

SUBTITLE A

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT
AND PROPERTY MANAGEMENT
SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS
CHAPTER I: CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES

PART 1
CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES
STANDARD PROCUREMENT

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

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 Reg. 9015, effective July 1, 1996; old Part repealed by emergency rulemaking at 22 Ill.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 Reg. 12726, effective July 1, 1998, for a maximum of 150 days; old Part repealed and new Part adopted at 22 Ill.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 Reg. 20540, effective December 2, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 30 Ill.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. ____.

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Section 1.1 Title

This Part may be cited as the Standard Procurement Rules.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

SUBTITLE A**Section 1.5 Policy**

All State procurements shall be accomplished in the most economical, expeditious and commercially reasonable manner that is in accordance with statute, this Part and other applicable rules.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.8 Purpose and Implementation of This Part

- a) This Part establishes rules necessary and appropriate to implement the authorities granted by the Illinois Procurement Code (Code) [30 ILCS 500] relating to the procurement, management, and control of supplies, services, real estate leases and related capital improvement, concessions and, as applicable, construction, and necessary rulemaking under the authority of the Code.
- b) This Part applies to all procurements and procurement rulemaking under the jurisdiction of the Chief Procurement Officer for General Services (CPO) and any State Purchasing Officer (SPO) appointed by the CPO. For the purposes of this Part, any reference to CPO means the Chief Procurement Officer for General Services unless the context indicates otherwise.
- c) This Part is intended to make policies, procedures and guidelines for procurement activities of State agencies uniform and consistent among and within the State agencies under the jurisdiction of the CPO 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 State's interests.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.10 Application

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

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- 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 (d)(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 allow State agencies to utilize contracts established by other governmental entities.);*
- 2) *grants;*
- 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; or*
- 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 this Code shall give his or her prior approval when the procuring entity is not one subject to the jurisdiction of the Governor. [30 ILCS 500/1-10] 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, contracting for expert witnesses.*

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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 below, and each term listed in this Section shall have the meaning set forth below unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

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

"Bidder" – Any person who submits a 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 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.

"Chief Procurement Officer" or "CPO" – The Chief Procurement Officer for General Services, as created by Section 1-15.15(5) of the Code or a designee.

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

"Concession" – The right or a lease to engage in a certain activity for profit on the lessor's premises (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" – 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

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limited to purchase, installment purchase, lease and rental contracts.

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

"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, in which event the period shall run to the end of the next business day.

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

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

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

"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]

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

"Offeror" – A person who responds to an Invitation for Bids, Request for Proposals or other form of solicitation.

"Procurement Officer" – The Chief Procurement Officer (CPO) or appropriate State Purchasing Officer (SPO) who conducts the particular procurement, or a designee of either.

"Proposal" – The response to a Request for Proposals.

"Protest Review Office" – The office address 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 conjunction with the purchase of care. Such services may include administrative 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.

"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 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]*

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

"Responsive Bidder" – *A person who has submitted a bid that conforms in all material respects to the invitation for bids. [30 ILCS 500/1-85]*

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

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

"Service" – *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 the financing thereof. [30 ILCS 500/1-15.90]*

"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.

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"Solicitation" – An Invitation for Bids, a Request for Proposals or other request to one or more vendors to respond to a procurement need expressed by the State.

"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.

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

"State Agency" – Generally the term "State agency" *includes all boards, 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 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. 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 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, 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 Chief Procurement Officer for General Services are encompassed by the term State agency.

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

"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]*

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"Unsolicited Offer" – Any offer other than one submitted in response to a solicitation.

"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.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Receipt of an Invitation for Bids or other solicitation or procurement document, or submission of any response thereto, or other offer, confers no right to receive an award or contract, nor does it obligate the State in any manner.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.30 Constitutional Officers, and Legislative and Judicial Branches

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.

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SUBPART B: PROCUREMENT RULES

Section 1.525 Rules

- a) Procurement under the jurisdiction of the CPO or an appointed SPO shall be conducted in accordance with the Code and this Part except as provided in this Section.
- b) 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.
- c) An agency that has procurement needs not adequately addressed by the Standard Procurement Rules may inform the CPO and provide a draft of proposed rules to address those procurement needs, including a statement explaining why particular program needs of the agency require a rule different from or in addition to the Standard Procurement Rules. In lieu of approving rules proposed by the agency, the CPO may elect to meet the agency's need by amending these Standard Procurement Rules.
- d) All procurement rules proposed by an agency governed by the Code must be approved by the CPO prior to submission for publication as a proposed rule and again prior to adoption after all comments have been addressed.
- e) An agency with procurement rules approved by the CPO shall review those rules in conjunction with the Illinois Procurement Code and shall report to the CPO if changes are needed in their rules. The CPO shall inform each agency with procurement rules approved by the CPO of changes proposed to these Standard Procurement Rules that will require changes to their rules. In each such case, the CPO or SPO shall commence appropriate rulemaking.
- f) All proposed rules will be submitted to the Procurement Policy Board (Board) before or during the public comment period established under the Illinois Administrative Procedure Act. Rulemaking, except for emergency rulemaking, shall be scheduled so as to allow the Board at least 30 days to provide comments.
- g) Emergency rules will be submitted to the Board for review and comment with as much notice as is reasonably possible. A copy of the adopted emergency rules shall be provided to the Board. The Board shall be given opportunity to comment

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on rules proposed to replace the emergency rules.

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SUBPART C: PROCUREMENT AUTHORITY

Section 1.1005 Exercise of Procurement Authority

- a) The SPOs appointed by the CPO shall conduct all procurements under the jurisdiction of the CPO subject to the limitations set by the CPO. Those limitations are provided or authorized by this Part.
- b) Procurements contemplating any form of agreement including, but not limited to, outright purchase, installment and lease purchase, lease, rental and license, are included.

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Section 1.1010 Appointment of State Purchasing Officer

- a) The executive head of each State agency shall, after consultation with the CPO, recommend to the CPO one of the agency's officers or employees for appointment as SPO. Upon appointment by the CPO of the recommended individual and approval by the executive head of the State agency, the named individual shall be an SPO for that agency.
- b) 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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Section 1.1040 Central Procurement Authority of the CPO

- a) The CPO 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 following items will be procured by the CPO as the central purchasing agency. These items may be procured by an SPO only as provided in this Subpart or in a letter of delegation from the CPO authorizing the procurement activity.
 - 1) Supplies. The CPO shall procure all supplies exceeding \$25,000. In addition the CPO shall procure:
 - A) printing exceeding \$10,000; and
 - B) regardless of price:
 - i) Employee benefits authorized under the State Employees 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 managed by the CPO;
 - viii) Vehicles.
 - 2) Services. The CPO shall procure the following services:
 - A) Electronic data processing services including, but not limited to, consulting and professional and artistic services, exceeding

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\$25,000;

- 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;
 - 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 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, each agency must initiate the procurement process through submission of a purchase request to the CPO. The CPO shall designate the format and requirements for submission.
 - 2) Chief Procurement Officer's Authority to Reject
When the CPO, after consultation with the requesting agency, decides that processing the purchase request is clearly not in the best interest of the State, or that further review is needed, the CPO shall return such purchase request to the requesting agency. A statement of the reasons for its return shall accompany the returned request. Examples of reasons a purchase request may be returned include, but are not limited to:
 - A) the request can be satisfied from existing State inventory or State

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contracts;

- B) the request exceeds agency needs;
- C) the needs requested could be procured more economically at a different time without detriment to the State; or
- D) the quality requested is inconsistent with State standards and usage.

3) Determination of Contractual Terms and Conditions

The CPO has authority to determine the terms and conditions of solicitations and contracts. The CPO will consult with the requesting agency if the agency requests special terms and conditions.

- d) The CPO 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 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.
- f) The CPO 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.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.1050 Procurement Authority of the SPO; Limitations

- a) **SPO's Authority**

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 the CPO.
- b) **Emergency Procurements**
 - 1) Agencies shall report telecommunications emergencies to the Department of Central Management Services' Network Control Center. Emergency procurements shall be made or authorized by the Department of Central Management Services. If the Network Control Center number cannot be reached, the Agency shall take reasonable temporary measures to meet its telecommunications needs.
 - 2) For all other emergency procurements, whenever practicable, SPOs shall contact the CPO for instructions for meeting needs in emergency situations for each procurement under the central procurement authority of the CPO. SPOs shall utilize existing contracts established by the CPO whenever practicable. Quick purchases under Section 1.2030 of this Part must be approved by the CPO for those items under the jurisdiction of the CPO as identified in Section 1.1040 of this Part.
- c) **Professional and Artistic Services**

Each SPO shall have authority, subject to the supervision of the CPO, to procure those professional and artistic services that are not under the central procurement authority of the CPO. Supervision primarily consists of ensuring SPO compliance with the procurement procedures established by the Code and this Part for procuring these services, but also includes without limitation the authority to review and require modifications to specifications; schedule for opening proposals; evaluation criteria; and awards when deemed necessary to protect the State's interests and ensure compliance with the Code and this Part.
- d) **Correctional Industries**

Each SPO shall have authority to procure supplies and services from the Department of Correction's Correctional Industries program.
- e) **CPO Contracts**

SPOs do not have the authority to procure items for which the CPO establishes

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master, scheduled or open-ended contracts, except as permitted in the terms of those contracts.

- f) Department of Central Management Services
SPOs must procure from the Department of Central Management Services items available from any of the program operations of the Department of Central Management Services unless specifically authorized to procure from another source. This includes, but is not limited to:
- 1) Paper and Printing Warehouse;
 - 2) Division of Vehicles system; and
 - 3) Central Computing Facility.
- g) Review by CPO
Any procurement related activity of an SPO may be reviewed by the CPO, and the SPO shall supply information requested by the CPO. Should the CPO determine that the SPO's activities were not in accordance with the requirements of the Code, this Part or good procurement practices, or is otherwise not in the State's best interest, the CPO may consult with the SPO or executive head of the agency and, if necessary, may place additional limits on the SPO's authority. These additional limitations will be communicated in the form of written notice sent by the CPO to the SPO and the executive head of the agency.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.1060 Delegation

- a) The CPO may delegate to any SPO the CPO's authority to conduct specific procurements or classes of procurements for the use of that agency. The CPO may also delegate to any SPO the CPO's authority to conduct on behalf of the CPO specific procurements or classes of procurements for multiple agency use. An SPO may request that the CPO delegate authority to that SPO.
- b) The CPO and each SPO (with approval of the SPO's executive head) may appoint designees to assist in the performance of their respective duties and responsibilities.
- c) Any exercise of delegated authority shall be in accordance with the Code and this Part.
- d) 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;
 - 3) whether the authority may be further delegated;
 - 4) the duration of the delegation; and
 - 5) any reporting requirements.

SUBTITLE A**Section 1.1070 Toll Highway Authority**

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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Section 1.1075 Department of Natural Resources

The CPO delegates to the Department of Natural Resources and its SPO authority to procure construction and construction-related services for the construction activities under the jurisdiction of the Department of Natural Resources. 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 for Capital Development Board. The CPO may delegate to the CPO for 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 Department of Natural Resources.

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Section 1.1080 Illinois Mathematics and Science Academy

The CPO delegates to the Illinois Mathematics and Science Academy and its SPO authority to procure supplies and services for the operation of the Academy. The Academy may utilize contracts let by the CPO for Public Institutions of Higher Education (CPO-HED) in lieu of master and other such contracts established by CMS. For the procurement of such supplies and services, the SPO shall follow the procurement rules adopted by the CPO-HED. The CPO may delegate to the CPO-HED authority to publish in its volume of the Bulletin all notices that must be published relating to the procurement of supplies and services by the Illinois Mathematics and Science Academy.

