STRIKING A BALANCE

Balancing Ethics & Business in State Procurement

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WHAT IS PROCUREMENT?

- Procurement is the process by which Agencies and Universities purchase and contract for goods and services.
- Agencies and Universities under the jurisdiction of the Governor follow the Illinois Procurement Code.
  - 30 ILCS 500/1-1, *et seq.*

- The Procurement Code was the subject of ethics reform in 2009, and has been in a constant state of revision since that time.

WHO ARE THE PLAYERS?

Independent Chief Procurement Office

- CPO – Chief Procurement Officer
  - Independent State Officer
  - Appointed by the EEC, confirmed by Senate
  - Exercises procurement authority under the Code
- SPO – State Purchasing Officer
  - Appointed by the CPO
  - Assigned to one or more State Agencies
- PCM – Procurement Compliance Monitor
  - Appointed by the EEC, Supervised by the CPO
  - Assigned to one or more State Agencies

WHO ARE THE PLAYERS?

Other Entities

- APO – Agency Purchasing Officer
  - Agency employee who serves as liaison to CPO
- PPB – Procurement Policy Board
  - Independent advisory board
  - Appointed by legislative leaders and governor
- BOSS – Bureau of Strategic Sourcing
  - Division of CMS focused on procurement

MORE PROCUREMENT ACRONYMS

- IFB – Invitation for Bid
  - lowest price wins
- RFP – Request for Proposals
  - best offer wins
- RFI – Request for Information
  - in leasing, akin to an RFP
  - outside leasing, a way to seek information only
- PBC – Procurement Business Case
  - electronic contract management system at CMS

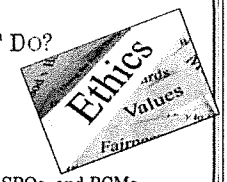
COULD THERE BE MORE ACRONYMS?

- IPG – Illinois Procurement Gateway
  - CPO system which pre-registers vendors
  - evaluates certain standard requirements for vendors
- BidBuy – State eProcurement System
  - CPO & CMS system to streamline procurement
  - will replace multiple procurement systems
  - eta: 2017
- ERP – Enterprise Resource Planning System
  - statewide system to streamline enterprise resources
  - will replace multiple fiscal and procurement systems

Where Does the EEC Fit In?

- EEC's authority originates in the Ethics Act where it has broad jurisdiction.
- There is additional, specific, authorities granted under other statues.
- Limited, specific, authority in the Procurement Code:
  - Appoints 4 Chief Procurement Officers
  - Appoints Procurement Compliance Monitors
  - Responsible for Removal Proceedings for CPOs, SPOs, PCMs after a hearing for cause
  - Responsible for Certain Conflict of Interest Hearings
  - Promulgates Rules for Communications Reporting
- By agreement with the CPOS provides administrative services to the 4 Officers

What Does the EEC NOT Do?



- Has NO involvement in the Day to Day procurement business and decisions of the 4 CPOs and their staffs.
- Is NOT the employer of the CPOs, SPOs, and PCMs.
  - The CPOs are independent State Officers.
  - SPOs and PCMs report to the CPO.
- Does NOT control the CPOs' procurement decisions.
- Is NOT a body where agencies or vendors can appeal the decisions of the CPOs.

Why Am I Involved?

- You are the first stop for ethics matters
- Conflicts of Interest
  - Evaluators
  - Vendors
  - Other Optical Matters
- Confidentiality
  - Procurement processes are confidential
  - Weighing transparency
- Communications Reporting
  - EEC promulgates the rules
  - Ethics Officers charged with being the agency point person
- Revolving Door
  - Special Provisions for procurement personnel

ETHICS & PROCUREMENT

- 2010 Legislation was Ethics Reform
  - Independence
  - Transparency
  - Accountability
- The Trade Off?
  - New Way of Doing Business
    - People
    - Regulations
    - Procedures
    - Processes
  - Discretion Lies With the CPO
    - require justification
    - transparency
    - mandatory items have no discretion

ETHICS & PROCUREMENT

It is the express duty of all CPOs, SPOs, and their designees to maximize the value of the expenditure of public moneys in procuring goods, services, and contracts for the State of Illinois and to act in a manner that maintains the integrity and public trust of State government. In discharging this duty, they are charged to use all available information, reasonable efforts, and reasonable actions to protect, safeguard, and maintain the procurement process of the State of Illinois.

30 ILCS 500/50-1

TRANSPARENCY

Repeatedly Required by the Code

- Bulletin
- Hearings
- Communication Reporting
- Procurement File
  - documents the procurement
  - statutorily required to be open to the public
  - by its nature the contents are public information
  - does not require a FOIA to view
- FOIA
  - can be more restrictive in its approach to access
  - coordinate with the CPO where are procurement is involved – can cause undue delay

CONFIDENTIALITY

Any chief procurement officer, State purchasing officer, designee, or executive officer who willfully uses or allows the use of specifications, competitive solicitations documents, proprietary competitive information, contracts, or selection information to **compromise the fairness or integrity of the procurement or contract** process shall be subject to immediate dismissal, regardless of the Personnel Code, any contract, or any collective bargaining agreement, and may in addition be subject to criminal prosecution.

