupancy or possession of the space rented. For the purposes of this Section, the terms "occupancy" and "possession" shall have the same meaning.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 1.4040 Local Site Preferences

Upon the request of the chief executive officer of a unit of local government, leasing preferences may be given to sites located in enterprise zones, tax increment districts or redevelopment districts.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4042 Historic Area Preference

State agencies with responsibilities for leasing, acquiring or maintaining State facilities shall take all reasonable steps to minimize any regulations, policies and procedures that impede the goals of Section 17 of the Capital Development Board Act [20 ILCS 3105]. [30 ILCS 500/45-80]

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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4044 Emergency Lease Procurement

Emergency lease procurements may be made pursuant to Section 1.2030.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART O: PREFERENCES

Section 1.4505 Procurement Preferences

The procurement preferences identified in Article 45 of the Code must be considered in developing procurement documents, conducting evaluations and drafting contracts. Any preferences applicable to an individual procurement will be stated in the solicitation for that procurement.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.4510 Resident Vendor Preference

- a) "Illinois resident vendor" as used in this Section means a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced, including a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced.
- b) In breaking a tie bid or proposal, as described in Section 1.2037, an Illinois resident vendor shall be given the award.
- c) An Illinois resident vendor shall be allowed a preference over a non-resident vendor equal to any in-state vendor given or required by the state of the non-resident vendor.
- d) If only non-resident bidders are bidding, the purchasing agency has the right to specify that Illinois labor and manufacturing locations be used as part of the manufacturing process. This specification may be negotiated as part of the

Deleted: When any such preference is utilized, the Invitation for Bids, Request for Proposals, or other procurement request shall identify the preference and the conditions associated with such use. Subsequent Sections of this Subpart O identify conditions for the use of certain of the statutory preferences.

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solicitation process.

- e) This Section does not apply to any contract for any project for which federal funds are available for expenditure when its provisions may be in conflict with federal law or federal regulation.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.4515 Soybean Oil-Based Ink

Contracts requiring printing services shall specify the use of soybean oil-based ink unless an SPO determines another type of ink is required to assure high quality and reasonable pricing of the printed product. [30 ILCS 500/45-15]

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4520 Recycled Materials

When a contract is to be awarded to the lowest responsible bidder, an otherwise qualified bidder who will fulfill the contract through the use of products made of recycled materials may be given preference over other bidders unable to do so, provided that the cost included in the bid of supplies made of recycled materials does not constitute an undue economic or practical hardship [30 ILCS 500/45-20].

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4525 Recyclable Paper

All paper purchased for use by State agencies must be recyclable paper unless a recyclable substitute cannot be used to meet the requirements of the State agencies or would constitute an undue economic or practical hardship [30 ILCS 500/45-25].

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4526 Environmentally Preferable Procurement

State agencies shall contract for supplies and services that are environmentally preferable, as that term is defined in Section 45-26(3) of the Code. If, however, contracting for an environmentally preferable supply or service would impose an undue economic or practical hardship on the contracting State agency, or if an environmentally preferable supply or service

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cannot be used to meet the requirements of the State agency, then the State agency need not contract for an environmentally preferable supply or service. Specifications for contracts, at the discretion of the contracting State agency, may include a price preference of up to 10% for environmentally preferable supplies or service. [30 ILCS 500/45-26(b)]

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4530 Correctional Industries

The CPO-GS shall distribute to each SPO and State agency the list of items that must be purchased from Illinois Correctional Industries (ICI), as determined by the CPO-GS. Procurement from ICI may be made without notice or competition.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.4535 Qualified Not-for-Profit Agencies for Persons with Severe Disabilities

a) Use
The CPO-GS shall distribute to each SPO and State agency a list of supplies and services available from qualified not-for-profit agencies for persons with severe disabilities (sheltered workshops). Purchases may be made from sheltered workshops without notice or competition.

b) Pricing Approval

Prior to contracting with a sheltered workshop, the State Use Committee (see Section 45-35(c) of the Code) must determine that the price is not substantially more than a competitively solicited price.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.4540 Gas Mileage and Flex-Fuel Requirements

a) Specifications for new passenger automobile specifications shall require compliance with minimum gas mileage requirements established in Section 45-40 of the Code. As used in this Section, passenger automobile does not include station wagons, vans, 4-wheel drive vehicles, emergency vehicles and police or fire vehicles. Passenger automobiles must achieve at least the minimum average

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fuel economy in miles per gallon imposed upon manufacturers of vehicles under Title V of the Motor Vehicle Information and Cost Savings Act (15 USC 2001).

- b) *All gasoline-powered vehicles purchased from State funds must be flexible fuel vehicles or fuel efficient hybrid vehicles. Any vehicle purchased from State funds that is fueled by diesel fuel shall be certified by the manufacturer to run on 5% biodiesel (B5) fuel. [30 ILCS 500/25-75].*
- c) *The CPO-GS or SPO may exempt a procurement from the requirements of subsections (a) and (b) when an agency demonstrates a need for a non-compliant vehicle in writing.*
- d) *In awarding contracts requiring the procurement of vehicles, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of vehicles powered by ethanol produced from Illinois corn or biodiesel fuels produced from Illinois soybeans. [30 ILCS 500/45-60].*
- e) *The CPO-GS may require use of a uniform form or format for the SPO's determination that an exemption is warranted.*

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.4545 Small Business

- a) Set-Aside
The CPO-GS may determine categories of construction, supplies or service procurements that will be set aside for small businesses in Illinois. A set-aside designation shall be for a stated period of time. An SPO may determine to set aside for small business individual contracts not in a set-aside category.
- b) Small Business List
The CPO-GS may develop his or her own list, or may use a list maintained by another State agency, of vendors that meet the criteria of small business. Vendors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses shall submit information as specified verifying that the vendor qualifies as a small business under this Part. A business that fits the definition of small on the day of award or proposal opening will be considered small for the duration of the contract.

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c) Required Use

Any procurement proposed for set aside for small businesses shall be so identified in the Bulletin notice and the solicitation documents. Bids or proposals received from large businesses will be rejected as nonresponsive.

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d) Withdrawal of Set-Aside

If the SPO determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the SPO may reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification shall be published in the Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with this Part but without the small business designation.

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2)A Procurement Officer may request a waiver of the set-aside requirement from the CPO. To obtain a waiver, the Procurement Officer must demonstrate a measurable substantial impact, taking into account factors such as cost, supply base, quality, statutory preferences, regional or geographic requirements, acquisition cycle times, and terms and conditions. Following are examples of guidelines that may be considered:

e) Criteria for Small Business

1) Unless the CPO-GS provides a definition for a particular procurement that reflects industrial characteristics, a small business is one that meets the requirements of Section 45-45 of the Code.

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2) A small business in Illinois is one that meets the definition of a "resident bidder" in Section 45-10 of the Code and either has headquarters in Illinois or has the majority of its workforce in Illinois.

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4) If a business is any combination of retailer, wholesaler or construction business, then the annual sales for each component may not exceed the higher of \$10,000,000 for a wholesaler, \$16,000,000 for a retailer, \$10,000,000 for a construction business or the amounts shown in Section 45-45 of the Code. For example, a business that is both a retailer and a wholesaler may not have total sales exceeding

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\$16,000,000 and the retail component may not exceed \$16,000,000 and the wholesale component may not exceed \$10,000,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed 250.

5) When computing the size status of a vendor, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates shall be included. Concerns are affiliates when either one directly or indirectly controls or has the power to control the other, or when a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration shall be given to all appropriate factors, including use of common facilities, common ownership and management, and contractual arrangements. However, a franchise relationship shall not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

f) Small Business Specialist
The CPO-GS shall designate a small business specialist who shall have the duties set forth in Section 45-45(e) of the Code and who shall also act as coordinator of small business. The designated small business specialist shall compile statistics provided by the State agency needed to make the small business annual report to the General Assembly required under Section 45-45(f) of the Code.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.4550 Illinois Agricultural Products

In awarding contracts requiring the procurement of agricultural products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of agricultural products grown in Illinois. [30 ILCS 500/45-50]

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4555 Corn-Based Plastic Products

In awarding contracts requiring the procurement of plastic products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of plastic products made from Illinois corn by-products. [30 ILCS 500/45-55]

Deleted: With no more than 250 employees, including those of affiliates, if a manufacturing business.

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A)

Deleted: A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis, for its most recently ended fiscal year. ¶
B)

Deleted: If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date. ¶
5)

Deleted: If the business is any combination of retailer, wholesaler or construction business, then the annual sales for each component may not exceed the amounts shown in subsection (e)(3). For example, a business that is both a retailer and wholesaler may not have total sales exceeding \$16,000,000 and the retail component may not exceed \$6,000,000 and the wholesale component may not exceed \$10,000,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed the number shown in subsection (e)(4). ¶

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Deleted: Vendors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses shall submit information verifying that the vendor qualifies as a small business under the Code and this Part. The CPO may establish procedures for verifying such information.