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SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section 1.1510 Illinois Procurement Bulletin

- a) The Illinois Procurement Bulletin consists of several volumes, one for each of the Chief Procurement Officers designated in the Code and one for each other State entity that must publish notices under the Code. Each volume will contain procurement information relating to procurements under the jurisdiction of the applicable Chief Procurement Officer. Each volume shall be available in electronic form.
- b) The Bulletin may be accessed via instructions available from the CPO.
- c) Access to the detailed information contained in the Bulletin may be subject to an annual subscription fee as set by the CPO, not to exceed publication and distribution costs.
- d) To accommodate those who are not interested in subscribing to the Bulletin, a free subscription will be made available to interested public libraries in Illinois.

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Section 1.1525 Bulletin Content

- a) The information in each volume of the Bulletin will be updated at least once per month and may be updated as frequently as daily. The format, lead-time and other administrative requirements for submitting notices to the Bulletin will be provided in writing by the CPO to each SPO.
- b) Notice of each procurement request governed by the Code that must be conducted by competitive sealed bidding, including multi-step sealed bidding, competitive sealed proposals, competitive selection procedures, or real estate requests for information, shall be placed in the Bulletin. The notice shall contain at least the following information:
 - 1) the name of the procuring 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);
 - 5) the date, time, and location for making submissions;
 - 6) the method of source selection;
 - 7) the name of the Procurement Officer in charge; and
 - 8) instructions on how to obtain detailed information.
- c) Notice of each contract awarded that was subject of a notice in subsection (b) shall be placed in the Bulletin. 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; and

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- 5) other disclosures required to be published in the Bulletin.
- d) The following information regarding emergency procurements shall be published in the Bulletin within 10 days after commencement of performance under the emergency contract:
- 1) name of the procuring agency (and using agency, if different);
 - 2) name of the vendor selected for award;
 - 3) brief description of what the vendor will do or provide;
 - 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; and
 - 6) name of the Procurement Officer in charge.
- e) 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:
- 1) name of the procuring agency (or using agency, if different);
 - 2) name of the vendor;
 - 3) brief description of what the vendor will do or provide; and
 - 4) name of the Procurement Officer in charge.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

SUBTITLE A**Section 1.1550 Official State Newspaper**

- a) The Department of Central Management Services will select, by Competitive Sealed Bid, a secular newspaper of general circulation printed in English, to be known as the Official State Newspaper. The term of the appointment and the requirements will be specified by the Department in the Invitation for Bids.
- b) Upon direction of the CPO, this newspaper may be used as a substitute for the Bulletin in the event the Bulletin cannot be published.

SUBTITLE A**Section 1.1560 Supplemental Notice**

Publication in the Bulletin may be supplemented by publication elsewhere at the discretion of the purchasing agency. Examples include publication in:

- a) the Official State Newspaper;
- b) a newspaper of general circulation;
- c) a newspaper of local circulation in the area pertinent to the procurement;
- d) industry media; or
- e) agency "WEB" pages.

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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.

SUBTITLE A**Section 1.1580 Direct Solicitation**

In addition to giving notice in the Bulletin, agencies may directly contact prospective vendors by providing copies of Invitations for Bids, Requests for Proposals, or other procurement information. Direct solicitation may be oral or in writing, but care should be taken to ensure that all vendors solicited in this manner receive the same information as provided to others. No direct solicitation shall be made prior to the date any required notice first appears in the Bulletin.

SUBTITLE A**Section 1.1590 Retention of Bulletin Information**

- a) The information published pursuant to Section 1.1525(b) should be retained in electronic or paper form until the information required to be published under Section 1.1525(c) for that procurement is published.
- b) Other information published in the Bulletin shall be retained in electronic or paper form for a period of one year after first publication.

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SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

Section 1.2005 General Provisions

- a) Late Bids or Proposals, Late Withdrawals and Late Modifications
 - 1) Definition. Any bid, proposal, modification or withdrawal received after the time and date for receipt is late. A bid 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, but the agency shall not be responsible for ensuring such subsequent delivery.
 - 2) Treatment. No late bid or proposal, late modification, or late withdrawal will be considered unless the Procurement Officer, 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).
 - 3) Records. Records shall be made and, in accordance with the State Records Act [5 ILCS 160], 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.
- b) Extension of Time
 - 1) The Procurement Officer 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.
 - 2) After opening bids or proposals, the Procurement Officer may request bidders or offerors who submitted timely bids or proposals to extend the time during which the State may accept the bids or proposals, provided that, with regard to bids, no other change is permitted. This extension does not provide an opportunity for others to submit bids or proposals.
- c) Electronic and Facsimile Submissions
 - 1) The Invitation for Bids or Request for Proposals may state that electronic and facsimile machine submissions will be considered if they are received at the designated office by the time and date set for receipt. Any required

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attachments will be submitted as stated in the IFB or RFP.

- 2) Electronic submissions authorized by specific language in the IFB or RFP will be opened in accordance with electronic security measures in effect at the purchasing agency at the time of opening. Unless the electronic submission procedures provide for a secure receipt, vendor assumes risk of premature disclosure due to submission in unsealed form.
 - 3) Fax submissions authorized by specific language in the IFB or RFP will be placed in a sealed container upon receipt and opened as other submissions. Vendor assumes risk of premature disclosure due to submission in unsealed form.
- d) **Intent to Submit**
The Invitation for Bids or the Request for Proposals 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 IFB or RFP. Bids and proposals submitted without complying with the notice of intent requirement may be rejected.
- e) **Only One Bid or Proposal Received**
If only one bid or proposal is received, an award may be made to the single bidder or offeror if the Procurement Officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise:
- 1) new bids or offers may be solicited, including under sole source (Section 1.2025) or emergency (Section 1.2030) procedures; or
 - 2) the procurement may be canceled.
- f) **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 Source Procurement) of this Part; 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

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requirements of the specifications.

- 2) Multiple bids or proposals may be accepted if:
 - A) permitted by the solicitation and submitted in accordance with instructions in the solicitation; or
 - B) only one vendor responded, then, one or more of the submissions may be evaluated, provided that, in the case of bids, only the lowest cost bid meeting specifications may be considered.
 - 3) If a vendor clearly indicates a primary submission among alternate or multiple bids or proposals, then that primary submission shall be considered for award as though it were the only bid or proposal submitted by the vendor.
- g) **Multiple Items**
An Invitation for Bids or Request for Proposals may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, or grand total of all items.
- h) **"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.
- i) **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:
- 1) be rejected unless the vendor removes the condition; or
 - 2) be evaluated and award made to that vendor if the vendor is also independently evaluated as the winner of the other IFBs or RFPs provided the agency need not delay procurement actions to accommodate the vendor's all or none condition.
- j) **Unsolicited Offers**
- 1) **Processing of Unsolicited Offers.** The Procurement Officer may consider unsolicited offers. If the SPO of an agency that receives an unsolicited offer is not authorized to enter into a contract for the items offered, the SPO of such agency may forward the offer to the CPO, who may consider such unsolicited offer.

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- 2) Conditions for Consideration. An unsolicited offer must be in writing and must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the State.
 - 3) Award. 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 except if that unsolicited offer meets the requirements for a small (Section 1.2020), sole source (Section 1.2025), or emergency (Section 1.2030) procurement.
- k) Clarification of Bids and Proposals
The Procurement Officer may request that a vendor clarify its bid or proposal as a part of the evaluation process. A vendor shall not be allowed to materially 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 & Finals as authorized elsewhere in this Part.
- l) 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 Procurement Officer determines in writing that it is not practical to award another contract at the time of such extension.
- m) Increase in Quantity on Definite Quantity Contracts
- 1) The quantity that may be ordered from a definite quantity contract without additional notice and competition may be increased by up to 20% provided the Procurement Officer determines that separate bidding for the additional quantity is not likely to achieve lower pricing. A particular procurement may specify a different percentage.
 - 2) 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.
- n) Subsequent Purchase Request
If, within 30 days after making an award to a particular vendor pursuant to a competitive sealed bid on behalf of an agency, the CPO receives a purchase request from another agency for the same item and for the same or lesser quantity, the CPO may contract with that vendor on the same terms and conditions, including price, without additional notice and competition, if such contract is acceptable to the vendor.

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- o) Assignment, Novation or Change of Name
 - 1) Assignment. No State contract is transferable, or otherwise assignable, without the written consent of the Procurement Officer, provided, however, that a vendor may assign money receivable under a contract after due notice to the State. Assignment may require the execution of a contract with the assignee and in such cases the assignee must meet all requirements for contracting with the State.
 - 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 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.
 - 4) Reports. All change of name or novation agreements under this subsection (o) shall be reported to the CPO within 30 days after the date the agreement becomes effective so that the bid list may be updated.
- p) 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].
- q) 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 not bound to strict compliance with the Code and rules

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governing the method of source selection used.

- r) Vendor Signature
A bid or proposal submitted unsigned will be evaluated if the vendor submits a written signature acceptable to the Procurement Officer within the time specified by that officer.
- s) Stringing
Dividing or planning procurements to avoid use of competitive procedures (stringing) is prohibited.
- t) Confidential Data
Vendors must clearly identify any information that is exempt from the disclosure requirement of the Illinois Freedom of Information Act [5 ILCS 140] and must request special handling of that material.
- u) Documentation of Procurement Actions
Each 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) Procurement Business Case or other 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,
 - 8) Contractor Performance reviews,

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- 9) All information from subsections (u)(1)-(u)(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 (u)(1)-(u)(5) available on the date any award is posted to the Procurement Bulletin.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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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) **The Invitation for Bids**
 - 1) **Use.** The Invitation for Bids is used to initiate a competitive sealed bid procurement.
 - 2) **Content.** The Invitation for Bids 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 office 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.
 - 3) **Incorporation by Reference.** The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.
- c) **Bidding Time**

Bidding time is the period of time between the date of notice or distribution of the Invitation for Bids and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 14 days shall be provided unless a shorter time is authorized by the Code or this Part.
- d) **Bidder Submissions**
 - 1) **Bid Form.** The Invitation for Bids may include a form or format for submitting bids. If a form or format is specified, vendor shall submit bids

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as instructed.

- 2) Bid Samples and Descriptive Literature
 - A) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.
 - B) Unsolicited bid samples or descriptive literature are submitted at the bidder's risk, may not be examined or tested, will not be deemed to vary any of the provisions of the Invitation for Bids, and may not be utilized by the vendor to contest a decision or understanding with the State.
- e) Public Notice
 - 1) Publication. Every procurement for supplies and services in excess of the small purchase amount that must be procured using an Invitation for Bids shall be publicized in the Illinois Procurement Bulletin (see Section 1.1510).
 - 2) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection.
 - 3) Distribution. Invitations for Bids or Notices of the Availability of Invitations for Bids may be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of Availability shall, at a minimum, indicate where Invitations for Bids may be obtained; generally describe what is needed; and indicate the due date for bids. Where appropriate, the Procurement Officer may require payment of a fee or a deposit for supplying the Invitation for Bids.
- f) Pre-Bid Conference

A pre-bid conference may be conducted to enhance understanding of the procurement requirements. The pre-bid conference shall be announced as a part of the Invitation for Bids notice. The conference may be designated as "attendance mandatory" or "attendance optional". The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment to the Invitation for Bids. Amendments shall be supplied to all those prospective bidders known to have received an Invitation for Bids. If the conference is mandatory, the amendment shall be supplied to attendees only.

