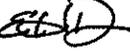




Notice 2016.07 General Services

To: Agency Procurement Staff
Central Management Services Bureau of Strategic Sourcing
State Purchasing Officers

From: Ellen H. Daley 

Date: May 19, 2016

Subject: Conflict of Interest Review and Determination

CC: Procurement Compliance Monitors
Procurement Policy Board

The Conflict of Interest Review and Determination process utilized by the Chief Procurement Officer for General Services (CPO-GS) serves important State agency needs. This process ensures that a vendor or subcontractor who is ineligible for award because of disclosure of a conflict of interest does not receive an award.

Effective June 1, 2016, the conflict of interest review and determination process and procedures are revised pursuant to section 50-35 and 50-38 of the Illinois Procurement Code and Section 1.5035 and 1.5038 of the Title 44 of the Illinois Administrative Code in an effort to efficiently and timely review financial disclosures to determine if there exists the potential for a conflict of interest and to ensure compliance with lobbyist disclosure requirements. Attached to this Notice as reference documents are (i) the PPB Conflict of Interest Review and Determination form and (ii) CPO-GS Potential Conflict of Interest Review and Determination Procedures.

Changes

This process and procedure Notice replaces the process and procedures outlined in the document dated January 2016. The notable differences between the process and procedures are that a letter is required from the CPO-GS to the Procurement Policy Board (PPB) and not all potential conflicts of interest are sent to the PPB. Generally, when a potential conflict of interest is identified, discovered, or reasonably suspected and the PPB has not during the current fiscal year previously reviewed the potential conflict of interest, the CPO-GS or State Purchasing Officer (SPO) shall send the contract to the PPB for review.

Process

Not every disclosed relationship has the potential to create an actual conflict of interest. A disclosed relationship has the potential to be a conflict of interest if a reasonable person expects that naturally and probably a conflict will come into existence even though one does not now exist. A sequential step-by-step procedure document for conflict of interest review and determination is attached to this Notice. Below are the



CHIEF PROCUREMENT OFFICE

Ellen Daley, General Services

pertinent steps that the following stakeholders take: Agency, State Purchasing Officer, the Chief Procurement Officer, and the Executive Ethics Commission.

Agency

1. Review Financial Disclosures and Conflicts of Interest in Forms A or Forms B for the following:
 - a. Each **vendor and subcontractor** with a contract/subcontract with annual value more than \$50,000.
 - b. If applicable, each **100% parent** of vendor and/or subcontractor.
 - c. If applicable, **any officer or employee** who may have a conflict.
 - d. **Contract renewals or annual recertification** of multi-year contracts, for each vendor and subcontractor with annual value of more than \$50,000 and obtain from vendor and/or subcontractor a signed Certification of No Change form.
2. If one of the boxes in Step 5 of the Financial Disclosures and Conflicts of Interests Forms A or IPG Form I questions 11-20 (vendor/subcontractor submitted Forms B) is marked **Yes**, Agency forwards the following to the SPO:
 - a. Conflict of Interest Review and Determination Form,
 - b. Financial Disclosures and Conflicts of Interest Form (from either Forms A or Forms B),
 - c. Copy of the solicitation response (IFB or RFP) or proposed contract (sole source), and
 - d. Any prior PPB conflict review memo.
3. After a finding is made that it does not create a potential conflict of interest, attach the completed and signed conflict of interest review and determination form as public documents to the Notice of Award.
4. If there is a disclosure of a lobbyist, forward the disclosure to the SPO.

SPO

1. Upon receipt of information from the Agency, determine if one of the identified relationships rises to the level of a potential conflict of interest.
 - a. State employment
 - i. If PPB has **not** during the current fiscal year previously reviewed, SPO submits the potential conflict of interest to the PPB for review
 - ii. If PPB has during the current fiscal year previously reviewed and not found an actual conflict, SPO reviews the repetitive submission. If no change, SPO sends Agency the signed determination that the disclosed relationship does not preclude the Agency from entering into the proposed contract
 - b. If vendor identifies anything other than a relationship to state employment in the previous 3 years, SPO determines if the relationship rises to the level of a potential conflict of interest.
 - i. No – send signed determination to Agency that the disclosed relationships does not preclude the Agency from entering into the proposed contract.
 - ii. If not sufficiently clear, SPO forwards request and all material to the CPO for review



CHIEF PROCUREMENT OFFICE

Ellen Daley, General Services

1. If CPO finds no potential conflict of interest, forward signed form to Agency after receive from CPO.
 2. If CPO finds potential conflict, CPO sends to the PPB. See #2 below (Disposition of Potential Conflict of Interest).
2. Disposition of Potential Conflict of Interest
- a. Hearing
 - i. If PPB makes a recommendation to void, SPO publishes notice of PPB determination of potential conflict of interest to the Bulletin and the date and location and time of the public hearing established by the EEC.
 - ii. SPO sends the CPO's final determination to Agency.
 - iii. SPO publishes CPO's final determination to the Bulletin
 - b. No hearing
 - i. SPO publishes the form with the Notice of Award.

