

Procurement Communications Reporting Frequently Asked Questions:

- 1) Who is required to report procurement communications?  
Any person employed by the State of Illinois or authorized agents of the State who have material knowledge concerning a procurement matter (whether potential or actual).
- 2) Who will have access to my procurement communications?  
All reported procurement communications will be available on the Procurement Policy Board's website, so anyone with internet access may read your communications.
- 3) Why do I have to report procurement communications?  
It is mandated by Public Act 96-0795 that resulted from Procurement Reform Legislation SB0051.
- 4) Who is considered a State Employee?
  - a. any person employed full-time, part-time, or pursuant to a contract and whose employment duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed; or
  - b. any appointed or elected commissioner, trustee, director, or board member of a board of a State agency; or
  - c. any other person appointed to a position in or with a State agency regardless of whether the position is compensated.
- 5) Are "Officers" considered State Employees?  
Yes.
- 6) Are Board and Commission members considered State Employees?  
Yes, but they would be required to report only if the communication occurred in their official capacity as a Board or Commission member.
- 7) If a State employee is appointed to a Board or Commission, are they required to report their communications in their capacity as a Board or Commission member?  
Yes, in whichever capacity the State employee represented themselves or whichever capacity the communicant approached them in when the communication occurred.
- 8) What procurement communications are required to be reported?  
Any written or oral communication that imparts or requests material information or makes a material argument regarding potential action concerning a procurement matter, including, but not limited to, an application, a contract, or a project shall be reported to the Procurement Policy Board.

The Executive Ethics Commission has promulgated DRAFT Rules that state the following:

A communication that imparts or requests material information or makes a material argument is a communication that a reasonable person would believe was made for the purpose of influencing procurement decisions including but not limited to decisions:

1. establishing or defining a procurement need or method of source selection;
  2. drafting, reviewing or preparing specifications, plans or requirements;
  3. drafting, reviewing, or preparing any invitations for bid, requests for proposals, requests for information, sole source procurement justifications, emergency procurement justifications or selection information;
  4. evaluating bids, responses, offers;
  5. publishing notices to the procurement bulletins;
  6. letting or awarding a contract;
  7. determining the contents of the procurement file or the contract file;
  8. resolving protests;
  9. determining inclusion on prequalification lists or prequalification in general;
  10. identifying potential conflicts of interests or voiding or allowing a contract, bid, offer or subcontract for a conflict of interest;
  11. voiding or allowing a contract or subcontract pursuant to Section 50-50 of the Illinois Procurement Code;
  12. determining firm performance evaluations;
  13. determining suspensions or debarments; and
  14. approving change orders or the renewal or extension of an existing contract.
- 9) Are any communications excluded?  
Notwithstanding the above (FAQ #4), unsolicited communications providing general information about products, services, or industry best practices that are not further disseminated, considered or used by the receiving employee or any person in a procurement decision are not required to be reported.

The following communications are specifically excluded from the reporting requirement:

- i) Statements by a person publicly made in a public forum
  - ii) Statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter
  - iii) Statements made by a State employee of the agency to the agency head or other employees of that agency, to the employees of the Executive Ethics Commission or to the employees of the Department of Central Management Services' Bureau of Strategic Sourcing and Procurement (BOSSAP) concerning procurement activities being conducted by BOSSAP on behalf of those employees' agency.
  - iv) Communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of a contract.
- 10) Is a meeting subject to the Open Meetings Act considered a "public forum"?  
A meeting that satisfies the demands of the Open Meetings Act (OMA) would be considered a public forum for purposes of the disclosure requirements. In other words, OMA communications are exempt from the Communications Reporting requirement.

- 11) Is there a dollar threshold for when a report is made?  
The Procurement Code and EEC Rules don't specifically name a threshold. Dollar value of a procurement may not yet be known, or may be irrelevant.
- 12) When should I report the communication?  
*Upon receipt of a communication*, the State officer or employee shall report the communication to the Procurement Policy Board in accordance with its rules.
- 13) I had a communication that is believed to be material and I forgot to report it. What should I do?  
You should report the communication immediately and note on the report why it was not reported more timely.
- 14) What is the penalty to a State employee or officer for non-compliance with the reporting requirement?  
The Procurement Code establishes possible penalties:  
  