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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4557 Disabled Veterans

It is the goal of the State to promote and encourage the continued economic development of small businesses owned and controlled by qualified veterans and that qualified service-disabled veteran-owned small businesses (SDVOSB) and veteran-owned small businesses (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 the goal to be awarded to SDVOSB and VOSB. [30 ILCS 500/45-57] The CPO-GS will inform each SPO and State agency of procedures established to implement this provision.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4570 Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities

Procurements made under the Code are subject to the requirements of the Business Enterprise for Minorities, Females and Persons with Disabilities Act [30 ILCS 575].

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.4575 Domestic Products

- a) This Section applies unless an exception is provided by statute, or in the case of a small, emergency or sole economically feasible source situation.
- b) This Section applies to supplies purchased by the State that have undergone some manufacturing process that changes the raw material or components into a different product. The following examples show how to interpret this Section:
 - 1) If the State needs iron ore, this Section would not apply because the State would be asking for a raw material.
 - 2) If the State needs a steel ingot, the purchase would be subject to this Section as the steel ingot was subject to a manufacturing process. The iron ore used in manufacturing the ingot would not be subject to any domestic restriction.

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The Business Enterprise Act for Minorities, Females, and Persons with Disabilities [30 ILCS 575] (Act) sets a goal (minimum 12%) for contracting with businesses owned or controlled by minorities, females, or persons with disabilities. ¶
¶
b)

Deleted: Goal ¶
Each State agency subject to that Act shall establish a goal that at least 12% of the dollar value of State contracts be awarded to minority and female-owned businesses. Of that 12%, five shall be for female-owned businesses, two for businesses owned by persons with disabilities and not-for-profit agencies for the disabled, and the remaining five for other minority-owned businesses, unless these percentages are modified by the Council created under the Act. ¶
¶

Deleted: Upon direction of the CPO, and pursuant to direction from the Council, the procuring agencies may establish set-asides ...

Deleted: Certification ¶
Certification procedures are set forth in rules governing the Business Enterprise Act (44 I...

Deleted: List of Certified Businesses ¶
¶
1)

Deleted: The CPO shall maintain a list of businesses that have been certified. This list shall be made available to all procuring ...

Deleted: The names and addresses of certified vendors shall be made available to the public. ¶

Deleted: Professional and Artistic Contract Reporting ¶
Professional and artistic contracts, which m...

Deleted: Notice that an agency intends to enter into a professional and artistic contract shall be given to the Council. Notice ma...

Deleted: The notice shall include the agency name and address; contact person; contract reference number; date bid or ...

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- 3) If the State needs a steel I-Beam, the I-Beam would be subject to this Section. The iron ore and steel used in creating the I-Beam would not be subject to any domestic restriction.
- 4) If the State needs a structure made of steel I-Beams, the assembly would have to be done domestically. The iron ore, steel and I-Beams used in building the structure would not be subject to any domestic restriction.
- c) Specifications for manufactured supplies shall include a reference to the preference established in this Section.
- d) The preference shall be as follows:
 - 1) The low bid or most advantageous proposal shall be identified without regard to whether the product is a domestic product.
 - 2) In the event of a tie in a competitive sealed bid procurement, the vendor that certifies it will provide domestic supplies shall be given preference.
 - 3) If the low bid or most advantageous proposal does not contain a certification that the supply items are domestic, then any responsive and responsible vendor that is within 2% of the identified vendor's price that has made that certification shall be evaluated as though its price was 2% lower, subject to a maximum dollar value of \$50,000.
 - 4) The winning vendor will be determined after application of the preference.
 - 5) Notwithstanding the preference outlined in this subsection (d), if the appropriate SPO determines that the price differential calculated using the preference is not acceptable given the particular procurement and the economic circumstances, the award may be conditioned on receipt of an acceptable price reduction. If the price cannot be reduced to an acceptable level, the original low priced or most advantageous proposal may be selected for award.
- e) Each procuring agency shall include in the procurement file documentation showing the application of any preference given and any determination that the supplies involved in the purchase were not subject to the Procurement of Domestic Products Act [30 ILCS 517].

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.4578 Bio-Based Products

When a State contract is to be awarded to the lowest responsible bidder, an otherwise qualified bidder who will fulfill the contract through the use of bio-based products may be given preference over other bidders unable to do so, provided that the cost included in the bid of bio-based products is not more than 5% greater than the cost of products that are not bio-based. [30 ILCS 500/45-75]

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.4579 Notice of Preferences

The Bulletin and solicitation document shall state whether a preference applies or may apply and the amount or type of preference.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART P: ETHICS

Section 1.5002 Continuing Disclosure; False Certification

- a) Multi-year contracts and subcontracts are subject to the annual recertification requirements of Section 50-2 of the Code. Every person that has entered into a multi-year contract and every subcontractor with a multi-year subcontract subject to the Code, shall certify, by July 1 of each fiscal year covered by the contract after the initial fiscal year, to the responsible CPO-GS whether it continues to satisfy the requirements of Article 50 of the Code pertaining to eligibility for a contract award. If a contractor or subcontractor is not able to truthfully certify that it continues to meet all requirements, it shall provide with its certification a detailed explanation of the circumstances leading to the change in certification status. A contractor or subcontractor that makes a false statement material to any given certification required under Article 50 of the Code is, in addition to any other penalties or consequences prescribed by law, subject to liability under the Illinois False Claims Act [740 ILCS 175] for submission of a false claim. [30 ILCS 500/50-2]

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- b) The CPO-GS may prescribe a standard format for annual recertification and may include annual certifications as part of the prequalification process.
- c) Should a vendor be unable to certify that it continues to meet requirements of Section 50 of the Code, the relevant information shall be submitted to the SPO for review and disposition.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5005 Bribery

- a) Prohibition
No person or business shall be awarded a contract or subcontract who:
 - 1) Has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or
 - 2) Has made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct.
- b) Businesses
No business shall be barred from contracting with any unit of State or local government, or subcontracting under such a contract, as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business and:
 - 1) The business has been finally adjudicated not guilty; or
 - 2) The business demonstrates to the governmental entity with which it seeks to contract or which is a signatory to the contract to which the subcontract relates, and that entity finds that the commission of the offense was not authorized, requested, commanded or performed by a director, officer or high managerial agent on behalf of the business, as provided in Section 5-4(a)(2) of the Criminal Code of 1961 [720 ILCS 5].
- c) Conduct on Behalf of Business
For purposes of this Section, when an official, agent or employee of a business committed the bribery or attempted bribery on behalf of the business and in

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accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.

d) Certification

Every bid submitted to and contract executed by the State and every subcontract shall contain a certification by the contractor or the subcontractor, respectively, that the contractor or subcontractor is not barred from being awarded a contract or subcontract under this Section, and acknowledges that the CPO-GS may declare the related contract void if any certifications required by this Section are false. A contractor who makes a false statement, material to the certification, commits a Class 3 felony. [30 ILCS 500/50-5]

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5010 Felons

a) Unless otherwise provided, no person or business convicted of a felony shall do business with the State of Illinois or any State agency, or enter into a subcontract, from the date of conviction until 5 years after the date of completion of the sentence for that felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. [30 ILCS 500/50-10]

b) Every bid submitted to and contract executed by the State and every subcontract subject to this Part shall contain a certification by the bidder or contractor or subcontractor, respectively, that the bidder, contractor or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges the CPO-GS may declare the related contract void if any of the certifications required by this Section are false.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5011 Debt Delinquency

a) No person shall submit a bid for or enter into a contract or subcontract if that person knows or should know that he or she or any affiliate is delinquent in the payment of any debt to the State, unless the person or affiliate has entered into a deferred payment plan to pay off the debt. [30 ILCS 500/50-11(a)] For purposes of this Section, terms shall have the meanings ascribed in Section 50-11 of the Code.

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b) Every bid submitted to and contract executed by the State and every subcontract shall contain a certification by the bidder, contractor or subcontractor, respectively, that the contractor or the subcontractor and its affiliate is not barred from being awarded a contract or subcontract under this Section and acknowledges that the CPO-GS may declare a related contract void if any of the certifications completed pursuant to this subsection (b) are false. [30 ILCS 500/51-11(b)]

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 1.5012 Collection and Remittance of Illinois Use Tax

a) No person shall enter into a contract with a State agency or enter into a subcontract unless the person and all affiliates of the person collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act [35 ILCS 105], regardless of whether the person or affiliate is a "retailer maintaining a place of business within this State" as defined in Section 2 of the Use Tax Act. [30 ILCS 500/50-12] For purposes of this Section, terms shall have the meanings ascribed in Section 50-12 of the Code.

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b) Every bid submitted and contract executed by the State and every subcontract shall contain a certification by the bidder, contractor or subcontractor, respectively, that the bidder, contractor or subcontractor is not barred from bidding for or entering into a contract under subsection (a) and acknowledges that the CPO-GS may declare the related contract void if any of the certifications completed pursuant to this subsection (b) are false. [30 ILCS 500/50-12]

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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5013 Conflicts of Interest Prohibited by the Code

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a) Any bid, proposal, offer of acceptance, or proposed contract must be reviewed for conflicts of interest pursuant to Section 50-13 of the Code. If a conflict is found, no contract will be executed unless a waiver is granted under Section 50-20 of the Code by the Executive Ethics Commission.