30 ILCS 500/50-45.

CONFIDENTIALITY

Insider Information

It is unlawful for any current or former elected or appointed State official or State employee to knowingly use confidential information available only by virtue of that office or employment **for actual or anticipated gain for themselves or another person**.

30 ILCS 500/50-50.

CONFLICTS OF INTEREST

Evaluators

- Direct impact on vendor selection
- Disclosure of conflicts
  - Protects the integrity of the procurement
  - Ensures any potential of a conflict, even an appearance, is weighed.
  - Appearance of bias
- Confidentiality statements
  - Ensures understanding of the confidential nature of the procurement process
  - Protects the vendor community – fair playing field

CONFLICTS OF INTEREST

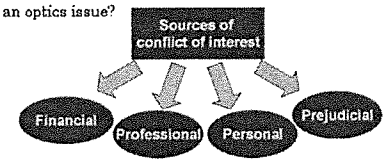
Vendors

- Required Disclosures
- Two Categories:
  - Prohibited Conflicts
    - Section 50-13 of the Code
    - Bars entities from State contracts in certain circumstances
  - Potential Conflicts
    - Section 50-35 of the Code
    - Requires disclosure for due diligence purposes
    - Does not necessarily have an impact on a contract
- Can require information from entities not involved in the procurement to resolve.

CONFLICTS OF INTEREST

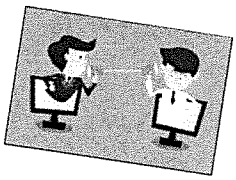
- Is there an actual conflict of interest?
- Is there the potential for a conflict in the future?

- Is there an appearance of a conflict of interest?
- Does the appearance put the procurement, employee, agency, or vendor at risk?
- Is this an optics issue?



COMMUNICATIONS REPORTING

- Who
  - State Employees
  - Personally and Substantially Involved in the Decision to Issue a State Contract
- What
  - communications with 3rd Parties
    - Material to a
    - Potential Action in an
    - Active Procurement Matter
  - there are several exceptions
- When
  - within 30 days
- Where
  - PPB's website
- Why
  - transparency
  - fair procurement process

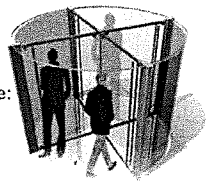


COMMUNICATIONS REPORTING

Ethics Officer's Role

- Prior administrations made the Ethics Officer the Agency point person for reporting questions
- EEC creates the rules for reporting
  - areas of common concern
  - as I someone required to report?
  - was the communication material?
  - if it needs to be reported does it mean I am in trouble?
  - if it needs to be reported does it mean that the vendor is prohibited from bidding on a contract?

REVOLVING DOOR



Specific to the Procurement Code:

- 30 ILCS 500/50-30

Who Does it Apply to?

- CPOs, SPOs, PCMs
- Their designees whose principal duties are directly related to State Procurement
- Executive Officers confirmed by the Senate

For How Long?

- **2 years** after terminating an affected position

REVOLVING DOOR

What is Prohibited?

- Engaging in any procurement activity relating to the State agency most recently employing them in an affected position for a period of at least 6 months.
- The prohibition includes but it not limited to:
  - lobbying the procurement process;
  - specifying;
  - Bidding;
  - proposing bid, proposal, or contract documents;
- On their own behalf or on behalf of any firm, partnership, association, or corporation.

PENALTIES

Any CPO, SPO, or designee who willfully violates or allows the violation of this Code shall be subject to immediate dismissal, regardless of the Personnel Code, any contract, or any collective bargaining agreement.

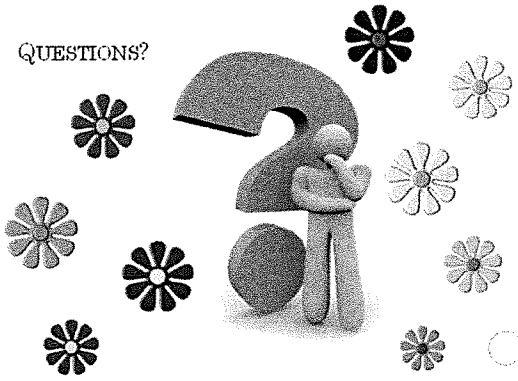
Except as otherwise provided in this Code, whoever violates this Code or the rules promulgated under it is guilty of a Class A misdemeanor.

30 ILCS 500/50-75

REPORTING CONCERNS & MISCONDUCT

Generally
- Violations by vendors can be reported to the CPOs
- Violations can also be reported to the OEIG

PCMs
- Charged with reporting waste, fraud, and abuse
- Reports to the CPOS and OEIG

Anticompetitive Practices
- Reported to the Attorney General and the CPO

QUESTIONS?