



ILLINOIS CHAMBER OF COMMERCE

Memo to Senate Procurement Committee Co-Chairs Senator Don Harmon and Senator Pam Althoff:

Last year, the Illinois Chamber of Commerce, on behalf of the business community, worked closely with the Governor's office and the General Assembly to find an appropriate balance between a procurement process that is sensible and fair, and a process that is fully transparent. We appreciate the efforts on the behalf of the General Assembly and the Governor to secure changes to P.A. 96-0795 (SB 51) last year and believe P.A. 96-0920 represented a positive start to addressing some of the outstanding compliance issues, including the deterioration of critical vendor/bidder communications with the state.

We believe, however, that additional legislative changes are still necessary to ensure the state's procurement laws do not create compliance burdens that otherwise hinder the state's ability to access the entrepreneurship of the market that is so vital to increasing efficiency and a strong return on investment for the state.

In response to the business community's concerns for P.A. 96-0795, the Illinois Chamber assembled an internal working group that has served as an invaluable resource to assessing the impact of the law on state bidders and vendors. As with the trailer legislation passed last year (P.A. 96-0920), we have worked to identify those provisions of the state's procurement laws that continue to be the most problematic and look forward to the opportunity to collaborate with the members of the new Senate Procurement Committee to identify solutions that can address those problem areas.

I have summarized below a number of the areas we have identified that are and continue to be problematic for the bidder/vendor community and respectfully urge you and the members of the Procurement Committee to consider these matters so that we might find a satisfactory resolution to these outstanding issues in the remaining weeks of the spring legislative session.

EX PARTE PROCUREMENT COMMUNICATIONS and COMMUNICATIONS REPORTING:

P.A. 96-0920 included several changes to the state's original procurement reform law that sought to clarify certain parameters around procurement communications between vendors, bidders, and state employees and officials. The Act turned most of the clarification of these issues over to the Executive Ethics Commission (EEC) and the Procurement Policy Board (PPB) to provide through the rulemaking process. Since that time, we have worked closely with the EEC to craft rules that strike a careful balance between the limitations of the law and ensuring an open line of communications between the bidder/vendor community and the state. We are optimistic that the rules adopted on April 21 will go a long way to addressing some of the communications

breakdowns we have seen as a result of the original procurement reform law, but we still have concerns over agency interpretations of the rules and the inability of some of state's bidders/vendors to engage in legal communications with state employees.

The Illinois Chamber recognizes that there is a fine line between ensuring open communications and honest communications between the bidder/vendor community and the state and we do not wish to erode any of the protections that have been installed to insulate the procurement process from any potential conflicts. We do, however, encourage the Procurement Committee to examine ways in which agency interpretation of the ex parte communications and reporting provisions can be standardized and result in protocols that do not impede bidder/vendor access to state employees and officials. The Illinois Chamber believes that language proposed in Senate Amendment #1 to SB 268 (Sandoval) would help address this by ensuring that only those state employees that by the nature of his or her duties has the authority to participate personally and substantially in the decision to award a state contract be subject to the reporting requirements under the Procurement Code.

DUE PROCESS:

The state's procurement reform law enhances penalties for bidders and vendors that do not operate within the boundaries of the law, including a number of new penalties for those bidders and vendors that violate new reporting requirements. The Illinois Chamber believes that in addition to establishing a set of clear guidelines that define "reportable" communications, the law must also provide bidders and vendors with the opportunity to formally respond to any allegations of wrong-doing. Given the large number of state employees required to report and the level of detail required, there is always a chance for errors and inconsistencies in these reports. The current penalty for violating certain sections of the Act is to simply deny the vendor the opportunity to bid for a state contract without any opportunity to respond to the alleged violations. Therefore, such a strict penalty should be balanced with a fair review process that includes the impacted state agency, the vendor, and the Procurement Policy Board.

We encourage the Senate Procurement Committee to consider language proposed in SB 1953 (Althoff) that we believe will address this unresolved concern over due process.

SUBCONTRACTOR DISCLOSURE REQUIREMENTS:

The Illinois Chamber appreciates the changes made to the state's procurement reform law under P.A. 96-0920 as they relate to the definition of subcontractor and subsequent subcontractor disclosure requirements. We believe it is important for the Act to allow for transparency, but we must not hinder the ability of the competitive marketplace to establish the price for goods and services. Balance transparency with the ability to allow the competitive marketplace to establish the price for goods and services. By requiring the public reporting of subcontractor pricing along with the submission of these contracts under Section 20-120 of the Act, the ability of vendors to competitively negotiate the price, terms, and conditions of supplier contracts is undermined.

P.A. 96-0920 did make some concessions in terms of allowing vendors to identify potentially sensitive information for redaction; however, we believe stronger protections are needed to ensure vendors are not put at a disadvantage due to confidentiality clauses in their agreements with subcontractors. Furthermore, the current requirement of providing a copy of subcontracts

within 20 days of execution to the state is also very burdensome on the vendor. There are cases in which a vendor may be required to identify and secure an alternate subcontractor in a very short amount of time, which leaves a number of questions on behalf of the vendor in terms of timely disclosure of the new contract and the execution of the old contract, and how those issues are related to compliance with the law.

Again, we encourage the Senate Procurement Committee to consider language proposed in SB 1953 (Althoff) that we believe will still afford transparency while providing assurances to the vendor community that their ability to negotiate and remain flexible in their relations with subcontractors is not compromised.

DISCLOSURE REQUIREMENTS FOR PRIVATELY HELD ENTITIES:

Finally, the Illinois Chamber supports legislation that alters current provisions to allow more privately held entities that have contracts with the state to comply more easily with financial disclosure statements required by the Procurement Code. HB 1444 (Mautino-Wilhelmi) passed the House earlier this month and we urge the Senate Procurement Committee to consider including the provisions of the legislation within any larger, more comprehensive procurement clean-up bill that may be proposed as a result of the committee's work. The legislation, which allows privately held entities with more than 200 shareholders (current law sets the threshold at 400 shareholders) that are otherwise exempt from federal 10K reporting laws to submit information that Federal 10K reporting companies are required to report under federal regulations in order to fulfill the financial disclosure requirements outlined in Section 50-35 of the Procurement Code. We believe the legislation in no way diminishes the amount of information a vendor is required to submit to the state, but rather affords more entities the ability to reduce compliance burdens with the state's procurement law.