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AUTHORITY: Implementing and authorized by Section 5-25 of the Illinois Procurement Code [30 ILCS 500].

SOURCE: Adopted by emergency rulemaking at 22 Ill. Reg. 13905, effective July 1, 1998, for a maximum of 150 days; amended by emergency rulemaking at 22 Ill. Reg. 19096, effective October 1, 1998, for a period to expire November 27, 1998; adopted at 22 Ill. Reg. 20964, effective November 20, 1998; amended at 32 Ill. Reg. 16388, effective September 24, 2008; recodified, pursuant to PA 96-795, from 44 Ill. Adm. Code 526 to 44 Ill. Adm. Code 4 at 35 Ill. Reg. 10151; amended at 36 Ill. Reg. 10951, effective August 6, 2012; recodified Title heading at 39 Ill. Adm. Code 5903; amended at 40 Ill. Reg. 456, effective January 15, 2016; amended at 40 Ill. Reg. 11260, effective September 1, 2016; Subpart Q and R headers recodified at 42 Ill. Reg. 18550; amended at 43 Ill. Reg. 1781, effective February 15, 2019; amended at 44 Ill. Reg. 3884, effective March 13, 2020; amended at 46 Ill. Reg. 2921, effective February 18, 2022; amended at 50 Ill. Reg. ______, effective ____________.

SUBPART A: GENERAL

Section 4.10 General Exemptions

a) Except as specifically provided in the Code, *the Code* and this Part *do not apply to*:

1) *contracts between the State and its political subdivisions or other governments, or between State governmental bodies*. (For purposes of this subsection (a), "governmental bodies" includes the State universities and their governing boards, community colleges and their governing boards and school districts. This provision applies to contracts between governmental entities; it does not apply to State universities use of contracts established by other governmental entities);

2) *grants, except for the filing requirements of Section 20-80 of the Code*;

3) *purchase of care;*

4) *hiring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual;*

5) *collective bargaining contracts;*

6) *purchase of real estate, except that notice of this type of contract with a value of more than $25,000 must be published in the Procurement Bulletin within 10 calendar days after the deed is recorded in the county of jurisdiction* (This applies to purchases whether outright or by means of an installment purchase. The exercise of an option to purchase in a real estate lease is exempt, but the underlying lease is not exempt from this Part). *The notice shall identify the real estate purchased, the names of all parties to the contract, the value of the contract, and the effective date of the contract*;

7) *contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the chief legal counsel to the Governor shall give his or her prior approval when the procuring agency is one subject to the jurisdiction of the Governor, and provided that the chief legal counsel of any other procuring entity subject to* the *Code shall*

give his or her prior approval when the procuring entity is not one subject to the jurisdiction of the Governor. Anticipated litigation is that which a university may prosecute or defend before a court or administrative body and actions necessary to prepare for and conduct the effective legal prosecution or defense of litigation, including, but not limited to, the retention of counsel, investigators, expert witnesses and court reporters. This Section is applicable to equipment or services necessary in the furtherance of covert activities lawfully conducted by a university;

8) *Procurement expenditures by the Illinois Conservation Foundation when only private funds are used*;

9) *Public-Private agreements entered into according to the procurement requirements of Section 20 of the Public-Private Partnerships for Transportation Act and design-build agreements entered into according to the procurement requirements of Section 25 of the Public-Private Partnerships for Transportation Act;*

10) *Contracts for legal, financial, and other professional and artistic services entered into on or before December 31, 2018 by the Illinois Finance Authority in which the State of Illinois is not obligated. Such contracts shall be awarded through a competitive process authorized by the Board of the Illinois Finance Authority and are subject to Sections 5-30, 20-160, 50-13, 50-20, 50-35, and 50-37 of* the *Code, as well as the final approval by the Board of the Illinois Finance Authority of the terms of the contract;*

11) *Contracts for services, commodities, and equipment to support the delivery of timely forensic science services in consultation with and subject to the approval of the CPO as provided in Section 5-4-3a(d) of the Unified Code of Corrections* [730 ILCS 5], *except the requirements of Sections 20-60, 20-65, 20-70, and 20-160 and Article 50 of the Code; however, the CPO may, in writing with justification, waive any certification required under Article 50 of this Code. For any contracts for services that are currently provided by members of a collective bargaining* unit, *the applicable terms of the collective bargaining agreement shall be followed.*

12) *Contracts for participation expenditures required by a domestic or international trade show or exhibition of an exhibitor, member, or sponsor;*

13) *Contracts with a railroad or utility that require the State to reimburse the railroad or utilities for the relocation of utilities for construction or other public purpose.* ~~[30 ILCS 500/1-10(b)]~~

14) *Procurements that are necessary for increasing the recruitment and retention of State employees, particularly minority candidates for employment, including:*

A) *procurements related to registration fees for job fairs and other outreach and recruitment events;*

B) *production of recruitment materials; and*

C) *other services related to recruitment and retention of State employees.*

i) The university must make a good faith determination that the exemption is necessary and appropriate for the expenditure.

ii) The university must comply with the requirements set forth in Sections 20-160 and 25-60 and Article 50 of the Code.

iii) Copies of the contracts shall be made available to the CPO-HE immediately upon request.

iv) State responsibilities in hiring or the positions that effectuate hiring shall not be replaced or diminished.

v) This subsection (a)(14) shall be *inoperative on and after June 30, 2029.* [30 ILCS 500/1-10(b)]

b) Universities~~After October 1, 2017, universities~~ shall publish in the Bulletin notice of each contract with an annual value of more than $100,000 entered into under Section 1-10(b) of the Code, except for those procured under subsections (a)(1), (a)(2) and (a)(5) of this Section. Notice shall be published within 14 calendar days after contract execution. The CPO-HE shall prescribe the form and content of the notice.

c) The CPO-HE shall submit a report to the Governor and General Assembly no later than November 1 of each year that shall include, at a minimum, an annual summary of the monthly information reported to the CPO-HE by the universities. The CPO-HE will structure the required Bulletin publication to serve as a university's report, but the CPO-HE may request a report or additional information from a university if Bulletin publication is insufficient. At a minimum, this information published to the Bulletin shall include:

1) the name of the contractor;

2) a description of the supply or service provided;

3) the total amount of the contract;

4) the term of the contract; and

5) the exception to the Code utilized.

d) A copy of any or all of these contracts shall be made available to the CPO-HE within 14 days after request, unless a more immediate response is required.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.13 Additional Exemptions Applicable to Higher Education

a) *Except as provided in this Section, the Code shall not apply to procurements made by or on behalf of* universities *for any of the following:*

1) *Memberships in professional, academic, research, or athletic organizations on behalf of a* university, *an employee of a* university, *or a student at a* university.

2) *Procurement expenditures for events or activities paid for exclusively by revenues generated by the event or activity, gifts or donations for the event or activity, private grants, or any combination thereof.*

3) *Procurement expenditures for events or activities for which the use of specific potential contractors is mandated or identified by the sponsor of the event or activity, if the sponsor is providing a majority of the funding for the event or activity.*

4) *Procurement expenditures necessary to provide athletic, artistic or musical services, performances, events, or productions by or for a* university.

5) *Procurement expenditures for periodicals, books, subscriptions, database licenses, and other publications procured for use by a university library or*

academic department, except for expenditures related to procuring textbooks for student use or materials for resale or rental.

6) *Procurement expenditures for placement of students in externships, practicums, field experiences, and for medical residencies and rotations.*

7) *Contracts for programing and broadcast license rights for university-operated radio and television stations.*

8) *Procurement expenditures necessary to perform sponsored research and other sponsored activities under grants and contracts funded by the sponsor or by sources other than State appropriations.*

9) *Contracts with a foreign entity for research or other educational activities, provided the foreign entity either does not maintain an office in the United States or is the sole source of the service or product.* ~~[30 ILCS 500/1-13(b)]~~

10) *Procurement expenditures for any ongoing software license or maintenance agreement or competitively solicited software purchase, when the software, license, or maintenance agreement is available through only the software creator or its manufacturer and not a reseller.*

11) *Procurement expenditures incurred outside of the United States for the recruitment of international students.*

12) *Procurement expenditures for contracts entered into under the Public University Energy Conservation Act.*

13) *Procurement expenditures for advertising purchased directly from a media station or the owner of the station for distribution of advertising.* [30 ILCS 500/1-13(b)]

b) *Except as provided in this* Section, *the provisions of the Code shall not apply to contracts for:*

1) *medical supplies;*

2) *medical services necessary for the* direct *delivery of* patient *care and treatment at medical, dental, pharmaceutical, or veterinary teaching facilities* *used*~~*utilized*~~ *by:*

A) *Southern Illinois University;*

B) *the University of Illinois;* or

C) *any university-operated health care center or dispensary that provides care, treatment, and medications for students, faculty and staff.* [30 ILCS 500/1-13(b-5)]; or

3) *procurements made by facilities of any additional supplies or services that the operator of the facility deems necessary for the effective use and functioning of the medical supplies or services that are otherwise exempt from the Code under* Section 1-13(b-5) of the Code, *including, but not limited to, procurements necessary for compliance and management of federal programs.* [30 ILCS 500/1-13(b-5)].

c) *Except as provided in this* Section, *the provisions of the Code shall not apply to procurements for investment services made by or on behalf of the University of Illinois.*

1) Notice of intent to renew each contract identified in subsection (c) shall be published in the Bulletin at least 14 days prior to the execution of a renewal and the University of Illinois shall hold a public hearing for interested parties to provide public comment.

2) Notice of each contract extended, renewed, or entered under subsection (c) shall be published in the Bulletin within 5 days after contract execution.

d~~c~~) *Procurements made on or behalf of* universities *for the fulfillment of a grant shall be made in accordance with the Code to the extent practicable*. [30 ILCS 500/1-13(c)].

1) A university may request a waiver of contract, registration, certification, and hearing requirements if compliance is impracticable.

2) A university shall provide the CPO-HE with specific reasons for the waiver, including the necessity to contract with a particular contractor, and shall certify the university's good faith efforts to comply with the provisions of the Code. The CPO-HE shall provide a written justification for any waiver granted to a university.

3) Notwithstanding any waiver of the registration requirements of Section 20-160 of the Code, no business entity and any affiliated entity or person may make campaign contributions if otherwise prohibited under Section 50-37 of the Code.

4) For purposes of this Section, "grant" means *non-appropriated funding provided by a federal or private entity to support a project or program administered by a public institution of higher education and any non-appropriated funding provided to a sub-recipient of the grant*. [30 ILCS 500/1-13(f)]

e~~d~~) Notice of each contract with an annual value of more than $100,000 entered by a university identified in subsections (a) and (b) and each waiver issued in subsection (c) shall be published in the Bulletin within 14 calendar days after contract execution. The CPO-HE shall prescribe the form and content of the notice.

f~~e~~) The CPO-HE shall submit a report to the Governor and General Assembly no later than November 1 of each year that shall include, at a minimum, an annual summary of the monthly information reported to the CPO-HE by the universities. The CPO-HE will structure the required Bulletin publication to serve as the university's report, but the CPO-HE may request a report or additional information from a university if Bulletin publication is insufficient. At a minimum, this information published to the Bulletin shall include:

1) the name of the contractor;

2) a description of the supply or service provided;

3) the total amount of the contract,

4) the term of the contract;

5) the exception to the Code utilized; and

6) the justification for any waiver granted under subsection (c).

g~~f~~) A copy of any or all of these contracts shall be made available to the CPO-HE within 14 days after request, unless a more immediate response is required.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.15 Definition of Terms Used in This Part

As used throughout this Part, terms defined in the Illinois Procurement Code shall have the same meaning as in the Code and as further defined in this Section, and each term listed in this Section shall have the meaning set forth unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

"Amendment" − A written modification to a contract. An amendment may memorialize an action authorized by specific language in the contract (e.g., exercise of an option or showing price decrease or increase based on CPI), or may memorialize nonmaterial changes (e.g., change in names of notice contacts or number of periodic status meetings). An amendment may also be a change order as defined in this Section.

"Best Interest of the State" – For purposes of this Part, best interest of the State also includes best interest of the procuring university.

"Bid" − The response submitted by a bidder in a competitive sealed bidding process, to an Invitation for Bid or to a multi-step sealed bidding process.

"Bid Credit" – *Virtual dollar for a contractor or subcontractor to use toward future bids on contracts with the State for public works projects.* [30 ILCS 559/20-10]

"Bidder" − *One who submits a response in a competitive sealed bidding process, to an invitation for bid, or to a multi-step sealed bidding process.* [30 ILCS 500/1-15.02]

"Brand Name or Equal Specification" − A specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance and other characteristics needed to meet university requirements and that allows the submission of equivalent products.

"Brand Name Specification" − A specification limited to one or more items by manufacturers' names or catalogue numbers.

"Building Services" – Repairs to or maintenance of the structure, but does not include janitorial, window washing services, or services provided by university employees.

"Bulletin" – The volume of the Illinois Procurement Bulletin published by the CPO-HE, unless the context clearly means the volume of another CPO or the Illinois Procurement Bulletin generally.

"Change Order" – *A change in a contract term, other than as specifically provided for in the contract,* which is determined necessary to address needs that are best met by the contract holder, and that *authorizes or necessitates any increase or decrease in the cost of the contract or the time for completion*. [30

ILCS 500/1-15.12] A change order is an amendment to the contract.

"*Chief Procurement Office*" – *The offices to which the Chief Procurement Officers are appointed pursuant to Section 10-20* of the Code. [30 ILCS 500/1-15.13]

"Chief Procurement Officer" or "CPO-HE" – The Chief Procurement Officer for Public Institutions of Higher Education, as created by Section 10-20(3) of the Code, or a designee.

"Code" − The Illinois Procurement Code [30 ILCS 500].

"Commission on Equity and Inclusion" or "CEI" – The body created by the Commission on Equity and Inclusion Act [30 ILCS 574/40-1].

"Compostable" – The *item meets the ASTM D6400 standard of compostability and has been certified by the Biodegradable Products Institute as compostable.* [30 ILCS 500/45-23 and 45-24]

"Compostable Foodware" – Containers, bowls, straws plates, trays cartons, cups lids, forks, spoons, knives, and other items that are designed for one-time use for beverages, prepared food, or leftovers from meals that are compostable. [30 ILCS 500/45-23]

"Concession" – The right granted by a license, lease or other agreement to use State property, whether tangible or intangible. Also includes the right to engage in a certain activity on the lessor's property (e.g., a refreshment or parking concession).

"*Construction*" – As used in this Part, *building, altering, repairing, improving, or demolishing any public structure or building, or making improvements of any kind to public real property. Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings, or real property.* [30 ILCS 5/1-15.20]

"Construction Agency" – *The Capital Development Board for construction or remodeling of State-owned facilities; the Illinois Department of Transportation for construction or maintenance of roads, highways, bridges, and airports; the Illinois Toll Highway Authority for construction or maintenance of toll highways; the Illinois Power Agency for construction, maintenance, and expansion of Agency-owned facilities, as defined in Section 1-10 of the Illinois Power Agency Act* [20 ILCS 3855]*; and any other State agency (including universities) entering into construction contracts as authorized by law or by delegation from the Chief*

Procurement Officer. [30 ILCS 500/1-15.25]

"Construction Manager Services" – Services provided in the planning, pre-construction and construction phases of a construction project.

"Construction-related Professional Services" – Services performed that are governed by the Architectural, Engineering, and Land Surveying Qualifications-Based Selection Act [30 ILCS 535]. "Professional Services" as used in this Part means those services within the scope of the practice of architecture, professional engineering, structural engineering, or registered land surveying, as defined by the laws of this State.

"Construction Support" – Equipment, supplies and services necessary to the operation of a construction agency's construction program, but does not include construction-related services.

"Consulting Services" – Services provided by a business or person as an independent contractor to advise and assist a university in solving specific management or programmatic problems involving the organization, planning, direction, control or operations of a university. The services may or may not rise to the level of professional and artistic as defined in the Code and this Part.

"*Contract*" − *All types of State agreements, regardless of what they may be called, for the procurement, use, or disposal of supplies, services, professional or artistic services, or construction or for leases of real property* for which *the State is the lessee, or capital improvements, and including renewals, master contracts, contracts for financing through use of installment or lease-purchase arrangements, renegotiated contracts, amendments to contracts, and change orders.* [30 ILCS 500/1-15.30] The term "contract" includes, but is not limited to purchase, installment purchase, lease and rental contracts. The term contract, as used in the Code and this Part, does not include: supplies or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission, and for which there is no authorized competition, bonds, Certificates of Participation or contracts relating to bonds or Certificates of Participation issued by or on behalf of a State agency when the contractor or vendor is neither selected nor paid by the State agency. Also referred to as a "State contract" or a "university contract".

"*Contract Award*" – Except as otherwise defined in this Section for specific categories of procurements, *the determination that a particular* vendor *has been selected from among other* potential vendors *to receive a contract, subject to* resolution of any protest and *the successful completion of final negotiations. "Contract award" is evidenced by the posting of a Notice of Award or a Notice of*

Intent to Award to the respective volume of the Illinois Procurement Bulletin after all State agency required and SPO approvals have been obtained. [30 ILCS 500/15-25(b-5)]

"Contract Let" – The act of awarding a contract to a bidder that responded to an invitation for bids as part of a letting.

"Contractor" or "Vendor" − An individual, firm, partnership, corporation, joint venture or other legal entity that seeks, or has entered into, a contract with a State agency as defined in Section 1-15.30 of the Code. The terms contractor and vendor are used interchangeably for the purposes of the Code and this Part. In appropriate circumstances, the term shall also include subcontractors.

"Day" − Calendar day. In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a State or university holiday, as applicable, in which event the period shall run to the end of the next business day.

"Design-Bid-Build" – The traditional delivery system used on public projects in this State that incorporates the Architectural, Engineering, and Land Surveying Qualification Based Selection Act and the principles of competitive selection in the Code. [30 ILCS 537/10]

"Design-Build" – A *delivery system that provides responsibility within a single contract for the furnishing of architecture, engineering, land surveying and related services as required, and the labor, materials, equipment, and other construction services for the project.* [30 ILCS 537/10]

"Designee" – A person or category of persons identified by the CPO-HE or an SPO, in writing, to exercise procurement authority or to assist with the procurement process. A designee acts under procurement authority of the CPO-HE or SPO and has the responsibility for taking procurement actions in accordance with applicable laws, rules and policies, as limited by the terms of the delegation.

"Disposable" – *Serviceware designed for one-time use.* [30 ILCS 500/45-24]

"Disposable Food Service Container" – Includes, but not limited to, serviceware for take-out foods, bakery products, and leftovers from partially consumed meals. Does not include polystyrene foam coolers, egg carton containers, ice chests that are used for the processing or shipping of seafood or serviceware that is used to contain, transport or otherwise package raw, uncooked or butchered meat,

poultry, fish or seafood. [30 ILCS 500/45-24]

"Domestic Product" – A product that meets the requirements of the Procurement of Domestic Products Act. [30 ILCS 517]~~.~~

"*Electronic Procurement*" – The *conducting of some or all procurement functions over the internet.* [30 ILCS 500/1-15.40]

"Emergency Statement" – The statement filed with the Procurement Policy Board, Commission on Equity and Inclusion, CPO-HE, and Auditor General ~~and the Procurement Policy Board~~ setting forth the actual or estimated amount expended, the name of the contractor involved, ~~and~~ the conditions and circumstances requiring the emergency procurement, and a description of the university's best efforts to include contractors certified under the Business Enterprise Program in the emergency procurement process. [30 ILCS 500/20-20(c)]~~.~~

"Emergency Contract Award" – For purposes of an emergency contract, an emergency contract is awarded on the earlier of the date a State agency communicates to a vendor to start work, notice is published on the Illinois Procurement Bulletin identifying the vendor of the required supplies or services, or the date the contract is signed by both parties.

"Estimated Cost" – The amount expected to be paid for a procurement transaction. It is representative of all known work and may include potential and expected unscheduled work arising out of the requirements. The total estimated contract cost is not necessarily equivalent to the maximum cost.

"Evaluation Criteria" – The standards or factors by which the vendor and its bid or offer may be evaluated. These criteria may include, but are not limited to, specialized experience, technical qualifications, competence, capacity to perform, past performance, experience with similar projects, assignment of personnel to the project, and other appropriate factors.

"*Expatriated Entity*" – *A foreign incorporated entity that is treated as an inverted domestic corporation under section 835(b) of the Homeland Security Act of 2002 (6 U.S.C.~~USC~~ 395(b)) or any subsidiary of that entity. The federal regulations found at 26 CFR 1.7874-3 may be used to determine when 6 U.S.C.~~USC~~ 395(b)(3) applies.* [30 ILCS 500/1-15.120]

"Fiduciary Duty" – A CPO's, SPO's, or PCM's obligation to serve the best interest of the State of Illinois.

