



# CHIEF PROCUREMENT OFFICE

Ellen Daley, General Services

## MEMORANDUM

**To:** State Purchasing Officers  
**From:** Ellen H. Daley *[Signature]*  
**CC:** Amy Gerloff, CMS Deputy General Counsel Procurement  
**Date:** 8/20/2015  
**Subject:** Removal of Certification Options

On 8/7/2015, the Chief Procurement Office removed two of four certification options from #32 in the Standard Certifications and #4.32 in Forms A. These options allow a potential contractor to demonstrate compliance with the requirement that a person (other than an individual acting as a sole proprietor) be a duly constituted legal entity and authorized to transact business or conduct affairs in Illinois prior to submitting a bid or offer per the Illinois Procurement Code (30 ILCS 500/20-43).

The removed options are C. and D.:

- C.  Vendor certifies it is a legal entity, and is a foreign corporation performing activities that do not constitute transacting business in Illinois as defined by Illinois Business Corporations Act (805 ILCS 5/13.75). A vendor claiming exemption under the Act must include a detailed explanation of the legal basis for the claim with its bid or offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.
- D.  Vendor certifies it is a legal entity, and is an entity otherwise recognized under Illinois law as eligible for a specific form of exemption similar to those found in the Illinois Business Corporation Act (805 ILCS 5/13.75). A vendor claiming exemption under a specific law must provide a detailed explanation of the legal basis for the claim with its bid or offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.

The Standard Certifications and Forms A found on the CPO's website and linked to from the IFB and RFP are up-to-date. The current documents are designated by an "a" in the document version (V.15.2a) found in the footer.

We removed options C. and D. due to a new and different interpretation of Section 20-43 of the Procurement Code.

EEC's Legal Opinion concerning when a vendor indicates they are not registered with the Illinois Secretary of State and provides reference to "activities that do not constitute transacting business" under the Business Corporations Act (805 ILCS 5/13.75):



## CHIEF PROCUREMENT OFFICE

Ellen Daley, General Services

The requirement to be "authorized to transact business or conduct affairs" arises from the Illinois Procurement Code (30 ILCS 500/20-43). The authorization required by the Illinois Procurement Code is a separate requirement which exists in addition to any other requirements of law or rule. As such, the reference the vendor provides to what constitutes transacting business in the Illinois Business Corporations Act does not serve to create exemption from the separate and additional requirement to be "authorized to transact business or conduct affairs" under the Illinois Procurement Code. The vendor must register with the Illinois Secretary of State or provide a different, valid reason for exemption from the Illinois Procurement Code's registration requirement.

If a bidder or offeror selects option C. or D. in a non-current version of the Standard Certifications or Forms A and submits it with their bid or offer, please notify your Senior State Purchasing Officer and Jan Morrow immediately upon discovery. After evaluation of the reasons for submitting this certification, I will decide if it is in the best interest of the State to provide the bidder or offeror a brief period to register with the Secretary of State and cure the deficiency. It is always an option for the State Purchasing Officer to cancel the solicitation and re-procure if the SPO determines that to be in the State's best interest.