CHIEF PROCUREMENT OFFICE

# The 5 W's for Vendors

## How to Navigate State Procurement Communications

November 2013

# ILLINOIS PROCUREMENT CODE

Prohibited Bidders and Contractors
30 ILCS 500/50-10.5 (e)

Procurement Communications Reporting
30 ILCS 500/50-39

# Prohibited Bidders or Contractors

No person or business shall bid or enter into a contract under this Code if the person or business assisted an employee of the State of Illinois, who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract

- by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request for information;
- or by providing similar assistance.

30 ILCS 500/50-10.5(e)

# Prohibited Bidders or Contractors

- No person or business shall submit specifications to a State agency unless requested to do so by an employee of the State.

- No person or business who contracts with a State agency to write specifications for a particular procurement need shall submit a bid or proposal or receive a contract for that procurement need.

30 ILCS 500/50-10.5(e)

# Prohibited Bidders or Contractors: Authorized Vendor Assistance

A bidder may:

- Review, draft, direct, or prepare any invitation for bids, a request for proposal, or request for information or provide similar assistance IF part of a publicly issued opportunity to review drafts of all or part of these documents.

- Initiate a communication with an employee to provide general information about products, services, or industry best practices and, if applicable, that communication is documented in accordance with Section 50-39 or

# Prohibited Bidders or Contractors: Authorized Vendor Assistance

- May respond to a communication initiated by a State employee for the purposes of providing information to evaluate new products, trends, services, or technologies
- Demonstrate its product as representative of industry trends and innovation and is not specifically designed to meet the State's needs
- May submit specifications to a State agency if requested to do so by an employee of the State

30 ILCS 500/50-10.5(e)

# Procurement Communication Reporting: Who Must Report? State Employees

- Any written or oral communication received by a State employee who,
- by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract and
- that imparts or requests material information or makes a material argument regarding potential action concerning an active procurement matter, including, but not limited to, an application, a contract, or a project.

30 ILCS 500/50-39(a)

# Procurement Communication Reporting: Who Must Report?

## Lobbyists

When an oral communication made by a person required to register under the Lobbyist Registration Act is received by a State employee that is covered under this Section, all individuals who initiate or participate in the oral communication shall submit a written report to that State employee that memorializes the communication and includes the information required to be reported to the Procurement Policy Board.

30 ILCS 500/50-39(c)

# WHAT IS A REPORTABLE COMMUNICATION?

A communication must:

(1) Be material

(2) Be regarding a potential action

(3) Pertain to an active procurement matter

# What Is Not A Reportable Communication?

Communications that do not have to be reported include the following:

(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;

# What Is Not A Reportable Communication?

(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 an employee of another State agency who, through the communication, is either

(a) exercising his or her experience or expertise in the subject matter of the particular procurement in the normal course of business, for official purposes, and at the initiation of the purchasing agency or the appropriate State purchasing officer, or

(b) exercising oversight, supervisory, or management authority over the procurement in the normal course of business and as part of official responsibilities;

# What Is Not A Reportable Communication?

(iv) unsolicited communications providing general information about products, services, or industry best practices before those products or services become involved in a procurement matter;

# What Is Not A Reportable Communication?

(v) communications received in response to procurement solicitations, including, but not limited to, vendor responses to a request for information, request for proposal, request for qualifications, invitation for bid, or a small purchase, sole source, or emergency solicitation, or questions and answers posted to the Illinois Procurement Bulletin to supplement the procurement action, provided that the communications are made in accordance with the instructions contained in the procurement solicitation, procedures, or guidelines;

# What Is Not A Reportable Communication?

(vi) communications that are privileged, protected, or confidential under law; and

(vii) communications that are part of a formal procurement process as set out by statute, rule, or the solicitation, guidelines, or procedures, including, but not limited to, the posting of procurement opportunities, the process for approving a procurement business case or its equivalent, fiscal approval, submission of bids, the finalizing of contract terms and conditions with an awardee or apparent awardee, and similar formal procurement processes.

# What Is Not A Reportable Communication?

The provisions of this Section shall not apply to communications regarding the administration and implementation of an existing contract.

- Except communications regarding change orders or the renewal or extension of a contract <u>are reportable</u>.

No trade secrets or other proprietary or confidential information shall be included in any communication reported to the Procurement Policy Board.

30 ILCS 500/50-39(a)

# WHAT TO REPORT?

Details including:

Date, time, and duration of each communication;

Identities of persons and individuals or entities represented, communicating, receiving, and responding;

Action requested or recommended;

Summary of the points made;

Location of all persons involved in the communication;

Telephone numbers if the communication occurred by telephone;

Any other pertinent information.

30 ILCS 500/50-39(b)

# WHERE AND WHEN TO REPORT?

Reports are made on the Procurement Policy Board website at
http://www2.illinois.gov/ppb/Pages/default.aspx

Reportable communications must be reported as soon as practicable,

but in no event more than 30 days after receipt of the communication,

or the first in a series of communications.

# PENALTIES?

State employees who

knowingly and intentionally

fail to comply with the reporting requirements

shall be subject to suspension or discharge.

30 ILCS 500/50-39(e)

# Exclusions From The Exclusions

Attempts to influence through duress, coercion or the direct or indirect offer or promise of anything of value to any person or entity in consideration for any benefit or preference in the procurement process.

If the employee reasonably believes a communication was made for any improper purpose, including, but not limited to, providing an improper benefit, monetary or non-monetary, to any person or entity.

2 Ill. Adm. Code 1620.825(d)and (e)

# Synopsis of Reportable Communications: The 5 Ws

- Who: Employees who participate personally and substantially in decision to award. Lobbyists must also report all communications.

- What: Communications that are material, regard a potential action, and relate to an active procurement matter.

# Synopsis of Reportable Communications: The 5 Ws

- When: Within 30 days after receipt of the communication.
- Why: For transparency and to ensure a level playing field for vendors.
- Where: illinois.gov/ppb/Pages/default.aspx

# The Take Away for Vendors on Reportable Communications

- Vendors may communicate with State agencies-vendors just have to do it inside the boundaries.
- It is not a negative that conversations with State employees are being reported.
- It provides a fair playing surface so all vendors know what information is available.
- A reportable conversation does not equal a vendor being disqualified from responding to the bid or offer.