"Germane" – Closely or significantly related to, arising out of, or directly incidental to the original contract. Additional work or materials are germane if they are of small or minor importance, or are ordinary and comparatively unimportant departures from the details in the specifications. Changes that are a substantial departure from the nature, scope or scale of the original contract are not germane. (See Attorney General Opinion S-939.)

"*Grant*" – Unless otherwise specified, *the furnishing by the State of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award the primary purpose of which is to procure an end product for the direct benefit or use of the State agency making the grant, whether in the form of goods, services, or construction. A contract that results from such an award is not a grant and is subject to the Code.* [30 ILCS 500/1-15.42] When a grantor provides a grant or award to a university that authorizes or allows the university to award subgrants or subawards, the subgrant or subaward shall also be deemed a grant that is made by the university as agent of the grantor.

"Grounds Services" – Lawn care, landscaping, and snow and ice removal services.

"HUBZone Business" – A business that operates and employs people in Historically Underutilized Business Zones (HUBZone) as designated by the federal HUBZone Empowerment Act (15 U.S.C.~~USC~~ 657a). [30 ILCS 500/45-95(a)].

"*Invitation for Bids*" or "IFB" − *The process by which a purchasing agency requests information from bidders, including all documents, whether attached or incorporated by reference, used for soliciting bids.* [30 ILCS 500/1-15.45] Also referred to as "Competitive Sealed Bidding".

"Items" − Anything that may be procured under the Code and this Part.

"Letting" – A construction agency's act of advertising an invitation for bids for one or more construction projects.

"Master Contract" – A definite quantity, indefinite quantity or requirements contract awarded under the Code through which universities may place purchase orders. Master contracts include use by a single university, or for multiple State purchasing entities or other entities as authorized under the Governmental Joint Purchasing Act [30 ILCS 525].

"Multiple Award" – An award that is made to two or more bidders or offerors for similar supplies, services, or construction-related services.

"Natural Resources Services" – Services consist of non-supervisory activities of a routine, repetitive, non-discretionary nature not needing special expertise, training or education. These services include, but are not limited to, assisting in the operation of tree nurseries, fish hatcheries, game farms and sanctuaries; cleaning and maintenance of specialized facilities; repairing fences and building cages; mowing; and trail and ancillary facility repair.

"*Offer*" or "Proposal" – The response submitted by an offeror in a competitive sealed proposal process or to a Request for Proposals or Request for Information for real estate or capital improvement leases.

"*Offeror*" or "Respondent" – *Any person who submits a proposal in response to a competitive sealed proposal process or a request for proposals.* [30 ILCS 500/1-15.52]

"Plastic" – Synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shapes during their life cycle and after disposal. [30 ILCS 500/45-23]

"*Person*" – *Any business, public or private corporation, partnership, individual, union, committee, club, unincorporated association or other organization or group of individuals, or other legal entity.* [30 ILCS 500/1-15.55]

"Polystyrene Foam" – Blown polystyrene and expanded or extruded foams using a styrene monomer. [30 ILCS 500/45-24]

"Procured Products" – Assembled articles, materials or supplies purchased by a State agency. [30 ILCS 517/5]

"Procurement Compliance Monitor" or "PCM" – An individual appointed by the Executive Ethics Commission under Section 10-15 of the Code to oversee and review procurement processes.

"Procurement Officer" − The Chief Procurement Officer or appropriate State Purchasing Officer who is responsible for the particular procurement action.

"Procurement Policy Board" or "PPB" – The body created by Section 5-5 of the Code.

"Proposal" or "Offer" − The response to a Request for Proposals or Request for Information for real estate or capital improvement leases.

"Protest Review Office" – The office of the person designated in the solicitation document to whom protests must be directed. This person will respond to or coordinate the response to the protest.

"*Purchase of Care*" − *A contract with a person for the furnishing of medical, educational, psychiatric, vocational, rehabilitative, social, or human services directly to a recipient of a State aid program* [30 ILCS 500/1-15.68]. Purchase of care includes the furnishing of services directly to recipients of State aid programs or applicants for a State aid program. Purchase of care contracts may include some services that are administrative in nature, as long as the contract primarily provides direct care to recipients of State aid programs. Examples of purchase of care contracts include, but are not limited to, contracts related to care coordination programs under Title XIX of the Social Security Act, including contracts with managed care organizations; primary care case management services; prepaid ambulatory health plans; prepaid inpatient health plans; and direct care services provided under the Children and Family Services Act [20 ILCS 505]. Contracts that do not pertain to direct services to State aid recipients or that are primarily administrative in nature exceed the scope of the definition of a purchase of care contract and are not exempt from the requirements of the Code.

"*Purchasing Agency*" – *A State agency that enters into a contract at the direction of a State Purchasing Officer authorized by a Chief Procurement Officer or* at the direction of *a Chief Procurement Officer.* [30 ILCS 500/1-15.70]

"Qualifications~~Quality~~ Based Selection" or "QBS" – The source selection method for architectural, engineering and land surveying services, as defined by the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535].

"Qualified HUBZone Small Business Concern" – A business that qualifies under the HUBZone program administered by the U.S. Small Business Administration. [30 ILCS 500/45-95(a)]

"Qualified Products List" − An approved list of supplies described by model or catalogue numbers that, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

"Recyclable Foodware" – Items that are designed for one-time use for beverages, prepared food, or leftovers from meals and that are commonly accepted in local curbside residential recycling pickup. [30 ILCS 500/45-23]

"Renewal" – An agreement between the parties to a contract to authorize an additional contract period under the terms and conditions of the renewal provision in the original contract. Any renewal of a real estate lease for which a renewal provision is not present may be allowed in accordance with Sections 4.4015 and 4.4025.

"Request for Information" or "RFI" – The process of requesting information from interested parties to aid the State in decision making. This type of RFI is not a procurement method and will not result in a participant receiving a contract.

"Request for Information for Real Property or Capital Improvement Leases" or "RFI-Real Property Leases" or "RFI-RPL" – The process of seeking proposals for leases of real property or capital improvements as outlined under Article 40 of the Code.

"*Request for Proposals*" or "RFP" − *The process by which a purchasing agency requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals.* [30 ILCS 500/1-15.75]

"Request for Proposals-Professional and Artistic" or "RFP-P&A" − The process by which a purchasing agency requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals for professional and artistic services as defined in Section 1-15.60 of the Code.

"Requesting Agency" – The agency that requests that the CPO-HE or SPO conduct a procurement for its use. All procurements reserved to the CPO-HE that have not been delegated must be initiated by a purchase request.

"*Responsible Bidder*", "Responsible *Potential Contractor*" or "Responsible *Offeror*" − *A person who has the capability in all respects to perform fully the contract requirements and* who has *the integrity and reliability that will assure good faith performance. A responsible bidder or offeror shall not include a business or other entity that does not exist as a legal entity at the time a bid or offer is submitted for a State contract.* [30 ILCS 500/1-15.80]

"*Responsive Bidder*" − *A person who has submitted a bid that conforms in all material respects to the Invitation for Bids.* [30 ILCS 500/1-15.85]

"*Responsive Offeror*" – *A person who has submitted an offer that conforms in all material respects to the Request for Proposals.* [30 ILCS 500/1-15.86]

"Scoring Tool" – The document used to record the method used by the individuals evaluating the responses to a solicitation to judge qualifications or otherwise show whether or how well the responses met requirements set forth in the solicitation.

"*Services*" − *The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance* and its financing. [30 ILCS 500/1-15.90]

"Serviceware" – Container, bowl, plate, tray, carton, cup, lid, or other items designed to contain, transport, serve, or aid in the consumption of food or beverages. [30 ILCS 500/45-24]

"Single Prime" – A contracting method whereby one contractor provides all subdivisions of the work necessary to complete the construction project. These subdivisions include, but are not limited to, plumbing, heating, ventilating, electrical, fire protection, temperature control, and general work.

"Single-Use Plastic Disposable Foodware" – Containers, bowls, straws, plates, trays, cartons, cups, lids, forks, spoons, knives, and other items that are designed for one-time use for beverages, prepared food, or leftovers from meals and that are made of plastic, are not compostable, and are not accepted in residential curbside recycling pick up. [30 ILCS 500/45-23]

"Site Technician Services" – These services consist of non-supervisory activities of a routine, repetitive, non-discretionary nature not needing special expertise, training or education. These services include, but are not limited to, the maintenance of the site, including operating small farm-type equipment and trucks that do not require a Class C or D driver's license.

"Solicitation" – The document (e.g., IFB, QBS, RFP, RFP-P&A, or RFI-Real Property Lease) posted to the Procurement Bulletin requesting interested parties to submit a response for evaluation by the State. A request for information to determine if there is any interest on the part of a university in the supplies or services of a vendor or vendors, or on the part of a vendor or vendors in providing the supplies or services, is not considered a solicitation.

"Specification for a Common or General Use Item" − A specification that has been developed and approved for repeated use in procurements.

"*Specifications*" – *Any description, provision or requirement pertaining to the physical or functional characteristics or of the nature of a supply, service or other item to be procured under a contract. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service, professional or artistic service, construction, or other item for delivery*. [30 ILCS 500/1-15.95]

"Standard Illinois Certifications" − A form prescribed by the CPO-HE which outlines the material requirements and conditions to do business with a public university. The Standard Illinois Certifications become part of the contract.

"State" – As appropriate, collectively or individually, the State of Illinois, a State agency as defined in this Section, and all officers and employees of the foregoing.

"*State Agency*" – Generally, *all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the State, created by or in accordance with the constitution or statute, of the executive branch of State government and does include colleges, universities, and institutions under the jurisdiction of the governing boards of the University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governors State University, Northeastern Illinois University, and the Board of Higher Education. However, this term does not apply to public employee retirement systems or investment boards that are subject to fiduciary duties imposed by the Illinois Pension Code* [40 ILCS 5] *or to the University of Illinois Foundation* or any other university foundation. *"State agency" does not include units of local government, school districts, community colleges under the Public Community College Act* [110 ILCS 805], *and the Illinois Comprehensive Health Insurance Board.* [30 ILCS 500/1-15.100] For purposes of this Part, State agency means only State universities that are under the jurisdiction of the CPO-HE, unless the context indicates otherwise.

"State Purchasing Officer" or "SPO" – An individual appointed by the CPO-HE in accordance with Section 10-10 of the Code and assigned to exercise procurement authority at the direction of the CPO-HE.

"State Witness" – An employee of the State who observes the opening of bids or sealed proposals.

"Stringing" − Dividing or planning procurements with the intent to avoid use of competitive procedures.

"*Subcontract*~~*Subcontrac*~~*" – A contract between a person and* another *person who has a contract subject to the Code, pursuant to which the subcontractor provides to the contractor or, if the contract price exceeds the small purchase maximum established by Section 20-20 of the Code*~~*$50,000*~~*, another subcontractor some or all of the goods, services, real property, remuneration, or other monetary forms of consideration that are the subject of the primary contract and includes, among other things, subleases from a lessee of a State agency. For purposes of the Code, a "subcontract" does not include purchases of goods or supplies that are* *incidental to the performance of a contract by a person who has a contract subject to the Code.* [30 ILCS 500/1-15.107]

"*Subcontractor*" – *A person or entity who enters into a contractual agreement with a total value that exceeds the small purchase maximum established by Section 20-20 of the Code~~of $50,000 or more~~ with a person or entity who has a contract subject to the Code pursuant to which the person or entity provides some or all of the goods, services, real property, remuneration or other monetary forms of consideration that are the subject of the primary State contract, including subleases from a lessee of a State contract. For purposes of the Code, a person or entity is not a "subcontractor" if that person only provides goods or supplies that are incidental to the performance of a contract by a person who has a contract subject to the Code.* [30 ILCS 500/1-15.108]

"Subfactor" – A subset of a main evaluation factor. Main evaluation factors are identified in the solicitation.

"*Supplies*" − *All personal property, including, but not limited to, equipment, materials, printing, and insurance and the financing of those supplies that can be procured regularly or are available on the commercial market.* [30 ILCS 500/1-15.110] For purposes of this Part, the term "goods" is equivalent to the term "supplies".

"*Supplier*" – *Any person or entity providing supplies, including, but not limited to, equipment, materials, printing, and insurance, and the financing of those supplies that can be procured regularly or are available on the commercial market.* [30 ILCS 500/1-15.111]

"University" – The colleges, universities and institutions under the jurisdiction of the governing boards identified in the definition of "state agency" in accordance with Section 1-15.100 of the Code. For purposes of the Code and this Part only, "university" also includes the Illinois Math and Science Academy. The terms "university" and "public institution of higher education" are used interchangeably for the purposes of the Code and this Part.

"Unsolicited Bid" or "Unsolicited Offer" or "Unsolicited Proposal" − Any bid, offer or proposal other than one submitted in response to a solicitation.

"*Utilization Plan*" − *An attachment that is made to~~A form and additional documentations included in~~ all bids or proposals and that demonstrates the bidder's or offeror's efforts to meet the contract-specific Business Enterprise Program goal. The utilization plan shall indicate whether the prime vendor intends to meet the Business Enterprise program goal through its own* *performance, if it is a certified vendor, or through the use of subcontractors that are certified vendors.*~~*demonstrate a vendor's proposed utilization of vendors certified by the Business Enterprise Program* (see 30 ILCS 575) and the Veterans Business Program (Section 45-57 of the Code) *to meet the targeted goal.*~~

The utilization plan shall demonstrate that the vendor has either:

met the entire contract goal; or

requested a full or partial waiver of the contract goal.

If the prime vendor intends to use a subcontractor that is a certified vendor to fulfill the contract goal, a participation agreement executed between the prime vendor and the certified subcontractor must be included with the utilization plan~~*and made good faith efforts towards meeting the goal*~~. [30 ILCS 575/2(A)(11)]

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART B: PROCUREMENT RULES, POLICIES AND PROCEDURES

Section 4.525 Rules

a) Procurement under the jurisdiction of the CPO-HE or an appointed SPO shall be conducted in accordance with the Code and this Part, except as provided in this Section.

b) If legislation or court decision invalidates any Section of this Part or requires a different interpretation, the rules will be implemented in accordance with the legislation or court decision.

c) All proposed rules will be submitted to the ~~Procurement Policy Board (~~PPB~~)~~ and CEI during the public comment period established under the Illinois Administrative Procedure Act [5 ILCS 100]. Rulemaking, except for emergency rulemaking, shall be scheduled to allow the PPB and CEI at least 30 days to provide comments.

d) Emergency rules will be submitted to the PPB and CEI for review and comment with as much notice as is reasonably possible. A copy of the adopted emergency rules shall be provided to the PPB and CEI. The PPB and CEI~~Board~~ shall be given opportunity to comment on rules proposed to replace the emergency rules.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.530 Policies and Procedures

a) The CPO-HE may issue policies and procedures to further implement the Code and this Part. Policies and procedures shall be maintained in a structured format. The CPO-HE shall periodically review policies and procedures and determine if any should be issued as an administrative rule.

b) The CPO-HE shall notify the PPB and CEI of changes to policies or new policies. The CPO-HE may give notice by including the PPB and CEI on standard distribution list.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section 4.1525 Bulletin Content

a) The Bulletin will contain all content required by the Code. The Bulletin may include reference information of general interest (e.g., how to access the other volumes of the Illinois Procurement Bulletin, notice of new legislation, announcements and determinations) and may serve as the CPO-HE's website. The CPO-HE shall determine whether the CPO-HE, SPO or a designee will publish notices to the Bulletin. This determination shall be based upon considerations such as operational efficiencies, staff resources, system capabilities, workload and timing considerations.

b) Notice of each procurement shall be published in the Illinois Procurement Bulletin for at least 14 days and contain at least the following information, as applicable:

1) the name of the purchasing university;

2) a brief description of the supplies or services sought in the particular solicitation;

3) a procurement reference number, if used;

4) the date the procurement is first offered (procurements that require notice shall not be distributed to vendors prior to the date the notice is first published in the Bulletin);

5) the date, time and location for making submissions;

6) the method of source selection;

7) the name of the State Purchasing Officer in charge and the name of the university person on the purchasing staff assigned to the procurement (university buyer);

8) instructions on how to obtain a comprehensive purchase description and any disclosure and contract forms;

9) encouragement to prospective vendors to hire qualified:

A) Veterans;

B) Illinois minorities, women, persons with disabilities; and

C) Residents discharged from any Illinois adult correctional center.

c) Notice of each contract let or awarded that was subject of a notice in subsection (b) shall be placed in the Bulletin and shall be immediately issued electronically to those bidders or offerors submitting responses to the solicitation. Bidders and offerors must register (see Section 4.1515) and sign up for email notices. Should the Bulletin fail to send notice to bidders or offerors submitting responses to the solicitation, the time for filing a bid protest will be extended up to 7 days.

d) The SPO shall publish the notice of award or notice of intent to award to the Bulletin for a minimum of 14 days prior to execution of the contract, unless a shorter time is authorized by the Code or this Part. This notice shall contain at least the following information:

1) all the information published in subsection (b)(1) through (7);

2) the name of each vendor who submitted a response and the vendor selected for award;

3) the contract price for the vendor selected for award;

4) the total number of vendors who responded;

5) the number of unsuccessful vendors;

6) for each vendor who submitted a response, including the awarded vendor:

A) BEP Firms

i) the name or names of the certified Business Enterprise Program (BEP) firms identified in the vendor's submitted utilization plan;

ii) the ~~amount and~~ percentage of business proposed to be conducted by businesses owned by BEP vendors, as reflected in each utilization plan;

B) VBP Firms

i) the name or names of the certified Veterans Business Program (VBP) firms identified in the vendor's submitted utilization plan;

ii) the amount and percentage of business proposed to be conducted by businesses owned by VBP vendors, as reflected in each utilization plan;

iii) the total number of VBP vendors that submitted responses; and

7) the information recorded at the solicitation opening, including bid amount, and any other disclosures required to be published in the Bulletin.

e) If a university wishes to award to other than the lowest responsive and responsible vendor in accordance with Sections 20-10(g) and 35-30(f) of the Code, an SPO must make a written determination that awarding to the lowest responsive and responsible vendor is not in the best interest of the university and must post in the Bulletin a written explanation with the notice of award. The written explanation must also be filed by the SPO with the Legislative Audit Commission and must include:

1) a description of the university's needs;

2) a determination that the anticipated cost will be fair and reasonable;

3) a listing of all responsible and responsive bidders; and

4) the name of the bidder selected, the total contract price, and the reasons for selecting that bidder.

f) Notice of each contract renewal shall be approved by an SPO and posted in the Bulletin within 14 days after the determination by the university to execute a renewal of the contract. The date of the determination to execute a renewal shall be the date of the last approval required by the university to move forward with the renewal. Each university shall identify the renewal approval process, including the requirements contained in Section 8i of the Business Enterprise for Minorities, Women and Persons with Disabilities Act [30 ILCS 578], and shall ensure the renewal notice contains the required information and is posted to the Bulletin within the prescribed time. The notice shall include all information required by subsection (d) or shall reference this information electronically. The notice may include attachment of or reference to the original Bulletin notice.

g) Notice of renegotiated contracts and change orders, or series of change orders, shall be conducted and published in accordance with Section 4.2067.

h) The following information regarding emergency procurements shall be published in the Bulletin within 5 days after emergency contract award:

1) name of the procuring university;

2) name of the vendor selected for award;

3) brief description of what services or supplies the vendor intends to provide;

4) total cost (if only an estimate is known, it shall be published, but a subsequent notice repeating all required information shall be published when the final amount is known);

5) reasons for using the emergency method of source selection;

6) name of the CPO, SPO and name of the university buyer in charge of the procurement;

7) name of the university person who authorized the emergency contract action; and

8) statement of emergency procurement , if available, and, if not available, to be published as an amendment to the notice within 10 days after the emergency procurement.

i) In addition to the requirements of subsection (h), notice ~~of hearing~~ to extend an emergency contract must be posted in the Bulletin no later than 7 calendar days after the extension is executed~~14 days prior to the hearing~~. A completed emergency extension justification form as prescribed by the CPO-HE shall be published as part of the notice to extend an emergency contract. ~~of hearing.~~

j) The following information regarding intent to enter a sole source contract shall be published in the Bulletin at least 14 days prior to the required public hearing:

1) name of the purchasing university;

2) name of the intended sole source vendor;

3) a description of what services or supplies the vendor intends to provide;

4) name of the SPO and university buyer in charge of the procurement;

5) the date, time and location of the scheduled public hearing, with an explanation that the hearing will be cancelled if no person registers to attend; and

6) a completed sole source justification form as prescribed by the PPB.

k) Each university shall post in the Bulletin a copy of its annual report of utilization of businesses owned by minorities, women, and persons with disabilities. Posting is due within 10 days after the university submits its report to the Business Enterprise Council in accordance with Section 6(c) of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act.

l) The CPO-HE shall allow the universities to post in the Bulletin, at least annually, the reports of the granting of university concession required by Section 53-25 of the Code.

m) On or before January 1, each university purchasing food or food products shall publish in the Bulletin the *local farm or food products purchased in the immediately preceding fiscal year.* [30 ILCS 595/10(e)]

n) Each university shall post in the Bulletin a list of cooperative purchases under a procurement awarded under Section 4.5400 of the rules. The list shall be posted within 5 days after the beginning of each quarter of the fiscal year. The following information shall be included in the list:

1) name of purchasing university;

2) name of cooperative;

3) description of what services or supplies the vendor provided to the university;

4) vendor name;

5) procurement reference number;

6) total number of purchase orders; and

7) total spend.

o) Notice of other matters shall be published as required by law or at the direction of the CPO-HE.

p~~n~~) The CPO-HE may allow another CPO or another governmental entity to publish procurement related notices and other matters of public interest to the Bulletin.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.1535 Vendor Portal

a) In consultation with the PPB and universities, the CPO-HE may establish a vendor portal, use another CPO's vendor portal, or jointly operate a vendor portal with other CPOs if a single portal better serves the needs of State agencies and the vendor community. A vendor portal shall allow potential vendors to:

1) Provide certifications, disclosures, registrations and other documentation needed to do business with the State in advance of a particular procurement;

2) Submit the vendor's registration number, with a confirmation that the vendor portal information is accurate and current, as part of the vendor's response to a competitive solicitation or other contracting process, and with the understanding that the universities will be relying on the information when evaluating solicitation responses and awarding contracts.

b) The CPO-HE may accept the registration number of a vendor from another CPO's vendor portal provided that the vendor certifies that vendor portal information is current.

c) Once registered in the vendor portal, vendors must reregister annually to continue utilizing their vendor portal number in lieu of paper and this update satisfies the annual recertification for contracts and subcontracts of more than one year in duration or for any renewal term required by Section 50-2 of the Code.

d) A vendor may be~~is not~~ required to register in the vendor portal as a condition of conducting business with any university.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

Section 4.2005 General Provisions

a) Method of Source Selection. *Unless otherwise authorized by law, all State contracts shall be awarded by competitive sealed bidding, in accordance with Section 20-10* of the Code, *except as provided* elsewhere in the Code. The CPO-HE *may determine the method of solicitation and contract for all procurements pursuant to the Code.* The CPO-HE *shall have the sole authority to develop and distribute uniform documents for the solicitation, review and acceptance of all bids, offers and responses and the award of contracts.* [30 ILCS 500/20-5, 20-155]

b) Solicitation Response
A solicitation may contain forms that must be returned or may require compliance in a prescribed format. If a form or format is prescribed, prospective vendors shall submit those forms as instructed.