1) Office or Employment
It is unlawful for any person holding an elective office in this State,

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holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person, to have or acquire any contract, or any direct pecuniary interest in the contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority. [30 ILCS 500/50-13(a)]

2) Financial Interests

It is unlawful for any firm, partnership, association, or corporation, in which any person as described in subsection (a)(1) is entitled to receive more than 7½% of the total distributable income or an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein. [30 ILCS 500/50-13(b)]

3) Combined Financial Interests

It is unlawful for any firm, partnership, association or corporation, in which any person listed in subsection (a)(1) together with his or her spouse or minor children is entitled to receive more than 15%, in the aggregate, of the total distributable income or an amount in excess of 2 times the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein. [30 ILCS 500/50-13(c)]

b) For the purpose of this Part, an individual has a direct pecuniary interest in a contract when the individual is owed a payment or otherwise received a direct financial benefit in conjunction with performance of a contract, including finders fees and commission payments.

c) For the purpose of this Part, "distributable income" means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, which is distributed to those entitled to receive a share of the income. In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income the entitlement shall be determined at the end of the company's most recent fiscal year.

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Deleted: An individual has a direct pecuniary interest in a contract when the individual is owed a payment or otherwise receives a direct financial benefit in conjunction with performance of a contract, including finders fees and commission payments.

Deleted: Distributable income means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, which is distributed to those entitled to receive a share of such income. In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income the entitlement shall be determined at the end of the company's most recent fiscal year.

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- d) This Section applies to those elected to an office of Illinois State government. This Section does not apply to those elected to local government offices, including school districts, nor does it apply to those elected to Federal offices in this State. This Section does not apply to contracts with licensed professionals, provided those contracts are competitively bid. For purposes of this Section, "bid" means procured pursuant to the competitive procedures identified in Subpart E of this Part.

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- e) Additional exemptions to the application of this Part are listed in Section 50-13(f) of the Code.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.5014 Environmental Protection Act Violations

- a) Unless otherwise provided, no person or business found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act [415 ILCS 5] shall do business with the State of Illinois or any State agency or enter into a subcontract from the date of the order containing the finding of violation until 5 years after that date, unless the person or business can show that no person involved with the violation continues to have any involvement with the business. [30 ILCS 500/50-14(a)]

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- b) A person or business otherwise barred from doing business with the State of Illinois and any State agency or any subcontractors under the Code by subsection (a) may be allowed to do business with the State of Illinois or any State agency if it is shown that there is no practicable alternative to the State to contracting with that person or business. [30 ILCS 500/50-14(b)]

- c) Every bid submitted to and contract executed by the State and every subcontract shall contain a certification by the bidder, contractor or subcontractor, respectively, that the bidder, contractor or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges that the contracting State agency may declare the related contract void if any of the certifications completed pursuant to this subsection (c) are false.

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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5015 Negotiations for Future Employment

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- a) *It is unlawful for any person employed in or on a continual contractual relationship with any of the offices or agencies of State government to participate in contract negotiations on behalf of that office or agency with any firm, partnership, association or corporation with whom that person has a contract for future employment or is negotiating concerning possible future employment. [30 ILCS 500/50-15(a)]*
- b) An individual who performs services pursuant to a contract and who meets the requirements of an "employee" as opposed to an independent contractor is in a "continual contractual relationship" from the effective date of the contract until such time as the contract is terminated.
- c) An individual who performs services pursuant to a contract and who meets the requirements of an "independent contractor" as opposed to an "employee" is in a "continual contractual relationship" if the contract term is indefinite, is automatically renewed, is renewable at the individual's option, is renewable unless the State must act to terminate, or has a definite term of at least three months.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5020 Exemptions

If the SPO finds a conflict of interest under Section 50-13 of the Code with the vendor selected for award or contract negotiations, the SPO shall forward to the CPO-GS the name of the vendor and a description of the proposed contract and of the potential conflict, and shall state why an exemption should be granted. The CPO-GS shall decide whether to disapprove the contract or submit the files to the Executive Ethics Commission to determine whether an exemption should be granted in accordance with Section 50-20 of the Code.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.5021 Bond Issuances

a) Definitions. For the purposes of this Section 1.5021, the following listed terms shall have the same meaning as in the Code and as further defined in this subsection (a).

- 1) "Entity" means brokers, dealers and municipal securities dealers as defined in, and subject to, Rule G-37 and Rule G-38 of the Municipal

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Securities Rulemaking Board (MSRB).

2) "Independent Consultant" means a person used by the entity to obtain or retain securities business through direct or indirect communication by the person with a State official or employee (including an official or employee of the State agency) on behalf of the entity when the communication is undertaken by the person in exchange for or with the understanding of receiving payment from the entity or other person. Independent Consultant does not include:

A) a finance professional employed by the entity; or

B) a person whose sole basis of compensation from the entity is the actual provision of legal, accounting or engineering advice, services or assistance in connection with the securities business that the entity seeks to obtain or retain. [30 ILCS 500/50-21(a)]

3) "Issuance of bonds or other securities by the State agency" means the purchase or placement on other than a competitive bid of a primary offering of the State agency's general obligation municipal securities.

4) "Issuance by the State agency" means the issuance of bonds or other securities by the State agency when acting as a governmental issuer specified in MSRB Rule G-37.

5) "MSRB Rule G-37" and "MSRB Rule G-38" refer to the Municipal Securities Rulemaking Board rules in effect on August 6, 2012, or any successor rules adopted by the MSRB on the same subject after August 6, 2012, as provided in Section 50-21(b) and (c) of the Code. MRSB Rule 37 went into effect April 25, 1994, and MRSB Rule G-38 went into effect on August 29, 2005. Copies of G-37 and G-38 are available to the public at the MSRB website: <http://www.mrsb.org>, at the United States Security and Exchange Commission's website: <http://sec.gov>, and at the office of the CPO-GS. (See 30 ILCS 500/50-21(b) and (c).)

b) Use of Independent Consultants

1) Section 50-21(a) of the Code prohibits the State agency from entering into a contract with respect to the issuance of bonds or other securities by the State agency with any entity that uses as independent consultant to obtain

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or retain securities business through direct or indirect communications by the person with a State official or employee, including an official or employee of the State agency. Use of an independent consultant is also prohibited by MSRB Rule G-38. Every contract between the State agency and an entity relating to the issuance of bonds or other securities by the State agency shall include a certification that the entity did not use an independent consultant to obtain the contract and that the entity has not been found to have knowingly violated in Illinois MSRB Rule G-38 (or any successor rule) with respect to the prohibition on obtaining or retaining municipal securities business.

- 2) In the event a federal agency finds that an entity has knowingly violated MSRB Rule G-38 in the State of Illinois, the CPO-GS shall bar that entity from participating in any contract with respect to the issuance of bonds or other securities by any of the State agencies for a period of one year as specified in Section 50-21(c) of the Code.

c) Prohibited Political Contributions

- 1) Section 50-21(b) of the Code requires that every contract between the State agency and an entity relating to the issuance of bonds or other securities by the State agency include a certification that the entity is, and will remain for the duration of the contract in compliance with the MSRB Rule G-37 requirement for reporting political contributions and that the entity has not been found to have knowingly violated in Illinois MSRB Rule G-37 (or any successor rule) with respect to the making of prohibited political contributions or payments. Failure to remain in compliance throughout the term of the contract shall make the contract voidable by the CPO-GS.
- 2) In the event a federal agency finds that an entity has knowingly violated MSRB Rule G-37 in the State of Illinois by making prohibited political contributions, the CPO-GS shall impose a penalty that is at least twice the fine assessed by the federal agency. In addition, the CPO-GS shall bar the entity from participating in any contract with respect to the issuance of bonds or other securities by any of the State agencies for a period of one year as specified in Section 50-21(c) of the Code.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 1.5023 Other Conflicts of Interest

- a) Except as otherwise specified in the Public Officer Prohibited Activities Act [50 ILCS 105], no officer of a State agency or member of a State agency's governing board shall be directly or indirectly interested in any contract to be made by that State agency's governing board for any purposes whatsoever.
- b) Except as otherwise specified in the Public Officer Prohibited Activities Act, a State agency may not award a contract to an officer or employee of the State agency; a member of the State agency's governing board; a firm, partnership, association or corporation, the owner or principal owners or major officers or primary employees of which are officers or employees of the State agency or members of the governing board of the State agency; or members of the immediate family of an officer or employee of the State agency or a member of the governing board of the State agency, unless the contract is deemed essential to the State agency operations and is approved by the State agency's head and the CPO-GS. These approvals shall be filed with the contract and shall be made part of the procurement file.
- c) Any State agency that has its own policies regarding procurement conflict of interest relative to its own employees must provide notice of any potential conflict of interest to the SPO along with the State agency's policy. This information may be used by the SPO when considering whether to award a contract.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5030 Revolving Door Prohibition