(30 ILCS 500/50-75)  
Sec. 50-75. Other violations.  
(a) Any chief procurement officer, State purchasing officer, 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.  
(b) Except as otherwise provided in this Code, whoever violates this Code or the rules promulgated under it is guilty of a Class A misdemeanor.
- 15) What happens when I submit the communications report?  
The communications report will be sent to the State Purchasing Officer (SPO) for your agency. The SPO is only reviewing your communications report to ensure compliance with the law. They may not alter or change your communication report in any way. They will only be able to reject your communication report for malicious content.
- 16) What happens if my communications report is rejected for malicious content?  
The Procurement Policy Board will automatically turn over the communications report to the Office of the Inspector General for investigation – *no exceptions*.
- 17) What is considered "malicious content"?  
An example of a communications report with malicious content would be a communication report that may or may not pertain to a procurement matter and the State employee or officer is using the system to inflict harm or pain on another person.
- 18) I believe my communications report was material and it wasn't malicious, nor did it contain profanity, yet it was rejected. What can I do?  
If your communications report is rejected for any reason other than malicious content, you may contact the Executive Ethics Commission and file a complaint. You are ethically and legally charged with reporting your procurement communications and are responsible for ensuring that your communications are reported to the Procurement Policy Board. It is not the responsibility of the SPO to determine if your communication is material.
- 19) What if I receive a call and the communicant refuses to share information that I'm required to report, e.g., their telephone number or title?  
It is suggested that you attempt to procure the information through other means, such as an internet search, in an effort to obtain the information. If that doesn't produce results, enter zeros.
- 20) The person who communicated with me used profanity. Am I not ethically charged with reporting exactly what was said?  
Verbatim communications are not required. You are only required to report a detailed summary of the points made by each person involved in the communication.
- 21) Are the following communications required to be reported:  
a. a vendor conference that is offered or required in a solicitation  
b. bid openings  
c. questions and answers asked by vendors during the solicitation process that are published as an addendum to the solicitation  
To the degree that the above items fit into the exemption "statements made by a person publically made in a public forum" or one of the other exemptions, they would not have to be reported.
- 22) Are negotiations with a vendor after award required to be reported?  
The EEC is working on a determination in this case and these FAQs will be updated when a decision is made.
- 23) I am a SPO for a State agency and must report a communication. Will I be able to review my own communication report?  
A reviewer may not review their own communications. The Chief Procurement Officer (CPO) will review your communications reports.
- 24) A group of 5 State employees met with a vendor. Can we designate one person to report the communication?  
No, each person who attended the meeting is required to report the communication.
- 25) What if the person who contacted me was a lobbyist?  
If you receive an oral communication by any person required to register under the Lobbyist Registration Act, the individuals who initiate or participate in the oral communication shall submit a written report to the State employee that memorializes the communication and includes, but is not limited to:  
i) The date and time of the communication  
ii) The identity of each person from whom the oral communication was received, the individual or entity represented by that person, and any action the person requested or recommended  
iii) The identity and job title of the person to whom each communication was made  
iv) If a response is made, the identity and job title of the person making each response

- v) A detailed summary of the points made by each person involved in the communication
- vi) The duration of the communication
- vii) The location or locations of all persons involved in the communication
- viii) Any other pertinent information

26) Do the lobbyists have a time limit in which to submit their communication report to the State employee?

No time limit has been established for a lobbyist to comply with the law. It is recommended that if a State employee has made attempts to request the lobbyist report and the lobbyist has not complied within a reasonable amount of time, e.g., 10 days, that the State employee will note that the lobbyist has not submitted the required lobbyist report in the employee's communication report and submit the report. This will keep the State employee in compliance, even if the lobbyist isn't. If the lobbyist provides their report after the State employee has already submitted their communication report, the State employee should complete a new communication report referencing the previous report, noting that the lobbyist did not comply with the law in a reasonable amount of time.

27) Am I required to tell the person I am communicating with that I must report the communication?

You are not required to under the law, however, it would be reasonable and fair to do so. State agencies and universities are encouraged to request that State employees alert vendors of the communication requirement in their procedures.

28) What happens when I submit my communication report?

Your communication will remain in queue for 30 days from the date it was submitted by you for review. If the reviewer takes no action (does not submit or reject the communications report), the communications report will automatically post to the Procurement Policy Board's website 30 days from the date it was submitted by you for review. The reviewer also has the option to submit the communications report once their review is complete.

29) Who can I contact to help me decide if a procurement communication is material?

The State employee is ultimately responsible for making that determination. If you feel that the communication should be reported, it is incumbent on you to do so. However, if you have questions you should contact your agency or university Ethics Officer.

30) Are more detailed provisions available to help me decide?

Yes. The Executive Ethics Commission has promulgated rules to further define the intent of the law. The rules will be available on this site when they are finalized and filed.

31) Is there refresher training available?

Training materials and tutorials are available on this site. In addition, the yearly ethics training that is required of all State employees now has a section that will deal with procurement communications reporting.