



## Notice 2013.03 General Services

To: State Purchasing Officers  
CMS Bureau of Strategic Sourcing  
Agency Procurement Staff  
Procurement Policy Board

From: Matt Brown, Chief Procurement Officer General Services *MB*

Date: August 6, 2012

Subject: P.A. 97-895/SB 2958 Revisions to the Illinois Procurement Code

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This CPO Notice is effective August 6, 2012.

On August 3, 2012, Governor Quinn signed SB 2958 into law, which makes changes to the Illinois Procurement Code (30 ILCS 500) (Code), and are summarized below<sup>1</sup>. The law has an immediate effective date. As a result of the change in law, several provisions of standard procurement rules (44 Ill. Admin. Code 1) need to be updated to reflect the changes to the Code. In those instances where a rule conflicts with the Code, the Code (as amended) shall be followed.

1. Section 1-10 (h) of the Code is new and provides that each chief procurement officer may access records necessary to review whether a contract, purchase, or other expenditure is or is not subject to the provisions of the Code, unless such records are subject to attorney-client privilege.
2. Section 1-12 is new and provides the Code does not apply to the procurement of expenditures necessary to provide artistic and musical services, performances, or theatrical productions held at venues operated or leased by a state agency. Provisions are established for providing notice of these contracts on the Illinois Procurement Bulletin (Bulletin). This section has a repeal date of December 31, 2016.
3. Section 1.15-107 and 1.15-108 amends the definition of subcontract and subcontractor to raise the threshold from \$25,000 to \$50,000. Please use the statutory definition over the definitions found in the rule at 44 Ill. Admin. Code 1.15.
4. Section 5-5(h) clarifies notification requirements to the Procurement Policy Board (PPB) of alleged conflicts of interest or violations of the Code. Additional provisions for notifying contractors and

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<sup>1</sup> This memo provides a synopsis of the changes. Please go to <http://www.ilga.gov/legislation/publicacts/97/PDF/097-0895.pdf> to view the complete changes made by P.A. 97-895.



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subcontractors with alleged conflicts of interest are outlined, as well as hearing procedures for conflict hearings are established.

5. Section 10-10 clarifies the State Purchasing Officer (SPO) has the authority to approve or reject contracts for a purchasing agency, and that once written approval of the contract is provided by the SPO, the applicable State agency head has the authority to sign and enter into that contract. To the extent this provision conflicts with the rule at 44 Ill. Admin. Code 1.1005(i), please follow the amended Code.
6. Section 10-15(b) provides additional language to clarify the required duties of Procurement Compliance Monitors.
7. Section 15-1 clarifies that CPOs, in consultation with agencies under their jurisdictions, possess the rights to and are the authority responsible for publishing their volume of the Bulletin.
8. Section 15-25(c-5) clarifies that each purchasing agency, with the assistance of the CPO, shall post a copy of its annual BEP report to the Bulletin within 10 business days after submission to the BEP Council.
9. Section 15-35 is new and provides that CPOs may, in consultation with agencies under their jurisdiction and the PPB, establish a vendor portal to provide a central repository for certifications, disclosures, registrations and other documents needed to do business with a State agency.
10. Section 10-20(g) is modified to add publication requirements for the SPO when an “other than low bidder” is chosen in an IFB, including a description of the agency’s need, a determination that the anticipated costs will be fair and reasonable, a listing of all responsive and responsible bidders, the name of the bidder selected, and the total contract price and the reasons for selecting that bidder. The written explanation must also be filed with the Legislative Audit Commission and the PPB within 30 days after the agency’s decision to award the contract. To the extent this provision adds to 44 Ill. Admin. Code 1.2010(g), please add the required publication requirements as provided in the amended Code.
11. Section 20-25 is modified to provide that sole source hearings will be held only when an interested party submits a written request for a public hearing. To the extent this provision conflicts with the rule at 44 Ill. Admin. Code 1.2025(e) and 1.5730(c), please follow the amended Code. SPOs will still post a notice on the Illinois Procurement Bulletin of intent to award using sole source as a procurement method, but instead of a hearing date being included in the notice, SPOs will provide in the notice instruction to interested parties of how to request a hearing to contest sole source as the appropriate procurement method. The PPB Sole Source Justification Form will still be required, but will be modified to require Part II either after a hearing or after the 14 days for requesting a hearing has passed, basically keeping the process nearly the same as it is today as far as the SSJF goes – it will still be a 2-step process. PPB will not grant a waiver on sole source transactions until all of the Code requirements are met, including a complete SSJF Part I at initial posting, a hearing occurs if requested, CPO approval (which occurs when Part II is posted), and disclosures are posted.
12. Section 20-120 raises subcontractor disclosure requirements from \$25,000 to \$50,000.
13. Section 20-155(b) is modified to clarify the procurement file shall not include trade secrets or other competitively sensitive, confidential, or proprietary information. To the extent this provision adds to