1) All bids/offers received shall be date and time-stamped and stored in a secure manner (e.g., locked file cabinet, safe, locked room, secure electronic portal, or other secure location) by the person responsible for receiving bids and offers.

2) No information regarding bids/offers received shall be disclosed to anyone prior to opening, except as authorized by the SPO. The SPO, in consultation with the university purchasing director, shall determine who is authorized to have information prior to opening. The name and title of the person authorized to have this information and the name and title of the person disclosing the information shall be documented in the procurement file. University personnel may confirm receipt of the bid or offer to the bidder or offeror, but no information is to be given otherwise.

3) If a bid or offer is opened for identification purposes or in error, the procurement file shall include a signed statement explaining the reason for

the mistake or error, including the name of every person involved. The bid or offer shall be re-sealed until the time set for the opening of the solicitation.

c) Late Bids or Proposals, Late Withdrawals and Late Modifications

1) Any bid or proposal (include any modification, withdrawal or other procurement-related submission) received after the time and date for receipt, or at other than the specified location, is late. A submission that is delivered to the wrong location but is subsequently delivered to the correct location by the date and time specified shall be considered. State employees shall not be responsible for ensuring subsequent delivery of misdelivered items. Delivery at the specified location and time shall be the sole responsibility of the bidder or offeror.

2) No late submission will be considered unless the SPO determines it would have been timely but for the action or inaction of State personnel directly serving the procurement activity (e.g., providing the wrong address). It is the responsibility of the bidder or offeror to ensure delivery at the time and to the place specified. Vendors submitting a late response will be notified and given the opportunity to retrieve the submission at their cost. Late submissions not returned to the vendor will be destroyed after all related procurement activity is complete and the resulting contract has been executed.

3) Records shall be made and kept for each late bid or proposal, late modification, or late withdrawal.

4) Any other submission that has a time or date deadline shall be treated in the same manner as a late bid or late proposal.

d) Solicitation Modifications

1) The SPO may, prior to the date or time for submitting a bid or proposal, approve an extension of the date or time for the convenience of the university.

2) The SPO may approve modification to the bid or proposal for reasons other than extending the date or time.

3) If notice cannot be made at least 72 hours in advance of the time the responses are due, the SPO shall approve an extension of time to respond for a reasonable period of time or shall authorize cancellation of the

solicitation. The SPO, after consultation with the university, shall determine which action best meets the needs and interests of the university and best promises transparency, competitiveness and other policies of the Code.

4) All notices under this subsection (d) shall be published in the Bulletin.

e) Bid/Proposal Firm Time

1) Unless otherwise provided in the solicitation, the vendor's bid/proposal must be kept firm for at least 30 days after the opening date.

2) After opening bids or proposals, the SPO may request bidders or offerors to extend the time during which the university may accept the bids or proposals, provided that, with regard to bids, no other change is permitted. This extension does not provide an opportunity for others to submit bids or proposals.

f) Electronic and Fax Submissions and Communications

1) Solicitation responses, notices and other official procurement-related communications may be made in electronic form if stated in the solicitation. The CPO-HE shall establish or approve the use and method of electronic submission in accordance with Section 20-180 of the Code. Submissions that must be secure will be opened at the designated date, time and place only by an authorized person.

2) Procurement-related communications that reflect final agreements or settlements in relation to protests, suspensions, debarments or contract matters must be signed by submitting a scanned copy of an original signature or by digital signature using an approved security process. Electronic communications must meet the same substantive requirements as paper communications except as allowed to reflect the different means of communication.

3) *Electronic signatures must meet the minimum security requirements established by the Department of Central Management Services* [5 ILCS 175/25-101(c)] and the accompanying regulations (14 Ill. Adm. Code 105).

4) Fax or email submissions are acceptable for small purchases.

g) Only One Bid or Proposal Received

1) If only one bid or proposal is received, the SPO may award to the single bidder or offeror if the SPO finds:

A) the price submitted is fair and reasonable, and other prospective bidders or offerors had reasonable opportunity to respond; or

B) there is not adequate time for resolicitation.

2) Otherwise the SPO may cancel the procurement.

h) Alternate or Multiple Bids or Proposals

1) Alternate bids or proposals may be accepted if permitted by the solicitation and in accordance with instructions in the solicitation.

2) Multiple bids or proposals may be accepted if permitted by the solicitation and submitted in accordance with instructions in the solicitation.

i) Multiple Items
A solicitation may call for pricing of multiple items of similar or related type. Award shall be as specified in the solicitation based on an individual line item, a group total of certain items, a core list, a "market basket" of related items representative of the total requirement, a grand total of all items, or other grouping method.

j) All or None Bids or Proposals
All or none bids or proposals may be accepted if the evaluation shows an all or none award to be the lowest cost or best value of those submitted.

k) Conditioning Bids or Proposals Upon Other Awards
Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall be rejected.

l) Unsolicited Bids or Offers
An award may not be made based on an unsolicited offer in place of the notice and competition requirements of the Code and this Part.

m) Clarification of Bids and Proposals
The university may request that a vendor clarify its bid or proposal as a part of the evaluation process. A copy of the clarification request must be provided to the SPO. A clarification is not an opportunity to make material changes or for submission of best and final offers as authorized elsewhere in this Part.

n) Assignment, Novation or Change of Name

1) Assignment and Novation. All assignments and novations must be in writing. No university contract may be assigned or novation entered into without the prior written consent of the CPO-HE or SPO, provided, however, that a vendor may assign money receivable under a contract after due notice to the State. The assignee or transferee, except in the case of assignment of payment only, must meet all requirements for contracting with the university. Any purported assignment or novation without prior written consent shall be null and void.

2) Recognition of a Successor in Interest; Novation. When in the best interest of the university, a successor in interest may be recognized in a written novation agreement in which the transferor and the transferee agree that:

A) the transferee assumes all of the transferor's obligations;

B) the transferee meets all requirements for contracting with the university;

C) the transferor waives all rights under the contract as against the university, and it is understood that the university does not waive any applicable right or remedy against the transferor unless expressly stated in the Novation Agreement; and

D) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required by the university, furnish a satisfactory performance bond.

3) Change of Name. A vendor may submit to the university a written request to change the name in which it holds a contract with the university. The name change shall not alter the parties, any of the terms and conditions of the contract or the obligations of the vendor.

o) Contracting for Installment Purchase Payments, Including Interest
Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].

p) Incorporation by Reference
A solicitation may incorporate documents by reference provided that the

solicitation specifies where the documents can be obtained.

q) Use of Source Selection Method that is Not Required
For procurements that are subject to the Procurement Code, if a university uses a method of source selection that it is not, by law, required to use (e.g., use of a competitive sealed bid for a small purchase), the university is bound to compliance with the Code and this Part governing the method of source selection used.

r) Vendor Signature
A bid or proposal submitted unsigned will be evaluated if the vendor submits a written signature acceptable to the SPO within the time specified by the SPO.

s) Stringing
Dividing or planning procurements with the intent to avoid use of competitive procedures (stringing) is prohibited. Periodic purchases of similar supplies from several different vendors to maintain inventory or resources are~~is~~ not stringing unless the purchases are planned to avoid use of competitive procedures. When the university or SPO identifies three or more purchases of the same item or similar items with a total value exceeding the small purchase limit during any 12 month period, the university purchasing director and the SPO shall jointly determine whether the circumstances, including, but not limited to, frequency of purchases, cost of individual purchases and future needs, warrant issuing a competitive or other consolidated procurement.

1) Cumulative small purchases under $1,000 made in a previously non-contemplated manner, as determined by a university, that exceeds the small purchase threshold during any 12 month period, do not constitute stringing. A university shall ensure maximum reasonable competition and promote small businesses, diversity, transparency and other statutory policies.

2) Small purchases must be monitored to prevent stringing. *Unlawful stringing of bids is a Class 4 felony.* [720 ILCS 5/33E-18]

t) Confidential Data
A vendor must clearly identify, by page and paragraph, any information submitted to the State claimed to be exempt from the disclosure requirement of the Illinois Freedom of Information Act [5 ILCS 140] (FOIA), including information the vendor claims is a trade secret or other competitively sensitive, confidential or proprietary information belonging to the vendor.

1) The vendor must identify the basis of the claim of exemption from FOIA

and show how that basis applies to the request for exemption. Information submitted without a claim of exemption from FOIA may be disclosed to the public without notice or permission.

2) Information submitted with a claim of confidentiality or exemption from FOIA may still be disclosed to the public if determined under applicable law that the claim or exemption does not meet the requirements for withholding the information under FOIA.

u) Notice of Subcontractor

1) Any contract entered into under this Part shall state whether the services of a subcontractor will be used. *The contract shall include the names and addresses of all known subcontractors with subcontracts with an annual value* *that exceeds the small purchase maximum established by Section 20-20 of the Code*~~*of more than $50,000*~~*, the general type of work to be performed by* each *subcontractor, and the expected amount of money each will receive under the contract.* [30 ILCS 500/20-120(a)] A subcontract shall include all certifications required by Article 50 of the Code.

2) If, at any time during the term of the contract, a contractor desires to add or change any subcontractors with subcontracts with an annual value *that exceeds the small purchase maximum established by Section 20-20 of the Code*~~of more than $50,000~~, the contractor shall promptly notify the university, in writing, of the names and addresses of the proposed subcontractors, the general type of work to be performed by the proposed subcontractor, and the expected amount of money each new or replaced subcontractor will receive under the contract.

3) No contractor shall change a subcontractor listed in the original bid or proposal, except for documented good cause. Any substitute subcontractor must meet all requirements of the Code applicable to subcontractors.

A) Good cause may include, but is not limited to:

i) failure of the subcontractor to execute a written contract after a reasonable period of time after the written contract is presented to the subcontractor by the contractor;

ii) bankruptcy of the subcontractor;

iii) death or disability of the subcontractor, if the subcontractor is an individual;

iv) dissolution of the subcontractor, if the subcontractor is a corporation or partnership;

v) failure of the subcontractor to meet bond requirements as specified in the solicitation;

vi) subcontractor becomes ineligible to perform on the subcontract because the subcontractor is suspended, debarred or otherwise ineligible to perform;

vii) a series of failures by the subcontractor to perform in accordance with the specifications, terms and conditions of its subcontract;

viii) failure of the subcontractor to comply with a requirement of law applicable to the subcontractor; or

ix) failure or refusal of the subcontractor to perform the subcontract.

B) A request of a contractor for a substitution of a listed subcontractor shall be submitted in writing to the university and shall include the reasons for the request. Consent of the university for a substitution shall be made in writing and be included in the procurement file.

C) Any substitution of an approved BEP subcontractor must be approved in accordance with 30 ILCS 575 and 44 Ill. Adm. Code 10 as it applies to universities.

D) Failure of a contractor to comply with this Section may result in cancellation of its contract and be grounds for suspension or debarment.

v) Pre-Solicitation Assistance

1) *For purposes of this subsection* (v)*, "business" includes all individuals with whom a business is affiliated, including, but not limited to, any officer, agent, employee, consultant, independent contractor, director, partner, manager* or shareholder *of a business.* [30 ILCS 500/50-10.5(e)]

2) Non-Prohibited Acts. This Section does not prohibit a person or business from submitting a bid or proposal or entering into a contract if the person or business:

A) Initiated a communication with an employee of the university to provide general information about products, services or industry best practices.

B) Responded to a communication initiated by an employee of the university for the purposes of providing information to evaluate new products, trends, services or technologies.

C) Provided written material to a university employee obtained from public sources, such as through an internet search, or literature packets obtained in conjunction with an event such as a trade show.

D) Provided, at the request of the university, general marketing material or makes a general sales presentation to show the person's qualifications or product capabilities. Material may be personalized for the procuring agency provided any personalization is obtained from publicly available sources.

E) Provided technology, supplies or services demonstrated to the university that represent industry trends and innovation and is not specifically tailored to meet the university's needs.

F) Asked for clarification on a published solicitation provided:

i) the response did not provide a competitive advantage to the person or business who asked for clarification; and

ii) the question and answer were published to the Bulletin as an addendum to the solicitation.

G) Provided market costs or production time to a person performing construction-related services to help determine the estimated costs and time to complete a construction project.

3) Prohibited Acts

A) Specifications. With the exception of standard specifications that a vendor makes available to any potential purchaser, a person or business may not submit specifications to a university for a particular transaction unless requested by a university employee. An SPO or person designated by the SPO must approve an employee's request for the specifications.

B) Assistance to University Employees. A person or business is prohibited from bidding on a solicitation and from having a contract or subcontract if the person or business assisted an employee of the university who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a contract. Assistance to a university employee may include any of the following:

i) Drafting (writes or assists the university with writing all or part of the procurement document);

ii) Reviewing (reads the document or comments on the procurement document or signified approval or disapproval);

iii) Directing (giving instructions or commands or in supervising or overseeing the preparation of the procurement document);

iv) Preparing (any activity relating to organizing or distributing the documents, including through the Procurement Bulletin); or

v) Providing similar assistance (e.g., conducting research or providing any advice used in drafting, reviewing, directing or preparing procurement documents).

C) A person (and its affiliated or related entities) that contracts with a university to write specifications for a particular procurement may not submit a bid or proposal or receive a contract or subcontract for that procurement.

4) Exceptions~~.~~

A) Any person or business who responds to an advertised request for information or other publicly available opportunity to provide information related to the procurement need or to review drafts of all or part of proposed procurement documents shall not be disqualified by virtue of responding to the State's publicly advertised request.

B) The CPO-HE may permit a university to accept a bid or enter into a contract or subcontract with a business that assisted a university in determining need or that assisted in reviewing, drafting or preparing documents related to a bid or contract, provided:

i) The bid or contract is essential to research administered by the university;

ii) The CPO-HE determines it is in the best interest of the university to accept the bid or contract; and

iii) Written approval is provided by the Executive Ethics Commission.

w) Pre-Submission Conference

1) A pre-submission conference may be conducted to enhance potential vendors' understanding of the procurement requirements. The pre-submission conference shall be announced as part of the solicitation notice. The conference may be designated as "attendance mandatory" or "attendance optional". For mandatory pre-submission conferences, a university shall document attendance on a form prescribed by the CPO-HE, which shall include the name of the attendee, the business represented, and the attendee's position within the business.

2) The conference shall be held long enough after the solicitation has been issued to allow potential vendors to become familiar with it, and sufficiently before solicitation opening to allow consideration by vendors of conference results in preparing their responses.

3) Supporting documentation of the conference shall be supplied to all prospective vendors known to have received a solicitation by posting the information on the Bulletin.

4) Nothing stated at the pre-submission conference shall change the solicitation unless a change is made by written modification to the solicitation. Amendments shall be supplied to all those prospective vendors through posting on the Bulletin.

x) Federally Funded Purchases

For purchases funded in whole or in part by United States Government funds, the solicitation will identify the federal agency providing the funds, the name of the fund and contact information where interested parties can obtain requirements for contracting in relation to those funds.

y) Evaluation Committee

1) Evaluation committee members shall be determined by the university, tailored to the particular solicitation, and include, as appropriate, technical or other personnel with expertise to ensure a comprehensive evaluation of offers.

2) Evaluation committee members and any technical or other personnel with expertise assisting with the evaluation must not have any conflicts of interest or apparent conflicts of interest and must commit to the time necessary to complete all evaluations and attend any necessary evaluation meetings.

3) Scoring and recommendation of any committee member who does not complete the entire evaluation and scoring will not be considered in determining the final scores.

4) After consultation with the university purchasing director, evaluation committee members may be removed by the SPO for failure to comply with instructions or directions or to ensure the integrity of the procurement. The SPO shall state in writing the reasons for removing a committee member.

5) The SPO has the right to attend all evaluation meetings.

z) Confidentiality and Conflicts

1) To protect the integrity of the procurement process, persons having access to confidential procurement information or participating in the procurement process may be required to execute a confidentiality and conflict of interest form as prescribed by the CPO-HE.

2) Bids and offers and any modifications shall be opened in a manner to avoid disclosing contents to competitors. Until an award recommendation is made, no university personnel or contractual agents, other than the evaluation committee and those assigned to the procurement, may review the bids or offers, except with justification from the purchasing director and approved by the SPO.

3) While the procurement is on-going, a university shall not disclose any information related to the procurement to any other bidder, offeror, or any other person not assigned to the procurement, other than information that was recorded, read and made publicly available at the opening of the bids or offers. After completion of the evaluation and award recommendation, the university may conduct discussions with management and the board of trustees if necessary to obtain approval for award prior to publishing the award in the Bulletin.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.2012 Multi-Step Sealed Bidding

a) Definition
Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the State, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

b) Conditions for Use
The multi-step sealed bidding method may be used when it is determined in writing by the SPO that it is not practical to prepare initially a definitive purchase description that will be suitable to permit an award based on price. Multi-step sealed bidding may be used when it is considered desirable:

1) to invite and evaluate possible diverse technical offers to determine their acceptability to fulfill the purchase description requirements; and

2) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, when appropriate, obtain supplemental information, permit revisions of technical offers, or amend the purchase description.

c) Pre-Submission Conference in Multi-Step Sealed Bidding
Prior to the submission or evaluation of unpriced technical offers, a pre-submission conference as contemplated by Section 4.2005(w) (Pre-Submission Conference) may be conducted by the SPO or designee.

d) Procedure for Phase One of Multi-Step Sealed Bidding

1) Form. Multi-step sealed bidding shall be initiated by the issuance of an

Invitation for Bids in the form required by Section 4.2010 (Competitive Sealed Bidding), except as otherwise provided in this subsection (d). In addition to the requirements set forth in Section 4.2010, the multi-step IFB shall state:

A) that it is a multi-step sealed bid procurement, that only unpriced technical offers are requested, and that priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

B) the criteria to be used in the evaluation of the unpriced technical offers;

C) that the SPO or designee may conduct oral or written discussions of the unpriced technical offers; and

D) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the IFB.

2) Amendments to the IFB. After receipt of unpriced technical offers, amendments to the IFB must occur before pricing is opened and shall be distributed only to responsive bidders who submitted ~~unpriced~~ technical offers, and those bidders shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the SPO, a contemplated amendment will significantly change the nature of the procurement, the IFB may be canceled in accordance with Section 4.2040 (Cancellation of Solicitation; Rejection of Bids or Proposals) and a new IFB issued.

3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers submitted by bidders shall be opened in the presence of at least one State witness or through an electronic procurement system approved by the CPO-HE.

4) Evaluation of Unpriced Technical Offers. Unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the IFB.

5) Unacceptable Unpriced Technical Offer. When the SPO determines a bidder's unpriced technical offer does not meet criteria, the offer shall be rejected.

