



STATE OF ILLINOIS

Chief Procurement Office General Services

Matt Brown, Chief Procurement Officer

**Notice 2012.06
General Services**

TO: State Purchasing Officers
Agency Procurement Staff
CMS Bureau of Strategic Sourcing

FROM: Matt Brown, Chief Procurement Officer General Services 

CC: Procurement Compliance Monitors
Procurement Policy Board
Steve Valasek, Assistant Comptroller-Operations

DATE: November 10, 2011

SUBJECT: Vendor Delinquent Debt

This CPO Notice is effective November 10, 2011.

The Illinois Procurement Code (30 ILCS 500) prohibits vendors from submitting offers or entering into contracts if delinquent debt is owed to the State. Section 50-11 of the Code provides as follows:

a) No person shall submit a bid for or enter into a contract or subcontract under this Code if that person knows or should know that he or she or any affiliate is delinquent in the payment of any debt to the State, unless the person or affiliate has entered into a deferred payment plan to pay off the debt. For purposes of this Section, the phrase "delinquent in the payment of any debt" shall be determined by the Debt Collection Bureau. For purposes of this Section, the term "affiliate" means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. For purposes of this subsection, (a) a person controls an entity if the person owns, directly or individually, more than 10% of the voting securities of that entity. As used in this subsection (a), the term "voting security" means a security that (1) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (2) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

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(b) Every bid submitted to and contract executed by the State and every subcontract subject to Section 20-120 of this Code shall contain a certification by the bidder, contractor, or subcontractor, respectively, that the contractor or the subcontractor and its affiliate is not barred from being awarded a contract or subcontract under this Section and acknowledges that the Chief Procurement Officer may declare the related contract void if any of the certifications completed pursuant to this subsection (b) are false.

Section 50-60(b) of the Code also provides the vendor must not become delinquent in the payment of debt during the term of the contract. The solicitation and standard contract documents include a section requiring vendors to certify they are in compliance with these provisions of the Code or that they have entered into a deferred payment plan to pay the debt. Failure to certify or otherwise be in compliance with these sections of the Code may result in the Chief Procurement Officer (CPO) voiding the contract if it is in the best interest of the State.

Good procurement practices support verification by agencies of the delinquent debt certification prior to selection or award of a contract. For purposes of this notice:

Comptroller's Offset System is the Illinois Office of the Comptroller Offset System as described in the Illinois State Collection Act [30 ILCS 210].

Contract Award or Contract Selection is any procurement subject to the Illinois Procurement Code with total anticipated payments in excess of \$10,000. This notice applies to all procurement approaches.

Delinquent Debt is a debt of at least \$1,000 (cumulative with the debtor) and at least 90 days past due.

Unsatisfied Delinquent Debt shall be a debt that is not fully discharged (as of bid day opening) by payment in full to the State, is not subject to a fully executed (by the State and vendor) installment plan to pay off the debt, discharged in bankruptcy, or otherwise satisfied.

Vendor is the prime vendor with whom a contract is being established or any subcontractor as defined in section 20-120 of the Code. The terms vendor and contractor may be used interchangeably.

Section 5(f) of Illinois State Collection Act permits state agencies to use the Comptroller's Offset System for purposes of ensuring compliance with the Procurement Code. Instructions for requesting access to the system may be found at IOC Accounting Bulletin #102 located at: (www.apps.ioc.state.il.us/ioc-pdf/bulletins/AB102.pdf).

Prior to notifying the vendor of its selection or award for any contract, state agencies must inquire, using the vendor FEIN or SSN, the Comptroller's Offset System to determine if any delinquent debt has been placed by a state agency. The inquiry shall be made for the prime vendor and each known subcontractor.

- If no delinquent debt is discovered, the agency shall produce a screen print of the result for inclusion in the procurement file.
- If delinquent debt is discovered, the agency shall:
 - Contact the agency to which the debt is owed (contact information will appear on Offset System screen).

- Determine from the placing agency if the debt meets the definition of delinquent debt provided in this Notice (\$1,000 and at least 90 days past due).
 - If it does not meet the definition, the State Purchasing Officer (SPO) may proceed with award or selection of a vendor. A screen print from the Offset System shall be produced by the procuring agency along with a confirming e-mail or other documentation (from the placing agency showing that the debt does not meet the definition) for inclusion in the procurement file.
 - If the delinquent debt is confirmed, the SPO shall deem the vendor's offer as non-responsive. The screen print from the Offset System shall be produced to illustrate why the vendor was deemed non-responsive and the document shall be made part of the procurement file by the procuring agency.
 - ✓ The SPO may then direct the agency to proceed with processing the award to the next highest-ranked vendor. The same inquiry process will need to be followed for the next highest-ranking vendor (and any subsequent selected vendor). The agency shall document the difference in service levels and/or price that the State accepted as a result of a denied award and shall include this information in the procurement file.
 - ✓ If the delinquent debt is confirmed on a subcontractor, the award may still be made to the vendor; however, the subcontractor may not be used as part of the contract until the debt is satisfied.

If denial of an award is considered by the state agency to be detrimental, an exception to the policy request may be presented to the CPO for consideration. The request must include (if applicable): (1) the approved State Purchasing Officer Determination Form; (2) the results of the inquiry made to the Comptroller's Offset System; (3) the summary scoring sheet or pricing comparison data; (4) a complete justification detailing why an exception to the policy should be granted, including a statement explaining the impact to the State should the exception not be granted. The request must be signed by the Agency Director (or designee) and State Purchasing Officer (SPO) and forwarded to the Chief Procurement Officer. The SPO may not proceed with the award until a final determination is made by the CPO.

If there are any questions regarding this notice, contact the Chief Procurement Office at (217) 558-2157.

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