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- g) Amendments to Invitations for Bids
 - 1) Form. Amendments to Invitations for Bids shall be clearly identified and shall reference the portion of the IFB it amends.
 - 2) Distribution. Amendments shall be made available to all prospective bidders known to have received an Invitation for Bids.
 - 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 such preparation, the amendment shall extend the response time. If necessary, the response time may be extended by e-mail, fax or telephone and confirmed in the amendment.
- h) Pre-Opening Modification or Withdrawal of Bids
 - 1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids 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.
- i) Receipt, Opening and Recording of Bids
 - 1) Receipt. Upon its receipt, each bid and modification shall be 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 in error, the file shall so state.
 - 2) Opening and Recording
 - A) Bids and modifications shall be opened publicly at the time, date, and place designated in the Invitation for Bids. Opening shall be witnessed by a State employee or any other person present, but the person opening bids shall not serve as witness. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer shall be recorded and read

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aloud or otherwise made available. The name of the witness shall also be recorded at the opening.

- B) The winning bid shall be available for public inspection after award, along with the record of each unsuccessful bid.

j) 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 Invitation for Bids, except as permitted in the Code and this Part. The Invitation for Bids 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 Invitation for Bids.
- 2) Responsibility. Responsibility of prospective vendors is covered by Section 1.2046 (Responsibility) of this Part.
- 3) Responsiveness. A bid must conform in all material respects to the Invitation for Bids.
 - A) Product or Service Acceptability. The Invitation for Bids 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 it conforms with 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

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rejected.

- 4) Determination of Lowest Bidder. Following determination of product or service acceptability as set forth in this subsection (j), 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 Invitation for Bids. Only objectively measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost and ownership or life-cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall be reasonable estimates based upon information the State has available concerning future use and shall provide for the equitable treatment of all bids. Pricing for optional supplies or services, or for renewal terms, may be considered, particularly when the pricing for such 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.
- k) Documentation of Award
Following award, a record showing the successful bidder shall be made a part of the procurement file.
- l) Award to Other Than Low Bidder
- 1) The Procurement Officer, but not a designee, may 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. 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.
 - 2) This action may be appropriate when the difference in quality or speed of delivery is so great as compared to the difference in price, and considering the needs of the agency, that a best value award is justified. However, if the difference in price is significant, the Procurement Officer may not utilize this provision.
- m) Publicizing Award
The successful bidder shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. In procurements over the small purchase limit set in Section 1.2020 (Small Purchases) of this Part, notice of award shall be published in the Bulletin.

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- n) The contract resulting from this process shall reflect the awarded requirements and no material changes shall be made except in compliance with the requirements of the Code and this Part, including, but not limited to, source selection and Bulletin posting requirements.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.2012 Multi-Step Sealed Bidding

- 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, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description.
- c) **Pre-Bid Conference in Multi-Step Sealed Bidding**

Prior to the submission or evaluation of unpriced technical offers, a pre-bid conference as contemplated by Section 1.2010(f) (Pre-Bid Conference) may be conducted by the Procurement Officer.
- 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 hereinafter provided. In addition to the requirements set forth in Section 1.2010, the multi-step Invitation for Bids shall state:
 - A) that unpriced technical offers are requested;
 - B) whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;

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- C) that it is a multi-step sealed bid procurement, and 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;
 - D) the criteria to be used in the evaluation of the unpriced technical offers;
 - E) that the Procurement Officer may conduct oral or written discussions of the unpriced technical offers;
 - F) 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 Invitation for Bids.
- 2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Procurement Officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids may be canceled in accordance with Section 1.2040 (Cancellation of Solicitation; Rejection of Bids or Proposals) of this Part and a new Invitation for Bids 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 witness. Such 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 Invitation for Bids. The unpriced technical offers shall be categorized as:
- A) acceptable;
 - B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
 - C) unacceptable, in which case the Procurement Officer shall record in writing the basis for finding an offer unacceptable, notify the vendor and make it part of the procurement file.

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- 5) The Procurement Officer may initiate phase two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds discussion of the technical offers is necessary, the Procurement Officer shall commence discussions of the unpriced technical proposals.
 - 6) Discussion of Unpriced Technical Offers. The Procurement Officer may conduct discussions with any vendor who submits an acceptable or potentially acceptable technical offer. During the course of such discussions, the Procurement Officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Any such bidder may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer. Such submission may be made at the request of the Procurement Officer or upon the bidder's own initiative.
 - 7) Unacceptable Unpriced Technical Offer. When the Procurement Officer determines a bidder's unpriced technical offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer.
- e) Procedure for Phase Two
- 1) Initiation. Upon the completion of phase one, the Procurement Officer 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
 - 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 30 Ill. Reg. 17305, effective October 20, 2006)

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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 of this Part).
 - 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 Procurement Officer that competitive sealed bidding is either not practicable or advantageous.
 - 1) "Practicable" Distinguished from "Advantageous." As used in Section 20-15 (Competitive Sealed Proposals) of the Illinois Procurement Code and in this Section, "practicable" denotes what may be accomplished or put into practical application, and "advantageous" connotes a judgmental assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Before a procurement may be conducted by competitive sealed proposals, the Procurement Officer shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the State.
 - 2) General Discussion
 - A) If competitive sealed bidding is not practicable or is not advantageous, competitive sealed proposals should be used.
 - B) The key element in determining whether use of a proposal is advantageous is the need for flexibility. The competitive sealed proposal method differs from competitive sealed bidding in two important ways:

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- i) it permits discussions with competing offerors and changes in their proposals, including price; and
 - ii) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.
 - C) Where evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, where the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration, use of competitive sealed proposals is the appropriate procurement method.
- 3) When Competitive Sealed Bidding Is Not Practicable. Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:
- A) whether the contract needs to be other than a fixed-price type;
 - B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
 - C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;
 - D) 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; and
 - E) whether the primary consideration in determining award may not be price.

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- 4) When Competitive Sealed Bidding Is Not Advantageous. A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the State, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:
 - A) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and
 - B) whether the factors listed in subsection (c)(3) of this Section are desirable, in conducting a procurement, rather than necessary; if they are, then such factors may be used to support a determination that competitive sealed bidding is not advantageous.
- d) Content of the Request for Proposals
The Request for Proposals 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 such discussions; and
 - 2) a statement of when and how price should be submitted.
- e) Receipt and Registration of Proposals
 - 1) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals. 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.
 - 2) Proposals and modifications shall be opened in a manner to avoid disclosing contents to competitors. Only State personnel and contractual agents may review the proposals prior to award.
- f) Evaluation of Proposals
 - 1) Evaluation Factors in the Request for Proposals. The Request for

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Proposals 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 Request for Proposals.

- 2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Only those factors specified in the Request for Proposals shall be considered and no other factors shall be authorized for consideration in evaluating the proposals, except as communicated in advance to each proposer with opportunity to make necessary adjustments to the proposal. Numerical rating systems may be used but are not required. Any scoring tool shall reflect the evaluation criteria and ranking set forth in the Request for Proposals and any subfactors available at the opening. 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. The price proposal shall be opened in the presence of a State witness and distributed to the appropriate evaluators.
 - 3) Classifying Proposals. For the purpose of conducting discussions, proposals may be initially classified as:
 - A) acceptable;
 - B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
 - C) unacceptable. Offerors whose proposals are unacceptable shall be so notified promptly.
- g) Proposal Discussions with Individual Offerors
- 1) "Offerors" Defined. For the purposes of Section 20-15(f) (Competitive Sealed Proposals, Discussion with Responsible Offerors and Revisions to Proposals) of the Illinois Procurement Code and of this Section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses that submitted unacceptable proposals.

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- 2) 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 factors set forth in the Request for Proposals.
 - 3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If during discussions there is a need for any substantial clarification of, or change to, the Request for Proposals, the Request shall be amended to incorporate such 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.
 - 4) Best & Final Offers. The Procurement Officer may request Best & Final offers, when in the best interest of the State of reasons, including, but not limited to, reducing scope to accommodate budget, obtain lower cost at no or insignificant change from original proposal, to accept new technology at no or insignificant change in cost, or to have vendors adjust proposals to focus on one or several alternatives originally requested or proposed. Best & Final offers may be requested from all offerors or from only those in the zone of contention after preliminary evaluation as determined by the Procurement Officer. The request for Best & Final offers may pertain to any aspect of the solicitation, including but not limited to qualifications, specifications, scope of work or price. The Best & Final request shall clearly identify the matters that the offerors must address, and the matters may vary from vendor to vendor if necessary. Best & Final offers shall be submitted by a specified date and time. The Procurement Officer may conduct additional discussions or change the State's requirements and require another submission of Best & Final offers. If an offeror does not submit a Best & Final offer, that offeror's immediately previous offer will be construed as its Best & Final offer.
- h) Award
- 1) An award shall be made by the Procurement Officer pursuant to a written determination showing the basis on which the award was found to be most advantageous to the State, based on the factors set forth in the Request for Proposals.

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- 2) If the selected vendor did not submit the low price, the award notice shall state, in reasonable detail, why the selected vendor was deemed most advantageous.
- 3) The contract resulting from this process shall reflect the awarded requirements and no material changes shall be made except in compliance with the requirements of the Code and this Part, including, but not limited to, source selection and Bulletin posting requirements.
 - i) **Publicizing Awards**
The successful offeror shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. When the award exceeds the small purchase limit set in Section 1.2020 of this Part, notice of award shall be published in the Bulletin.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.2020 Small Purchases

- a) Application
 - 1) Procurements of \$25,000 or less for supplies or services, other than professional and artistic, may be made using the method of source selection determined by the Procurement Officer to be most appropriate to the circumstances.
 - 2) 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 using the method of source selection determined by the Procurement Officer to be most appropriate to the circumstances.
 - 3) Procurements for construction and construction related services of \$30,000 or less, or as increased to reflect increases in the consumer price index as determined by the CPO for Capital Development Board or the CPO for Department of Transportation.
 - 4) The CPO 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 December 31, 1998, and for each year thereafter. That percentage change shall be used to calculate the small purchase maximums that shall be applicable for the fiscal year beginning July 1, 1999. The small purchase maximums shall be likewise recalculated for each July 1 thereafter.
- b) In determining whether a contract is under the limit, the value of the contract for the full term and all optional renewals, determined in good faith, shall be utilized. The stated value of the supplies or services, plus any optional supplies and services, shall be utilized. Where the term is calculated month-to-month or in a similar fashion, the amount shall be calculated for a 12 month period.
- c) 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)).
- d) If, after signing the contract, the actual cost of completing the contract is determined to exceed the small purchase amount, and the Procurement Officer determines that a supplemental procurement is not economically feasible or practicable because of the immediacy of the agency's needs or other circumstances, the Procurement Officer must follow the procedures for sole

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source or emergency procurement, whichever is applicable, to complete the contract.