- a) *CPOs, SPOs, Procurement Compliance Monitors, their designees whose principal duties are directly related to State procurement, and executive officers confirmed by the Senate are expressly prohibited for a period of 2 years after terminating an affected position from engaging in any procurement activity relating to the State agency most recently employing them in an affected position for a period of at least 6 months. The prohibition includes but is not limited to: lobbying the procurement process; specifying, bidding, proposing bid, proposal, or contract documents; on their own behalf or on behalf of any firm, partnership, association, or corporation. This prohibition applies to all persons who terminate an affected position on or after January 1, 1999. [30 ILCS 500/50-30]*
- b) The CPO-GSs shall identify in writing those designees whose job, or whose

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position description, is at least 51% directly related to procurement. Activities directly related to procurement include, but are not limited to, drafting specifications, preparing solicitations, evaluating offers, negotiating contracts, administering contracts and supervising any of the foregoing. This information shall be maintained for a period of at least 2 years following the end or revocation of the designation.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

a) For purposes of Section 50-35(a) of the Code, an "offer from responsive bidders or offerors" means only those offers that are received under Section 20-10, 20-15 or 20-35 or Article 35 of the Code. Disclosures are not required in sole source and emergency contracts, but shall be obtained in whole or in part when practical and when the value exceeds \$25,000. Disclosures shall be obtained for small purchases exceeding \$25,000. If a small purchase could qualify as an emergency or sole source, disclosures shall be obtained when practical. In circumstances in which the vendor refuses or is unable to provide disclosures, the SPO may authorize the State agency to move forward with the transaction. In granting that authorization, the State agency must provide documentation of efforts to obtain compliance in a form prescribed by the PPB and CPO-GS.

b) For purposes of:

- 1) Section 50-35(b) of the Code, "parent entity" means an entity that owns 100% of the bidding entity.
- 2) Section 50-35(b)(1) of the Code, "contractual employment of services" means any contract to provide services to the State, whether as independent contractor or employee, that is by and between the State and the named individual.

c) "Distributable" or "distributive income" means the income of a company after payment of all expenses, including employee salaries and bonuses, and retained earnings that is distributed to those entitled to receive a share of that income. In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income, the entitlement shall be determined at the end of the company's most recent fiscal year.

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d) "Personal services" shall be any contract for services subject to the Code, including, by way of example, professional and artistic services, repair services, cleaning and guard services, but excludes contracts with employees who are exempt from the Code under Section 1-10(b)(4).

e) "Subject to federal 10K reporting" means subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934. "10K disclosure" means a report required under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 USC 78a et seq.).

f) New disclosures are required on contract renewals. New disclosures are not required for contract amendments.

g) 10K Disclosures

1) Any vendor subject to federal 10K reporting requirements may submit its 10K to the State in satisfaction of the disclosure requirement of Section 50-35(b) of the Code. The vendor may be required to identify the specific sections or parts in the 10K disclosure containing information, if any, pertaining to those who have an ownership interest or an interest in the distributable income of the vendor or its parent, or other information that the vendor knows or reasonably should know identifies a potential conflict of interest with the State. If the financial interest or conflict of interest information requested by the State is not in the 10K, or in a document that may be submitted to the SEC in conjunction with, or in lieu of, the 10K, then that additional documentation shall be provided as well.

2) 10K disclosures are available for public review. Any potential conflict of interest identified by the public and brought to the attention of the CPO-GS or SPO shall be investigated.

3) In circumstances in which, a vendor may submit a 10K disclosure in lieu of the specific disclosure requirements of the Code, the SPO or designee may consider information identified by the vendor in the 10K disclosure and any information disclosed pursuant to public review of the 10K disclosure in determining whether a potential conflict of interest exists.

h) Form of Disclosure

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Deleted: and for purposes of the Procurement Officer's duty to consider any conflict or potential conflict of interest that may exist, but that is not subject to specific disclosure requirements of the Code and this Part, and that is not personally known by the Procurement Officer, "publicly known or reasonably available to the public" shall consist of

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- 1) The form of disclosure shall be prescribed by the CPO-GS and shall include at least the names, addresses and dollar or proportionate share of ownership of each person identified in this Section, their instrument of ownership or beneficial relationship, and notice of any potential conflict of interest resulting from the current ownership or beneficial relationship of each person identified in this Section having any of the following relationships:
 - A) State employment, currently or in the previous 3 years, including contractual employment of services;
 - B) State employment of spouse, father, mother, son or daughter, including contractual employment for services in the previous 2 years;
 - C) Elective status: the holding of elective office in the State of Illinois, the government of the United States, any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois currently or in the previous 3 years;
 - D) Relationship to anyone holding elective office currently or in the previous 2 years, including spouse, father, mother, son or daughter;
 - E) Appointive office: the holding of any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois that entitles the holder to compensation in excess of expenses incurred in the discharge of that office currently or in the previous 3 years;
 - F) Relationship to anyone holding appointive office currently or in the previous 2 years, including spouse, father, mother, son or daughter;
 - G) Employment, currently or in the previous 3 years, as, or by, any registered lobbyist of the State government;

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- H) Relationship to anyone who is or was a registered lobbyist in the previous 2 years, including spouse, father, mother, son or daughter;
- I) Compensated employment, currently or in the previous 3 years, by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections;
- J) Relationship to anyone, including spouse, father, mother, son or daughter, who is or was a compensated employee in the last 2 years of any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections.[30 ILCS 500/50-35(b)(1-10)]
- 2) The disclosures required under this Section also include the name and address of each lobbyist required to register under the Lobbyist Registration Act [25 ILCS 170] and other agent of the bidder or offeror who is not identified under subsection (a) and who has communicated, is communicating, or may communicate with any State officer or employee concerning the bid or offer. The disclosure under this subsection (h)(2) is a continuing obligation and must be promptly supplemented for accuracy throughout the process and throughout the term of the contract if the bid or offer is successful. [30 ILCS 500/50-35(b-1)]
- 3) The disclosure required under this Section must also include, for each of the persons identified in subsection (h)(1) or (2), each of the following that occurred within the previous 10 years: debarment from contracting with any governmental entity; professional licensure discipline; bankruptcies; adverse civil judgments and administrative findings; and criminal felony convictions. The disclosure under this subsection (h)(3) is a continuing obligation and must be promptly supplemented for accuracy throughout the process and throughout the term of the contract if the bid or offer is successful. [30 ILCS 500/50-35(b-2)]
- i) Intent of Disclosure

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The disclosure required in subsection (h) is not intended to prohibit or prevent any contract. The disclosure is meant to fully and publicly disclose any potential conflict to the CPO-GS, SPOs, their designees and executive officers so they may adequately discharge their duty to protect the State. [30 ILCS 500/50-35(c)]

- 1) Determination by Procurement Officer
When a potential conflict of interest is identified, discovered or reasonably suspected, it shall be reviewed by the CPO-GS or SPO, who will send the contract to the PPB. The PPB shall recommended to the CPO whether to allow or void the contract, bid, offer or subcontract weighing the best interest of the State of Illinois. The CPO-GS will hold a hearing if the PPB recommends to void a contract or void a bid or offer. No contract shall be awarded before a hearing if the PPB recommends a contract or bid or offer be voided. This written determination shall become a publicly available part of the contract, bid or proposal file.
- 2) Requirements for Reasonable Care and Diligence
These thresholds for disclosure do not relieve the CPO-GS, SPO or their designees from reasonable care and diligence for any contract, bid, offer or proposal. The CPO-GS, SPOs or their designees shall be responsible for using any reasonably known and publicly available information to discover any undisclosed potential conflict of interest and act to protect the best interest of the State of Illinois. [30 ILCS 500/50-35(e)]
- 3) Inadvertent or Accidental Failure to Fully Disclose
Inadvertent or accidental failure to disclose shall render the contract, subcontract, bid, proposal or relationship voidable by the CPO-GS if he or she deems it in the best interest of the State of Illinois and, at his or her discretion, may be cause for barring from future contracts, subcontracts, bids, proposals or relationships with the State for a period of up to 2 years. [30 ILCS 500/50-35(f)]
- 4) Intentional, Willful or Material Failure to Disclose
Intentional, willful or material failure to disclose shall render the contract, subcontract, bid, proposal or relationship voidable by the CPO-GS if he or she deems it in the best interest of the State of Illinois and shall result in debarment from future contracts, subcontracts, bids, proposals or relationships with the State for a period of not less than 2 years and not more than 10 years. Reinstatement after 2 years and before 10 years must

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be reviewed and commented upon by the CPO-GS, who must rule in writing whether and when to reinstate.