CPO-GS

1. Reviews referrals forwarded by the SPO.
 - a. No potential conflict of interest, CPO sends the signed determination form to the SPO for distribution to the Agency.
 - b. Potential for a conflict of interest, refer to PPB for review and recommendation.
2. Determination: After receipt of PPB recommendation, CPO makes final determination whether to void on basis of testimony at public hearing and sends determination to SPO.

PPB

1. Receives request.
2. Gathers information. PPB may hold a hearing at the request of the potential vendor/subcontractor.
3. If PPB does not view disclosed relationship as creating a potential conflict of interest, PPB sends SPO signed determination form.
4. If PPB finds creates conflict of interest, PPB submits detailed reasons with recommendation for voiding to the EEC with a carbon copy to the CPO/SPO.

Executive Ethics Commission (EEC)

The EEC holds a hearing if the PPB finds that the relationship creates a conflict of interest within 30 calendar days of the PPB recommendation to void.

Effective Date

The effective date of CPO Notice 2016.07 is June 1, 2016.

If there are any questions regarding this Notice, contact the Chief Procurement Officer at (217)558-2231.

STATE OF ILLINOIS
CHIEF PROCUREMENT OFFICER – GENERAL SERVICES
POTENTIAL CONFLICT OF INTEREST REVIEW AND DETERMINATION PROCEDURES

POLICY

It is the policy of the Chief Procurement Officer- General Services (CPO-GS) to review, in an efficient and timely manner, information disclosed under Section 50-35 of the Procurement Code to determine if there exists the potential for a conflict of interest and to ensure compliance with lobbyist disclosure requirements.

Not every disclosed relationship has the potential to amount to an actual conflict of interest. A disclosed relationship has the potential to be a conflict of interest if a reasonable person concludes that they would naturally and probably expect a conflict to come into existence even though one does not now exist. Improbable connections or strained “what ifs” will not constitute a potential for a conflict. The mere disclosure of one or more of the ten relationships identified in Section 50-35 is not sufficient, without a determination by the SPO, to conclude a potential for a conflict exists.

SCOPE

Contracts, Bids and Proposals

This procedure implements the portion of Section 50-35 of the Code relating to processing of contracts for which there is an associated potential for a conflict of interest. It includes review of potential conflicts of interests, determination of when potential conflicts of interest meet the threshold for Procurement Policy Board (PPB) review, and when vendors may be considered ineligible for award because of the disclosure. A disclosed relationship has the potential to be a conflict of interest if a reasonable person expects that naturally and probably a conflict will come into existence even if one does not now exist.

Disclosures are required in the following situations: a) for all bids or offers with an annual value of more than \$50,000 and all submissions to the Illinois Procurement Gateway (IPG); b) for each subcontractor for subcontracts with an annual value of more than \$50,000; c) from parent entities that own 100% of a bidder, offeror, or subcontractor. Disclosures must be signed and made under penalty of perjury by an authorized officer or employee of the bidder, offeror, or subcontractor and filed with the PPB. Financial disclosures are incorporated as a material term of the contract and are part of the publicly available procurement file.

When a potential for a conflict of interest is identified, discovered, or reasonably suspected, the State Purchasing Officer (SPO) must send the Conflict of Interest Review form and the contract to the PPB. Upon consideration, PPB shall recommend in writing to the Executive Ethics Commission (EEC) whether to allow or void the contract, bid, offer, or subcontract. The EEC must hold a hearing within 30 days if the PPB recommends voiding a contract or voiding a bid or offer. The CPO may not award a contract before the hearing if the PPB recommendation does not support a bid or offer. The recommendation and proceedings of any hearing are available to the public.

Lobbyists

This procedure also implements the portion of Section 50-35 and 50-38 of the Code relating to the disclosure and publication of the name and address of each lobbyist required to register under the Lobbyist Registration Act and other agent of the potential vendor or subcontractor who has communicated, is communicating, or may communicate with any State officer or employee concerning a bid or offer.

PROCEDURE

SPOs have responsibility for reviewing and final processing of potential conflict information and lobbyist disclosure. To ensure timely processing, SPOs have a goal to begin review no later than the next business day after receipt of the Agency’s request. The time to review may vary, depending on the completeness of information provided and the complexity of the issue.

This procedure details the steps necessary to identify, review and resolve 50-35 potential conflicts of interest and lobbyist disclosure. This procedure documents the internal activities and identifies who has responsibility at each step of the process.