- e) 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.
- f) If there is a repetitive need for small procurements of the same type, the Procurement Officer shall consider issuing a competitive sealed bid or proposal for procurement of those needs.
- g) Agencies shall establish policies to control the use of this small purchase provision and shall make those policies available to the CPO upon request.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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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 set in Section 1.2020 (Small Purchases) or unless emergency conditions exist as defined in Section 1.2030 (Emergency Procurements) of this Part.
- 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 potential bidder or offeror authorized to provide that item. The following are examples of circumstances that could necessitate sole source procurement:

 - 1) where the compatibility of equipment, accessories, replacement parts, or service is a paramount consideration;
 - 2) where a sole supplier's items are needed for trial use or testing;
 - 3) where a sole supplier's item is to be procured for commercial resale;
 - 4) where public utility regulated services are to be procured;
 - 5) where the item is copyrighted or patented and the item or service is not available except from the holder of the copyright or patent;
 - 6) the procurement of the media for advertising;
 - 7) the procurement of art or entertainment services; and
 - 8) changes to existing contracts (see subsection (c)).
- 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 complete the contract or program, and that can be best accomplished by the contract holder may be procured under this Section when the Procurement Officer determines that the cost of delay or

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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.

- 2) A change (whether in cost or rate) that does not exceed the applicable small purchase limit as defined in Section 1.2020 of this Part, or that is an emergency as defined in Section 1.2030 of this Part, 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.
- d) Procurement Officer to Determine
- 1) The determination as to whether a procurement shall be made as a sole source shall be made by the Procurement Officer. Such determination and the basis therefore shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness.
 - 2) Any purchase request submitted to the CPO suggesting that a procurement be restricted to one potential vendor shall be accompanied by an explanation as to why no other vendor will be suitable or acceptable to meet the need.
 - 3) The State agency SPOs shall submit any sole source procurements to the CPO for approval before publication of a notice in the Bulletin. Based on sole source procurements previously submitted, the CPO may determine that certain categories of procurements do not require future approval and that certain agencies no longer need to submit sole source procurement requests for approval. These exceptions may be revoked upon review and determination that the sole source procurement file does not have adequate documentation appropriate for non-competitive procurement.
- e) Publication of Sole Source Notice
- The Procurement Officer shall publish in the Bulletin notice of intent to contract with that vendor at least 14 days prior to execution of the contract.
- 1) If no challenge to this determination is made by a vendor within the 14-day period, the Procurement Officer may execute a contract with that vendor.
 - 2) If a challenge is received, the Procurement Officer shall consider the

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information and shall commence a competitive procurement if the Procurement Officer determines that more than one economically feasible source may be available and the sole source designation is, therefore, not appropriate, unless an emergency situation exists.

- f) Negotiation in Sole Source Procurement
The Procurement Officer shall conduct negotiations, as appropriate, to reach contract terms, including price, and shall maintain a record of each sole source procurement showing:
- 1) the vendor's name;
 - 2) the amount and type of the contract;
 - 3) what was procured; and
 - 4) the identification number of the contract file.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.2030 Emergency Procurements

- a) Applications
The provisions of this Part apply to every procurement over the small purchase limit set in Section 1.2020 (Small Purchases) of this Part and that is not a sole source procurement under Section 1.2025 of this Part made under emergency, including quick purchase, conditions.
- b) Definition of Emergency Conditions
Procurements may be made under this Section 1.2030 in the following circumstances:
 - 1) Traditional circumstances include but are not limited to:
 - A) public health or safety, including the health or safety of any particular person, is threatened;
 - B) immediate repairs are needed to State property to protect against further loss or damage to State property, or to prevent loss or damage to State property;
 - C) immediate action is needed to prevent or minimize serious disruption in State services;
 - D) action is needed to ensure the integrity of State records;
 - E) equipment or services are necessary in the furtherance of covert activities lawfully conducted by a State agency. Any required disclosures shall be made so as not to jeopardize those covert activities;
 - F) immediate action is necessary to avoid lapsing or loss of federal or donated funds;
 - G) the need for items to protect or further State interests is immediate and use of other competitive source selection procedures under the Code and this Part cannot be accomplished without significant risk of causing serious disadvantage to the State.
 - 2) After Unsuccessful Competitive Solicitations. When bids or proposals received pursuant to a competitive sealed bid or competitive sealed proposal method are unreasonable or noncompetitive, or the price exceeds

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available funds, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals, and if emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

- 3) Extension to Allow Competition. Extending an existing contract for such period of time as is needed to conduct a competitive method of source selection where terminating or allowing the contract to terminate would not be advantageous to the State.
- 4) Quick Purchase:
 - A) 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;
 - B) Items are available on the spot market or at discounted prices for a limited time so that good business judgment mandates a purchase immediately to take advantage of the availability and price;
 - C) availability of rare items, such as books of historical value;
 - D) the procurement is for entertainment.
- c) Scope of Emergency Conditions
Emergency procurements shall be limited to the items, quantity and term necessary to meet the emergency need.
- d) Authority to Make Emergency Procurements
Authority to make emergency procurements is established in Subpart C. Whenever practical, existing State contracts shall be utilized and, whenever practical, approval by the CPO shall be obtained prior to procuring items reserved to the CPO. The SPO of each agency shall be responsible for making the filings required in Section 20-30 of the Code.
- 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. 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.

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- f) Determination and Record of Emergency Procurement
- 1) Determination. The Procurement Officer shall make a written determination stating the basis for an emergency procurement and for the selection of the particular vendor. Such determinations shall be kept in the contract file of the Procurement Officer.
 - 2) Record. An affidavit of each emergency procurement shall be filed with the CPO and the Auditor General within 10 days after the procurement and shall include the following information:
 - A) the vendor's name;
 - B) the amount and type of the contract, provided that 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 shall be published in the Bulletin in accordance with Subpart D of this Part.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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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 Section 1.2035(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 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. These services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional and artistic services contracts. (See Illinois Attorney General Opinion S-256, January 20, 1971.)
 - 5) 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.

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- 6) 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 below 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 such 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;
 - 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]. Such 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 Purchases) of this Part.
 - f) **Prequalification**
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

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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.

- g) Public Notice of Competitive Selection Procedures
 - 1) Notice of the need for professional and artistic services shall be made by the Procurement Officer in the form of a Request for Proposals.
 - 2) Notice shall be given as provided in Section 1.2010 (Competitive Sealed Bidding) of this Part.
 - 3) Notice shall also be distributed to prequalified persons interested in performing the services required by the proposed contract.
- h) Request for Proposals
 - 1) Contents. The Request for Proposals shall be in the form specified by the CPO 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 principal place of business and, if different, the place of performance of the proposed contract;
 - ii) if deemed relevant by the Procurement Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;

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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 Request for Proposals;
 - 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); and
- H) the factors to be used in the evaluation and selection process and their relative importance.
- 2) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals. 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:
- 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;
 - 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.
- i) Pre-Proposal Conference
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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- j) Delivery, Receipt and Handling of Proposals
 - 1) Proposals shall be submitted to and opened by the CPO in accordance with instructions given by the CPO to the SPO.
 - 2) Public Opening
 - A) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals.
 - B) 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, 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 State personnel and contractual agents may review the proposals prior to award.
 - D) Proposals of offerors who are not awarded the contract shall not be open to public inspection.
 - 3) Transmission to SPO. The CPO will forward timely proposals to the SPO of the using agency along with any pertinent information contained in the files of the CPO regarding the vendors who submitted proposals.
 - 4) The CPO may require that the SPO be present at and assist in the opening and registration of proposals and the transportation of proposals to the SPO.
- k) Discussions
 - 1) Discussions Permissible. The Procurement Officer may conduct discussions with any offeror to:
 - A) determine in greater detail such offeror's qualifications; and
 - 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

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Procurement Officer may allow changes to the proposal based on those discussions.

- 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 has been made. The proposal of the offeror awarded the contract shall be open to public inspection except as otherwise provided in the contract.
- l) **Selection of the Best Qualified Offerors**
After conclusion of validation of qualifications, evaluation, and discussion, the Procurement Officer shall rank the acceptable offerors in the order of their respective qualifications.
- m) **Evaluation of Pricing Data**
Pricing submitted for all proposals timely submitted shall be opened and ranked.
 - 1) If the low price is submitted by the most qualified vendor, the Procurement Officer may award to that vendor.
 - 2) If the price of the most qualified vendor is not low and if it does not exceed \$25,000, the Procurement Officer, but not a designee, may award to that vendor.
 - 3) If the price of the best qualified vendor exceeds \$25,000, the Procurement Officer, 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.
- n) **Negotiation and Award of Contract**
 - 1) **General.** The Procurement Officer shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The Procurement Officer may, in the interest of efficiency, negotiate with other vendors, 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

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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 such 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 Procurement Officer 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, and the agency's identified budget.

4) Failure to Negotiate Contract with Best Qualified Offeror

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

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value without further evaluation.

- o) **Multiple Awards**
The Procurement Officer 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.
- p) **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.**
- q) **Notice of Award**
Written notice of award shall be public information and made a part of the contract file. The CPO 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.
- r) **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.**
- s) **Post Performance Review**
The SPO of the using agency shall provide a synopsis of the contract and shall rate the vendor's performance using the form developed by the CPO. A copy of the completed form shall be provided to the CPO.

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Section 1.2036 Other Methods of Source Selection

- a) Split Award
 - 1) An award of a definite quantity requirement may be split between bidders or offerors. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required. A split award may be used only when award to more than one bidder or offeror for different amounts of the same item are necessary to obtain the total quantity or the required delivery.
 - 2) The Procurement Officer shall make a written determination setting forth the reasons for the split award, which determination shall be made a part of the procurement file.
- b) Multiple Award
 - 1) General Conditions
 - A) A multiple award is an award of an indefinite quantity 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 when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, 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.
 - C) The State 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.
 - D) If a multiple award is anticipated, the solicitation shall state this fact as well as the criteria for award.

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E) In a multiple award situation, one vendor may 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 Procurement Officer.

2) Multiple Award with Set Rate

A) Notwithstanding anything to the contrary in this Part, the Chief Procurement Officer, but not a designee, may, on a case-by-case basis, authorize the Department of Central Management Services 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 Chief Procurement Officer 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 Illinois Procurement 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)(2) is amended.

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 Illinois Procurement 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

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subsection (b)(2)(G). Implementing Article 45 of the Code and subsection (b)(2)(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.

- E) The Department 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.
 - 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 Department 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.
 - ii) Require as part of the solicitation that vendors submit rates (prices), including disclosable rates, and inform them the Department 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.
- 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 Chief Procurement Officer.
- G) Using agency needs will be met by the Department 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 Chief Procurement Officer. This request shall set forth all reasons, including the additional qualifications or conditions, why a random

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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 Department 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.

- H) In order to ensure the continued availability of the set of master contract holders, all potential orders shall be monitored by the Department to ensure the equitable distribution of work and that no single vendor has an unwarranted disproportionate share of the available work. The Department 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.
- I) The Department shall conduct the random selection using a drawing, mechanical device or software driven selection. The specific process used by the Department 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.
- 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)(2)(B) of this Section; the research papers, reports, contract rates and internal or industry expert surveys, "additional

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rate information" and identification of "other contracts and research" in subsections (b)(2)(E)(i) and (ii); the alternate selection documents required by subsection (b)(2)(G), the 3 or more master contract holders for the alternate random selection in subsection (b)(2)(G) and updated information required of contractors pursuant to subsection (b)(2)(J). The Department 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.

- 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).
 - 2) Orders may be placed against term and condition contracts without use of any prescribed method of source selection for convenience of processing sole source, emergency or small procurements. Agencies with reasonably defined repetitive small needs that, over the course of a fiscal year, are likely to exceed the small purchase amount set in Section 20-20 of the Code and this Part should consider a competitive method of source selection to contract for those repetitive needs.
- 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.
- e) Non-governmental Joint Purchase
 - 1) The CPO may enter into (or authorize one or more SPOs to enter into) an agreement with a person not eligible for the Governmental Joint Purchasing Act for the joint procurement of anything 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.