- 5) Other Procurements
In addition, all disclosures shall note any other current or pending contracts, proposals, subcontracts, leases or other ongoing procurement relationships the bidding, proposing, offering or subcontracting entity has with any other unit of State government and shall clearly identify the unit and the contract, proposal, lease or other relationship. [30 ILCS 500/50-35(h)]
- 6) Continuing Obligation
The contractor or bidder has a continuing obligation to supplement the disclosure required by this Section throughout the bidding process or during the term of any contract. [30 ILCS 500/50-35(i)]
- j) Hearing
Any hearing required under Section 50-35 of the Code shall be conducted in accordance with Subpart W.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.5036 Disclosures of Business in Iran

- a) *Each bid, offer or proposal submitted for a State contract, other than a small purchase, shall include a disclosure of whether the bidder, offeror or proposing entity, or any of its corporate parents or subsidiaries, within the 24 months before submission of the bid, offer or proposal had business operations that involved contracts with, or provision of supplies or services to, the Government of Iran, companies in which the Government of Iran has a direct or indirect equity share, consortiums or projects commissioned by the Government of Iran, or companies involved in consortiums or projects commissioned by the Government of Iran and:*
- 1) *More than 10% of the company's revenue produced in or assets allocated in Iran involve oil-related activities or mineral extraction activities; less than 75% of the company's revenues produced or assets located in Iran involve contracts with or provision of oil-related or mineral-extraction products or services to the Government of Iran or a project or consortium*

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created exclusively by that government; and the company has failed to take substantial action; or

2) The company has, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each that in the aggregate equals or exceeds \$20 million in any 12-month period, that directly or significantly contributes to the enhancement of Iran's ability to develop petroleum resources of Iran. [30 ILCS 500/50-36(b)]

b) A bid, offer or proposal that does not include the disclosure required by subsection (a) shall not be considered responsive. An SPO may consider the disclosure when evaluating the bid, offer or proposal or awarding the contract. [30 ILCS 500/50-36(c)]

c) The CPO-GS shall provide the State Comptroller with the names of each entity disclosed under subsection (a) as doing business or having done business in Iran. The State Comptroller shall post that information on his or her official website. [30 ILCS 500/50-36(d)]

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5037 Vendor Registration, Certification and Prohibition on Political Contributions

a) Introduction
Illinois statute, (10 ILCS 5/9-35 and 30 ILCS 500/20-160 and 50-37) restricts political contributions by vendors and affiliated entities; requires registration with the State Board of Elections (SBEL); requires a copy of the registration certificate stamped by SBEL (Registration Certificate) to be submitted with bids/proposals and contracts; and requires solicitation and contract certifications relative to the requirements of the statutes. This Section supplements requirements found in statutes and does not excuse compliance with any of those requirements.

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b) General Registration Requirements

1) These requirements apply to contracts, bids and proposals that are subject to the Code:

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A) Bids/proposals referenced in this Section are those submitted in

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response to a competitive solicitation that is posted to the Bulletin on or after January 1, 2009, regardless of the value assigned to the procurement.

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- B) Bids and proposals include pending bids and proposals.
- C) These requirements generally apply to a vendor whose existing State contracts have an aggregate value in excess of \$50,000, or whose aggregate value of bids/proposals for State contracts exceeds \$50,000, or whose aggregate value of State contracts and bids/proposals exceeds \$50,000.
- D) This value is calculated on a calendar-year basis.

2) On a calendar-year basis, each vendor or potential vendor must keep track of the value of contracts and bids/proposals. Vendors must register with SBEL when the vendor determines that the value of the contracts and bids/proposals meets the threshold for registration.

3) An "executive employee" means:

A) the President, Chairman of the Board, Chief Executive Officer and/or other individuals who fulfill equivalent duties as the President, Chairman of the Board, or Chief Executive Officer; and/or

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B) any employee 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, irrespective of the employee's title or status in the business entity. For the purposes of this subsection (b)(3)(B), compensation determined directly by award or payment of contracts means a payment over and above regular salary that would not be made if it were not for the award of the contract.

c) Bids and Proposals

1) A copy of the Registration Certificate must be submitted with bids/proposals. The CPO-GS may establish a prequalification procedure allowing advance submission of the SBEL certificate. A vendor who

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complies with the prequalification procedure shall be deemed to have submitted the SBEL certification with the bid or proposal.

2) If the Registration Certificate is not timely submitted, the procuring agency shall reject the bid/proposal.

3) The procuring agency shall not reject a bid/proposal if absence of the Registration Certificate is the result of delay or error by the State, but shall require the Registration Certificate before making an award.

d) Contracts

A copy of the Registration Certificate must be in the procurement file as set forth in this subsection (d), unless the vendor certifies it is not required to register.

1) For contract renewals and extensions, if the value of the renewal or extension by itself, or in combination with the contract being renewed/extended and other contracts and bids/proposals exceeds \$50,000, the vendor must provide the Registration Certificate and make the appropriate contract certification, if it has not already done so. The Registration Certificate may be provided by reference to and incorporation of the vendor's prequalification by the CPO-GS.

2) For indefinite quantity/estimated value contracts, a vendor who is otherwise not required to register shall register with SBEL when the value of orders placed pursuant to an indefinite/estimated value contract plus all other contracts and bids/proposals exceeds \$50,000.

3) For contract amendments, if the value of the amendment, by itself or in combination with the contract being renewed plus other contracts and bids/proposals exceeds \$50,000, the vendor must provide the Registration Certificate and make the appropriate contract certification, if it has not already done so.

4) Any contracts mistakenly executed in violation of this Section must be amended to include the contract certifications, and the vendor must supply the Registration Certificate. If any violation by the vendor is not cured within 5 business days after receipt of notification of the violation, the contract is voidable by the State without penalty.

5) Contract certification required by Section 20-160 of the Code, shall be

Deleted: For bids and proposals due January 1, 2009 through February 2, 2009, the Registration Certificate must be submitted with the bid/proposal or it may be submitted by the earlier of February 2, 2009 or the contract execution.

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included in or added to each contract that must be filed with the State Comptroller pursuant to Section 20-80 of the Code and those written two-party contracts that need not be filed with the Comptroller. Agencies may require written confirmation of the rule-imposed certification at any time.

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e) Voidable contracts

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Every solicitation issued and contract executed by the State on or after January 2, 2009, shall contain a statement that the contract is voidable under Section 50-60 if the bidder, offeror or contractor fails to comply with Section 20-160 of the Code.

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.5038 Lobbying Restrictions

a) *A person or business that is let or awarded a contract is not entitled to receive any payment, compensation or other remuneration from the State to compensate the person or business for any expenses related to travel, lodging, or meals that are paid by the person or business to any officer, agent, employee, consultant, independent contractor, director, partner, manager or shareholder. [30 ILCS 500/50-39(a)]*

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b) Disclosure

1) *Any bidder or offeror on a State contract that hires a person required to register under the Lobbyist Registration Act [25 ILCS 170] to assist in obtaining a contract shall:*

A) *Disclose all costs, fees, compensation, reimbursement and other remunerations paid or to be paid to the lobbyist related to the contract;*

B) *Not bill or otherwise cause the State of Illinois to pay for any of the lobbyist's costs, fees, compensation, reimbursements or other remuneration;*

C) *Sign a verification certifying that none of the lobbyist's costs, fees, compensation, reimbursements or other remuneration were billed to the State.*

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2) The information in subsection (b)(1)(A), along with all supporting documents, shall be filed with the agency awarding the contract and with the Secretary of State. The CPO-GS shall post this information, together with the contract award notice, on the Bulletin. [30 ILCS 500/50-38(b)]

c) No person or entity shall retain a person or entity required to register under the Lobbyist Registration Act to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. Any person who violates this subsection (c) is guilty of a business offense and shall be fined not more than \$10,000. [30 ILCS 500/50-38(c)]

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5039 Procurement Communication Reporting Requirement

a) Reporting Requirement
Any written or oral communication received by a State employee that imparts or requests material information or makes a material argument regarding potential action concerning a procurement matter, including, but not limited to, an application, a contract or a project, shall be reported in accordance with rules of the Executive Ethics Commission (2 Ill. Adm. Code 1620).

b) Excepted Communications

1) These communication do not include the following:

- A) statements made by a person publicly in a public forum;
- B) 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; and
- C) statements made by the State employee of the agency to the agency head or other employees of that agency or to the employees of the Executive Ethics Commission.

2) The provisions of this Section shall not apply to communications regarding the administration and implementation of an existing contract.

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except communications regarding change orders or the renewal or extension of a contract.

