



## OFFICE OF THE GOVERNOR

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**PAT QUINN**  
GOVERNOR

April 27, 2011

Honorable Pamela J. Althoff  
M103C Capitol Building  
Springfield IL 62706

Honorable Don Harmon  
329 Capitol Building  
Springfield IL 62706

Dear Senators Harmon and Althoff:

Thank you for the opportunity to provide our perspective on the State's procurement system. These comments are submitted on behalf of the agencies under the jurisdiction of the Governor ("the Agencies").

The Agencies take very seriously their responsibility of maintaining integrity in the procurement process. CMS' Bureau of Strategic Sourcing and representatives of the Executive Ethics Commission ("EEC") are meeting and consulting on a regular basis in an attempt to resolve outstanding issues and to coordinate future initiatives. However, it is difficult to reach resolution on many of the Illinois Procurement Code ("IPC") issues without legislative clarification.

There are 3 areas of concern regarding procurement we would like to address: (i) the ambiguities in procurement responsibilities due to current provisions of the IPC, (ii) the provisions of the IPC that create inefficiencies without corresponding benefit, and (iii) other suggestions for improvements to the IPC and to other procurement laws and processes:

The single greatest challenge to efficiency and transparency from the perspective of the Agencies is the ambiguity regarding the division of responsibility for various procurement and fiscal actions between the Chief Procurement Officers ("CPOs")/State Purchasing Officers ("SPOs")/ Procurement Compliance Monitors ("PCMs") on the one hand and the Agencies on the other. The law puts overview authority regarding the procurement process in the hands of the EEC. However, it is the obligation of the Agencies and not the EEC to deliver the services and to fulfill the obligations of the State. It is the Agencies that have the statutory mandates that need to be met and, within the parameters of the IPC, they need to be able to engage vendors and fulfill those services.

### **(1) PROCUREMENT RESPONSIBILITY AND JUSTIFICATION**

- **Scope of CPO authority**-- Currently, the IPC does not specify under what circumstances a CPO can reject a procurement action. That being said, the CPO's general statutory powers are limited to procurement and to ensuring that the IPC is followed. It remains the agencies' power and responsibility to determine their needs and whether they have adequate funds to fulfill them. A procurement should not (and, statutorily, cannot) be rejected by the CPO on policy grounds or fiscal grounds but only if the IPC, another law, rule or the solicitation itself is violated.

To make this already-existing statutory limitation explicit in the area of procurement approval and rejection, the IPC should be amended to provide that the CPO and/or SPO may only refuse to approve any procurement action if there is a violation of the IPC or other law, any associated rules or the solicitation itself, including evaluation or award. (This is consistent with the language in the protest rule regarding the circumstances when a vendor can file a protest. 44 Ill Admin Code 1.5550 (a)).

- Inaction—The procurement process is dynamic and often fast-moving. Currently a CPO and/or SPO can nullify or indefinitely delay a procurement by inaction. They are under no obligation to inform the procuring agency of the reason for the inaction or even of the status of the procurement. This creates significant insecurity at the agency level as to when, if ever, a procurement will be able to be completed. It also leads to an increased number of emergency procurements, thereby increasing the cost to the State and eliminating competition. Emergency procurements have dramatically increased both in number and dollar value since the implementation of SB 51. During the first three months of 2010, when the Agencies still completed their own procurements with the assistance of CMS, there were 16 emergency procurements representing approximately \$1 million. In the first 3 months of 2011, with procurement processes requiring multiple approvals at several steps in the process, there were 38 emergency procurements representing approximately \$42 million.

We recommend that for all procurement actions that require the approval of the CPO or SPO, a request for such approval shall be submitted to them in writing by the procuring agency. If any additional documentation is required from the procuring agency the CPO or SPO shall send a request in writing for such documentation within 5 business days of receipt of the request for approval. All requests for approval of procurement actions from procuring agencies shall be approved or denied by the EEC within 30 days of receipt or shall be deemed approved. This review process is similar to the current Procurement Policy Board review process. (see 30 ILCS 500/5-30).

- Lack of justification for actions taken – We believe the CPOs/SPOs should be required to notify the agency in writing when they reject a procurement action and to state the grounds for rejection. Agencies currently do not always understand why procurement actions are being rejected and are frequently unable to obtain a reason why. Among other consequences, agencies cannot learn how to submit procurements in a manner acceptable to the EEC if they are not advised as to why their procurement was rejected. We recommend that any procurement action rejected by a CPO, SPO or PCM be accompanied by a written statement identifying with specificity the reason for rejection including a citation to the relevant section of the IPC or other law, any associated rules or the solicitation itself.
- Lack of consistency and direction—Currently EEC CPOs question and reject work that has been previously approved by EEC SPOs and/or PCMs. EEC PCMs question and reject work that has been previously approved by EEC SPOs. Agencies cannot rely on the approval of an EEC employee of any procurement action in order to proceed, as other EEC employees may disagree. Different EEC employees may provide different direction on the same topic. Different CPOs have established different policies. By no later than September 1, 2011 the EEC should adopt a comprehensive set of procurement policies and procedures which shall be binding on all employees of the EEC and all agencies subject to the IPC.