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- 2) The primary use of this provision shall be to accommodate mutual relationships between the State and not-for-profit groups whose purpose is to conduct programs adjunct to those of the State agency that is party to the contract.
- f) **Federal Requirements**
The Procurement Officer 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 such action.
 - h) **Donations**
 - 1) When a procurement will have the majority of funding from a donation, the terms of which donation require use of particular procurement or contracting procedures, the Procurement Officer 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 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.

(Source: Amended at 30 Ill. Reg. 13378, effective July 25, 2006)

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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 evaluation.
- b) Tie bids or proposals will be resolved as follows:
 - 1) If the tied bids or proposals include an Illinois resident vendor, the Illinois resident vendor shall be given the award in the case of bids and may be given the award in the case of proposals. "Illinois resident vendor" has the meaning given in Section 1.4510 (Resident Bidder Preference) of this Part.
 - 2) In all other situations the award shall be made by lot unless the Procurement Officer 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; or 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.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.2038 Mistakes

- 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 bidders.
- b) **Mistakes Discovered Before Opening**
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 Mistake**
When 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, 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 Procurement Officer shall waive such 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;
 - B) acknowledge receipt of an amendment to the solicitation, but only if:
 - i) it is clear from the bid or proposal that the offeror received the amendment and intended to be bound by its terms; or
 - ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery.
 - 2) **Mistakes Where Intended Correct Information Is Evident.** If the mistake

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and the intended correct information are clearly evident on the face of the bid or proposal document, the information shall be corrected and the bid or proposal 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 Where Intended Correct Information Is Not Evident. The low price 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 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 & Final Offers. Once discussions are commenced with any offeror or after Best & Final offers are requested, any offeror may propose to correct any mistake prior to the date set for conclusion of discussions or for receipt of Best & 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 where the Procurement Officer 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 Procurement Officer shall maintain in the procurement file documentation of actions regarding correction or withdrawal of bids or proposals based on mistakes.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

- a) **Scope of this Section**

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) **Policy**

Any solicitation may be canceled before or after opening when the Procurement Officer believes cancellation to be in the State's best interest. Nothing shall compel the award of a contract.
- c) **Cancellation of Solicitation; Rejection of All Bids or Proposals**
 - 1) A solicitation may be canceled in whole or in part or all bids and proposals may be rejected for any reason, 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 or all bids or proposals are rejected, notice shall be posted to the Procurement Bulletin.

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- 3) The notice shall:
 - A) identify the solicitation;
 - B) briefly explain the reason for cancellation or rejection; and
 - C) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar items.
- d) Documentation
The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.
- e) Rejection of Individual Bids or Proposals
 - 1) General. This subsection (e) applies to rejections of individual bids or proposals in whole or in part.
 - 2) Notice in Solicitation. Each solicitation shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the State as provided in this Section.
 - 3) Reasons for Rejection
Reasons for rejecting a bid or proposal may include, but are not limited to:
 - A) the business that submitted the bid or proposal is nonresponsible as determined under Section 1.2046 (Responsibility) of this Part;
 - B) the bid or proposal is not responsive, that is, it does not conform in all material respects to the solicitation;
 - C) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect;
 - D) the supply or service item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids; or

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- E) the proposed price is clearly unreasonable.
- 4) Notice of Rejection. Upon request, unsuccessful bidders or offerors shall be advised of the reasons for rejection.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section 1.2043 Suppliers

- a) An agency with procurement authority may contract with any qualified source of supply, but must procure from the Directed Sources except as permitted by those sources, and must consider the following Special Sources.
- b) Directed Sources – State-Produced Supplies or Services
 - 1) Correctional Industries. The CPO, after consulting with 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.
 - 2) Central Services. Supplies and services available from the program operations of the Department of Central Management Services shall be utilized unless the CPO authorizes procurement from other sources.
- c) Special Sources
 - 1) Prior to any equipment procurement, each agency should consider property available from the State and Federal Surplus Warehouses, which are 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.
 - 2) Various supplies and services are available from qualified workshops for the disabled and procurement from these workshops is encouraged. Notice and competition is not required pursuant to Section 45-35 of the Code. Information regarding the workshops is available from the Department.
 - 3) Various supplies and services are available from State agencies and other governmental units. These may be procured without notice and competition.

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Section 1.2044 Vendor List/Required Use

- a) The CPO shall maintain a list of vendors interested in doing business with the State. The names and addresses of vendors on the list shall be available for public inspection.
- b) Inclusion on, or exclusion from, the list shall not be a factor in determining whether a vendor is a responsible vendor.
- c) When vendors are directly solicited by the State, Invitations for Bids and other solicitations will be sent to vendors on the vendor list for supplies or services in question, except in the following cases:
 - 1) The vendor does not sell the particular commodity or equipment.
 - 2) The number of vendors for a procurement classification is of such magnitude that optimum prices may reasonably be expected without soliciting the entire vendor list. The Procurement Officer may, if he/she determines that the best interest of the State would be served, rotate the selection from the list on any equitable basis.
 - 3) The Procurement Officer determines that the best interests of the State will be served by limiting vendors to those in defined geographic areas (example: purchases of ready-mix concrete, perishables, and equipment requiring immediate service).

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Section 1.2045 Prequalification

- a) General
 - 1) The CPO shall identify by publication in the Bulletin the categories of supplies and services (including professional and artistic services) for which the CPO may prequalify vendors of those supplies and services. The CPO is not required to prequalify vendors but may do so when determination of a vendor's qualifications prior to procurement would be advantageous to the State.
 - 2) 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 failure to participate in the prequalification process may result in the vendor being ineligible to receive contracts.
 - 3) When prequalifying a vendor, the CPO may limit prequalifications to certain factors such as determining whether a vendor has been and is likely to be "responsible" using the criteria set forth in Section 1.2046 of this Part, or whether the vendor manufactures domestically. The fact that a prospective vendor has been prequalified generally does not necessarily represent a definitive finding for a particular procurement.
 - 4) When prequalifying a vendor, the CPO may consider factors tailored to a specific procurement or type of procurement, which shall be announced in the Bulletin.
 - 5) 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 Invitation for Bids, Request for Proposals or other procurement request shall state that fact.
- b) Professional and Artistic Services
 - 1) Any prequalification of vendors of professional and artistic services shall include, at a minimum, a specified level of education, experience, and technical ability, and may require certification or licensure, or membership in professional associations.

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- 2) Categories for prequalification will include, but are not limited to, those listed in Section 1.2035 of this Part.

- c) Qualified Products Lists
Qualified products lists are treated in Section 1.2050 (Specifications and Samples) of this Part.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.2046 Responsibility

- a) **Application**
Contracts are to be made only with responsible vendors unless no responsible vendor is available to meet the State's needs. If there is doubt about responsibility, and if a bond or other security would adequately protect the State's interests, then that vendor may be awarded a contract upon receipt of the bond or other security.

- b) **Standards of Responsibility**
 - 1) **Standards.** Factors to be considered in determining whether the standard of responsibility has been met may include, but are not limited to, whether a prospective vendor:
 - A) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements (the Procurement Officer may designate a level of financial resource below which the vendor will be deemed "not responsible");
 - B) is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;
 - C) has a satisfactory record of performance. Vendors who are or have been deficient in current or recent contract performance in dealing with the State or other customers may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the vendor;
 - D) has a satisfactory record of integrity and business ethics. Vendors who are under investigation or indictment for criminal or civil actions that bear on the particular procurement or that create a reasonable inference or appearance of a lack of integrity on the part of the vendor may be declared not responsible for the particular procurement;
 - E) is qualified legally to contract with the State;
 - F) has supplied all necessary information in connection with the

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inquiry concerning responsibility;

- G) has a current Public Contracts number from the Illinois Department of Human Rights, pursuant to 44 Ill. Adm. Code 750.210, if required. Proof of application prior to opening of bids or proposals will be sufficient for an initial determination;
 - H) pays prevailing wages, if required by law; and
 - D) is current in payment of all State of Illinois taxes, including the unemployment insurance tax.
- 2) Information Pertaining to Responsibility. The prospective vendor shall supply information requested by the Procurement Officer concerning the responsibility of such vendor. The State may supplement this information from other sources and may require additional documentation at any time. If such vendor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information, or may find the prospective vendor nonresponsible.
- c) Ability to Meet Standards
The prospective vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
- 1) evidence that such vendor possesses such necessary items;
 - 2) acceptable plans to subcontract for such necessary items; or
 - 3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
- d) Duty Concerning Responsibility
Before awarding a contract, the Procurement Officer must be satisfied that the prospective vendor is responsible. The State reserves the right to request information regarding responsibility and to accept information regarding responsibility at any time prior to execution of a contract, but failure of a vendor to provide information by the time required by law or as set forth in the solicitation is cause for rejection of a bid or proposal.
- e) Written Determination of Nonresponsibility Required
If a vendor who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the CPO or the SPO. The final determination

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shall be made part of the procurement file.

- f) **Bond for Responsibility**
Vendors not having a history of performance may be considered responsible if no other disqualifying factors exist. A bond or other security may be required of such vendors.
- g) **Affiliated Companies**
Vendors who 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 will also be determined not to be responsible unless the new organization can prove it was not set up for the purpose of avoiding an earlier determination of nonresponsibility.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section 1.2047 Security Requirements

- a) A Procurement Officer may require that a vendor furnish bid, proposal, or performance security on State contracts. Whenever security is required, except as provided herein, the procurement document will clearly indicate the type and amount of security.
- 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.
- c) Unless the amount is set by law, the Procurement Officer 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) Permissive/Mandatory Security
 - 1) Bid or proposal security is permissive on any contract but is not appropriate on emergency or sole source procurements.
 - 2) Performance security is permissive on any contract and is recommended on contracts calling for advance payment.
 - 3) Performance security is required on all public works contracts.
- f) A vendor may submit a single or continuous security each year that will be applicable on all contracts of the purchasing agency. When such security has been obligated in an amount equal to the sum of accumulated security requirements, additional security must be submitted.
- g) Bid or proposal security will be returned to unsuccessful vendors as soon after award as possible. The bid or proposal security of the successful vendor will be returned after contracts have been signed and performance security, if any,

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submitted. Performance security will be returned upon full performance.

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SUBPART H: SPECIFICATIONS AND SAMPLES

Section 1.2050 Specifications and Samples

- a) Responsibilities Regarding Specifications
 - 1) The Procurement Officer shall write the necessary specifications, except as noted in this Section.
 - 2) If a specification for general or common use or a qualified products list exists for an item to be procured under Section 20-20 of the Code (Small Purchases), it shall be used except as otherwise authorized by the CPO. If no such specification exists, SPOs shall have the authority to prepare specifications for use in such purchases. In an emergency under Section 20-30 of the Code, any necessary specification may be utilized without regard to the provisions of this Subpart.
- b) Procedures for the Development of Specifications
 - 1) If the CPO develops a specification for a common or general use item or has developed a qualified products list in accordance with this Section for a particular supply or service, it shall be used unless the CPO authorizes use of another specification.
 - 2) 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.
 - 3) Specifications shall not include unduly restrictive technical or performance requirements. All specifications shall be written in such a manner as to describe the requirements to be met, without 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.
 - 4) Any specifications or standards adopted by business, industry, not-for-profit organization or governmental unit may be adopted by reference.
 - 5) A specification may provide alternate descriptions where two or more design, functional, or performance criteria will satisfactorily meet the State's requirements.