6) Discussions. The university, in consultation with the SPO, may conduct discussions with a bidder to determine in greater detail the bidder qualifications and to explore with the bidder its ability to provide the specific supply or service and the bidder proposed method of performance. Each bidder shall be given fair opportunity to make revisions authorized as a result of discussions.

e) Procedure for Phase Two

1) Initiation. Upon the completion of phase one, the SPO or designee shall either:

A) open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or

B) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.

2) Conduct. Phase two shall be conducted as any other competitive sealed bid procurement except that only price and related factors are evaluated.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.2015 Competitive Sealed Proposals

a) Competitive Sealed Proposals may be used whenever permitted by the Code and as described in this Part.

b) The Competitive Sealed Proposal method of source selection may be used to procure the following categories. Note that the following services, if they are professional and artistic, must be procured in accordance with Section 4.2035.

1) electronic data processing equipment, software and services;

2) telecommunications equipment, software and services;

3) consulting services;

4) employee benefits and management of those benefits; and

5) insurance and banking services.

c) Competitive Sealed Proposals may be used on a case-by-case basis to procure other needs when it is determined in writing by the SPO that competitive sealed bidding is either not practicable or advantageous.

d) The Competitive Sealed Proposal method differs from competitive sealed bidding in two ways: it permits discussions with competing offerors and changes in their proposals, including price and it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract. Factors to be considered in determining whether competitive sealed bidding is either not practical or advantageous include:

1) When evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, when the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or when the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration;

2) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;

3) whether offerors may need to be afforded the opportunity to revise their proposals, including price;

4) whether award may need to be based upon a comparative evaluation, as stated in the Request for Proposals, of differing price, quality and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal;

5) whether the primary consideration in determining award may not be price; and

6) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State.

e) Content of the Request for Proposals
The RFP shall be prepared in accordance with Section 4.2010 (Competitive Sealed Bidding), provided that it shall also include:

1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for

award;

2) a statement of when and how price should be submitted.

A) The RFP shall identify in the solicitation what parts or features of the work are essential and what options may be included in the project. An option is a right to purchase additional supplies or services identified in the solicitation and directly relates to additional features or services of the underlying supply or service. All options must be clearly identified in the solicitation as optional work.

B) The solicitation shall identify how the university will evaluate offers to determine the most advantageous proposal for award purposes by identifying whether options will or will not be included in the evaluation.

C) The State expects prices for the required and optional supplies and services to be the lowest competitive market prices available for a customer of like type and of like circumstance. If the university solicits required and optional supplies or services, but awards based on the required supplies and services, the university may reject any response to the solicitation if the required or optional prices are materially unbalanced in relation to each other. For example, if a vendor submits an artificially low price for the required supplies and services but has submitted an artificially high price for the options, the prices are presumed to be unbalanced. Unbalanced prices are not conducive to competitive comparison and may not be in the best interests of the State.

D) Evaluation of options does not obligate the university to exercise those options. If the university adds options not accepted at the time of contract award, a change order shall be executed based on the price provided in the contract. Notice of the exercise of the options shall be published to the Bulletin 14 days in advance of exercise of the options.

E) Pricing for any renewal terms identified in the solicitation shall be applied in determining the price. A renewal term is not an option; and

3) a statement that revisions may be requested, after discussions, for the purpose of obtaining best and final offers.

f) Receipt and Registration of Proposals

1) Proposals and modifications shall be opened publicly at the time, date and place designated in the RFP in the presence of a State witness, or through an electronic procurement system approved by the CPO-HE.

2) The person opening the proposals shall not serve as a witness. The name of the person opening the proposals, the name of the person serving as the State witness, the name of each offeror, the number of modifications received (if any), a description sufficient to identify the supply or service item offered, a notation that the package contains a price proposal, and such other information as determined by the CPO-HE or SPO shall be recorded on a form prescribed by the CPO-HE, read aloud, and otherwise made available through an electronic procurement system approved by the CPO-HE.

g) Evaluation of Proposals

1) Evaluation Factors in the RFP. The RFP shall state all of the evaluation factors, including price, and their relative importance. Evaluation subfactors, if any, and their relative importance must be finalized prior to the opening and made available for inspection and copying upon opening. However, all price subfactors and their relative ranking must be shown in the RFP.

A) Demonstrations or presentations may be part of the evaluation criteria if provided for in the solicitation. The results of a demonstration or presentation may be included in scoring the proposal or to confirm the validity of the written proposal.

B) The criteria for demonstrations or presentations shall relate to the performance and intended use of the supply or service.

C) The RFP shall state the criteria for being invited to provide a demonstration or presentation.

D) Demonstrations or presentations shall be conducted in a manner that provides fair and equitable treatment to offerors.

2) Evaluation. The evaluation shall be based solely on the evaluation factors set forth in the RFP and no other factors shall be considered, except as communicated in advance to each proposer with opportunity to make

necessary adjustments to the proposal.

A) Numerical rating systems shall be used unless another scoring tool is authorized by the SPO. Any scoring tool shall reflect the evaluation criteria and ranking set forth in the RFP and any subfactors identified at the opening.

B) Proposals shall be submitted in three parts: the first, covering the price; the second, covering commitment to diversity; and third, covering all other items. Each part shall be evaluated and ranked independent of all other parts of all proposals. Each member of the evaluation committee must read and evaluate the third part individually and independently of all other members. All fields of the individual scoring sheet must be completed by each member of the evaluation committee.

i) The second part must include a description of the offeror's commitment to diversity~~Commitment to Diversity~~. (See Sec. 20-15 of the Code.) In the event a proposal does not include this part, commitment to diversity shall be scored zero points.

ii) The evaluators shall consider the information provided in the response and the quality of that information when evaluating responses. Offerors must show a demonstrated commitment to diversity. The RFP will assign an~~and require the~~ allotment of points for commitment to diversity~~Commitment to Diversity~~. Points for the commitment to diversity part must be equivalent to ~~Commitment to Diversity must account for~~ 20% of the total points assigned to the third part per the RFP.

iii~~ii~~) Factors to be considered in the award of points for the commitment to diversity~~Commitment to Diversity~~ component include, but are not limited to:

- *whether or how well the offeror, on the solicitation being evaluated, met the goal of contracting or subcontracting with businesses owned by women, minorities, or persons with disabilities;*

- *whether the offeror, on the solicitation being evaluated, assisted businesses owned by women,* *minorities, or persons with disabilities in obtaining lines of credit, insurance, necessary equipment, supplies, materials, or related assistance or services;*

- *the percentage of prior year revenues of the offeror that involve businesses owned by women, minorities, or persons with disabilities;*

- *whether the offeror has a written supplier diversity program, including, but not limited to, use of diverse vendors in the supply chain and a training or mentoring program with businesses owned by women, minorities, or persons with disabilities; and*

- *the percentage of members of the offeror's governing board, senior executives, and managers who are women, minorities, or persons with disabilities.* [30 ILCS 500/20-15(e-5)]

C) After completion of the individual evaluations, the evaluation committee may meet to discuss the proposals to ensure full understanding of the proposals. The evaluation committee shall meet if significant or substantial variance of scores, divergent scoring comments, or other information suggests the need for further discussion.

D) No committee member shall attempt to unduly influence another member's scores by virtue of the member's individual or organizational rank within the university. After consideration of comments, individual evaluators may, for good cause, adjust their scores on their individual scoring sheets.

E) Evaluation of the parts may be conducted simultaneously, provided different evaluators are used to evaluate each part and no information is exchanged between the evaluators prior to completion of the evaluation. The price proposal shall be opened in the presence of a State witness and distributed to the appropriate evaluators.

h) Proposal Discussions with Individual Offerors

1) Purposes of Discussions. Discussions are held to:

A) promote understanding of the university's~~University's~~ requirements and the offerors' proposals (e.g., determine in greater detail milestones, deliverables and timelines for completion of work); and

B) facilitate arriving at a contract that will be most advantageous to the State, taking into consideration price and the other evaluation factors set forth in the RFP.

2) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and clarifications of proposals. Discussion may be conducted by the university, in consultation with the SPO, with vendors reasonably susceptible of being awarded a contract based on qualifications and price. If during the discussions it is determined there is a need for any substantial revision of, or change to, the RFP, the RFP shall be canceled and may be resolicited to incorporate the clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

3) Best and Final Offers. The SPO may request best and final offers from those offerors deemed acceptable after completion of any discussions. Best and final offers shall be submitted by a specified date and time. The SPO may conduct additional discussions or require another submission of best and final offers. The scope of the best and final offer and the number of vendors allowed to participate shall be defined by the SPO. The primary objective of best and final offers is to maximize the university's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. If an offeror does not submit either a notice of withdrawal or another best and final offer, the offeror's immediately previous offer will be construed as its best and final offer.

i) Award

An award shall be made by the SPO pursuant to a written determination showing the basis on which the award was found to be most advantageous to the State, taking into consideration price and evaluation factors set forth in the RFP. The contract file shall contain the basis on which the award is made. Any changes negotiated after award, other than reduction in price, must be submitted to the SPO for approval prior to contract execution.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.2020 Small Purchases

a) When making a small purchase, the university shall ensure maximum reasonable competition and promote small businesses, diversity, transparency and other statutory policies. For all small purchases of $20,000 or more, quotes must be sought from at least three vendors whenever practical, be in writing, and be maintained in the procurement file.

b) Small Purchase Threshold

1) Individual procurements of $100,000 or less for supplies or services, other than professional and artistic, may be made without the notice or level of competition otherwise required of competitive sealed solicitations.

2) Procurements for construction and construction-related services of $100,000 or less may be made without the notice or level of competition otherwise required of competitive sealed solicitations.

3) Procurements of $100,000 or less for professional and artistic services and that have a nonrenewable term of one year or less may be made without the prior notice or level of competition otherwise required of competitive sealed solicitations. Notice of award of these small professional and artistic service contracts must be published in the Bulletin within 14 days after contract execution, and shall include the name of the SPO, reason for the exception, description of the procurement, name of the university decision maker, contract reference number and contract price.

c) Determination and Application of CPI

1) Each April the CPO-HE will determine the CPI adjustment to the small purchase thresholds applicable to the next fiscal year.

2) If the CPI is greater than zero, the thresholds identified in Section 20-20(a) of the Code will be reduced in an amount that, with the CPI increase, would result in the small purchase thresholds remaining as stated in subsection (b).

3) By July 1, 2019 and every five years thereafter, the CPO-HE will review the small purchase thresholds to determine if a modification to the thresholds is needed. If a modification is needed, the CPO-HE shall consult with the PPB and CEI~~Procurement Policy Board~~.

d) Determination of Small Purchase Status

1) In determining whether a contract is under the small purchase limit, the stated value of the supplies or services, plus any optional supplies and services, and the value of any renewals, determined in good faith, shall be utilized. Trade-in value is not to be considered in determining whether a contract is under the small purchase limit. When the value is calculated month-to-month or in a similar fashion, the amount shall be calculated for a 12 month period.

2) If only a unit price or hourly rate is known, the contract shall be considered small and shall have a not-to-exceed limit applicable to the type of procurement (see subsection (a)).

3) If, after signing the contract, the actual cost of completing the contract is determined to exceed the small purchase amount, and the SPO determines that a supplemental procurement is not economically feasible or practicable because of the immediacy of the agency's needs or other circumstances, the SPO shall follow the procedures for sole source or emergency procurement, whichever is applicable, to complete the contract.

e) Purchases shall not be artificially divided or intentionally made in a contemplated manner so as to avoid a competitive procurement.

f) Repetitive Need
If there is a repetitive need for small procurements of the same type (which may be evidenced by a pattern of small purchases, as determined by the university or the SPO), the university shall consult with the SPO to consider whether issuing a competitive sealed bid or proposal for procurement of those needs is in the best interests of the State.

g) Certifications
All small purchases with an annual value exceeding $50,000 shall be accompanied by the Standard Illinois Certifications prescribed by the CPO-HE.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.2030 Emergency Procurements

a) Authority to Make Emergency Procurements
The provisions of this Part apply to every procurement over the small purchase

limit set in Section 4.2020 (Small Purchases) made under emergency conditions. A university shall have the authority to make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods.

b) Statutory Emergency Conditions
A statutory emergency condition exists:

1) when there exists a threat to public health or public safety;

2) when immediate expenditure is needed for repairs to university property in order to protect against further loss or damage to university property;

3) to prevent or minimize serious disruption in critical university services that affect health, safety, or collection of substantial State revenues; or

4) to ensure the integrity of university records.

c) Quick Purchase. The quick purchase emergency method of source selection is allowed in certain situations. Quick purchase situations include,~~including,~~ but are not limited to:

1) protecting the health and safety of any person;

2) items are available on the spot market or at discounted prices for a limited time so that good business judgment mandates a "quick purchase" immediately to take advantage of the availability and price;

3) rare items, such as articles of historical value or art collections, are available for a limited time;

4) the opportunity to obtain entertainment, speakers and athletic and other events or performances (not exempt under Section 1-13 of the Code) is available for a limited time;

5) immediate action is necessary to avoid lapsing or loss of federal or donated funds.

d) Scope of Emergency Conditions
Emergency procurement shall be limited to those supplies, services, construction or other items necessary to meet the emergency need. In certain situations, the purchase to meet the immediate need (i.e., the temporary solution) may, by necessity, also be the permanent solution. In this event, the notice shall describe

that circumstance.

e) Source Selection Methods

Any method of source selection, whether or not identified in this Part, may be used to conduct the procurement in emergency situations. Whenever practical, existing State contracts shall be utilized. Emergency procurements shall be made with as much competition as is practicable under the circumstances, while also recognizing the need to obtain the goods or services in time to meet the emergency need. Universities shall use best efforts to include contractors certified under the Business Enterprise Program in the emergency procurement process. ~~Such competition as is practicable shall be obtained recognizing the need to obtain the item in time to meet the emergency need.~~ Documentation of all efforts made to obtain competition, including efforts at diversity, shall be made part of the procurement file.

f) Determination and Record of Emergency Procurement

1) Determination. The university shall make a written determination stating the basis for an emergency procurement, showing that the situation meets criteria for an emergency established by the Code and this Part and providing the reason for selecting the particular vendor. These determinations shall be kept in the contract file.

2) Emergency Contract Award. For purposes of an emergency contract, an emergency contract is awarded on the earliest of the date a university communicates to a vendor when to start work, the date of publication on the Illinois Procurement Bulletin identifying the selected vendor of the required supplies or services, or the date the contract is signed by both parties. Documentation of the contract award date shall be part of the procurement file.

3) Emergency Statement. The university shall prepare an emergency~~a~~ statement for each emergency procurement (including statutory, quick purchases and extensions of emergency contracts beyond 90 days) and shall file it with the CPO-HE, PPB,~~ and~~ Auditor General, and CEI within 10 days after the contract is awarded. The emergency statement shall be submitted electronically through the Bulletin, but if the Bulletin is not available, the emergency statement shall be submitted through alternate means. The emergency statement shall include the following information:

A) the vendor's name;

B) the amount and type of the contract (if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known);

C) a description of what the vendor will do or provide;

D) the reasons for using the emergency method of source selection.

4) Publication. Notice of the emergency procurement shall be published in the Bulletin as specified in Sections 15-25(c) and 20-30 of the Code no later than 5 days after the contract is awarded and shall include a description of the procurement, the reasons for the emergency procurement, the emergency statement, and the total cost. When only an estimate of the total cost is known at the time of publication, the estimate shall be identified as an estimate and published. When the total cost is determined, it shall also be published in like manner before the 10th day of the next succeeding month.

g) Duration of Emergency Contract

1) The term of the temporary solution emergency contract shall be limited to the time reasonably needed for a competitive procurement for the permanent solution, not to exceed 90 days.

2) A temporary solution emergency contract may be extended beyond 90 days with the approval of~~if~~ the CPO-HE. The~~determines additional time is necessary and the contract scope and~~ duration must be~~are~~ limited to the scope of the emergency. Prior to execution of the extension, the university shall provide the CPO-HE with written justification for the extension using the form prescribed by the CPO-HE~~a public hearing shall be held at which any person may present testimony~~.

3) Notice of Extension. Notice of an approved extension to~~intent to extend~~ an emergency contract shall be published in the Bulletin no later than 7 days after the extension is executed.~~at least 14 days prior to a public hearing.~~ Notice shall include at least a description of the need for the emergency extension and~~,~~ the vendor.~~, and the date, time and location of the public hearing.~~

~~4)~~ ~~The initial determination as to whether an emergency shall be extended for a term longer than 90 days shall be requested by the university, in the form of an extension request submitted to the SPO using the form prescribed by the CPO-HE. The request shall include the justification for the extension. Prior to execution of the extension, a public hearing shall be held at which~~

~~any person may present testimony. The CPO-HE may conduct the hearing or may authorize a hearing officer to hold the hearing and make a recommendation. The CPO-HE shall make a final determination as required by Section 20-30(a) of the Code. The final determination shall be published in the Bulletin. The term of the proposed contract extension may be shortened or lengthened as determined by the CPO-HE.~~

~~h) Contract Extension Hearing~~
~~The hearing shall be conducted in accordance with Subpart U.~~

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.2033 Best Value Procurements (Repealed)

~~a) Definition – *A best value procurement means a contract award determined by objective criteria related to price, features, functions, and life-cycle costs that may include:*~~

~~1) *total cost of ownership, including warranty, under which all repair costs are borne solely by the warranty provider; repair costs; maintenance costs; fuel consumption; and salvage value;*~~

~~2) *product performance, productivity, and safety standards;*~~

~~3) *the supplier's ability to perform to the contract requirements; and*~~

~~4) *environmental benefits, including reduction of greenhouse gas emissions, reduction of air pollutant emissions, or reduction of toxic or hazardous materials.*~~

~~b) A best value source selection may only be used for *purchases of heavy mobile fleet vehicles and off-road construction equipment. The total annual value of vehicles and equipment purchased through the best value source selection shall not exceed $20,000,000 per university.* [30 ILCS 500/25-85] Each university shall track expenditures made under this method of source selection and shall report annually the cumulative value of these expenditures to the CPO-HE.~~

~~c) A best value procurement shall be conducted in accordance with Section 4.2015 (Competitive Sealed Proposals). In addition to the requirements of Section 4.2015, the solicitation document shall:~~

~~1) Specify what performance factors will be given weighted value.~~

~~2) Identify all evaluation factors to be used in determining the successful offeror.~~

~~3) Give substantial weight to pricing in the evaluation of the successful offeror.~~

~~d) Award will be made to the offeror proposing the best combination of performance, qualifications, price and other factors identified in the evaluation criteria.~~

~~e) In addition to the publication requirements contained in Section 4.1525(d) (Bulletin Content), upon the written request of any person or entity that submitted an offer, notice of award shall be posted 24 hours in advance of contract execution in a public place at the offices of the university. The solicitation document shall identify where the notice of award shall be posted.~~

~~f) Protests may be filed by any person or entity that submitted an offer and will be conducted in accordance with Section 4.5550 (Protests). Within 10 days after filing a protest, the protesting offeror shall file a full and complete statement with the CPO-HE or Protest Review Officer identifying the grounds for the protest and any facts in support of the protest.~~

(Source: Repealed at 50 Ill. Reg. ______, effective ____________)

Section 4.2035 Competitive Selection Procedures for Professional and Artistic Services

a) Application

1) The provisions of this Section apply to every procurement of professional and artistic services except those subject to the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535] and except as provided in subsection (e).

2) "*Professional and artistic services*" *means those services provided under contract to a* university *by a person or business, acting as an independent contractor, qualified by education, experience and technical ability* [30 ILCS 500/1-15.60].

b) Professional and artistic services are further defined as follows:

1) "Qualified by education" means the individual who would perform the services must have the level of experience appropriate to the task, as specified in the Request for Proposals.

2) "Qualified by experience" means the individual who would perform the services must have the level of general experience specified in the Request for Proposals.

3) "Qualified by technical ability" means the individual who would perform the services demonstrates a high degree of skill or ability in performing services that are the same, similar or closely related in nature to those specified in the Request for Proposals.

4) An essential element distinguishing professional services from other services is confidence, trust and belief in not only the ability, but the talent, of the individual performing the service.

5) Professional and artistic services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional and artistic services contracts.

6) If the professional or artistic contract is with a firm or other business entity, the individuals whose education, experience and technical ability provided the basis on which the firm or other business entity was selected must meet the qualifications.