Vendors and Subcontractors may submit financial disclosures and conflicts of interests in two different formats: Forms A, where the certifications and disclosures are submitted on paper, or Forms B, which represents disclosures previously submitted electronically through the Illinois Procurement Gateway (IPG). Procedure steps are given for both Forms A and Forms B.

	Procedure Steps	Responsible Party
1.	Review Financial Disclosures and Conflicts of Interest form: Forms A, Section 5, Step 5 or Forms B, IPG Form I Questions 11-20.	
1.1	Review disclosure for each vendor and subcontractor with contract/subcontract with annual value more than \$50,000. Note if one of the boxes in the applicable section of <i>Forms A</i> or <i>Forms B</i> is marked Yes.	Agency
1.2	For contract renewals review disclosure for each vendor and subcontractor with annual value of more than \$50,000 and obtain from vendor and/or subcontractor a signed <i>Certification of No Change</i> form. Note if one of the boxes in the applicable section of <i>Forms A</i> or <i>Forms B</i> is marked Yes.	Agency
1.3	For annual recertification of multi-year contracts, review disclosures for each vendor and subcontractor whose contract has an annual value of more than \$50,000 and covers multiple fiscal years. Disclosures may be submitted in a variety of ways: <ul style="list-style-type: none"> • <i>Continuing Disclosure for Contractors and Subcontractors with Multi-year Contracts</i> form – if vendor indicates a change in certification status no longer meets the requirements found in 30 ILCS 500/50, then immediately deliver the form to the SPO • <i>Forms A</i> disclosures in paper • <i>Forms B</i> – an active IPG registration satisfies the continuing disclosure certification required by 30 ILCS 500/50-2 	Agency
1.4	If applicable, review disclosure for each 100% parent of vendor and/or subcontractor. Note if one of the boxes in the applicable section of <i>Forms A</i> or <i>Forms B</i> is marked Yes.	Agency
1.5	If applicable, review disclosures for any officer or employee who may have a conflict, such as an employee performing procurement functions who has a	Agency

	contract with the Agency, has a financial interest in a company that has a contract with the agency, or has a spouse or relative who has a contract or financial interest in a contract with the Agency. Note if one of the boxes in the applicable section of <i>Forms A</i> or <i>Forms B</i> is marked Yes.	
1.6	If one of the boxes in the applicable sections of <i>Forms A</i> or <i>Forms B</i> is marked Yes, Agency completes Sections I-V of the <i>Conflict of Interest Review and Determination</i> form. If this is a repetitive conflict of interest previously approved during the fiscal year, include a statement of no change or identify any changed circumstances. If this is a contract renewal of a multi-year contract, include the <i>Certification of No Change</i> form or if necessary, new disclosures. Agency forwards the Form, a copy of the proposed contract or solicitation response, as applicable and any prior PPB conflict review memo to the SPO.	
2.	Determine if one of the identified relationships rises to the level of being a potential for a conflict of interest.	
2.1	Where state employee or their spouse has an interest in a proposed contract (<i>Forms A</i> , Section 5, Step 5, boxes 1-2 or <i>Forms B</i> , IPG Form I, questions 11-12) <u>and where PPB has not during the current fiscal year previously reviewed</u> , SPO prepares the <i>Conflict of Interest Review and Determination</i> form, creates a log in the EEC SharePoint Site, and submits the potential conflict of interest to the PPB for review.	SPO
2.2	Where state employee or their spouse has an interest in a proposed contract (<i>Forms A</i> , Section 5, Step 5, boxes 1-2 or <i>Forms B</i> , IPG Form I, questions 11-12) but <u>where PPB has during the current fiscal year previously reviewed and not found an actual conflict</u> , SPO reviews the repetitive submission. If no change in circumstances from the initial approved submission, SPO sends Agency the signed determination that the disclosed relationship does not preclude the Agency from entering into the proposed contract. Skip to Step 5. If there is any concern about the circumstances not being identical or if a review has not been conducted in the current fiscal year, SPO prepares the <i>Conflict of Interest Review and Determination</i> form, creates a log in the EEC SharePoint Site, and submits to PPB for review.	SPO
2.3	If the disclosing entity identifies anything other than a relationship it has to state employment in the previous 3 years (<i>Forms A</i> , Section 5, Step 5, boxes 3-10 or <i>Forms B</i> , IPG Form I questions 13-20), the SPO determines if the relationship rises to the level of a potential conflict of interest. If SPO determines no potential conflict of interest, SPO sends Agency the signed <i>Conflict of Interest Review and Determination</i> form that the disclosed relationship does not preclude the Agency from entering into the proposed contract. Skip to Step 5.	SPO
2.4	If the request and justification is not sufficiently clear regarding a potential conflict of interest, SPO prepares the <i>Conflict of Interest Review and Determination</i> form, creates a log in the EEC SharePoint Site, and forwards request and all material to CPO for review and determination.	CPO