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- c) Brand Name or Equal Specification
- 1) Brand name or equal specifications may be used when the Procurement Officer determines in writing that:
 - 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, not including a brand name specification;
 - 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 Procurement Officer 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.
 - 4) Where 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 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) Determination. A brand name only specification may be used only when the Procurement Officer makes a written determination that only the identified brand name item or items will satisfy the State's needs.

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- 2) Use. 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. 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.
 - 3) Competition. The Procurement Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such 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 Source Procurement) of this Part.
 - 4) Small and Emergency Procurements. Brand name only specifications may be used when procuring items under the small (Section 1.2020 of this Part) and emergency (Section 1.2025 of this Part) provisions of this Part.
- e) Qualified Products List
- 1) Use. A qualified products list may be developed by the Procurement Officer when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy State requirements.
 - 2) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing or through notice posted in the Procurement Bulletin to submit products for testing and examination to determine acceptability for inclusion in a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration during the time allowed for testing and examination.
 - 3) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier.
- 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. Specifications may require that the supply or services must have been used in business or industry for a specified period of time to be considered.

g) State Required Samples

- 1) 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 State Required Samples. Samples not destroyed or consumed by examination or testing will be returned upon request and at vendor's expense. Such request must be made at time of submission with return collect or prepayment provisions and instructions for return accompanying the samples.

h) Product Demonstration

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.

i) Pre-solicitation Assistance/Specifications Prepared by Other Than State Personnel

- 1) 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.
- 2) A State agency may contract for or 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, provided agency personnel shall not seek that assistance if they know or suspect a conflict of interest. If a State agency uses the services of a non-state person for pre-solicitation

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activities, the State agency shall inform the CPO and provide the name and address of that person, the scope of the work performed and the amount paid for the work. The State agency shall also publish this information in the Bulletin as part of the solicitation or award notice.

- 3) 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 30 Ill. Reg. 17305, effective October 20, 2006)

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SUBPART I: CONTRACT TYPE

Section 1.2055 Types of Contracts

- a) **Scope**

This Section contains descriptions of types of contracts and limitations as to when they should 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**

The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Illinois Procurement 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.

 - 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 price 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.
- 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

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an industry or area (such as are frequently found in contracts for the purchase of coal);

- 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
- iii) in requirement contracts, where 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).

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) A cost-reimbursement type contract may be used only when the Procurement Officer determines in writing 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.

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

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

3) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract that 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

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such 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.

- 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.
 - 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 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

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are applied to the formula to establish the incentive fee payable to the vendor.

- 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. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior State approval.
- 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 approximate quantity or 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 obligation to order.
 - 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.
- 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

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percentage may be paired with a fixed price or cost reimbursement method.

j) Option Provisions

- 1) **Contract Provision.** When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. These options may be exercised without taking other procurement action when the option is established for exercise at the State's option.
- 2) **Lease with Purchase Option.** A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals, the leased supply or facility is the only supply or facility that can meet the State's requirements, the purchase option price is less than the small purchase limit or emergency conditions exist.

k) State Produced Supplies and Services

Notwithstanding any provision in any contract, supplies or services available from the State's own programs, such as Correctional Industries, 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

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.

n) Sale of Advertising in State Publications

- 1) Pursuant to Section 20-110 of the Code, a Procurement Officer 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

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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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SUBPART J: DURATION OF CONTRACTS

Section 1.2060 Duration of Contracts – General

- a) General
 - 1) 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.
 - 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.
 - 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.
 - 4) 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.
- b) The contractual obligation of both parties in each fiscal period succeeding the first is subject to appropriation and availability of funds. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of the contract shall be canceled without penalty to, or further payment being required by, the State. 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-Term Contracts
A multi-term contract may be used when:
 - 1) special production of definite quantities or the furnishing of long-term

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services is required to meet State needs; or

- 2) a multi-term 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 larger quantity of service requirements, and substantial continuity of production or 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.

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

- 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);
- 4) how award will be determined.

e) Renewals

- 1) When the original procurement specifically called for an initial term plus renewals, the renewals may be exercised without further procurement activity, provided the initial term and the exercised renewals may not exceed 10 years, the terms and conditions do not change except as provided in the contract (such as price escalations tied to an index) and the option is reserved solely to the State or is by mutual agreement. A

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renewal option 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.

- 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. This renewal shall start a new term not to exceed 10 years.
- 3) 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. Where a renewal will result in the total term, counting the initial term and any previous renewals, to exceed 10 years, the renewal must be exercised using one of the methods of source selection authorized by the Code and this Part. This renewal will start a new term that shall not exceed 10 years.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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SUBPART K: CONTRACT MATTERS

Section 1.2560 Prevailing Wage

- a) 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.
 - 1) Public works
 - 2) Printing
 - 3) Janitorial cleaning services, window cleaning services, building and grounds services, site technician services, natural resources services, food services and security guard services having a monthly contract price of \$200 or a yearly price of \$2,000.
- b) 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.
- c) Prevailing Wage Rates
 - 1) Prevailing wage rates, benefits and conditions will be those in effect on the first date of the contract, provided that, if the rate changes during the contract term and the amount of change is known before execution of the contract, then the contract rate will vary in like amount.
 - 2) If the change in the collective bargaining agreement cannot be determined in advance, the contract will be changed by the amount of the change in wage rate and all components of price that are dependent on the usage rate, such as payroll taxes, workers' compensation insurance, vacation, sick days, and pension, provided that profit shall not increase due to prevailing wage increases. The using agency shall have the option to cancel the contract if the new price is unacceptable.
 - 3) If the initial prevailing wage, etc., cannot be determined prior to execution, contracts may be entered into and will remain valid for the stated term.

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- d) If a collective bargaining agreement is in effect governing the services set forth in subsection (a), that agreement will define minimum wages, benefits and conditions that must be paid in order for a bidder to be considered responsible.
- e) For public works, location means the county where the physical work upon public works is performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workers and mechanics to construct the public works efficiently and properly, "locality" includes any other county nearest the one in which the work or construction is to be performed and from which such persons may be obtained in sufficient numbers to perform the work.
- f) Printing Contracts
 - 1) For printing contracts, location means one of the following areas:
 - A) Cook County;
 - B) Boone, Bureau, Carroll, Champaign, DeKalb, DeWitt, DuPage, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Livingston, Logan, Marshall, Mason, McDonough, McHenry, McLean, Mercer, Ogle, Peoria, Piatt, Putnam, Rock Island, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, and Woodford counties;
 - C) Adams, Alexander, Bond, Brown, Calhoun, Cass, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macon, Macoupin, Madison, Marion, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, and Williamson counties.
 - 2) Where the printing is performed in a plant outside the jurisdiction of this State, it shall be deemed produced in the Illinois locality in which delivery of the printing ordered is required to be made. Where such printing is required to be delivered to more than one Illinois locality, such printing shall be deemed produced in the Illinois locality to which the largest dollar volume of printing under the contract is to be delivered.

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- g) For other services, location means the county in which the work is to be performed.
- h) Prevailing wages, benefits and conditions will be determined by the Illinois Department of Labor.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.2570 Equal Employment Opportunity; Affirmative Action

- a) **Public Contracts**
Every party to a public contract and every eligible bidder shall:
- 1) Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
 - 2) Comply with the procedures and requirements of the Department of Human Right's (DHR) regulations concerning equal employment opportunities and affirmative action;
 - 3) Provide such information, with respect to its employees and applicants for employment, and assistance as DHR may reasonably request;
 - 4) Have written sexual harassment policies that shall include, at a minimum, the following information:
 - A) the illegality of sexual harassment;
 - B) the definition of sexual harassment under State law;
 - C) a description of sexual harassment, utilizing examples;
 - D) the vendor's internal complaint process, including penalties;
 - E) the legal recourse, investigative and complaint process available through DHR and the Human Rights Commission;
 - F) directions on how to contact DHR and the Commission; and
 - G) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act (IHRA) [775 ILCS 5]. A copy of the policies shall be provided to the Department of Human Rights upon request.
- b) Section 7-105A of the IHRA authorizes the Department of Human Rights to promulgate policies, rules and regulations to implement the provisions of the IHRA applicable to eligible bidders and public contractors. DHR has promulgated rules, 44 Ill. Adm. Code 750, that establish public contractor and

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eligible bidder duties, obligations, and reporting requirements. These rules require that certain employers register with DHR in order to be eligible for the award of certain public contracts (44 Ill. Adm. Code 750.Appendix A).

SUBTITLE A**Section 1.2575 Subcontractors**

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.

(Source: Added at 30 Ill. Reg. 17305, effective October 20, 2006)

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SUBPART L: CONTRACT PRICING

Section 1.2800 All Costs Included

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

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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SUBPART M: CONSTRUCTION AND
CONSTRUCTION RELATED PROFESSIONAL SERVICES**Section 1.3005 Construction and Construction Related Professional Services**

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:

- a) 44 Ill. Adm. Code, Subtitle A, Chapter III (CPO-DOT);
- b) 44 Ill. Adm. Code, Subtitle A, Chapter IV (CPO-CDB).

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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 the requirements of this Part and those in 44 Ill. Adm. Code 5000. In the event of a conflict, 44 Ill. Adm. Code 5000 shall prevail.

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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. 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.

SUBTITLE A**Section 1.4510 Resident Bidder 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, an Illinois resident vendor shall be given the award.
- c) The CPO shall maintain a list of states with in-state preference that shall be consulted in all procurements involving out-of-state vendors.

SUBTITLE A**Section 1.4530 Correctional Industries**

- a) The CPO shall make available to all SPOs a listing of the supplies or services available from the Department of Corrections and shall identify those that must be purchased from Corrections.
- b) Those items that must be purchased from Corrections may not be procured from any other source without the express written authorization of the CPO.
- c) Procurement Officers are authorized to procure from Corrections without seeking competition or giving public notice, but must inform the CPO of all such purchases.

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Section 1.4535 Sheltered Workshops for the Disabled

- a) **Use of Sheltered Workshop**
The Procurement Officer may determine to contract with a sheltered workshop on the list maintained by the CPO, and may do so without notice or competition.
- b) **Conditions for Use**
The CPO shall, in consultation with the State Use Committee created by the Code (Section 45-35), determine which articles, materials, services, food stuffs and supplies that are produced or manufactured by persons with disabilities in State use sheltered workshops shall be given preference by purchasing agencies procuring those items. The CPO shall develop and distribute to the various purchasing and using agencies procedures for implementing this Section.
- c) **Sheltered Workshop List**
The CPO shall maintain a list of all qualified sheltered workshops and shall provide to State agencies that list and the supplies and services each qualified sheltered workshop provides.
- d) **Pricing Approval**
 - 1) While notice and competition is not required prior to contracting with a sheltered workshop, prices must be reasonable. Whether a price is reasonable will be determined based upon current market prices, historical prices, prices received by other State agencies for similar supplies or services, the policy of the Code to promote procurements from sheltered workshops, and other such relevant factors.
 - 2) The State Use Committee, established under Section 45-35 of the Code, must approve contracts for reasonableness of price if:
 - A) the supply or service would ordinarily be subject to competitive sealed bidding or competitive sealed proposals methods of source selection; or
 - B) the supply or service is bid and the sheltered workshop is selected even though not the lowest responsible bidder.
 - 3) State Use Committee approval is not required if:
 - A) the contract does not exceed the bid limit set in Section 1.2020 of this Part and no bidding was conducted; or

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- B) the contract is let to the sheltered workshop submitting the low bid or most advantageous proposal under a competitive procedure.
- 4) When Committee approval is required, it will be given or denied in an expeditious manner so as not to disrupt procurement activities. Consideration will be at regularly scheduled meetings or through special telephone meetings conducted between regular meetings.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.4540 Gas Mileage

- a) Passenger automobile specifications shall require compliance with minimum gas mileage requirements established in Section 45-40 of the Code. Passenger automobiles must achieve at least the minimum average 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) Passenger automobiles that do not meet the minimum gas mileage requirements may not be procured unless and until the SPO makes a written determination that a non-compliant automobile is necessary to carry out the function of the agency, the SPO's determination is signed by the executive head of the procuring agency and the signed determination is reviewed and approved by the CPO.
- c) The CPO may require use of a uniform form or format for the SPO's determination.
- d) In response to the SPO's determination, the CPO may suggest a more economical alternative to the agency head. If such a suggestion is made, the agency head must state in writing why the alternate vehicle will not allow the agency to carry out its functions. If the agency head confirms need for the non-compliant passenger automobile, that vehicle may be procured. Except in the case of a covert vehicle, notice that a non-compliant passenger automobile is being purchased will be placed in the Bulletin along with the reasons for such a decision.
- e) Passenger automobile does not include station wagons, vans, four-wheel drive vehicles, emergency vehicles, or police or fire vehicles.