7) When a university requires services that meet the requirements of this subsection (b), the competitive selection procedures described in this Section must be followed. Services that do not meet the requirements of this Section must be procured in accordance with the other methods of source selection authorized by the Code and this Part.

c) The categories of services enumerated in this subsection (c) shall be considered and procured as professional and artistic services. With regard to other services, the SPO may determine whether the factors identified in subsection (b), when applied to particular services to be procured, require the services to be procured as professional and artistic under these competitive selection procedures, or as services that are subject to one of the other methods of source selection authorized by the Code and this Part. The following categories are examples of disciplines that would always be professional and artistic services:

1) law;

2) accounting;

3) medicine;

4) dentistry;

5) clinical psychology; and

6) custom-produced art.

d) Architect, engineering and land surveying services shall be procured in accordance with the source selection procedures of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535] and are subject to the procedures for all other professional services established in the Code or this Part. For professional services with an estimated basic professional service fee of $25,000 or more, the SPO shall publish notice of award or notice of intent to award to the Bulletin for a minimum of 14 days prior to execution of the contract.

e) Conditions for Use of Competitive Selection Procedures.
Except as authorized under Section 20-25 (Sole Economically Feasible Source Procurement) or Section 20-30 (Emergency Procurements) of the Code, these competitive selection procedures shall be used for all procurements of professional and artistic services of more than $100,000.

1) Services of $100,000 or less and for a nonrenewable term of one year or less may be procured in accordance with Section 4.2020 (Small Purchases) of this Part, except notice of the contract must be published as provided in accordance with Section 35-35(b) of the Code and include the name of the CPO-HE or SPO and a brief explanation of the reason for the exception.

2) Dividing or planning procurements to avoid use of competitive procedures (stringing) is prohibited. If there is a repetitive need for small professional and artistic procurements of the same type that may be evidenced by a pattern of small purchases, as determined by the university or the SPO, the university shall consult with the SPO to consider whether issuing a competitive sealed proposal for those needs is in the best interests of the State.

f) Request for Proposals
Professional and artistic services shall be procured using an RFP.

1) Contents. The RFP shall be in the form specified by the CPO-HE and shall contain at least the following information:

A) the type of services required;

B) a description of the work involved;

C) an estimate of when and for how long the services will be required;

D) the type of contract to be used;

E) a date by which proposals for the performance of the services shall be submitted;

F) a statement of the minimum information that the proposal shall contain, which may, by way of example, include:

i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;

ii) if deemed relevant, the age of the offeror's business and average number of employees over a previous period of time, as specified in the RFP;

iii) the abilities, qualifications and experience of all persons who would be assigned to provide the required services;

iv) a listing of other contracts under which services similar in scope, size or discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFP;

v) a plan giving as much detail as is practical explaining how the services will be performed;

G) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package);

H) the factors to be used in the evaluation and selection process and their relative importance; and

I) a plan for post-performance review to be conducted by the university after completion of services and before final payment and made part of the procurement file.

2) Evaluation. Proposals shall be evaluated on the basis of evaluation factors stated in the RFP. The relative importance of the evaluation factors will vary according to the type of services being procured.

A) Proposals shall be submitted in three parts: the first covering the price; the second, covering commitment to diversity; and third, covering all other parts. Each part shall be evaluated and ranked independent of all other parts of all proposals.

i) The second part must include a description of the offeror's commitment to diversity. (See Section 20-15 of the Code). In the event a proposal does not include this part, commitment to diversity shall be scored zero. The evaluators shall consider the information provided in the response and the quality of that information when evaluating responses. Offerors must show a demonstrated commitment to diversity and require the allotment of points for commitment to diversity. Commitment to diversity shall be equivalent to 20% of the total points assigned to the third part.

ii) Factors to be considered in the award of points for the commitment to diversity component include, but are not limited to:

- *whether or how well the offeror, on the solicitation being evaluated, met the goal of contracting or subcontracting with businesses owned by women, minorities, or persons with disabilities;*

- *whether the offeror, on the solicitation being evaluated, assisted businesses owned by women, minorities, or persons with disabilities in obtaining lines of credit, insurance, necessary equipment, supplies, materials, or related assistance or services;*

- *the percentage of prior year revenues of the offeror that involve businesses owned by women, minorities, or persons with disabilities;*

- *whether the offeror has a written supplier diversity program, including, but not limited to, use of* *diverse vendors in the supply chain and a training or mentoring program with businesses owned by women, minorities, or persons with disabilities; and*

- *the percentage of members of the offeror's governing board, senior executives, and managers who are women, minorities, or persons with disabilities.* [30 ILCS 500/20-15(e-5)]

B) The minimum evaluation factors for all other parts, excluding price and commitment to diversity, are:

i~~A~~) the plan for performing the required services;

ii~~B~~) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services and the qualifications and abilities of personnel proposed to be assigned to perform the services;

iii~~C~~) the personnel, equipment and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and

iv~~D~~) a record of past performance of similar work.

g) Receipt and Handling of Proposals
Proposals shall be submitted to and opened by the university unless otherwise directed by the CPO-HE or SPO.

1) Proposals and modifications shall be opened publicly at the time, date and place designated in the RFP in the presence of a State witness, or through a secure electronic procurement system approved by the CPO-HE.

2) The person opening the proposals shall not serve as a State witness. The name of the person opening the proposals, the name of the person serving as the State witness, the name of each offeror, the number of modifications received (if any), a description sufficient to identify the supply or service offered, a notation that the package contains a price proposal, and any such information determined by the CPO-HE or SPO shall be recorded on a form prescribed by the CPO-HE, read aloud, and otherwise made available through an electronic procurement system approved by the CPO-HE.

3) Proposals and modifications shall be opened in a manner to avoid disclosing contents to competitors. Until an award recommendation is made, no university personnel or contractual agents other than the evaluation committee and those assigned to the procurement may review the proposals, except with justification from the purchasing director and approved by the SPO. The university conducting the procurement shall not disclose any information contained in any proposal with any other offeror other than information that was recorded, read and made publicly available at the opening of the bids. After completion of the evaluation and award recommendation, the university may conduct discussions with management and board of trustees if necessary to obtain approval for award prior to publishing the award in the Bulletin. If discussions within the university are necessary to evaluate the proposals, the SPO shall require that confidentiality and conflict of interest statements be executed.

h) Discussions

1) Discussions Permissible. The CPO-HE or SPO may conduct discussions with any offeror to:

A) determine in greater detail the offeror's qualifications; and

B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance and the relative utility of alternative methods of approach. The CPO-HE or SPO may request revisions after discussions for the purpose of obtaining best and final offers.

2) Discussions shall not disclose any information derived from proposals submitted by other offerors, and the university conducting the procurement shall not disclose any information contained in any proposals with any other offeror.

i) Selection of the Best Qualified Offerors
After conclusion of validation of qualifications, evaluation and discussion, the SPO shall rank the acceptable offerors in the order of their respective qualifications.

j) Evaluation of Pricing Data
Ranking by price is required for all professional and artistic proposals with an annualized value that is more than $100,000. When annualized value cannot be determined, ranking by price is required.

1) If the low price is submitted by the most qualified vendor, the SPO may award to that vendor.

2) If the price of the most qualified vendor is not low and if it is not more than $100,000 annually, the SPO but not a designee may award to that vendor.

3) If the price of the best qualified vendor is not low and if it is more than $100,000 annually, the SPO, but not a designee, may award to that vendor but must state why a vendor other than the low-priced vendor was selected and that determination shall be published in the Bulletin.

k) Negotiation and Award of Contract

1) General. The university, in consultation with the SPO, shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The university, in consultation with the SPO, may, in the interest of efficiency, negotiate with the next highest ranked vendor, while negotiating with the best qualified vendor.

2) Elements of Negotiation. At a minimum, contract negotiations shall be directed toward:

A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity and nature of those services.

3) Successful Negotiation of Contract with Best Qualified Offeror

A) If compensation, contract requirements and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is canceled.

B) Compensation must be determined in writing to be fair and reasonable. Fair and reasonable compensation shall be determined by the university, in consultation with the SPO, based on the circumstances of the particular procurement, including, but not limited to, the nature of the services needed, qualifications of the offerors, consideration of range of prices received in the course of the procurement, other available pricing information and the university's identified budget.

C) Contracts entered into under this Section shall provide:

i) the duration of the contract, with a schedule for delivery when applicable;

ii) the method for charging and measuring cost (hourly, daily, etc.);

iii) the rate of remuneration;

iv) the maximum price; and

v) whether the services of subcontractors will be used.

4) Failure to Successfully Negotiate Contract with Best Qualified Offeror

A) If compensation, contract requirements or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons shall be placed in the file. The university, in consultation with the SPO, shall advise the offeror of the termination of negotiations.

B) Upon failure to successfully negotiate a contract with the best qualified offeror, the university, in consultation with the SPO, may enter into negotiations with the next most qualified offeror.

l) Multiple Awards
The SPO may authorize a solicitation for professional and artistic services that includes an intent to make multiple awards based upon a need demonstrated by the university to have multiple vendors under contract. Any multiple awards shall be conducted in accordance with Section 4.2036(b).

m) Notice of Award

1) Notice of award shall be in accordance with Section 4.1525(d) and (e).

2) Notice of award of professional and artistic service contracts that are nonrenewable, are one year or less in duration, in excess of the small purchase maximum established by Section 20-20 of the Code,~~and have a value of $100,000 or less~~ must be published in the Bulletin in accordance with Section 35-35(b) of the Code. The notice shall include the name of the SPO and a brief explanation of the procurement.

n) Prequalification
Prequalification of professional and artistic vendors shall not be used to bar or prevent an otherwise qualified person from responding to a request for proposal for professional and artistic services.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.2036 Other Methods of Source Selection

Notice of the results of any of the following methods must be published in the Bulletin in the form and format specified by the CPO-HE.

a) Split Award
An award of a definite quantity requirement may be split between bidders or offerors if necessary to obtain the total quantity needed. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required.

b) Multiple Award
An award may be made to two or more vendors for similar supplies or services when there is a need that cannot reasonably be met by a single award as determined by the university and SPO.

1) Supplies and services may be solicited with the intent to make multiple awards. The solicitation must state this intent and describe the type of multiple award in detail and the methodology for determining which vendor from among the multiple awardees will receive an as-needed individual order.

2) Types of Multiple Awards

A) Progressive (Primary with Alternates)
A multiple award may be made to a primary and one or more alternate vendors when there is a need for multiple vendors to

ensure immediate performance. The primary vendor shall have first refusal for all orders with others contacted in progressive order. Ranking of the alternates shall be by price or value depending on the methodology (IFB or RFP) used in the solicitation. Selection to meet the particular need shall be by low price or best value as appropriate to the underlying solicitation. If appropriate and within legal requirements, an alternate progressive award for the same items may be made to promote statutory preferences, goals, policies and programs (e.g., small business set-aside).

B) Pre-qualified Pool of Vendors

i) When it may be more efficient or more appropriate based on the nature of the item to establish a pool of qualified vendors and then select from among that pool as needs arise, the university may use an RFP to identify vendors who meet the criteria for the pre-qualified pool. The university may select the pool from among the vendors ranked most qualified, but the number in the pool shall be the minimum necessary to meet the need, and generally not exceed 10. Once selected, these vendors shall be considered of equal rank. If appropriate and within legal requirements, an alternate pool for the same item may be established to promote statutory preferences, goals, policies and programs (e.g., Business Enterprise for Minorities, Women, and Persons with Disabilities (BEP) Act, Veterans Business Program (VBP), and small business set-aside).

ii) When there is a specific need, each pool vendor will be contacted directly in writing and asked to submit a price, timeline for completion and any other information necessary to address the need by a specified date. The vendor submitting the response that meets stated needs and is the lowest price or that provides the best value will have the award. The method of selection shall be identified in the request for quotation.

iii) If it is not practicable for the university to discuss the particular need with each pool vendor, the university may, with SPO approval, select the two most qualified, based on the initial selection of the pool, to discuss the particular need. The university must detail the reasons for the selection and obtain SPO approval. Documentation to the procurement file must contain the reason why pre-selection discussions with all pool vendors were not practicable. The university, with approval of the SPO, may provide a method of allowing additional vendors to become part of the prequalified pool after its creation so long as there are no changes to the specifications in the original solicitation. This process shall be outlined in the original solicitation. This subsection (b)(2)(B)(iii) shall not apply to a construction agency in the procurement of construction or construction-related materials over the small purchase threshold in Section 4.2020.

3) Exception for Conflict or Capacity
If there is a known conflict of interest or the vendor otherwise eligible for the order is not available to perform, the next low or next best value vendor shall be offered the order.

4) Type of Contract
Multiple award contracts shall be considered master ordering agreements. Supplies or services ordered under these contracts shall be documented on the order that refers to that agreement. A multiple award contract is not a requirements contract and does not guarantee any level of ordering activity by the university.

5) If a particular quantity requirement arises that exceeds the university's normal requirement or a quantity or amount specified in the contract, a separate solicitation may be issued.

6) Despite the existence of a multiple award, the need may be met by a separate single award solicitation.

c) Term and Condition Contracts

1) A term and condition contract contains agreed contractual terms and conditions established for the convenience of the parties to be used in conjunction with a subsequent procurement and processed in accordance with the requirements of the Code and this Part. A term and condition contract is not a procurement. It creates no obligation on the part of the university to procure from the vendor, nor does it create an authorization for a university to order based on that term and condition contract, except as provided by subsection (c)(2).

2) Orders may be placed against term and condition contracts without use of any method of source selection specified in the Code for convenience of processing sole source, emergency or small procurements.

d) Auction

Purchases may be made at auction in accordance with the procedural requirements applicable to the particular auction. Prior notice and competition is not required and the amount payable shall be the amount bid and accepted plus any required buyer's premium.

e) Federal Requirements

The SPO for any university receiving federal aid funds, grants or loans or otherwise subject to federal entity requirements may conduct procurements in accordance with federal requirements that are necessary to receive or maintain those federal aid funds, grants or loans or to remain in compliance with federal requirements, except as provided in Section 1-13 of the Code.

f) Foreign Country Procurement

Procurements to meet the needs of university *offices located in,* or university programs operated in, *foreign countries shall comply with the provisions of the Code to the extent practical.* [30 ILCS 500/20-90] Procurements conducted solely in a foreign country to meet the needs of a university office or program located in that country are delegated to the university. The university shall provide a summary of the procurement or a copy of the procurement file to the SPO upon request.

g) Donations

1) When a procurement will have the majority of funding from a donation, the terms of which require use of a named vendor or the procurement of a particular good or service, the SPO shall comply with those requirements, but shall otherwise follow the Code and this Part.

2) Donations may be acknowledged by the donee university in a manner appropriate to the type of donation and the program activity associated with the donation. Acknowledgment may include, but need not be limited to, public announcement at the event or in donee university publications, and inviting the donor to attend the program activity associated with the donation.

h) Broker Method for Obtaining Certain Insurance Coverages

1) Notwithstanding anything to the contrary in this Part, the CPO-HE, but not a designee, may, on a case-by-case basis, authorize the use of this broker method to obtain insurance coverages when use of the methods of source selection set forth in Article 20 of the Code is not practicable or advantageous because, for example:

A) Due to the structure of the insurance industry, the types of insurance coverages needed cannot reasonably be obtained from "direct writers" who would provide quotes directly to university in a bid or RFP process; or

B) The process of obtaining quotes for needed insurance coverages cannot be accomplished within the normal procurement timeframes.

2) If the CPO-HE determines that this broker method is preferable for designated coverages, a two-part procurement process will be used to obtain the coverages.

A) A broker will be selected in accordance with the RFP process authorized by Section 20-15 of the Code, and the resulting contract will be subject to all requirements of the Code. The broker contract will be issued for a term of years, and during the term of the contract the broker will assist the university in obtaining coverages as set forth in subsection (i)(2)(B) of this Section as well as providing customary services such as issuing certificates of insurance and servicing policies.

B) The broker will assist the university by serving as broker of record in obtaining insurance coverages through the industry process of going to market to obtain quotes. The university will use an evaluation team to test the market for competitiveness, review the quotes, and select the insurers and products best fitting its needs. The solicitation, evaluation and selection process will be documented in writing and become a part of the public procurement file. The insurance coverages obtained, the term of coverage, and the premiums charged will be posted on the Bulletin as attachments to the broker award notice.

~~i) Job Order Contracting~~

~~1) Definition – A Job Order Contract is a competitively bid, indefinite quantity contract intended for new construction, renovation and repairs~~

~~with pre-established unit prices in which a university provides a definition of the work scope and a vendor selected from a list of qualified vendors furnishes all management, documentation, design and incidental drawings, labor, materials, supplies, parts, transportation, equipment and supervision needed to perform the work as required. Ordering is accomplished by means of issuance of a Work Order against the Job Order Contract.~~

~~2) Conditions of Use – The Chief Procurement Officer may authorize the use of a Job Order Contract upon a determination in writing that such use is necessary for adequate delivery, service or product compatibility, and that the methods of source selection set forth in Article 20 of the Code is either not practicable or advantageous because, for example, the program needs of a university cannot reasonably be met within the normal procurement timeframes, or that the type and variety of needs are such that a single award will not assure the needed availability or diversity of vendors.~~

~~3) Procedure – A Job Order Contract shall be initiated by the issuance of an Invitation for Bids in the form required by Section 4.2010 (Competitive Sealed Bidding), except as otherwise provided in this subsection (j)(3). In addition to the requirements set forth in Article 30 of the Code and Section 4.2010, the Job Order Contract Invitation for Bid shall include:~~

~~A) A detailed description of the scope of the Job Order Contract, including performance, technical requirements and specifications, and minimum and maximum work order amounts;~~

~~B) the reasons for using a Job Order Contract;~~

~~C) a description of the process that will be used to evaluate qualifications and proposals, including a method for determining each Vendor's Price Adjustment Factors utilizing the published Construction Task Catalog® and Technical Specifications documents; and~~

~~D) that the SPO may conduct oral or written discussions of the offers.~~

~~4) Award – Those vendors meeting minimum qualifications shall be offered non-exclusive indefinite quantity contracts against which a university may later place one or more work orders on an as needed basis in accordance with the allocation of work procedure set forth in subsection (j)(5).~~

~~5) Allocation of Work – Work Orders shall be allocated among qualifying vendors on an as needed basis. Once a need is identified, the university~~

~~shall allocate work for that project using Job Order Contracting from the list of qualified vendors. The university shall select the vendor that best addresses its needs for the project based on the work order allocation method specified in the IFB, which shall include such factors as price, capacity, past performance, geographic location, experience and knowledge. If the low price vendor is not selected, the university shall justify the alternative selection and submit the order to the SPO for approval. The SPO or PCM will periodically review any allocation of Work Orders and report to the CPO-HE with a recommendation for future action.~~

~~6)~~ ~~It shall be the affirmative obligation of each vendor with a Job Order Contract to update information provided to the contracting university regarding its continued ability to provide the contracted service. Job Order Contracts may provide that vendors who cannot perform the required services when contacted and who have not provided the updated information may be taken out of consideration for Work Orders for a period of time, including until the next prequalification.~~

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section 4.2043 Suppliers

A university may contract with any qualified source of supply, but shall use or consider, as applicable, the following special sources, from which procurements may be made without competition:

a) Correctional Industries in accordance with Subpart N.

b) State and Federal Surplus Warehouses under the jurisdiction of the Department of Central Management Services. (The State Property Control Act [30 ILCS 605/7a] requires that surplus furniture be considered before any purchase of new furniture valued at $1,500~~$500~~ or more per piece.)

1) If a university determines it is unable to use the surplus furniture, it may proceed with a new furniture purchase.

2) Universities shall comply with the reporting requirements under the State Property Control Act [30 ILCS 605/7a].

c) Qualified workshops for persons with significant disabilities in accordance with

Subpart N.

d) State agencies and other governmental units described in Section 1-10(b)(1) of the Code.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section 4.2047 Security Requirements

a) Vendors shall furnish bid, proposal or performance security as specified in the solicitation or contract and in compliance with the Public Construction Bond Act [30 ILCS 550]. The cost of providing security will be borne by the vendor unless otherwise stated in the solicitation.

b) Security, unless otherwise specified, may be in the form of cashier's check, certified check, money order, irrevocable letter of credit or bond. Any bond must be issued by a surety company authorized to do business in the State of Illinois and having a rating acceptable to the university.

c) Unless the amount is set by law, the university will determine the amount, in dollars or percentage of contract price, that will adequately protect the university's interests. That amount will vary depending on the type of procurement and the risks and potential losses associated with delay or failure to complete the project, and for other such reasons.

d) A vendor may be required to furnish up to 100% performance security at any time during contract performance and at its cost, if it appears that delivery or production schedules cannot be met, quality is poor, responsibility is questioned and for similar reasons.

e) The vendor's source of supply may also be required to furnish security. If the vendor does not have a stock of the supplies in question in the amount required or the facilities to produce the item in that amount, the university may, in addition, require the vendor to have the source of supply furnish security acceptable to the university, conditioned on the source supplying the vendor as required in the solicitation.

f) Bid or Proposal Security

1) The bid or proposal security will be used to ensure the bidder or offeror meets all obligations imposed under the solicitation. This includes, but is

not limited to, the obligation to keep the price, bid or proposal firm for as long a period as specified in the solicitation, to enter into a contract, and to file a performance security. The university may retain the bid or proposal security as damages if the bidder or offeror fails to meet its obligations.