	<p>If CPO determines the disclosed relationship does not create a potential conflict of interest, CPO sends the signed <i>Conflict of Interest Review and Determination</i> form to the SPO for distribution to the Agency. Skip to Step 5.</p> <p>If CPO determines there is a potential for a conflict of interest, CPO refers to the PPB for review and recommendation. The Agency may not enter into the proposed contract pending the recommendation of the PPB and subsequent final determination of the CPO.</p>	
3.	Recommendation from PPB	
3.1	PPB may gather information about the potential conflict of interest from the potential vendor or subcontractor. PPB may hold a hearing at the request of the potential vendor/subcontractor.	PPB
3.2	If PPB does not view the disclosed relationship as creating a potential conflict of interest to preclude the Agency from entering into the proposed contract, PPB sends SPO the signed <i>Conflict of Interest Review and Determination</i> form. Skip to Step 5.	PPB
3.3	If PPB finds the disclosed relationship creates a conflict of interest sufficient to preclude the Agency from entering the proposed contract, PPB submits its detailed reasons with the recommendation to void the contract, bid, or offer to the EEC with a cc: to the CPO/SPO.	PPB
3.4	If the PPB finds evidence of a potential conflict that was not originally disclosed, the PPB shall provide written notice to the entity providing the disclosure. The disclosing entity shall have 15 calendar days to respond in writing and may request a hearing.	PPB
3.5	If requested, the PPB shall hold the hearing no later than 15 calendar days after receipt of the request.	PPB
4.	Hearing Process	
4.1	If the PPB makes a recommendation to void a contract or void a bid or offer, SPO publishes notice of PPB determination of potential conflict of interest to Bulletin and the date, location and time of the public hearing established by EEC.	SPO
4.2	EEC hearing is held within 30 calendar days of PPB recommendation to void contract, bid or offer.	EEC
4.3	CPO makes final determination whether to void contract, bid or offer on basis of testimony at public hearing.	CPO
4.4	CPO or SPO sends to the Agency the CPO's final determination on whether to void award/contract due to potential conflict of interest.	CPO/SPO
4.5	SPO publishes CPO's final determination to the Bulletin.	SPO
5.	Bulletin Publication	
5.1	After a finding has been made that the disclosed relationship does not create a potential conflict of interest sufficient to preclude the Agency from entering a	Agency

	contract, Agency creates and submits to the SPO a Bulletin notice with the completed, signed <i>Conflict of Interest Review and Determination</i> form attached as public documents.	
5.2	SPO publishes Bulletin notice.	SPO
6.	Lobbyist Review and Publication: <i>Forms A, Section 5, Step 3</i> or <i>Forms B, Question 4</i>	
6.1	<i>Forms A, Section 5, Step 3</i> and <i>Forms B, Question 4</i> identifies whether a potential vendor or subcontractor is represented by or employs a lobbyist required to register under the Lobbyist Registration Act or other agent who is not previously identified and who has communicated, is communicating, or may communicate with any State/Public Agency officer or employee concerning the bid or offer. If a lobbyist will not or is/has not communicated with a State officer/employee concerning the bid or offer in question, disclosure of the lobbyist is not required.	Agency
6.2	If there is disclosure of a lobbyist or agent, Agency forwards lobbyist/agent disclosure to SPO.	Agency
6.3	SPO reviews lobbyist disclosure and verifies whether the lobbyist or agent has, is or will communicate concerning the bid or offer. SPO files the notification with the Secretary of State Index Department. The filing must include: <ul style="list-style-type: none"> • disclosure of all costs, fees, compensation, reimbursements, and other remunerations paid or to be paid to the lobbyist related to the contract, • a certified statement that the vendor or subcontractor will not bill or otherwise cause the State of Illinois/Agency to pay for any of the lobbyist's costs, fees, compensation, reimbursements, or other remuneration, and • a signed verification certifying none of the lobbyist's costs, fees, compensation, reimbursements, or other remuneration were billed to the State/Agency. 	SPO
6.4	As part of contract award notice, the lobbyist/agent disclosure is attached and posted to the Bulletin as a public document.	SPO
7.	Reports	
7.1	SPO maintains basic statistics relating to reviews for potential conflict of interest, including the number of disclosures reviewed, the number of potential conflicts determined not to rise to a level of further review, the number of repetitive reviews, the number of disclosures forwarded to PPB, and the number of PPB reviews that determined there was a potential for a conflict of interest.	SPO