- c) *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, but is not limited to, the items listed in Section 50-39 of the Code. [30 ILCS 500/50-39(c)]*

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 1.5055 Supply Inventory

State agencies shall manage their inventory of supplies in compliance with the 12-month inventory restriction of Section 50-55 of the Code.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 1.5060 Prohibited Bidders and Contractors

- a) *Unless otherwise provided, no business shall bid or enter into a contract or subcontract if the business or any officer, director, partner, or other managerial agent of the business has been convicted of a felony under the Sarbanes-Oxley Act of 2002 (PL 107-204) or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 [815 ILCS 5] for a period of 5 years from the date of conviction.*

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- b) *Every bid submitted to and contract executed by the State and every subcontract subject to Section 20-120 of the Code shall contain a certification by the bidder, contractor, or subcontractor, respectively, that the bidder, contractor, or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges that the chief procurement officer shall declare the related contract void if any of the certifications pursuant to this subsection (b) are false. [30 ILCS 500/50-10.5]*

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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5065 Lead Poisoning Prevention Act Violations

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Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act [410 ILCS 45] are prohibited from doing business with the State of Illinois or any State agency, or subcontracting, until the violation is mitigated. [30 ILCS 500/50-14.5]

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART Q: CONCESSIONS

Section 1.5310 Concessions

- a) A concession is an authorization allowing use of property for the purpose of selling directly or indirectly to the public. Concessions also include the assignment, license, sale or transfer of interests in or rights to discoveries, inventions, patents or copyrightable works.
- b) All concessions of State property shall be awarded in accordance with the requirements of Article 20 of the Code. Contracts shall be awarded to the highest and best bidder or offeror.
- c) Concession contracts shall be reduced to writing and shall include terms and conditions and concessionaire qualification requirements applicable to purchase contracts.
- d) All proposed concession contracts must be filed with PPB in compliance with Section 5-30 of the Code.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART R: COOPERATIVE PURCHASING

Section 1.5400 General

All cooperative/joint procurement activities and contracts must be approved by the CPO-GS.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5420 Governmental Joint Purchasing Act Contracts

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State and other governmental units (including not-for-profit entities authorized by law to participate in joint purchasing) may agree to use each others' procurement contracts. This authority is governed by this Subpart and the Governmental Joint Purchasing Act [30 ILCS 525].

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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5440 Non-Governmental Joint Purchasing

- a) The CPO-GS may authorize one or more State agencies to enter into joint procurement agreements with non-governmental entities, including, without limitation, consortiums of government entities, not-for-profit entities and commercial entities.
- b) If the authorized State agency acts as the lead agency, the procurement shall be conducted in accordance with the Code and this Part.
- c) If the authorized State agency acts as a participant in an agreement in which a non-governmental entity acts as lead agency, the State agency shall provide supplementary advertising in the Bulletin, as required by the Code, and shall include in the solicitation by the lead agency Code requirements or, if not possible, these requirements shall be included in the resulting contract.

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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5460 No Agency Relationship

In any cooperative/joint purchasing situation, each participant must issue its own purchase order, accept its own deliveries and make its own payments. No State agency shall have any obligation to the vendor for payment of orders placed by other participants.

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¶
c)

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¶
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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5510 Complaints Against Vendors (Repealed)

_____ (Source: Repealed at 36 Ill. Reg. _____, effective _____)

Deleted: For other infractions, the using agency shall send a written complaint to the vendor detailing the problem. For complaints regarding contracts established by the CPO, a form available from the CPO shall be used for processing complaints. ¶
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Section 1.5520 Suspension (Repealed)

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Section 1.5530 Resolution of Contract Controversies (Repealed)

(Source: Repealed at
36 Ill. Reg. _____, effective _____)

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Section 1.5540 Violation of Law or Rule (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

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SUBPART S: PROTESTS

Section 1.5550 Protests

a) Procurement-Related Protests Allowed

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1) Any person may submit a protest related to the notice of the procurement, the solicitation document, any pre-bid/proposal meeting and any decision to reject a late bid or proposal.

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2) Any person who has submitted a bid or proposal may protest a decision to reject the person's bid or proposal or to award to another person.

Deleted: An actual or prospective bidder, offeror, or vendor that may be aggrieved in connection with a procurement action may file a protest provided the aggrieved party has evidence of a violation of the Illinois Procurement Code or other law, any associated rules, or the solicitation itself, including evaluation or award.

b) Protest Review Officer

The CPO-GS may appoint one or more Protest Review Officers (PRO) to consider the procurement-related protests and make a recommendation to the CPO-GS for resolution of the protest. The CPO-GS may adopt the recommendation or take other action.

c) Submission of Protest

Deleted: b)...Submission Filing

1) A protesting party must submit a protest in writing to the PRO identified in the solicitation document. Fax and email qualify as writing, but the PRO does not guarantee receipt using those means.

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2) The protest must be physically received by the PRO at the location

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specified. A postmark or other carrier mark prior to the due date and time is not sufficient to show physical receipt.

Deleted: To expedite handling of protests, the delivery envelope should be labeled "Protest".

A) In regard to the solicitation notice or solicitation document including specifications, a protest must be received within 14 days after the date the solicitation was posted to the Bulletin and must be received by the PRO at the designated address before the date for opening bids or proposals.

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B) In regard to rejection of individual bids or proposals or awards, the protest must be received by close of business no later than 14 days after the protesting party knows or should have known of the facts giving rise to the protest to ensure consideration, and, in any event, must be received before execution of the applicable contract.

3) Any notice posted to the Illinois Procurement Bulletin establishes the "known or should have known" date for the subject matter of the notice.

4) Protests must be clearly marked on the delivery container, the fax cover sheet or the e-mail subject line.

5) The written protest shall include as a minimum the following:

A) the name and address of the protesting party;

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B) identification of the procurement, and, if a contract has been awarded, its number or other identifier;

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C) a statement of reasons for the protest specifically identifying any alleged violation of a procurement statute, a procurement rule or the solicitation itself, including the evaluation and award (conclusions with supporting facts and arguments may not be sufficient); and

Deleted: the Illinois Procurement Code or other law, any associated rules, or the solicitation itself, including the evaluation or award

D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated. If submitting the protest by fax, supporting documentation over 20 pages in length may not be included without authorization. If the protest is by fax or e-mail, the protesting party may be required to submit

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documentation by mail or carrier within 2 business days after the request; and

E) specific relief sought.

d) Requested Information

The protesting party must supply any additional information requested by the PRO within the time periods set in the request. If the protesting party fails to comply with this request, the PRO shall consider the protest on the basis of available information or may deny the protest.

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e) Stay of Procurements During Protest

Unless the CPO-GS determines the needs of the State require an immediate execution of a contract, the following apply:

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1) When a protest has been timely filed and before an award has been made, the SPO shall make no award of the contract until the protest has been resolved.

Deleted: Procurement Officer

2) If timely received but after award, the award shall be stayed without penalty to the State.

Deleted: or the award may be honored or revoked in whole or in part depending on the outcome of the protest review. Whether or not a protest has been received, the Procurement Officer may, with the approval of the Protest Review Office, make the award or reinstate the award upon a determination that the needs of the State require an immediate award and performance under the contract.

f) Resolution

The CPO-GS will resolve the protest by means of a written determination. The resolution may include affirming the State's initial decision, in whole or in part, or revoking the State's decision in whole or in part. The PRO will resolve the protest as expeditiously as possible after receiving all relevant, requested information.

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g) Effect of Judicial Proceedings

If an action concerning the protest has commenced in a court or administrative body, the CPO-GS may defer resolution of the protest pending the judicial or administrative determination.

Deleted: The Protest Review Office will resolve the protest as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, reversal of award and cancellation or revision of the solicitation.

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

Deleted: , the Protest Review Office shall not act on the protest, but shall refer the protest to the Attorney General. This Section shall not apply when a court requests, expects, or otherwise expresses interest in the decision of the Protest Review Office.

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SUBPART T; SUSPENSION AND DEBARMENT

Section 1.5560 Suspension and Debarment

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SUPPLY MANAGEMENT AND DISPOSITIONS

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- a) This Part applies to all debarments or suspensions of vendors from consideration for award of contracts under the Code. For the purposes of this Part, all references to "vendors" includes subcontractors.
- b) The CPO-GS may suspend a vendor from doing business with the State agency or with respect to certain types of supplies or services. A suspension may be issued upon a showing that the vendor violated the Code or this Part or failed to conform to specifications or terms of delivery.
- c) When the CPO-GS finds cause exists for the suspension or debarment, a notice of suspension or debarment, including a copy of that determination, shall be sent to the vendor. Bids or proposals will not be solicited from the vendor and, if received, will not be considered during the period of suspension or debarment.
- d) The CPO-GS may suspend a vendor for a period of time commensurate with the seriousness of the offense, but for no more than 10 years. The suspension will be effective 7 calendar days after receipt of notice unless an objection is filed. If an objection is filed, suspension shall not become effective until the evaluation of the objection is completed.
- e) The CPO-GS may debar a vendor. Debarment is the permanent suspension of a vendor from doing business with the State. A debarment may only take place in those instances involving bribery or attempted bribery of a State of Illinois officer or employee, or as otherwise allowed or required by law. Bids or proposals received from the debarred vendor or proposing the use of a debarred subcontractor will not be considered as responsive. The debarment will be effective 7 calendar days after receipt of notice, unless an objection is filed. If an objection is filed, the debarment shall not become effective until the evaluation of the objection is completed.
- f) The CPO-GS shall post the public record of suspensions and debarments that are currently in effect on his or her web page and on the Bulletin.
- g) A vendor objecting to the suspension or debarment shall do so in writing, detailing why the action is not valid and providing any documentation to support that position. The vendor may request a hearing. This hearing shall be conducted in accordance with Subpart V.
- h) The CPO-GS shall maintain a master list of all suspensions and debarments. The master list shall retain information concerning suspensions and debarments as

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public records. These records will be maintained for a period of at least 3 years following the end of the suspension or debarment. This public information may be considered in determining responsibility.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART U: VIOLATION OF STATUTE OR RULE