2) The bid or proposal security will be returned to the vendor as soon as is practicable after the bid or proposal opening.~~,~~ Bid or proposal security will be returned to the unsuccessful vendors upon execution of the contract.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART H: SPECIFICATIONS AND SAMPLES

Section 4.2050 Specifications and Samples

a) Responsibilities Regarding Specifications
The university shall write the necessary specifications, including the statement of work, subject to the SPO's review and approval. Any dispute with the SPO regarding the statement of work or scope of specifications can be escalated to the CPO-HE.

b) Procedures for the Development of Specifications

1) Specifications shall accurately reflect the university's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements without being unduly restrictive or having the effect of requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.

2) Any specifications or standards adopted by business, industry, not-for-profit organization, or governmental unit may be incorporated by reference.

3) A specification may provide alternate descriptions when two or more design, functional, performance or other criteria will satisfactorily meet the university's requirements.

4) Article 45 of the Code shall be considered and applied when required or appropriate, including language on reducing barriers to participation by small and diverse vendors.

5) *A solicitation or specification for a contract, or a contract, may not*

require, stipulate, suggest or encourage a monetary or other financial contribution or donation, cash bonus or incentive, economic investment, or other prohibited conduct as an explicit or implied term or condition for awarding or completing the contract. [30 ILCS 500/20-50]

6) *As used in this Section, "prohibited conduct" includes requested payments or other consideration by a third party to the university or State agency that is not part of the solicitation or that is unrelated to the subject matter or purpose of the solicitation. "Prohibited conduct" does not include a payment from the vendor that is supported by additional consideration (such as exclusive rights to sell items or rights to advertise), other than the consideration of the State's awarding a contract to purchase goods and services.* [30 ILCS 500/20-50]

7) The solicitation shall identify what specifications are essential and what optional specifications may be included in the project. All options must be identified in the invitation for bid or request for proposal as optional work.

c) Brand Name or Equal Specification

1) Brand name or equal specifications may be used in a competitive solicitation when:

A) no specification for a common or general use specification or qualified products list is available;

B) time does not permit the preparation of another form of specification;

C) the nature of the product or the nature of the university's requirement makes use of a brand name or equal specification suitable for the procurement; or

D) when the university determines that circumstances show this to be the most reasonable type of specification.

2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.

3) Unless the university determines in writing that the essential characteristics of the brand names included in the specifications are

commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional or performance characteristics that are required.

4) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the vendor.

d) Brand Name Only Specification

1) A brand name only specification may be used in a competitive solicitation provided the university makes a written request justifying that only the identified brand name item will satisfy the university's needs and the SPO approves in writing the use of the brand name only specification.

2) Brand name alone may be specified in order to fill medical prescription needs, to stock university retail-type operations, to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the SPO. A university may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time, and for that period the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.

3) The university shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit those sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 4.2025 (Sole Economically Feasible Source Procurement).

4) The SPO may~~shall~~ provide a quarterly report to the CPO-HE of solicitations conducted using brand name only.

e) Qualified Products List

1) A qualified products list may be developed by the university, with approval of the SPO, when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy

university requirements.

2) When developing a qualified products list, notice shall be posted to the Bulletin soliciting potential suppliers to submit products for testing and examination to determine acceptability for inclusion in a qualified products list.

3) Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements.

f) Proven Products
The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year prior to the notice date of a solicitation. Specifications may require that the supply or services must have been used in government or commercial venues for a specified period of time to be considered.

g) University Required Samples

1) Samples or descriptive literature may be requested when it is necessary to evaluate required characteristics of the items bid. Any required samples must be submitted as instructed in the solicitation, with transportation prepaid by the vendor. Each sample must be labeled with the vendor's name, address and a means of matching the sample with the applicable bid or proposal.

2) Any sample submitted must be representative of the item that would be delivered if a contract were awarded for that item. Samples submitted by a successful vendor will be retained to check continuing quality and compliance with specifications. Submission of samples will not limit the university's right to require adherence to specifications.

3) No payment will be made for samples. Samples not destroyed or consumed by examination or testing will be returned upon request and at vendor's expense. The request must be made at time of submission with return collect or prepayment provisions and instructions for return accompanying the samples.

4) Unsolicited samples or descriptive literature are submitted at the vendor's risk, may or may not be examined or tested, will not be deemed to vary any of the provisions of the solicitation, and may not be utilized by the vendor to contest a decision or understanding with the university.

h) Product Demonstration

Subject to the requirements of Section 50-39 of the Code, a vendor may request to demonstrate a product or service. Agreement to allow a demonstration will be solely at the university's discretion and will not entitle the vendor to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration. No payment will be made for the demonstration period except as agreed to in advance. If the price exceeds the small purchase amount, the product must be acquired under Section 4.2025 of this Part. The product demonstrated will be returned upon request and at the vendor's expense. The request must be made prior to the time of product demonstration with return collect or prepayment provisions and instructions for return accompanying the product demonstration.

i) Specifications Prepared by Other Than University Personnel

As provided in Section 4.2005(v), specifications may be prepared by other than university personnel, including, but not limited to, consultants, architects, engineers, designers and other drafters of specifications for public contracts provided there is no conflict of interest or an exception has been approved in accordance with Section 4.2005(v)(4)(B). Contracts for the preparation of specifications by other than university personnel shall require the specification writer to adhere to university requirements and the terms of the Code, particularly Section 50-10.5, and this Part. The university must inform the SPO of specifications prepared by anyone other than university personnel. The SPO retains the authority for final approval of the specifications. Any dispute with the SPO regarding the statement of work or scope of specifications can be escalated to the CPO-HE.

j) Pre-Solicitation Request for Information

When the university does not have sufficient information about available supplies or services to issue a solicitation, the university, in consultation with the SPO, may issue a pre-solicitation request for information inviting vendors to submit information about the availability of specified types of supplies and services. Public notice of the pre-solicitation request for information shall be published in the Bulletin at least 14 days before the date set for the receipt of information. The submission of information by a vendor in response to a pre-solicitation request for information is not a prerequisite for that vendor to respond to a subsequent solicitation for the types of supplies and services for which information was solicited, and the issuance of a pre-solicitation request for information does not commit the university to make any procurement of supplies or services of any kind. Confidential information will not be accepted from a vendor in response to a pre-solicitation request for information. All information received through a pre-solicitation request for information will be part of the publicly available procurement file. An RFI is to be used for information gathering only and is not a vehicle for procuring supplies or services.

k) *When procuring freight, small package delivery, and other forms of cargo shipping and transportation services, appropriate weight shall be given to the requirements of the Transportation Sustainability Procurement Program Act* [30 ILCS 530]. [30 ILCS 500/20-165]

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART I: CONTRACTS

Section 4.2055 Types of Contracts

a) Scope
This Section contains descriptions of types of contracts and limitations as to when they may be utilized by the university in its procurements. Types of contracts not mentioned in this Section may be utilized with approval of the SPO.

b) Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting
The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Code. This type of contracting may not be used alone or in conjunction with an authorized type of contract. A cost-plus-percentage-of-cost contract is one in which the vendor selects the supply or service on which the vendor's percentage is applied.

1) A percentage mark-up from an agreed price list is not a cost-plus-a-percentage-of-cost contract.

2) A percentage mark-up from the cost of a supply or service selected by the university or another vendor under contract to the university is not a cost-plus-a-percentage-of-cost contract.

3) A percentage mark-up from cost for parts needed in relation to a contract for services does not convert the services contract to a prohibited cost-plus-a-percentage-of-cost contract provided the parts supplied under the cost-plus-percentage-of-cost method do not exceed 20% of the value of the contract.

c) Types of Fixed-Price Contracts

1) Firm Fixed-Price Contract. A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the vendor's cost of performing the work specified in the contract.

2) Fixed-Price Contract with Price Adjustment

A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in the vendor's price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

i) changes in the vendor's labor agreement rates as applied to an industry or area (such as are frequently found in contracts for the purchase of coal);

ii) changes due to rapid and substantial price fluctuations that can be related to an accepted index (such as contracts for gasoline, heating oils and dental gold alloy); and

iii) in requirement contracts, in which a vendor is selected to provide all of the university's needs for the items specified in the contract, when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

B) If the contract permits unilateral action by the vendor to bring about the condition under which a price increase may occur, the university shall have the right to reject the price increase and terminate without cost the future performance of the contract.

d) Cost-Reimbursement Contracts

1) Determination Prior to Use

A) The university must submit to the SPO a justification for using any type of cost-reimbursement contract. This justification must be sufficient to show that such a contract is likely to be less costly to the university than any other type or that it is impracticable to obtain the items through any other type of contract. The SPO will consider the justification and any other relevant factors before making a written determination to authorize use of the cost-reimbursement contract.

B) Any reimbursement of travel expenses authorized in the solicitation and the terms of the contract must be in accordance with applicable travel control board regulations.

2) Cost Reimbursement Contract. A cost reimbursement contract provides that the vendor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee. These contracts establish an estimate of total cost and must establish a ceiling that a vendor may not exceed. The SPO must provide a written determination that this type of contract is likely to be less costly than any other type of contract or that it is impracticable to obtain the item required except under this type of contract.

3) Cost-Plus-Fixed-Fee Contract. This cost-reimbursement type contract provides for payment to the vendor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee may be adjusted to provide for an increase or decrease in the scope of work. The adjustment must be made via a change order with approval of the SPO.

4) Cost Incentive Contracts

A) General. A cost-incentive type of contract provides for the reimbursement to the vendor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the vendor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the vendor controls cost in the performance of the contract).

B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The vendor is obligated to complete performance of the contract and, if actual costs exceed the ceiling price, the vendor suffers a loss.

C) Cost-Reimbursement Contract with Cost-Incentive Fee.
In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the university is obligated to reimburse the vendor. The vendor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the vendor.

e) Performance Incentive Contracts
In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the vendor to a bonus, while late completion may entitle the university to a price decrease.

f) Time and Materials Contracts; Labor Hour Contracts
Time and materials contracts provide for an agreed basis for labor performed and payment for materials supplied. Labor hour contracts provide only for the payment of labor performed. The contracts shall contain a stated ceiling or an estimate that shall not be exceeded without prior approval. An estimated time and materials contract shall be treated as an indefinite quantity contract.

g) Definite Quantity and Indefinite Quantity Contracts

1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services at specified times or when ordered, with deliveries or performance scheduled at designated locations upon order.

2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally, an indefinite quantity contract is based on historical usage or the best information available as to quantity as stated in the solicitation and is not a guarantee of a quantity to be ordered. The contract may provide a minimum quantity the university is obligated to order and may also provide for a maximum quantity provision that limits the university's ability to order. If an estimated quantity is identified in the contract or the notice of award published in the Bulletin, the university may order up to 20% more than the estimate without written SPO approval. The SPO may authorize ordering beyond the stated 20%. Any such authorization shall be documented in writing and published in the Bulletin. An increase of an indefinite quantity contract is not a change order. An indefinite quantity contract using job order contracting must be in accordance with Section 4.3005.

3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the university to order all its actual requirements during a specified period of time with deliveries or performance scheduled at designated locations upon order. If identified in the solicitation as a requirements contract, all needed quantity, regardless of any stated estimate, must be ordered from that contract. A requirements contract shall state a realistic estimated total quantity in the solicitation and resulting contract, but this is not a representation that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal.

h) Leases
A lease is a contract for the use of supplies or real property under which title will not pass to the university at any time, except pursuant to an option to purchase. Leases of real property are governed in accordance with Article 40 of the Code and this Subpart M.

i) Recovery Contracts
Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the university. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the

percentage may be paired with a fixed price or cost reimbursement method.

j) State Produced Supplies and Services

Notwithstanding any provision in any contract, supplies or services available in-house or from State programs, such as Illinois Correctional Industries, may be ordered without violating any contract.

k) Extraordinary Quantities

Notwithstanding any provision in any contract, the university reserves the right to take bids separately if a particular quantity requirement arises that exceeds the university's normal needs or ordering requirements.

l) Energy Conservation and Energy Savings Contracts

Notwithstanding Section 20-60(a) of the Code, university procurements of energy conservation measures, including guaranteed energy savings contract, are defined in the Code and Public University Energy Conservation Act [110 ILCS 62] (PUECA) and shall be made in accordance with the Code, this Part, and as otherwise authorized by PUECA. Notwithstanding any other law, energy savings contracts or leases may include an alternative financing or lease to purchase option as part of the contract's terms.

m) Printing Cost Offsets

In accordance with university policies, the university may provide advertising rights in printed products to a vendor or receive free copies of printed products from a vendor in order to reduce the overall cost of a printing contract. Procurement by competitive sealed bid or competitive sealed proposal is required when the printing cost exceeds the small purchase limit of Section 4.2020 of this Part.

n) Contracting for Installment Purchase Payments, Including Interest

Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].

o) Food Donation

A university may not enter into a contract to purchase food with a bidder or offeror if the bidder's or offeror's contract terms prohibit the university from donating food to food banks, including, but not limited to, homeless shelters, food pantries, and soup kitchens. Universities shall adopt policies that permit the donation of leftover food procured with State funds, in accordance with Section 55-20 of the Code.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.2060 Duration of Contracts − General

a) General
The term of a contract, including potential renewals, may not exceed 10 years. Prior to the award expiration date, a contract which does not exceed 10 years may be entered into beyond the active term identified in the master contract award notice. The total of the term or terms of all contracts under one master contract award cannot exceed 10 years.

1) A software license designated as a perpetual license is not considered a multi-term contract; it is instead a one-time purchase.

2) The length of a lease for real property or capital improvements shall be in accordance with Section 40-25 of the Code.

3) The length of an energy conservation program contract or energy savings contract or leases shall be in accordance with Section 25-45 of the Code and the Public University Energy Conservation Act [110 ILCS 62].

4) The length of a lease for State-owned communications infrastructure, including dark fiber networks, conduit, and excess communication tower capacity shall be in accordance with Section 20-60 of the Code.

5) Contracts in connection with the issuance of certificates of participation or bonds shall not exceed 30 years.

b) Subject to Appropriation
Each contract is contingent upon and subject to the availability of funds. The State, at its sole option, may terminate or suspend a contract, in whole or in part and without penalty or further payment being required if the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay that obligation or if funds needed are insufficient for any reason. Each contract payable in whole or in part by any funds appropriated by the Illinois General Assembly shall recite that the contract is subject to termination and cancellation for lack or insufficiency of funding. A vendor will be notified in writing by the university of a failure or reduction or decrease of appropriation affecting a contract. This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.

c) Conditions for Use of Multi-Year Contracts
A multi-year contract may be used when:

1) special production of definite quantities or the furnishing of long-term services is required to meet State needs; or

2) a multi-year contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in State procurement. The following factors are among those relevant to such a determination:

A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping costs during the period of contract performance;

B) lower production costs because of a larger quantity of service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

C) stabilization of the vendor's work force over a longer period of time may promote economy and consistent quality; or

D) the cost and burden of contract solicitation, award and administration of the procurement may be reduced.

d) Multi-Term Contract Procedure
The solicitation shall state:

1) the proposed term;

2) the amount of supplies or services required for the proposed contract period;

3) the type of pricing requested (e.g., firm for term); and

4) how award will be determined.

e) Renewals

1) The initial term of a contract plus available renewals may not exceed 10 years. When the original contract specifically calls for an initial term plus renewals, the renewals may be exercised without further procurement activity, except for the publication of the renewal in the Bulletin as

required by 30 ILCS 575/8i, Section 15-25 of the Code and Section 4.1525 of this Part, and review by the PPB and CEI under Section 5-30 of the Code. The renewal terms and conditions shall not change except as provided in the contract (such as price escalations tied to an index) and as provided by in 30 ILCS 575/8i. Renewal options may be exercised by the university or by mutual agreement of the vendor, but may not be exercised solely at the option of the vendor. Except as provided by 30 ILCS 575/8i, any renewal that requires modification to a material term or condition of the contract shall be treated as a new contract and shall be subject to appropriate procurement procedures established by the Code and this Part.

2) A renewal may only be entered into if authorized by the original contract.

3) At least 6 months prior to exercising a renewal, a university shall review the vendor's performance to determine if good faith efforts toward meeting contract goals identified in the vendor's utilization plan are being met by the vendor. Except for construction and construction-related services, no renewal shall be authorized if the university determines good faith efforts were not exercised in meeting the contract goals agreed to in the utilization plan. If the university determines the vendor made good faith efforts, the university may issue a waiver after concurrence by the CPO-HE, which shall not be unreasonably withheld or impair university determination to execute the renewal. The university shall use the waiver form prescribed by the CPO-HE. The CPO-HE shall post the completed waiver form on the CPO-HE website within 5 business days after receipt from the university.

4) All renewals must be in conformance with the underlying contract. The procurement/contract file must contain any renewal justification form prescribed by the CPO-HE.

5) When a renewal will result in the total term, counting the initial term and any previous renewals, exceeding 10 years, the university's need must be procured using one of the methods of source selection authorized by the Code and this Part.

6) Renewals must be fully executed on or before expiration of the current contract term. If the renewal is not exercised prior to expiration of the current contract term, the supplies or services must be procured anew using one of the methods of source selection authorized by the Code and this Part.

f) Filing of Proposed Renewals and Extensions Exceeding $249,999

1) Prior to executing a renewal or extension with a cost estimated to exceed $249,999, the proposed renewal or extension must be submitted to the PPB and CEI. The PPB and CEI shall have up to 14~~30~~ days to review and comment on the proposal. The SPO assigned to the university may request a waiver of the review for reasons set forth in Section 20-60(c) of the Code.

2) This subsection does not apply to any:

A) emergency procurement;

B) procurement conducted under Article 40 of the Code; or

C) procurement exempted by Sections 1-10(b), 1-12 and 1-13 of the Code.

3) A contract is exempt from this subsection if it is paid for in whole or in part with federal-aid funds, grants or loans and where the provisions of this subsection would result in loss of those federal funds. A university shall file notice of this exemption with the PPB and CEI prior to entering the proposed renewal or extension.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.2067 Contract Amendments and Change Orders

a) Contract amendments memorialize actions:

1) authorized by specific language in the contract (e.g., exercise of an option or showing price decrease or increase based on CPI), or changes that do not affect price or time of performance (e.g., change in names of notice contacts or number of periodic status meetings);

2) not specifically authorized in a contract (e.g., material changes to terms and conditions that affect price or time of performance). This type of amendment constitutes a change order.

b) Change Orders

1) A change order is defined in Section 4.15. Renewals, change of a vendor's name, and orders against master contracts are not change orders.

2) *Change orders that increase or decrease the cost of a contract* or an estimated contract *by a total of $25,000~~10,000~~ or more, or the time of completion by a total of 180~~30~~ days or more,* must be accompanied by *a written determination that* includes a statement that:

A) *the circumstances said to necessitate the change in performance was not reasonably foreseeable at the time the contract was signed;*

B) *the change is germane to the original contract as signed; or*

C) *the change order is in the best interest of the State.* [720 ILCS 5/33E-9] Universities may not divide change orders into smaller parts to avoid requirements for written determinations or publication.

3) A change order shall be executed by the university and vendor evidencing the change. All changes that require a written determination as provided in subsection (b)(2) shall be approved by the SPO. Change orders that exceed the small purchase limit shall be published in the Bulletin in advance of execution of the change order.

4) A change order to *a contract for professional and artistic services* made using the sole source method *may not result in an increase in the amount paid under the contract by more than 5% of the initial award, or extend the contract term beyond the time reasonably needed for a competitive procurement, not to exceed two months.* [30 ILCS 500/20-25(b)]

5) The total contract term, including the initial term, renewals, extensions and change orders shall not exceed 10 years. Any change order that would extend the total term beyond 10 years is void. Any continuing need for supplies and services must be procured using one of the methods of source selection authorized by the Code and this Part.