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what should be redacted from the procurement file under 44 Ill. Admin. Code 1.2080(a), please amend your procurement file checklist to reflect the changes made to the Code.

14. Section 20-160(g) is modified to eliminate automatic disqualification of an entity if it fails to submit its' Board of Election certificate. Under the revision, the CPO shall verify that a business entity is required to register and is compliance with the registration requirements on the date the bid or proposal is due. To the extent this provision conflicts with 44 Ill. Admin. Code 1.5037(c)(2), please eliminate the requirement of automatic disqualification of vendors who do not submit their Board of Election certificate and follow the requirements in the amended Code that provide for verification by the CPO/SPO.
15. Section 45-35 expands the definition of entities who qualify as sheltered workshops.
16. Sections 50-5(d), 50-10(b), 50-10.5(b), 50-11(b), 50-12(b), 50-14(c), 50-60(e) are modified to provide that a contractor is not disqualified or a contract will not be voided if a false certification is provided by a subcontractor, provided the contractor terminates the subcontract.
17. Section 50-10.5(e) (1) is stricken and clarification is made as to prohibited bidders and contractors. The revisions also clarify only bidders or contractors that assist an employee of the State, who by the nature of the state employee's duties, has the authority to participate personally and substantially in the decision to award a state contract, are prohibited from making an offer to the solicitation. The section further clarifies that a vendor who provides information to the State on industry trends is not a prohibited bidder or offeror. Additional language is added that prohibits vendors from submitting specification unless requested to by an employee of the State and prohibits a person or business that contracts with a State agency from submitting a bid or proposal with regard to that particular procurement. To the extent these provisions conflict with 44 Ill. Admin. Code 1.5039, please refer to the amended Code.
18. Section 50-35(a) increases financial disclosure and potential conflict of interest disclosures for subcontracts with an annual value of \$50,000 (up from \$25,000). To the extent these provisions conflict with 44 Ill. Admin. Code 1.5035(a), please refer to the amended Code.
19. Section 50-35(d) establishes procedures for the PPB to address potential conflicts of interest when a contractor or subcontractor fails to identify a potential conflict. Recommendations on whether to allow or void the contract, bid, offer or subcontract are to be submitted to the Executive Ethics Commission. To the extent these provisions conflict with 44 Ill. Admin. Code 1.5035(i)(1), please refer to the amended Code.
20. Section 50-39(a) modifies procurement communications reporting to State employees who participate personally and substantially in the decision to award a state contract. Additional exempt communications are outlined, including certain communications between employees of sister State agencies and communications that are privileged by law. No trade secrets or other proprietary or confidential information is to be included in any communication reports. Definitions of active procurement matter, material information and material argument are added. To the extent these provisions conflict with 44 Ill. Admin. Code 1.5039, please refer to the amended Code.



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In addition to the changes made to the Procurement Code, modifications were also made to the Governmental Joint Purchasing Act (30 ILCS 525). Under the amendment, the CPO may authorize governmental joint purchases, which still must go through a competitive selection process in accordance with the Procurement Code.

The Chief Procurement Office will propose changes to the administrative rules with the Joint Commission on Administrative Rules as quickly as possible in order to have the rules reflect the changes made to the law by the General Assembly. If you have questions in the interim as to how the Code changes impact agency procurements, please contact your State Purchasing Officer or the Chief Procurement Office at 217-558-2231.

Thank you.