Section 1.5620 Violation of Statute or Rule

- a) Determination that Solicitation or Award Violates Statute or Rule
If the CPO-GS or the SPO finds that the solicitation or proposed award is in violation of statute or rule, the CPO-GS or SPO may cancel the solicitation or proposed award, or make modifications to correct the violation, if the correction may be legally accomplished.
- b) Determination that Contract Violates the Code or this Part
 - 1) If any contract or amendment to a contract is entered into, or purchase or expenditure of funds is made, at any time in violation of this Part or any other law, the contract or amendment may be declared void by the CPO-GS or may be ratified or affirmed, provided the CPO-GS determines that ratification is in the best interest of the State. If the contract is ratified and affirmed, it shall be without prejudice to the State's right to any appropriate damages.
 - 2) If, during the term of a contract, the SPO determines that the contractor is delinquent in the payment of debt as set forth in Section 50-11 of the Code, the CPO-GS may declare the contract void if it determines that voiding the contract is in the best interest of the State.
 - 3) If, during the term of a contract, the CPO-GS learns from an annual certification or otherwise determines that the contractor or subcontractor no longer qualifies to enter into State contracts, the CPO-GS may declare the contract void if it determines that voiding the contract is in the best interest of the State.
- c) Effect of Declaring a Contract Null and Void

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GOVERNMENTAL JOINT PURCHASING

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In all cases in which a contract is voided, the State agency shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART V: HEARING PROCEDURES

Section 1.5700 General

Any hearing required by the Code or offered in this Part shall be conducted in accordance with the procedures within this Subpart V.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5710 Informal Process

The hearing is for the purpose of receiving information from interested persons in a reasonable manner. Formal rules of evidence will not apply, nor will the hearing be conducted in the manner of a trial. The Hearing Officer may record the hearing to aid in producing minutes or may use the recording as the minutes.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5720 Hearing Officers

- a) The CPO-GS may appoint one or more Hearing Officers to conduct the hearing. If more than one Hearing Officer is assigned to conduct a hearing, one shall be designated as the Chief Hearing Officer.
- b) The Hearing Officer may require that the SPO or authorized representative of a State agency attend a hearing or be part of the Hearing Panel.
- c) The Hearing Officer will hear and consider information presented by interested persons and make a recommendation to the CPO-GS regarding the validity of the determination of the subject matter of the hearing.
- d) The Hearing Officer shall be responsible for the orderly conduct of the hearing by exercising discretion in:

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- 1) Scheduling, starting and ending the hearing;
 - 2) Setting the order of activities;
 - 3) Setting reasonable time limits for oral statements;
 - 4) Resolving any conflicts that may arise during the hearing.
- e) The Hearing Officer may cancel a hearing at any time prior to commencing a hearing, including making an announcement at the scheduled hearing date, time and location, but shall give as much advance notice as possible under the circumstances. A notice confirming the cancellation and any reschedule information will be published in the Bulletin.
- f) The Hearing Officer may change a scheduled hearing date, time or location prior to commencing a hearing by posting a notice outside the hearing room and by posting a notice to the Bulletin. The hearing should be continued to the next practicable date. In setting the next practicable hearing date, the Hearing Officer may take into consideration the schedule of the parties, the hardship to witnesses or the general public, travel and logistical considerations and any other matters that would affect public participation in the hearing.
- g) After commencing a hearing, the Hearing Officer may reconvene a hearing by announcing the new date and time at the hearing and posting the new date and time outside the hearing room. The hearing shall be continued to the next practicable date in accordance with subsection (f).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5730 Notice of Hearing

- a) Notice that a hearing will be held to receive testimony or written comments regarding the subject matter identified in the notice will be published in the Bulletin. The hearing notice shall be published in the Bulletin as soon as practicable and in accordance with any statutory requirements.
- b) The hearing may be held as soon as the first working day following the end of the notice period. The notice shall contain the following information and may describe more than one matter to be considered at the same hearing:

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- 1) The name of the affected parties (e.g., State agency and vendor);
- 2) A description of the subject matter;
- 3) A justification for the action under review;
- 4) Requirements for testifying or submitting written comments;
- 5) Hearing contact information;
- 6) The date, time and location of the hearing;
- 7) A statement that all written comments and oral testimony shall be considered public record and open to review by the public;
- 8) A statement of, or reference to, this hearing procedure.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.5740 Written Comments and Oral Testimony

Interested parties wishing to comment for or against the determination may do so in writing alone, may testify in person and may submit written comments reflecting the oral testimony.

a) Written Comments

- 1) Submission of Written Comments
Written comments are requested by the hearing registration deadline, shown in the Bulletin notice, to aid the Hearing Officer in preparing for the hearing. However, all written comments received by the hearing date will be considered.
- 2) Incorporation of Written Comments
If the Hearing Officer has received any written comment, the name and affiliation of the person submitting the comment shall be stated for the record and the written comments shall be incorporated into the record. In addition, the Hearing Officer may read excerpts from or summarize the basic points of the written comments for the record.

b) Oral Testimony

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- 1) Advance Registration
Any person who wishes to testify is requested to register with the Hearing Contact. Advance registration is requested to allow for efficient scheduling and to ensure the hearing room has sufficient capacity for those who wish to testify. Those who register in advance will be heard first on the matter for which they registered. The Hearing Officer has discretion to limit testimony for the efficiency of the hearing.
 - 2) Written Copy of Testimony Requested
Written comments reflecting proposed oral testimony are requested by the hearing registration deadline shown in the Bulletin notice to allow the Hearing Officer time to prepare for the hearing. A person testifying may submit written comments along with the testimony. The Hearing Officer may request a written copy of the oral testimony.
 - 3) Witness Slip Required
Each person providing oral testimony must complete a witness slip and provide it to the Hearing Officer as instructed.
 - 4) Duration of Testimony
Each interested party shall have a reasonable period of time to present his or her position based on the complexity of the issue and the press of other business.
- c) Sole Source and Emergency Contract Extensions – Supplemental Provisions
- 1) The notice, including attachments, as shown in the Bulletin represents the position of the State agency and the initial position of the CPO-GS. The Hearing Officer shall have the notice placed into the record. A copy of the notice will be posted in the hearing room.
 - 2) The SPO and a representative of the State agency shall attend the hearing if any person registers in advance to testify in opposition to the sole source or emergency contract extension determination. Attendance may be by video or audio. The SPO and agency representative shall respond to questions of the Hearing Officer and shall be available for consultation after adjournment of the hearing.

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- 3) The Hearing Officer may ask questions or request further written information in response to written comments or testimony or at the Hearing Officer's initiative. The Hearing Officer may allow parties to engage in dialogue and allow follow-up questions and answers as needed to ensure full understanding of the matter. The Hearing Officer is not required to respond to substantive questions at the hearing nor make commitments regarding the content of his or her recommendation.
- d) Suspension and Debarment – Supplemental Provisions
A party who receives notice of suspension or debarment may request a hearing to protest the suspension or debarment action. The hearing will be conducted in accordance with this Section and the following additional provisions shall apply.
 - 1) The Hearing Officer may ask questions or request further written information in response to written comments or testimony or at the Hearing Officer's initiative. The Hearing Officer is not required to respond to substantive questions at the hearing or make commitments regarding the content of his or her recommendation.
 - 2) Both the affected State agency and the vendor affected by a suspension of debarment may, at the discretion of the Hearing Officer, bring in witnesses to present testimony regarding the facts or circumstances that led to the determination to suspend or debar.
 - 3) In addition to responding to questions of the Hearing Officer, the witnesses shall respond to questions by the affected vendor if, at the discretion of the Hearing Officer, the questions are allowed.
 - A) The Hearing Officer may allow questions when the subject matter of the question is relevant and the questioning will not unnecessarily delay the proceedings.
 - B) The Hearing Officer may deny questions when the subject matter seeks only to unnecessarily embarrass the witness or delay the proceedings.
- e) Recommendation
After conclusion of the hearing, the Hearing Officer shall review the State agency's position, any information obtained from public comment (written or

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oral), the applicable Sections of the Procurement Code, other laws and associated rules and written policies and other information deemed relevant.

f) Decision of the CPO-GS

- 1) The CPO-GS shall, after considering the Hearing Officer's recommendation, make a decision in writing (which may be electronic) to uphold or overturn, in whole or in part, the State agency's decision.
- 2) The CPO-GS may request additional information from the Hearing Officer, or any other party, including supplemental comments or testimony from the interested parties, prior to making a decision.
- 3) The CPO-GS may adopt the recommendation, in whole or in part, or may reject the recommendation, or may write a separate decision.

g) Notice of Decision

- 1) The decision of the CPO-GS shall be provided to the impacted parties and State agencies. A copy of the decision shall be posted to the Bulletin.
- 2) Upon posting notice of a decision upholding the determination, the State agency may take action to have the contract executed.

h) Maintenance of Records

A copy of the public notices, any documents presented, any written comments, the recommendation of the Hearing Officer, and any decision of the CPO-GS shall be maintained in the procurement file. Any transcript or recording of a public hearing shall be available upon request.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1.6010 Supply Management and Dispositions (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 1.6500 General (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Deleted: ¶

a)

Deleted: Inventory Responsibility ¶

Each State agency shall have general supervision of and accountability for tangible personal property and other supplies under its control subject to the requirements of the State Property Control Act [30 ILCS 605] and rules implementing that Act. ¶

¶

b)

Deleted: Supply Management ¶

State agencies shall order supplies on a schedule and in quantities so as to maintain no more than a 12 month supply in inventory. Supplies shall be ordered so as to maintain the minimum inventory commensurate with ability to meet agency needs. This 12-month inventory restriction does not apply to lifesaving medications, mechanical spare parts, or when a greater quantity is needed to meet minimum order quantities. ¶

¶

c)

Deleted: Inventory ¶

State agencies shall periodically inventory all warehouses and similar storage areas under their jurisdiction. ¶

¶

d)

Deleted: Report of Inventory ¶

The CPO may require that agencies note on purchase requests compliance with the 12 month restriction on inventory. ¶

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e)

Deleted: Transfer of Excess Supplies ¶

Insofar as feasible, practical and in accordance with other applicable law, the SPOs shall transfer excess supplies to the Department of Central Management Services Surplus Property Division for disposition under the State Property Control Act [30 ILCS 605].