6) Prior to executing a change order with a cost estimated to exceed $249,999, the proposed change order must be submitted to PPB and CEI. PPB and CEI shall have up to 14 days to review and comment on the change order. The university may request a waiver of the review for reasons set forth in Section 20-60(c) of the Code.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART J: PROCUREMENT FILES

Section 4.2086 Contract Filing

a) *Filing with Comptroller*

1) *Whenever a grant, defined pursuant to accounting standards established by the* State *Comptroller, or a contract liability, except for contracts paid for from personal services, or contracts between the State and its employees to defer compensation in accordance with Article 24 of the Illinois Pension Code* [40 ILCS 5], *or contracts or grants that do not obligate the State treasury, exceeding $20,000 is incurred by any* university, *a copy of the contract, purchase order, grant or lease shall be filed with the Comptroller within 30 calendar days thereafter. Information pertaining to contracts or grants exceeding $20,000 that do not obligate funds held within the State treasury shall be submitted in a quarterly report to the Comptroller in a form and manner prescribed by the Comptroller.* [30 ILCS 500/20-80(b)]

2) *For each State contract for supplies or services awarded on or after July 1, 2010, the contracting* university *shall provide the applicable rate and unit of measurement of the supplies or services on the contract obligation document as required by the Comptroller.* [30 ILCS 500/20-80(b)]

3) *Any cancellation or modification to any such contract liability shall be filed with the Comptroller within 30 calendar days* after *its execution*. [30 ILCS 500/20-80(b)]

4) A contract filed with the Comptroller shall identify the method of source selection.

b) *Late Filing Affidavits*

When a contract, purchase order, grant or lease required to be filed with the Comptroller *by this Section has not been filed within 30 calendar days after execution, the Comptroller shall refuse to issue a warrant for payment thereunder until the university files with the Comptroller the contract, purchase order, grant or lease and an affidavit, signed by the chief executive officer of the agency or his or her designee, setting forth an explanation of why the contract liability was not filed within 30 calendar days after execution. A copy of this affidavit shall be filed with the Auditor General* and the CPO-HE. [30 ILCS 500/20-80(c)]

c) *Timely Execution of Contracts*

1) Except as otherwise provided by law, *no voucher shall be submitted to the*

Comptroller for a warrant to be drawn for the payment of money from the State treasury or from other funds held by the State Treasurer on account of any contract unless the contract is reduced to writing before the services are performed and filed with the Comptroller. Contractors shall not be paid for any supplies that were received or services that were rendered before the contract was reduced to writing and signed by all the necessary parties. [30 ILCS 500/20-80(d)]

2) Upon written request of the university and with justification required by the CPO-HE, the CPO-HE *may* *approve*~~*request*~~ *an exception to* Section 20-80(d) of the Code *by submitting a written statement to the Comptroller* ~~*and Treasurer*~~ *setting forth the circumstances and reasons why the contract could not be reduced to writing before the supplies were received or services were performed.* ~~*A waiver of* Section 20-80 (d) of the Code *must be approved by the Comptroller and Treasurer.*~~ *Section 20-80 of the Code does not apply to emergency purchases if notice of the emergency purchase is filed with* the *PPB* *and CEI* *and published in the Bulletin as required by the Code.* [30 ILCS 500/20-80(d)]

3) Regardless of the source of funds, contracts or change orders shall be reduced to writing before supplies are received or services are rendered. If supplies are received or services are performed prior to execution of a contract or change order, a written statement setting forth the circumstances and reasons why the contract or change order could not be reduced to writing before the supplies were received or the services were performed shall be maintained in the procurement file.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART K: WORKING CONDITIONS

Section 4.2590 Prohibited and Authorized Cybersecurity Products

State agencies are prohibited from purchasing any products that, due to cybersecurity risks, are prohibited for purchase by federal agencies pursuant to a United States Department of Homeland Security Binding Operational Directive. However, a university may purchase those offerings that are included in the Authorized Product List maintained by StateRAMP and that have been verified by StateRAMP as having an authorized security status. [30 ILCS 500/25-90].

(Source: Added at 50 Ill. Reg. ______, effective ____________)

SUBPART L: CONSTRUCTION AND CONSTRUCTION RELATED PROFESSIONAL SERVICES

Section 4.3005 Construction and Construction Related Professional Services

a) General Procedures

1) *Each contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works made by a public* university *shall contain a provision that steel products used or supplied in the performance of the contract or any subcontract thereto shall be manufactured or produced in the United States* in accordance with the Steel Products Procurement Act [30 ILCS 565]. For example, a finished supply item that contains a steel component, such as an HVAC system, is not considered a steel product and would not be subject to the Act, but a steel I-beam would be subject to the Act. *This Section does not apply:*

A) *When the contract involves an expenditure of less than $500.*

B) *When the* university president *certifies in writing that*:

i) *the specified products are not manufactured or produced in the United States in sufficient quantities to meet the* university's *requirements;*

ii) *the specified products cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the* university's *requirements; or*

iii) *obtaining the specified products manufactured or produced in the United States would increase the cost of the contract by more than 10%.*

C) *When its application is not in the public interest.* [30 ILCS 565/4]

2) In the case of contracts for construction of buildings or for other construction work in or about buildings or grounds where the entire estimated cost of the work exceeds the amount stipulated by Section 20-20 of the Code, prospective contractors, as well as architects and engineers employed in connection with those projects may be prequalified to determine their responsibility (for architects, engineers and land surveyors, see the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535]).

3) Estimated Cost of Work

A) Operative on and after January 1, 2026, if~~If~~ the total estimated cost of the work exceeds the amount stipulated by Section 30-30 of the Code, separate specifications shall be prepared for all equipment, labor and materials in connection with, at a minimum, the following five subdivisions of work:

i) Plumbing.

ii) Heating, piping, refrigeration and automatic temperature control systems, including the testing and balancing of those systems.

iii) Ventilating and distribution systems for conditioned air, including the testing and balancing of those systems.

iv) Electrical wiring.

v) General contract work.

B) However, if the estimated value of the construction work exceeds $250,000 and the estimate for an individual division is less than the current small purchase limit for construction, that division's work may be combined with another division, or procured separately under the Small Purchase procedure of Section 4.2020.

4) The specifications shall be drawn so as to permit separate and independent competitive bidding upon each of the above five subdivisions of work. All contracts awarded for any part of the work shall award the five subdivisions separately to responsible and reliable contractors engaged in these classes of work. The contracts, at the discretion of the university, may be assigned to the successful bidder on the general contract work or to the successful bidder on the subdivision of work designated by the university prior to bidding as the prime subdivision of work, with the provision that all payments will be made directly to the contractors for the five subdivisions upon compliance with the conditions of the contract. Any contract may be awarded for one or more buildings in any project to the same contractor. Specifications shall require, however, that, unless the buildings are identical, a separate price shall be submitted for each building. The contract may be awarded to the lowest responsible bidder for all of the buildings included in the specifications.

b) Single Prime Method

1) The single prime method may be used for projects under of the jurisdiction of the university in accordance with Article 30 of the Code. If the total estimated cost of the work exceeds the amount stipulated by Section 30-30 of the Code and the university is the construction agency, separate specifications may be prepared for all equipment, labor and materials in connection with the five subdivisions of work identified in Section 30-30 of the Code.

2) A university serving as the construction agency may award 2 or more of the 5 subdivisions of work together or separately to responsible and reliable bidders engaged in these classes of work if the following criteria are met:

A) The university has submitted a written notice with the reasons for using the single prime method and explanation as to why this method is in the best interest of the State to the PPB and CEI. The university has posted the notice to the university's online procurement webpage and online procurement bulletin at least 3 business days following submission to the PPB and CEI.

B) The successful low bidder prequalified with the university.

C) The bid of the successful low bidder identified the name of the subcontractor, if any, and the bid proposal costs for each of the 5 subdivisions.

D) The contract provides that no identified subcontractor may be terminated without the written consent of the university.

E) The successful low bidder prequalified with the University of Illinois or with the Capital Development Board.

3) Use of the Single Prime Method

A) For building construction projects with a total construction cost valued at $20,000,000 or less, the use of the single prime method shall not exceed 50% of the total number of projects bid per fiscal year.

B) For building construction projects with a total construction cost valued at $20,000,000 or more, the use of the single prime method shall be at the discretion of the university.

C) Except for the Board of Trustees of the University of Illinois, single prime contracts shall not exceed an aggregate total value of $100,000,000 per university per fiscal year.

D) Single prime contracts awarded by the Board of Trustees of the University of Illinois shall not exceed an aggregate total value of more than $300,000,000 per fiscal year.

4) *The university shall specify in writing as public record that the project shall comply with the Business Enterprise for Minorities, Women, and Persons with Disabilities Act and the equal employment practices of Section 2-105 of the Illinois Human Rights Act.* [30 ILCS 500/30-30(a-5)]

5) Bidding, award, and performance of all single prime projects shall be reported annually by the university to the Governor, General Assembly, PPB, and Auditor General.

c) Job Order Contracting

1) A university serving as a construction agency may use job order contracting to procure construction contracts using the competitive sealed bidding process in accordance with Section 30-15 of the Code. Architectural, engineering, and land surveying services shall be in accordance with 30 ILCS 535.

2) For purposes of this Section, "job order contracting" is an *indefinite quantity contract pursuant to which a contractor may perform an ongoing series of individual tasks at different facilities, locations, and sites under the jurisdiction of a* university serving as a construction agency. [30 ILCS 500/30-17]

3) For purposes of this Section, "indefinite quantity contract" is *a contract for an indefinite quantity of services for a fixed time or for a job order contract*. [30 ILCS 500/30-17]

4) Conditions of Use. The Chief Procurement Officer may authorize the use of a job order contract upon a determination in writing that such use is necessary for adequate delivery, service or product compatibility, and that the methods of source selection set forth in Article 30 of the Code are either not practicable or advantageous because, for example, the program needs of a university cannot reasonably be met within the normal procurement timeframes, or that the type and variety of needs are such that

a single award will not assure the needed availability or diversity of vendors.

5) Procedure. A job order contract shall be initiated by the issuance of an invitation for bids in the form required by Section 4.2010 (Competitive Sealed Bidding). In addition to the requirements set forth in Article 30 of the Code and Section 4.2010, the job order contract invitation for bid shall include:

A) a detailed description of the scope of the job order contract, including performance, technical requirements and specifications, and minimum and maximum work order amounts;

B) the reasons for using a job order contract;

C) a description of the process that will be used to evaluate qualifications and proposals, including a method for determining each vendor's price adjustment factors or unit price book and technical specifications documents; and

D) that the university, with the approval of the SPO, may conduct oral or written discussions of the offers.

6) Award. Those vendors meeting minimum qualifications shall be offered non-exclusive indefinite quantity contracts against which a university may later place one or more work orders on an as needed basis in accordance with the allocation of work procedure set forth in subsection (j).

7) Allocation of Work. Work Orders shall be allocated among qualifying vendors on an as needed basis. Once a need is identified, the university shall allocate work for that project using job order contracting from the list of qualified vendors. The university shall select the vendor that best addresses its needs for the project based on the work order allocation method specified in the IFB, which shall include such factors as price, capacity, past performance, geographic location, experience and knowledge. If the low price vendor is not selected, the university shall justify the alternative selection and submit the order to the SPO for approval. The university will provide a quarterly report of the allocation of work orders to the SPO. The SPO will review the quarterly report and make any recommendations for future action to the CPO-HE.

8) It shall be the affirmative obligation of each vendor with a job order contract to update information provided to the contracting university

regarding its continued ability to provide the contracted service. Job order contracts may provide that vendors who cannot perform the required services when contacted and who have not provided the updated information may be taken out of consideration for work orders for a period of time, including until the next prequalification.

d~~b~~) Request for Payment Form Specified by the University
To bill the university for construction work done, the vendor must submit a payment request in the form specified by the university.

e~~c~~) Periodic Payments
When provided in the contract, periodic payments can be made during the course of the work, provided a licensed architect or engineer issues a certificate indicating the proportionate amount of the total work has been completed satisfactorily.

f~~d~~) Retained Percentage
When periodic payments are made and if specified in the contract, the university shall retain a fixed percentage of the contract price to insure faithful completion of the contract.

g~~e~~) Additional Work

1) No amount of funds, in addition to those provided for in a construction contract, may be obligated or expended unless the additional work to be performed or materials to be furnished are germane to the original contract.

2) Even if germane to the original contract, no additional expenditures or obligations may, in their total combined amount, be in excess of the percentage of the original contract amount as provided in Section 30-35(b) of the Code unless they have received the prior written approval of the university construction agency.

3) In the event that the total of the combined additional expenditures or obligations exceeds the percentages of the original contract amount set forth in Section 30-35(b) of the Code, the university construction agency shall investigate all the additional expenditures or obligations in excess of the original contract amount and shall in writing approve or disapprove subsequent expenditures or obligations and state in detail the reasons for the approval or disapproval.

4) Change orders that increase or decrease the cost of a contract by a total of

$25,000~~10,000~~ or more or the time for completion by a total of 180~~30~~ days or more shall be in writing and contain the appropriate authorization from the university and SPO. Vendors shall not perform any changed work prior to authorization from the university.

5) Notices of additional expenditures or obligations in excess of the small purchase limit of Section 20-20 of the Code shall be published in the Bulletin.

h~~f~~) Improvements to Leased Real Estate
The procedures set forth in this Part shall apply, as appropriate, to contracts for improvements to real estate leased to the university.

i~~g~~) Construction Manager Services

1) Procurement of construction manager services~~Construction Manager Services~~, under the jurisdiction of the Capital Development Board, will be performed by the Capital Development Board (CDB).~~ or through delegation from CDB.~~

2) Construction manager services~~Construction Manager Services~~ for projects ~~not~~ under the jurisdiction of the university~~CDB~~ shall be procured by the university in accordance with Article 33 of the Code or applicable law.

j~~h~~) Architect, Engineer and Land Surveying Contracts. Solicitations for the procurement of architecture, engineering and land surveying service professionals shall be in accordance with the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 500/535], the Illinois Procurement Code and this Part.

k) Design-Build Delivery Method. Projects using the design-build delivery shall be in accordance with the Design-Build Procurement Act [30 ILCS 537/5], the Illinois Procurement Code and this Part, and must be determined in writing to be in the State's best interest as determined by the university. *In making that determination, the following factors shall be considered:*

1) *The probability that the design-build procurement method will be in the best interest of the State by providing a material savings of time or cost over the design-bid-build or other delivery system.*

2) *The type and size of the project and its suitability to the design-build procurement method.*

3) *The ability of the university to define and provide comprehensive scope and performance criteria for the project.* [30 ILCS 537/5]

l) An advisory copy of the written determination containing the factors identified in 30 ILCS 537/5 shall be provided to the PPB within 15 days after the initial written determination by the university is made. The full record of the written determination shall be maintained by the university for 5 years.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART M: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section 4.4015 Method of Source Selection

a) Leases shall be procured by using a Request for Information for Real Property or Capital Improvement Leases (RFI-RPL) process except as provided in subsection (b).

b) Leases acquired under these exceptions shall be selected and entered into by negotiation. Written summaries of all negotiations shall be maintained in lease files.

1) *Property of less than 10,000 square feet with base rent of less than $200,000~~100,000~~ per year.*

2) *Duration of less than one year that cannot be renewed.*

3) *Specialized space available at only one location.* Specialized space is defined as space of unique function or configuration, not generally available on the market on an as built or turnkey basis. Examples of specialized space include, but are not limited to: laboratories, vehicle testing stations, correctional facilities, medical facilities, boat docks and evidence storage facilities.

4) *Renewal or extension of a lease, provided that*:

A) *the CPO-HE determines in writing that the renewal or extension is in the best interest of the* university;

B) *the CPO-HE submits his or her written determination and the renewal or extension to* the *PPB and CEI*;

C) the *PPB or CEI does not object in writing to the renewal or* *extension within 30 days after its submission; and*

D) *the CPO-HE or designee publishes* notice of *the renewal or extension in the Bulletin*.

5) *Leases with other governmental units* may be negotiated without using the *RFI-Real Property Leases process when deemed by the CPO-HE to be in the best interest of the* university. [30 ILCS 500/40-15(c)]

c) None of the provisions of subsection (b) shall prohibit making a lease procurement under the RFI-RPL provisions if the CPO-HE deems it to be in the best interests of the university.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.4020 RFI-RPL Process

a) RFI-Real Property Leases (RFI-RPL) Form
When required, an RFI-RPL shall be issued and shall include the following:

1) *the type of property to be leased;*

2) *the proposed uses of the property;*

3) *the duration of the lease;*

4) *the preferred location of the property;*

5) *a general description of the configuration desired;* [30 ILCS 500/40-20(b)]

6) special and standard lease terms and conditions, qualifications and responsibility requirements, disclosures and certifications;

7) the address to which responses are to be sent;

8) the criteria for evaluating responses based on the minimum standards and conditions for occupancy;

9) response forms and instructions for completing forms;

10) a copy of spatial and performance guidelines required to meet the needs of the university to occupy the real property being procured; and

11) the date and time of responses.

b) The university shall prepare the RFI-RPL for submission to the SPO for approval.

c) Public Notice
Public notice of the RFI-RPL shall be published in the Bulletin at least 14 days before the date set forth in the request for receipt of responses and shall also be published in similar manner in a newspaper of general circulation in the community or communities where the university is seeking space. [30 ILCS 500/40-20(c)] All required documents of the RFI-RPL will be available in electronic format on the Bulletin. Notice shall begin when first published electronically. RFI-RPL document packages may also be mailed to owners of property that may meet the university's needs after the RFI-RPL has been published in the Bulletin.

d) Response
The RFI-RPL response shall consist of written information sufficient to show that the respondent can meet minimum criteria set forth in the RFI-RPL. [30 ILCS 500/40-20(d)] All responses to the RFI-RPL will be publicly opened on the announced date. Names of all parties submitting proposals will be made available to the public immediately following the opening of the proposals.

e) Negotiation and Determination

1) *The* university, with *SPO* approval, *may enter into discussions with respondents* to *the RFI-*RPL *for the purpose of clarifying university needs and the information supplied by the respondents. On the basis of the information supplied and discussions, if any,* the university with *SPO* approval *shall make a written determination identifying the responses that meet the minimum criteria set forth in the RFI-*RPL. *Negotiations shall be entered into with all qualified respondents for the purpose of securing a lease that is in the best interest of the State*. [30 ILCS 500/40-20(d)] Site visits may be made as part of the discussion and/or negotiation process. The university shall document negotiation efforts with each qualified respondent.

2) The university, with the approval of the CPO-HE or SPO, reserves the right to reject any proposals and to request and evaluate "best and final" proposals. Best and final offers shall be sought after a written determination is made by the university, with SPO approval, that it is in the best interest of the State to request best and final proposals. A best and final proposal shall not be requested from any vendor deemed non-

responsive or who does not meet the minimum criteria set forth in the RFI-RPL.

f) Contract Award, Reporting and Filing

1) The university~~SPO~~ shall review all relevant information and shall recommend to the SPO and CPO-HE which proposal shall be accepted based on the evaluation of all responsive proposals. The CPO-HE shall make the final award, which will be published in the Bulletin. Notification of award will be sent to all respondents.

2) When the lowest response by price is selected, a written report of the negotiation shall be retained in the lease files and shall include the reasons for the final selection.

3) *When the lowest response by price is not* recommended, *the* university~~*SPO*~~ *shall forward to the SPO and CPO-HE, along with the lease, notice of the identity of the lowest respondent by price and written reasons for the* recommendation *of a different response. The CPO-HE shall publish the written reasons for the selection in the next volume of the Bulletin.* [30 ILCS 500/40-20(d)] The written reasons for the selection of the vendor shall be retained in the lease files.

g) PPB and CEI Review

The *PPB and CEI shall review any proposed lease of real property of more than 10,000 square feet or any proposed lease of real property with annual base rent payments of $200,000~~100,000~~ or more.* The *PPB and CEI shall have 30 days to review the proposed lease.* No contract may be entered into until the 30-day period has expired, unless the university requests in writing that the PPB and CEI waive the period and the PPB and CEI grant~~grants~~ the waiver in writing. *If* the *PPB and CEI do~~does~~ not object within 30 days, the proposed lease shall become effective.* [30 ILCS 500/40-20(e)]

h) University Cooperation

A university shall provide any materials or provide any assistance the PPB and CEI determines is required for its review. The PPB and CEI may request in writing from the university, and the university shall promptly, but in no event later than 5 business days after receipt of the request, provide to the PPB and CEI documentation of information in the possession of the university. This does not preclude the university seeking any other available relief including termination for breach.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.4025 Lease Requirements

a) Length of Leases

1) Maximum Term. Except when a longer term is authorized by law, leases, inclusive of renewals, shall be for a term not to exceed 10 years and shall include a termination option in favor of the State after 5 years. A lease for real property owned by a university for healthcare uses, academic facilities, dormitory facilities, or other support uses~~the University of Illinois for use by the University of Illinois at Chicago for an ambulatory surgical center, which may include clinical and retail services~~, may be for a term not to exceed 30 years when:

A) The lease requires the lessor to make capital improvements of $100,000 or more; and

B) The Board of Trustees of a university~~the University of Illinois~~ determines a term of more than 10 years is necessary and in the best interests of the institution~~University~~.

2) *Renewal Option. Leases may include a renewal option. An option to renew may be exercised only when the* university and approved by the CPO-HE *determines in writing that renewal is in the best interest of the State. The* CPO-HE *shall publish a notice of the intent to exercise the option in the Bulletin at least 30~~60~~ days prior to the exercise of the option.* [30 ILCS 500/40-25(b)] For purposes of this Section, "exercise" means the date of notification to the lessor to renew or extend the lease.