## (2) INEFFICIENCIES UNDER THE IPC

- Sole source hearings - Prior to the passage of SB 51, a notice of each sole source procurement was posted to the Illinois Procurement Bulletin and emailed to each vendor who had registered on the Bulletin in the class code of that procurement. Any vendor or other party who believed that the procurement was not a proper sole source due to other available vendors or for any other reason could file a protest. The procurement would not move forward until the protest was resolved by an independent attorney who was not involved in the procurement. Since the enactment of SB 51, however, the Agencies are required to have a public hearing for all sole source procurements. To date, hearings have been held on 289 procurements for the Agencies. Of those 289, only 14 of those hearings (4.84%) had individuals appear and testify. Of those, none have resulted in the CPO denying the agency request for sole source procurement (except for one instance where the agency had requested to withdraw the procurement prior to the hearing). The hearing process itself involves 16 separate steps including scheduling, posting, preparation of notices and recommendations and the like. Each procurement hearing is attended by at least six individuals: two Hearing Officers (Chicago and Springfield), the CPO, the SPO, an agency representative and at least one member of the Procurement Policy Board.

It is the recommendation of the Agencies that all proposed sole source procurements, including the justification therefore, be posted to the Illinois Procurement Bulletin and emailed to every vendor who has registered in the class code of that procurement. A hearing must be held for any sole source procurement for which a vendor submits a written request for a public hearing within 14 days of the posting (similar to some of the requirements of the Administrative Procedures Act).

- Procurement Communications reporting - Section 50-39 of the IPC establishes reporting requirements concerning procurement communications. However, due to the broad language of the Section, it is capturing many more communications than we believe were ever anticipated or intended. Reporting began January 1, 2011 and, as of yesterday, 10,118 reports appear on the Procurement Policy Board website. Very much to its credit, the EEC worked cooperatively with the Office of the Governor and the Agencies to address many of our concerns in the Communication Rule that was recently adopted. However, we believe this reporting requirement continues to have a chilling effect, with State employees fearful of having important communications with vendors for fear of somehow being accused of wrongdoing. This has a significant negative impact on important new ideas coming to the State and, ultimately, increases costs to the State. According to the National Association of State Purchasing Officers, no other State has such a reporting requirement.
- Presolicitation assistance rules – Section 50-10.5 (e). The prohibition on allowing State staff to engage in informal conversations with vendors without risking the vendor’s ability to bid on a subsequent procurement is chilling and puts State employees in the position of being unable to stay informed of new and developing technologies. Vendors are unwilling to share innovative, potential cost saving ideas with the State for fear of disqualification from a later procurement. This is especially important in the areas of Information Technology, “green” procurements and other areas with technologies that evolve rapidly.

**(3) NON-SB51-RELATED PROCUREMENT ISSUES**

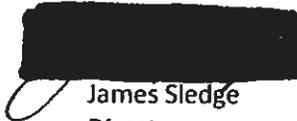
- Board of Elections registration - Section 20-160 of the IPC, intended to address and avoid “pay to play” requires most vendors to register with the State Board of Elections. Subsection (g) provides that “A copy of a certificate of registration must accompany any bid or proposal...” (emphasis added). Despite extensive education, many bidders who are properly registered with the State Board of Elections fail to attach their paper certificate to their bid and must be disqualified. During a sample 4 month period, 192 vendors were so disqualified, some of whom were the low bidders, thus costing the State money. All certificates are available electronically on the State Board of Elections website and we recommend that in lieu of requiring the attachment of a paper certificate to a bid package, that the status of the vendors’ certification be verified on the State Board of Elections website during the bid’s administrative review process and the vendors have until the time of contract award to obtain a registration. The contribution ban itself would, of course, remain in effect at all times and this change would affect the registration process only.
- Limited piggybacking – Currently, Illinois is one of only a few states that does not allow any form of “piggybacking,” that is the use of a contract that has been entered into through competitive bidding by another governmental entity. Piggybacking delivers the dual benefits of allowing Illinois to leverage potentially beneficial contracts entered into by other governmental entities and it frees up procurement staff for other activities. We recommend that the IPC be amended to allow Illinois to piggyback on contracts entered into by other governmental entities pursuant to the competitive bidding requirements of that entity. In the alternative, at a minimum we recommend that Illinois be allowed to piggyback on the contracts of any unit of the Federal government.

The State agencies continue to work closely with the EEC and CPOs to address many of the areas above. However, in some cases—particularly in the area of procurement responsibility and justification--only a legislative fix can best address the problem. We thank the Committee for the opportunity to provide these remarks and we are happy to provide additional information at any time.

Sincerely,



John F. Schomberg  
General Counsel  
Office of Governor Pat Quinn



James Sledge  
Director  
Department of Central Management Services