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Section 1.4545 Small Business

- a) Set-Aside
- 1) The CPO may determine categories of supplies or service procurements that will be set aside for small business located in Illinois. The set-aside designation may be made for current and future procurements of a specific supply, service or construction, or for a class of like supplies, services or construction. A set-aside designation may last indefinitely or for a stated period of time.
 - 2) State agencies shall set aside for small businesses the following categories of supplies and services unless the CPO establishes a master contract to meet agency needs or unless the CPO grants a waiver:
 - Addressing and Mailing
 - Air Conditioner Repair
 - Air Filters and Air Filter Media
 - Asphalt Paving
 - Automotive Maintenance, Batteries
 - Automotive Maintenance, Belts and Hoses
 - Automotive Maintenance, Exhaust
 - Building and Grounds Maintenance
 - Calendars (excluding Calendar Pads)
 - Carpentry
 - Carpet Cleaning
 - Carpet/Linoleum/Tile Laying
 - Computer Supplies, Data Tape Cartridges
 - Concrete Finishing
 - Data Entry
 - Drapery Cleaning
 - Dry Wall Services
 - Electrical Services
 - Electricians
 - Excavating
 - Exterior Building Cleaning
 - Fencing
 - Fertilizer Application
 - Flags
 - Floor Maintenance Machines
 - Floor Surfacing
 - Floor Wax Components

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Furniture Cleaning
Gloves, Disposable, Medical Type
Heating Repair
Housekeeping
Imprinted Notions
Janitorial
Jugs and Caps
Labeling Services
Landscaping
Laser Printer Cartridges and Supplies
Lawn Care, Misc.
Mailing Services
Masonry Services
Painting
Parking Lot Maintenance
Pavement Maintenance
Plastering
Plumbing, Misc.
Plumbing Services
Plumbing Supplies and Equipment, Misc.
Pneumatic Tools
Power Tools
Roofing
Safety Supplies
Snow Plowing
Trucking and Hauling Services
Typing Services
Upholstery Cleaning
Ventilating
Ventilation Services
Video and Audio Tapes
Wallpaper Hanging
Water Heaters
Window Washing
Wiping Rags
Word Processing Services
Woodworking

b) Small Business List

The CPO will maintain a list of responsible vendors that meet the criteria of small business and the supplies and services that each provides. Each purchasing agency will have web-based access to the list. A business that fits the definition of small on the day of award or proposal opening will be considered small for the

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duration of the contract.

c) Required Use

- 1) If a Procurement Officer wishes to make a procurement covered by a set-aside designation, the solicitation must note responses are limited to those from responsible small businesses. Bids or proposals received from large businesses will be rejected as nonresponsive.
- 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:
 - A) the product or service is provided by a large business sole source vendor;
 - B) there is a need for a brand-name product and there are no small businesses that provide the product;
 - C) there is an opportunity to establish a no-bid contract with a State use vendor (see Sheltered Workshop for the Severely Handicapped [30 ILCS 500/45-35]);
 - D) the supply base for the product or service includes several larger diversified vendors that can be counted towards the goal authorized in the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575];
 - E) the product or service is available from Illinois Correctional Industries;
 - F) the prices offered by qualified small businesses are substantially greater than the prices offered by large businesses; and
 - G) the small business supply base does not meet regional or geographic requirements for the product or service.

d) Withdrawal of Set-Aside

If the Procurement Officer determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the Procurement Officer shall

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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 Illinois Procurement Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with the limitations of the Code and this Part.

e) Criteria for Small Business

Unless the CPO provides a definition for a particular procurement that reflects industrial characteristics, a small business is:

- 1) An Illinois business, independently owned and operated.
- 2) Not dominant in its field of operations. This means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.
- 3) With annual sales, including sales of affiliates, for most recently ended fiscal year no greater than:
 - A) \$10,000,000 for wholesale business;
 - B) \$10,000,000 for construction business; or
 - C) \$6,000,000 for retail/service business.
- 4) With no more than 250 employees, including those of affiliates, if a manufacturing business.
 - A) 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) 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.

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- 5) 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).
- 6) 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) 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.

(Source: Amended at 30 Ill. Reg. 18635, effective November 17, 2006)

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

- a) **Introduction**

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) **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.
- c) **Upon direction of the CPO, and pursuant to direction from the Council, the procuring agencies may establish set-asides and other such preferences for vendors certified under that Act.**
- d) **Certification**

Certification procedures are set forth in rules governing the Business Enterprise Act (44 Ill. Adm. Code 10).
- e) **List of Certified Businesses**
 - 1) The CPO shall maintain a list of businesses that have been certified. This list shall be made available to all procuring agencies.
 - 2) The names and addresses of certified vendors shall be made available to the public.
- f) **Professional and Artistic Contract Reporting**

Professional and artistic contracts, which must be reported to the Business Enterprise Council pursuant to Section 6a of the Business Enterprise Act, shall be reported as follows:

 - 1) Notice that an agency intends to enter into a professional and artistic contract shall be given to the Council. Notice may be mailed, hand delivered or given by fax, and must be submitted on the same date that the potential vendor is contacted. If the contract is advertised in the Bulletin,

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reporting to the Council is not required.

- 2) The notice shall include the agency name and address; contact person; contract reference number; date bid or proposal was first available; return dates and opening dates; term of the contract; services to be provided; special requirements; and dollar value. Notice should be given on the form available from the CPO.

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Section 1.4575 Domestic Products

- a) This Section applies unless an exception is provided by law, 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.
 - 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.

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- 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 to a purchase were not subject to the Procurement Domestic Products Act [30 ILCS 517].

(Source: Added at 30 Ill. Reg. 17305, effective October 20, 2006)

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SUBPART P: ETHICS

Section 1.5013 Conflicts of Interest

- a) This Section does not apply to those elected to local government, including school districts, nor does it apply to those elected to Federal offices in this State. This Section does apply to those elected to an office of Illinois State government.
- b) 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.
- c) 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.
- d) This Section does not apply to contracts with licensed professionals provided such 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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Section 1.5015 Negotiations for Future Employment

- 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 "continued 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 contracted 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.

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Section 1.5020 Exemptions

If the Procurement Officer finds a conflict of interest under Section 50-13 of the Code with the vendor selected for award or contract negotiations, the Procurement Officer shall forward to the CPO 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 shall submit the files to the Board of Ethics for its determination and with the approval of the CPO, the Board of Ethics may exempt named individuals from the prohibitions of Section 50-13 of the Code when, *in its judgment, the public interest in having the individual in the service of the State outweighs the public policy evidenced in that Section.* [30 ILCS 500/50-20]

SUBTITLE A**Section 1.5030 Revolving Door**

Effective January 15, 1999, CPOs and SPOs shall identify in writing their designees whose job, or whose position description, is at least 51% directly related to State procurement. The following activities are directly related to State procurement: drafting specifications, preparing Invitations for Bids and Requests for Proposals, evaluating responses to Invitations for Bids and Requests for Proposals, negotiating contracts and supervising any of the foregoing. They shall maintain that information for a period of at least two years following the end or revocation of the designation.

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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 using an Invitation for Bids or Request for Proposals under Section 20-10, 20-15 or 20-35, or Article 35, of the Code. Disclosures are not required in small, sole source or emergency procurements.
- b) For purposes of:
 - 1) Section 50-35(b) of the Code, "parent entity" means a person who 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, which is distributed to those entitled to receive a share of such income.
- 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) "Competitively bid" means a contract let pursuant to Sections 20-10, 20-15 and 20-35 of the Code.
- f) "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.
- g) Once a disclosure is made in relation to a particular contract, the disclosure need not be repeated if the contract is amended.
- h) 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

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50-35(b) of the Code provided the vendor also identifies the specific sections or parts in the 10K disclosure where the State may find 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, but is in a document referenced 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 or SPO shall be investigated.
- 3) In circumstances where a vendor may submit a 10K disclosure in lieu of the specific disclosure requirements of the Code 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 information identified by the vendor in the 10K disclosure and any information disclosed pursuant to public review of the 10K disclosure.

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Section 1.5037 Vendor Registration, Certification and Prohibition on Political Contributions

- a) Introduction
Illinois law (Public Act 95-971; 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 law. This Section supplements requirements found in the Act and does not excuse compliance with any of those requirements.
- b) General Registration Requirements
 - 1) These requirements apply to contracts, bids and proposals that are subject to the Illinois Procurement Code:
 - A) Bids/proposals referenced in this Section are those submitted in response to a competitive solicitation that is posted to the Illinois Procurement Bulletin on or after January 1, 2009, regardless of the value assigned to the procurement.
 - 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 that fulfill equivalent duties as the

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President, Chairman of the Board, or Chief Executive Officer;
and/or

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, 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.
- 2) 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.
- 3) If the Registration Certificate is not timely submitted, the procuring agency shall reject the bid/proposal.
- 4) 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, it has not already done so.
- 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.

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- 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 Public Act 95-971 shall be included in or added to each contract that must be filed with the State Comptroller pursuant to Section 20-80 of the Illinois Procurement 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.

(Source: Amended at 33 Ill. Reg. 9607, effective June 25, 2009)

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SUBPART Q: CONCESSIONS

Section 1.5310 Concessions

- a) A concession is an authorization allowing use of State property for the purpose of making profit, including future profit.
- b) An authorization to allow use of State property by not-for-profit entities is not a concession or lease of State property under Article 53 of the Code.
- c) Proposed concessions, leases or other uses of State property must be coordinated with the State Property Control Act [30 ILCS 605] and rules implementing that Act.

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SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

Section 1.5510 Complaints Against Vendors

- a) The purpose of this Section is to document performance of vendors.
- b) Whenever a vendor fails to meet contract requirements, including but not limited to failure to deliver on time or meet specifications, the using agency shall take appropriate action to initiate a complaint to the vendor.
- c) For relatively minor infractions, the using agency may initiate contact by telephone or in person. If not resolved by this action, a written complaint shall be made.
- d) 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.
- e) A copy of all written complaints and the resolution or status shall be filed with the CPO.