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In an effort to make the procurement process more efficient, State and other governmental units (including not-for-profit entities authorized by law to participate in joint purchasing) may agree to utilize each others' procurement contracts. This authority is governed by this Subpart and the Governmental Joint Purchasing Act [30 ILCS 525]. Only the CPO may enter into contracts under the Act when the State is a party to the contract. ¶

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Section 1.6510 No Agency Relationship (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 1.6520 Obligations of Participating Governmental Units (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 1.6530 Centralized Contracts – Estimated Quantities (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 1.6535 Centralized Contracts – Definite Quantities (Repealed)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

SUBPART W; MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section 1.7000 Severability

If any provision of this Part or any application of it to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this Part that can be given effect without the invalid provision or application and, to this end, the provisions of this Part are declared to be severable.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.7010 Government Furnished Property

If the State provides any property to the vendor in furtherance of the contract, the property shall remain the property of the State, but may be consumed by the vendor if necessary to complete the contract. Vendor will issue a receipt for the property and will be responsible for its safekeeping and for return of unused property to the State.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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In any joint procurement situation, the governmental unit must issue its own purchase order, accept its own deliveries and make its own payments. The State of Illinois shall have no obligation to the vendor for payment of orders placed by other governmental units. ¶

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a)

Deleted: provide to the CPO a copy of the ordinance or resolution passed by the governing body of the governmental unit giving authority to make purchases from contracts issued by the State of Illinois; ¶

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Section 1.7015 Inspections

- a) Inspection of Plant or Site
The CPO-GS or a designee may enter a vendor's or subcontractor's plant or place of business and, pursuant to contract provisions, if any, to:
 - 1) inspect supplies or services for acceptance by the State agency;
 - 2) audit the books and records of any vendor or subcontractor;
 - 3) investigate an action to debar or suspend a person from consideration for award of contracts pursuant to the Code;
 - 4) determine whether the standards of responsibility have been met or are capable of being met;
 - 5) determine if the contract is being performed in accordance with its terms; and
 - 6) accomplish any other purpose permitted by law.
- b) ~~When an inspection is made in the plant or place of business of a vendor or subcontractor, the vendor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.~~ The presence or absence of an inspector shall not relieve the vendor or subcontractor from any requirements of the contract.
- c) ~~When an inspection is made in the plant or place of business of a vendor or subcontractor, the vendor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.~~
- d) ~~Inspection or testing of supplies and services performed at the plant or place of business of any vendor or subcontractor shall be performed so as to not unreasonably delay the work of the vendor or subcontractor.~~
- e) Inspection of Construction Projects
On-site inspection of construction shall be performed in accordance with the terms of the contract.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

- Deleted: State
- Deleted: pursuant to the terms of a contract
- Deleted: pursuant to Section 1.7020 (Records and Audits) of this Part
- Deleted: Inspection and Testing of Supplies and Services ¶
 - 1)
- Deleted: Solicitation and Contractual Provisions. State contracts may provide that the State may inspect supplies and services at the vendor's or subcontractor's facility and perform tests to determine whether the supplies or services conform to solicitation requirements, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract. ¶
 - 2)
- Deleted: Procedures for Trial Use and Testing. The Procurement Officers may establish operational procedures governing the testing and trial use of equipment, material, and other supplies by any State agency, and the application of resulting information and data to specifications or procurements. ¶
 - c)
- Deleted: Conduct of Inspections ¶
 - 1)
- Deleted: Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the vendor or subcontractor. No inspector other than the Procurement Officer may change any provision of the specifications or the contract without written authorization of the Procurement Officer.
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Section 1.7020 Taxes, Licenses, Assessments and Royalties,

a) The contractor shall pay all current and applicable city, county, State and federal taxes, licenses or assessments, including federal excise taxes, due on the performance of any contract, including, without limiting the foregoing, those required by the Federal Insurance Contribution Act (26 USC 3101 et seq.), the Federal Unemployment Tax Act (26 USC 3301 et seq.) and the State Unemployment Insurance Act [820 ILCS 405], together with all royalties due for any proprietary items. The contractor is exclusively liable for the payment of taxes to the respective governments. In the event the taxes, licenses, assessments or royalties, or any part thereof, are in the first instance charged to the State agency, the contractor shall, upon timely demand of the State agency, pay the State agency the amount of the tax, license, assessment or royalty due, plus all penalties that may have accrued.

b) The State agency is exempted by Section 3-5 of the Use Tax Act [35 ILCS 105/3-5] from paying any of the taxes imposed by that Act, and sales to the State agency are exempt by Section 2-5(11) of the Retailers' Occupation Tax Act [35 ILCS 120/2-5(11)] from any of the taxes imposed by that Act. The Illinois Department of Revenue, under 86 Ill. Adm. Code 130.2075(d), has declared that sale of materials to construction contractors for conversion into real estate for schools or charities are not taxable retail sales. A State agency making purchases of tangible personal property must provide its exemption numbers to vendors in order to receive an exemption from tax. Contractors making purchases from vendors of tangible personal property that will be incorporated into real estate owned by a State agency must present vendors with the State agency's exemption number and other required documentation in order to receive an exemption from tax.

c) Federal Excise Tax. Bidders must not include in their prices any allowance for payment under Federal Excise Tax if the State agency is exempt from those taxes. If an order or contract is awarded for the purchase of an item that is subject to the Federal Excise Tax, the State agency will furnish the vendor with an exemption certificate upon request.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1.7025 Written Determinations (Repealed)

Deleted: Records and Audits

Deleted: Retention of Books and Records ¶
Books and records that relate to performance of a State contract, including subcontracts, and that support amounts charged to the State, shall be maintained: ¶

¶
1)

Deleted: by a vendor, for three years from the date of final payment under the prime contract; ¶

¶
2)

Deleted: by a subcontractor, for at least three years from the date of final payment under the subcontract; and ¶

¶

Deleted: by a vendor and subcontractor for such longer period of time as is necessary to complete ongoing or

Deleted: Contract Audit ¶

¶
1)

Deleted: Types of Contracts Audited. The type of contract under which books and records should be audited is that in which

Deleted: Situations in which an audit may be warranted include but are not limited to when a question arises in connection with

Deleted: the financial condition, integrity, and reliability of the vendor or subcontractor; ¶

Deleted: any prior audit experience; ¶

¶
C)

Deleted: the adequacy of the vendor's or subcontractor's accounting system; ¶

Deleted: the number or nature of invoices or reimbursement vouchers submitted by the vendor or subcontractor

Deleted: the use of federal assistance funds; ¶

Deleted: the fluctuation of market prices affecting the contract; or ¶

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(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 1.7030 No Waiver of Sovereign Immunity

Nothing in this Part shall be deemed to be a waiver of sovereign immunity.

Deleted: ¶
a)

Deleted: Preparation and Execution ¶
When the Code or this Part requires a written determination, the officer required to prepare the determination may delegate its preparation, but the responsibility for and the execution of the determination shall not be delegated. ¶
b)

Deleted: Content ¶
Each written determination shall set out sufficient facts, circumstances, and reasoning as will substantiate the specific determination that is made. ¶
c)

Deleted: Obtaining Supporting Information ¶
While an officer is responsible for the execution of the written determination, other State personnel, particularly technical personnel and appropriate personnel in the purchasing agency, are responsible for furnishing to the cognizant official, in an accurate and adequate fashion, the information pertinent to the determination. When requested, such information shall be furnished in writing to the cognizant official who shall have the authority to decide the final form and content of the determination and to resolve any questions or conflicts arising with respect to the determination. ¶
d)

Deleted: Forms ¶
The CPO is authorized to prescribe methods and operational procedures to be used in preparing written determinations. ¶
e)

Deleted: Retention ¶
Each written determination shall be filed in the solicitation or contract file to which it applies, shall be retained as part of such file for so long as the file is required to be maintained, and, except as otherwise provided by statute or rule, shall be open to public inspection.