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Section 1.5520 Suspension

- a) **Application**
This Section applies to all debarments or suspensions of vendors from consideration for award of contracts under the Code.
- b) The CPO may suspend a vendor from doing business with the State, with one or more agencies, or for specific types of supplies or services. A suspension may be issued upon a showing the vendor violated the Code or this Part, or failed to conform to specifications or terms of delivery.
- c) When the CPO finds cause exists for suspension, a notice of suspension, including a copy of such determination, shall be sent to the suspended vendor. Bids or proposals will not be solicited from the suspended vendor, and, if received, will not be considered during the period of suspension.
- d) A vendor may be suspended for a period of time commensurate with the seriousness of the offense, but for no more than 10 years. The suspension will be effective seven calendar days after receipt of notice unless an objection is filed. If an objection is filed, suspension would not become effective until the evaluation of the objection is completed.
- e) The CPO 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 will not be considered.
- f) The CPO shall maintain a master list of all suspensions and debarments. The master list will retain information concerning suspensions and debarments as public records. Such records will be maintained for a period of at least three years following the end of the suspension or debarment. Such public information may be considered in determining responsibility.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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Section 1.5530 Resolution of Contract Controversies

- a) **Authority to Resolve Controversies**
The Procurement Officer shall have authority to resolve controversies, but the executive head of the purchasing agency may set limits on such authority.
- b) **Authority of Using Agency**
The using agency has the authority to accept delivery of supplies or services in accordance with contract requirements as satisfactory adjustment of a complaint.
- c) **Substitution of Terms/Price Reduction**
If the vendor proposes to make an adjustment by:
 - 1) substituting an alternative specification, or
 - 2) reducing the contract price by a certain amount to compensate for some failure to provide full performance under the contract,such proposal must be referred to and approved by the Procurement Officer, but not a designee.
- d) **Cancellation for Breach of Contract**
In any of the following cases the Procurement Officer shall have the right to terminate or rescind any contract entered into under this Part:
 - 1) In the event the successful bidder fails to furnish a satisfactory performance bond within the time specified.
 - 2) In the event the vendor fails to make delivery at the place or within the time specified in the contract or as ordered by the purchasing agency.
 - 3) In the event 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) In the event the vendor is guilty of misrepresentation (for example, 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 upon to fulfill his obligations as a responsible

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vendor under any of his contracts with the State.

- 5) In the event 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 Procurement Officer; 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) In the event of any other breach of contract or other unlawful act by the vendor.
- e) Cancellation for Fraud, Collusion, Illegality, Etc.
The State may cancel any contract it established if there is sufficient evidence to show that:
- 1) The contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or
 - 2) The contract conflicts with any statutory provision of the State of Illinois or of the United States.
- f) Withholding Money to Compensate State for Damages
If a contract is terminated or rescinded under this Section, the State may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the State of Illinois for any damages suffered by it because of the vendor's breach of contract or other unlawful act on the vendor's part on which the cancellation is based.
- g) 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.

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Section 1.5540 Violation of Law or Rule

- a) **Determination that Solicitation or Award Violates Law**
If the CPO or the SPO finds that the solicitation or proposed award is in violation of statute or rule, the CPO or the SPO may cancel the solicitation or proposed award, or make modifications to correct the violation, if such correction may be legally accomplished.
- b) **Determination that Contract Violates the Code or this Part**
Contracts based on awards or solicitations that were in violation of law shall be terminated at no cost to the State unless statute or rule allows the State to modify, ratify or take other corrective action.
- c) **Effect of Declaring a Contract Null and Void**
In all cases in which a contract is voided, the State 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.

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Section 1.5550 Protests

- a) **Protest Resolution by the Protest Review Office**

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) **Filing of Protest**
 - 1) An aggrieved party must submit the protest in writing to the Protest Review Office designated in the solicitation document or, in the absence of any appropriate designation, to the CPO. An aggrieved party must deliver the protest by noon of the seventh calendar day after the aggrieved party knew or should have known of the facts giving rise to the protest. In regard to a protest of specifications or other terms and conditions of the solicitation document, the protest must be received within 7 calendar days after the date the solicitation was posted in the Illinois Procurement Bulletin, or issued if not posted in the Bulletin. Protests delivered late shall not be considered. A protest is considered delivered when physically received by the Protest Review Office.
 - 2) To expedite handling of protests, the delivery envelope should be labeled "Protest". The written protest shall include as a minimum the following:
 - A) the name and address of the protester;
 - B) appropriate identification of the procurement, and, if a contract has been awarded, its number;
 - C) a statement of reasons for the protest specifically identifying any alleged violation of the Illinois Procurement Code or other law, any associated rules, or the solicitation itself, including the evaluation or award; and
 - 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.
- c) **Requested Information**

The aggrieved party must supply any additional information requested by the State within the time periods set in the request. If the aggrieved party fails to

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comply with this request, the Protest Review Office may resolve the protest on the basis of available information or may deny the protest.

- d) **Stay of Procurements During Protest**
When a protest has been timely filed and before an award has been made, the Procurement Officer shall make no award of the contract until the protest has been resolved. If timely received but after award, the award shall be stayed without penalty to the State 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.
- e) **Decision by the Protest Review Office**
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.
- f) **Effect of Judicial Proceedings**
If an action concerning the protest has commenced in court, 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.

(Source: Amended at 30 Ill. Reg. 17305, effective October 20, 2006)

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SUBPART S: SUPPLY MANAGEMENT AND DISPOSITIONS

Section 1.6010 Supply Management and Dispositions

- a) **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) **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) **Inventory**
State agencies shall periodically inventory all warehouses and similar storage areas under their jurisdiction.
- d) **Report of Inventory**
The CPO may require that agencies note on purchase requests compliance with the 12 month restriction on inventory.
- e) **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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SUBPART T: GOVERNMENTAL JOINT PURCHASING

Section 1.6500 General

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.

SUBTITLE A**Section 1.6510 No Agency Relationship**

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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Section 1.6520 Obligations of Participating Governmental Units

If governmental units determine to use contracts established by the CPO, they must:

- a) 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;
- b) make all purchases under the State contracts for public use only and specifically prohibit personal use or consumption by any individual, public employee or official;
- c) make payment to the vendor within 30 days after receipt of supplies or services;
- d) place orders with the supplier directly using their own purchase order forms. A copy of the purchase order must also be sent to the CPO. This copy will be used for statistical purposes and will serve as notice that the governmental unit has complied with the bid action;
- e) inspect all items immediately for compliance with the contract specifications and report to the CPO any failure of suppliers to comply with contract requirements; and
- f) attempt to resolve disputes with the vendor before involving the CPO.

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Section 1.6530 Centralized Contracts – Estimated Quantities

Certain centralized contracts for estimated quantities contain a price extension clause permitting governmental units to utilize the contract by placing an order directly with the vendor. Governmental units using these contracts must comply with the following provisions or risk being removed from active participation in this program:

- a) the State purchase order or contract reference number as indicated in the "Notice of Awards" must be shown;
- b) the purchase order or contract reference number must contain a complete description of the item; item number; brand and/or model number; unit of measure; unit price; and price extension;
- c) place orders for at least the minimum quantities shown on the "Notice of Awards" (Vendors are not required to deviate from the terms of their contract.); and
- d) read the "Notice of Awards" carefully to ensure understanding of special provisions, particularly as it may pertain to catalogs and price lists.

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Section 1.6535 Centralized Contracts – Definite Quantities

- a) Certain items, such as foods and highway salt, are purchased under definite quantity contracts. Governmental units interested in such items, or other items not covered under the estimated quantity contracts, must contact the CPO for instruction on use of those contracts.
- b) If purchase requests are received after the Invitation for Bids has been issued, if the quantities are too small for centralized purchase, or do not lend themselves to joint purchasing, the State will return the purchase request to the governmental unit.
- c) Governmental units must consider the following factors prior to filing purchase requests for definite quantities:
 - 1) The State issues Invitation for Bids and makes awards based on the requirements covered by purchase requests. The State does not take bids to obtain estimated prices. Withdrawal from participation in the contract after solicitation for bids has been made by the State will not be permitted except in very unusual cases.
 - 2) Any governmental unit having an existing contract shall complete that contract before participating in joint purchasing for that item.
 - 3) Overlapping time periods must be identified in the joint purchase requisition so there will be no misunderstanding as to whether or not existing commitments will be honored or as to the date a future commitment will begin.
 - 4) It should be clearly understood that the governmental unit has delegated its authority to purchase items covered by purchase requests and that the resulting award will be made in exactly the same manner as if the purchase requests had been submitted by a State agency.
 - 5) Specifications established in the Invitation for Bids shall be accepted.
 - 6) Location of the vendor will not be a factor in determining the award, except as may be established by State law.
 - 7) The governmental units are required to purchase items awarded from the successful bidder.

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SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section 1.7000 Severability

If any provision of this Part or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without such invalid provision or application.

SUBTITLE A**Section 1.7010 Government Furnished Property**

If the State provides any property to the vendor in furtherance of the contract, such 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.

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Section 1.7015 Inspections

- a) **Inspection of Plant or Site**

The State may enter a vendor's or subcontractor's plant or place of business to:

 - 1) inspect supplies or services for acceptance by the State pursuant to the terms of a contract;
 - 2) audit the books and records of any vendor or subcontractor pursuant to Section 1.7020 (Records and Audits) of this Part;
 - 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) **Inspection and Testing of Supplies and Services**
 - 1) **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) **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) **Conduct of Inspections**
 - 1) **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

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Procurement Officer may change any provision of the specifications or the contract without written authorization of the Procurement Officer. The presence or absence of an inspector shall not relieve the vendor or subcontractor from any requirements of the contract.

- 2) Location. When an inspection is made in the plant or place of business of a vendor or subcontractor, such 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.
 - 3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any vendor or subcontractor shall be performed at reasonable times.
- d) Inspection of Construction Projects
On-site inspection of construction shall be performed in accordance with the terms of the contract.

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Section 1.7020 Records and Audits

- a) 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) by a vendor, for three years from the date of final payment under the prime contract;
 - 2) by a subcontractor, for at least three years from the date of final payment under the subcontract; and
 - 3) by a vendor and subcontractor for such longer period of time as is necessary to complete ongoing or announced audits.

- b) Contract Audit
 - 1) Types of Contracts Audited. The type of contract under which books and records should be audited is that in which price is based on costs or is subject to adjustment based on costs, or that in which auditing would be appropriate to assure satisfactory performance, such as a time and materials contract.
 - 2) Situations in which an audit may be warranted include but are not limited to when a question arises in connection with:
 - A) the financial condition, integrity, and reliability of the vendor or subcontractor;
 - B) any prior audit experience;
 - C) the adequacy of the vendor's or subcontractor's accounting system;
 - D) the number or nature of invoices or reimbursement vouchers submitted by the vendor or subcontractor for payment;
 - E) the use of federal assistance funds;
 - F) the fluctuation of market prices affecting the contract; or
 - G) any other situation in which the Procurement Officer finds that such an audit is necessary for the protection of the State's best

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interest.

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Section 1.7025 Written Determinations

- a) **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) **Content**
Each written determination shall set out sufficient facts, circumstances, and reasoning as will substantiate the specific determination that is made.
- c) **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) **Forms**
The CPO is authorized to prescribe methods and operational procedures to be used in preparing written determinations.
- e) **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.

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Section 1.7030 No Waiver of Sovereign Immunity

Nothing in this Part shall be deemed to be a waiver of sovereign immunity.