3) *All leases shall include a provision that they are subject to termination and cancellation in any year the General Assembly fails to make an appropriation to make payments under the terms of the lease.* [30 ILCS 500/40-25(c)]

4) Holdover. *No lease may continue on a month-to-month or other holdover basis for a total of more than 6 months* after expiration of the underlying lease. [30 ILCS 500/40-25(d)]

b) Lessor's Failure to Make Improvements
Each lease must provide for actual or liquidated damages upon the lessor's failure to make improvements agreed upon in the lease. The actual or liquidated damages shall consist of a reduction in lease payments equal to the corresponding percentage of the improvement value to the lease value. The

actual or liquidated damages shall continue until the lessor complies with the lease and the improvements are certified by the CPO-HE and the leasing university. [30 ILCS 500/40-55] The penalty amount shall be retained by the university. This does not preclude the university seeking any other available relief, including termination for breach.

c) All leases shall be accompanied by a full written disclosure of the identity of every owner and beneficiary having any interest in the premises being leased.

1) The disclosure shall be subscribed and sworn or otherwise affirmed on oath by an owner, authorized trustee, corporate official, partner, managing agent or other authorized person.

2) The disclosure shall set forth all ownership interests. By way of example, the disclosure should identify the names of the beneficiaries of a land trust in addition to the trustee, the names of all partners whether general or limited in nature, the names of all members or managers of a limited liability company and the names of all shareholders in a corporation who are entitled to receive more than 7½% of the total distributable income of the entity. If the entity is publicly traded and no readily known individual owns more than a 7½% interest, then the requirements of this subsection (c) may be met by an officer or managing agent of the entity making an affirmative statement to this effect under oath.

3) The disclosure shall set forth the identity of any State officer, employee or elected official, or the wife, husband, or minor child of that person having an ownership or beneficial interest under the lease. In the event a person is so set forth, the disclosure shall include a specific designation of the percentage of the total distributable income to that person, together with that of the wife, husband or minor child of the person, is entitled to receive from any firm, partnership, association or corporation that is the lessor.

4) It shall be the responsibility of the lessor to notify the leasing university ~~CPO-HE, SPO or designee~~ of any changes in ownership or beneficial interest and to submit updated disclosure statements reflecting the changes within 30 days after the change.

d) Space that is not in compliance with accessibility regulations, or is not capable of being brought in compliance with the installation of minimum essential features of accessibility by the time of occupancy, shall not be considered for use.

1) Each RFI will contain specifications for accessibility. Exceptions to the specifications will be allowed only upon request of the university if

legitimate reasons are given and the request is otherwise in compliance with all federal and State laws regarding accessibility. The CPO-HE, SPO or designee may waive certain specifications at his or her discretion in accordance with subsection (d)(2).

2) Exceptions may be based upon one or more of the following criteria:

A) No other suitable location exists within the geographic boundaries required by the operation/program at the site.

B) No funds are appropriated to cover expenses for:

i) Relocation to an accessible site;

ii) Remodeling existing site to achieve accessibility; or

iii) Construction of a new facility.

3) The operations at the site are part of an on-going program that cannot be interrupted or terminated pending relocation, remodeling or new construction.

4) The operations at the site are part of a new program that must be implemented without delay to avoid:

A) Delay or interruption of vital services; and/or

B) Loss of funds associated with the program

5) The operations/programs at the site:

A) Generate a low frequency of public use; and/or

B) Provide a low number of job opportunities.

6) For sites carrying out programs funded in whole or part by federal funds, exceptions will be granted only upon written certification from the university that alternative methods have been established to deliver services to disabled clients and the university will provide necessary structural modification for qualified disabled employees, unless the modification would cause the university to incur undue hardship. This requirement is based on federal law (section 504 of the Rehabilitation Act of 1973 (29 U.S.C. ~~USC~~ 706)) and any federal regulations promulgated in

accordance with that Act, including those promulgated by the U.S. Department of Health and Human Services.

e) Each university that enters into a lease under Section 4.4025 shall file, in writing, a report to the General Assembly. The report shall outline each lease entered into under Section 4.4025 that is current as of the date of the report.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.4030 Purchase Option

Leases of all space in entire, free-standing buildings shall include an option to purchase exercisable by the university, unless the university and approved by the CPO-HE or SPO determines in writing that inclusion of that purchase option is not in the State's best interest. The determination, including the reasons for making that determination, shall be published in the Bulletin. Leases with governmental units and not-for-profit entities are exempt from the requirements of this Section.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART N: PREFERENCES

Section 4.4523 Compostable or Recyclable Plastics

When a university is to award a contract to the lowest responsible bidder, an otherwise qualified bidder who will fulfill the contract through the use of compostable foodware or recyclable foodware may be given preference over the other bidders unable to do so; provided that the bid is not more than 5% greater than the cost of products that are single-use plastic disposable foodware. [30 ILCS 500/45-23]. *The contract awarded the cost preference shall also include the option of providing the university with single-use plastic straws.* [30 ILCS 500/45-23(b)]

a) After January 1, 2025, a university shall procure only compostable foodware or recyclable foodware for use at a university. Procuring of disposable food service containers in whole or in part from polystyrene foam for use at a university is prohibited. (See 30 ILCS 500/45-24)

b) *After January 1, 2026, or at the renewal of its next contract* with a university, *whichever occurs later*, vendor must offer only compostable foodware or recyclable foodware for use a university. The use of disposable food service containers composed in whole or in part from polystyrene foam for use at a university is prohibited. (See 30 ILCS 500/45-24)

(Source: Added at 50 Ill. Reg. ______, effective ____________)

Section 4.4545 Small Businesses

a) Authority to Establish Small Business Set-Aside
The CPO-HE, in consultation with the universities, may determine categories of construction, supplies or service procurements that will be set aside for small businesses in Illinois. A set-aside designation shall be for a stated period of time. An SPO, in consultation with a university, may determine to set aside for small business individual contracts not in a set-aside category. A set-aside may be established for competitive solicitations or for small purchases.

b) Certified Small Business List
The CPO-HE, in consultation with the universities, may develop its own list, or may use a list maintained by another CPO, of vendors that meet the criteria of small business.

c) Contract Set-Aside

1) Any procurement proposed for set-aside to small businesses shall be so identified in the Bulletin notice and the solicitation documents. Bids or proposals received from large businesses will be rejected as nonresponsive. Vendors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses must be certified as a small business by one or more CPOs or shall submit information as specified verifying that the vendor qualifies as a small business under this Part. A business that fits the definition of small on the day of award or proposal opening will be considered small for the duration of the contract.

2) When conducting a small purchase in a set-aside category, the university shall consult the list of certified small businesses and shall solicit at least three vendors under the commodity codes or classifications representing the supplies or services being solicited. Vendors outside a reasonable geographic area need not be contacted.

3) The SPO may waive the requirement for set-aside on individual transactions based upon a request from the university that a set-aside is not conducive to meeting its need.

4) Withdrawal of Set-Aside
If the SPO determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the SPO may reject all bids or proposals and withdraw the designation of small business set-aside for

the procurement in question. When a small business set-aside is withdrawn, notification shall be published in the Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with this Part but without the small business designation. The CPO shall make the annual report available on the CPO-HE website and shall issue a press release in conjunction with the small annual report. The annual report shall include an executive summary and a link to the annual report on the CPO-HE website.

d) Criteria for Small Business

1) Unless the CPO-HE provides a definition for a particular procurement that reflects industrial characteristics, a small business is a business that is independently owned and operated and is not dominant in its field of operation.

A) A wholesale business is a small business if its annual sales for its most recently completed fiscal year do not exceed $13,000,000.

B) A retail business or business selling services is a small business if its annual sales and receipts for its most recently completed fiscal year do not exceed $8,000,000.

C) A manufacturing business is a small business if it employs no more than 250 persons. A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis, for its most recently ended fiscal year. If a manufacturing business has been in existence for less than a full fiscal year, its average employment shall be calculated for the period through one month prior to the bid or proposal due date.

D) A construction business is a small business if its annual sales and receipts for its most recently completed fiscal year do not exceed $14,000,000.

E) If a business is any combination of retailer, wholesaler or construction business, then the annual sales for each component may not exceed the higher of $13,000,000 for a wholesaler, $8,000,000 for a retailer, $14,000,000 for a construction business or the amounts shown in Section 45-45 of the Code. For example, a business that is both a retailer and a wholesaler may not have total sales exceeding $21,000,000 and the retail component may not exceed $8,000,000 and the wholesale component may not exceed $13,000,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed 250.

2) A small business in Illinois is defined as a company that meets the criteria in subsection (d~~e~~)(1) and is a sole proprietor whose primary residence is in Illinois or is a business incorporated or organized as a domestic corporation under the Business Corporation Act of 1983 [805 ILCS 5/1.80], is a business organized as a domestic limited liability company under the Limited Liability Company Act [805 ILCS 180], is a business organized as a domestic partnership under the Uniform Partnership Act of 1997 [805 ILCS 206], or a business organized as a domestic limited partnership under the Uniform Limited Partnership Act of 2001 [805 ILCS 215].

3) A small business that is not dominant in its field of operations means the business does not exercise a controlling or major influence in the kind of business activity in which it is engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

4) Businesses artificially divided to qualify as small business will be disallowed. When computing the size status of a vendor and whether the vendor qualifies as a small business, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates, concerns and related entities shall be included. Concerns and related entities are affiliates of each other when one directly or indirectly controls or has the power to control the other, or when a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. In determining whether concerns and related entities are independently owned and operated and whether affiliation exists, consideration shall be given to all appropriate factors, including use of common facilities, common ownership and management, identity of interest (substantially identical business or economic interests such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) and contractual arrangements. In determining whether affiliation exists, the CPO-HE will consider the totality of the

circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation. A franchise relationship shall not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

e) Small Business Specialist

1) The CPO-HE shall designate a small business specialist, who shall have the duties set forth in Section 45-45(e) and (f) of the Code, and who shall also act as coordinator of small business. The designated small business specialist shall compile statistics provided by the university needed to make the small business annual report to the General Assembly required under Section 45-45(f) of the Code.

2) The small business specialist shall provide written instruction to any business registered as a small business in accordance with Section 45-45 of the Code on how to register for the Public Higher Education Bulletin. Notice shall be provided within 30 days after the small business certification.

f) Small Business Contracts

1) Goal

A) It is the goal of the State of Illinois to award not less than 10% of the total dollar amount of State contracts to small businesses.

B) Small businesses are defined as those businesses meeting the criteria established in Section 45-45 of the Code and subsection (d) of this Section.

2) Goal Measurement

A) The goal shall be measured on a full fiscal year basis.

B) Each university's expenditures, whether against contracts established by the university or against contracts established on behalf of a university, shall be included in the university's goal attainment statistics.

C) A university may satisfy its goal, in whole or in part, by counting expenditures made by State vendors to subcontractors that are small businesses.

3) University Compliance Plans

A) Each university shall submit an annual compliance plan of how it intends to reach its goal and a timetable for reaching its goal. The CPO-HE shall establish the format and timetable for submission of the compliance plan. The CPO-HE shall approve the plan if it meets the requirements of the Code and this Part.

B) Each university shall submit an annual utilization report of small business contracts during the preceding fiscal year, including lapse period spending and a mid-fiscal year utilization report. The CPO-HE shall establish the format and timetable for submission of the utilization report.

C) The CPO-HE or small business specialist appointed under Section 45-45 of the Code may recommend ways in which a university may reach its goal. Upon a finding by the CPO-HE that a university's compliance plan is insufficient to reach the university's goal, the CPO-HE shall recommend ways in which a university can reach its goal. Those recommendations may include, but are not be limited to:

i) using stronger and better focused solicitation efforts to obtain more small businesses as potential sources of supply;

ii) division of job or project requirements, when economically feasible, into smaller, more manageable, tasks or quantities;

iii) elimination of extended experience or capitalization requirements when programmatically feasible; and

iv) identification of specific proposed contracts as particularly attractive or appropriate for participation by small businesses.

D) If the compliance plans or utilization reports indicate a university's goal will not be reached, the CPO-HE may request that the university explain the university's noncompliance. If the CPO-HE determines a university is not making a serious effort to reach the goal, the CPO-HE will prepare a report for submission to the

Governor and General Assembly with recommendations for remedial action.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.4570 Contracting with Businesses Owned and Controlled by Minorities, Women, and Persons with Disabilities

Procurements made under the Code are subject to the requirements of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act [30 ILCS 575]. Each university is responsible for ~~establishing goals and~~ taking ~~other~~ action in accordance with the Act, such as ensuring specifications are written to minimize barriers to participation and that diverse vendors are included in solicitation outreach and training. Each solicitation conducted by a university, regardless of the source selection method, shall take into account the goals and policies set forth in the Act and any other laws of the State.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.4575 Domestic Products

a) This Section applies unless an exception is provided by statute or, in the case of a small, emergency or sole economically feasible source situation.

b) *Purchases of procured products shall promote the purchase of and give preference to manufactured articles, materials, and supplies that have been manufactured in the United States. Procured products manufactured in the United States shall be specified and purchased unless the* university *determines that any of the following applies:*

1) *Procured products are not manufactured in the United States in reasonably available quantities.*

2) *Price of the procured products manufactured in the United States exceeds the price of available and comparable procured products manufactured outside of the United States by 12% or more.*

3) *Quality of the procured products manufactured in the United States is substantially less than the quality of the comparably priced, available, and comparable procured products manufactured outside the United States.*

4) *Purchase of the procured products manufactured outside the United States better serves the public interest by helping to protect or save life, property, or the environment.*

5) *Purchase of procured products is made in conjunction with contracts or offerings of telecommunications, fire suppression, security systems, communications services, Internet services, or information services.*

6) *Purchase of pharmaceutical products, drugs, biologics, vaccines, medical devices used to provide medical and health care or treat disease or used in medical or research diagnostic tests, and medical nutritionals regulated by the Food and Drug Administration under the federal Food, Drug and Cosmetic Act.* [30 ILCS 517/10]

c~~b~~) This Section applies to supplies purchased by the university that have undergone some manufacturing process that changes the raw material or components into a different product. The following examples show how to interpret this Section:

1) If the university needs grain, this Section would not apply because the university would be asking for a raw material.

2) If the university needs flour, the purchase would be subject to this Section as the flour was subject to a manufacturing process. The grain used in manufacturing the flour would not be subject to any domestic restriction.

3) If the university needs bread, the bread would be subject to this Section. The grain and flour used in creating the bread would not be subject to any domestic restriction.

4) An item assembled domestically with components manufactured in another country is still considered a domestic product.

d~~c~~) Specifications for manufactured supplies shall include a reference to the preference established in this Section.

e~~d~~) The preference shall be as follows:

1) The low bid or most advantageous proposal shall be identified without regard to whether the product is a domestic product.

2) In the event of a tie between two bidders or offerors who have certified they will provide products manufactured in the United States~~in a competitive sealed bid procurement~~, the vendor that certifies it will provide products manufactured in Illinois~~domestic supplies~~ shall be given preference.

3) If the low bid or most advantageous proposal does not contain a certification that the supply items are domestic, then any responsive and responsible vendor that is within 2% of the identified vendor's price that has made that certification shall be evaluated as though its price was 2% lower, subject to a maximum dollar value of $50,000.

4) The winning vendor will be determined after application of the preference.

5) Notwithstanding the preference outlined in this subsection (e~~d~~), if the university ~~appropriate SPO~~ determines that the price differential calculated using the preference is not acceptable given the particular procurement and the economic circumstances, the award may be conditioned on receipt of an acceptable price reduction. If the price cannot be reduced to an acceptable level, the original low priced or most advantageous proposal may be selected for award.

f~~e~~) Each procuring university shall include in the procurement file documentation showing the application of any preference given and any determination that the preference was not subject to the Procurement of Domestic Products Act [30 ILCS 517].

g) Annual Compliance Reports
Each procuring university shall submit to the CPO-HE a report on the university's compliance and noncompliance with the Procurement of Domestic Products Act, including an analysis of goods, products, and materials not subject to the Act, and recommendations for how to further effectuate the policy set forth in this Act.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.4596 Electric Vehicles

a) *"Electric vehicles"*, as used in this Section, *means a vehicle that is exclusively powered by and refueled by electricity, must be plugged in to charge or utilize a pre-charged battery, and is permitted to operate on public roadway.*

b) *"Manufactured in Illinois"*, as used in this Section, *means, in the case of electric vehicles, that design, final assembly, processing, packaging, testing, or other process that adds value, quality, or reliability occurs in Illinois.*

c) *In awarding contracts requiring the procurement of electric vehicles, preference shall be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of electric vehicles manufactured in Illinois. Specifications for contracts for electric vehicles shall include a price preference* *of 20% for electric vehicles manufactured in Illinois. The* university *may require additional information from bidders or offerors to verify whether an electric vehicle is manufactured in Illinois.* [30 ILCS 500/45-100]

(Source: Added at 50 Ill. Reg. ______, effective ____________)

Section 4.4597 Illinois Businesses

a) *In procuring construction and construction-related professional services for projects with a total value that exceeds the small purchase maximum established by Section 20-20 of the Code, construction agencies shall provide a bid preference to a responsive and responsible bidder that is an Illinois business as defined in* Section 45-105(g) of the Code. *The construction agency shall allocate to the lowest bid by an Illinois business that is responsible and responsive a bid preference of 4% of the contract base bid. Subsection* 45-105(e) of the Code *applies only to projects where a business that is not an Illinois business submits a bid.* [30 ILCS 500/45-105(e)]

b) The term *"Illinois business"*, as used in this Section 4.4597 and Section 45-105(g) of the Code, *means a contractor that is, for at least one year prior, operating and headquartered in Illinois, subject to applicable State taxes, and providing, at the time that an invitation for a bid or notice of contract opportunity is first advertised, construction or construction-related professional services. "Illinois business" includes a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State where it is operating, headquartered, and performing construction or construction-related professional services at least one year before an invitation for a bid or notice of contract opportunity is first advertised.* [30 ILCS 500/45-105(g)]

c) "Headquartered", as used in this Section and Section 45-105(g) of the Code, means having a physical location, excluding job site trailers, within the state where the executives for the business, or high-level officers for a corporation, direct, control, and coordinate the business' or corporation's activities.

(Source: Added at 50 Ill. Reg. ______, effective ____________)

SUBPART O: ETHICS

Section 4.5011 Debt Delinquency

a) *If a~~No~~ person submits~~shall submit~~ a bid or offer for, enters~~ or enter~~ into a contract or subcontract under this Code, or makes~~make~~ a submission to a vendor* *portal* *and* ~~*if*~~ *that person knows or should know that he or she or any affiliate is delinquent in the payment of any debt to the State,* *that person or affiliate must cure the debt delinquency within 7 calendar days by satisfying the entire debt, or*~~*unless*~~ *the person or affiliate* *must enter*~~*has entered*~~ *into a deferred payment plan to pay off the debt**, subject to the Comptroller's ability to process the payment, or must be actively disputing or seeking a resolution of the debt*. [30 ILCS 500/50-11(a)] For purposes of this Section, terms shall have the meanings ascribed in Section 50-11 of the Code.

b) *Every bid and offer submitted to the State, every vendor's submission to a vendor portal, every contract executed by the State, and every subcontract subject to Section 20-120 of the Code shall contain a certification by the contractor or subcontractor, respectively, that the bidder, offeror,* respondent, *potential contractor, contractor or subcontractor and its affiliate is not barred from being awarded a contract or subcontract under this Section and acknowledges that the* CPO-HE *may declare the related contract void if any of the certifications* required by this Section *are false. If the false certification is made by a subcontractor, then the contractor's submitted bid and the executed contract may not be declared void, unless the contractor refuses to terminate the subcontract upon the State's request after a finding that the subcontractor's certification was false.* [30 ILCS 50-11(b)]

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

a) Disclosures of financial interests and potential conflicts of interest shall be obtained for all submissions to a vendor portal and from all bidders, offerors, vendors, or contractors.

1) For the purposes of Section 50-35(a) of the Code, "bids and offers from responsive bidders, offerors, vendors, or contractors" means bids, offers and quotes received pursuant to any source selection method, except for sole source and emergency procurements, and that have~~has~~ an annual value that exceeds the small purchase threshold established under Section 20-20 of the Code~~of more than $50,000~~.

2) Disclosures are not required in sole source and emergency contracts, but shall be obtained in whole or in part when practical and when the annual value exceeds the small purchase threshold established under Section 20-20 of the Code~~$50,000~~.

~~3) Disclosures shall be obtained for small purchases annually exceeding~~

~~$50,000, except as otherwise provided in this Section. If a small purchase could qualify as an emergency or sole source, disclosures are not required but shall be obtained when practical.~~

3)~~4)~~ In certain circumstances (e.g., emergency and sole source procurements) in which the vendor refuses or is unable to provide disclosures, the SPO may authorize the university to move forward with the transaction. The university must provide documentation of efforts to obtain compliance in a form prescribed by the PPB and CPO-HE.

4) A signed affidavit prescribed by the CPO-HE may be obtained in lieu of disclosures in accordance with Section 50-35(j) of the Code.

b) For purposes of:

1) Section 50-35(b) of the Code, "parent entity" means an entity that owns 100% of the bidding entity.

2) Section 50-35(b)(1) of the Code, "contractual employment of services" means any contract to provide services to the State, whether as independent contractor or employee, that is by and between the State and the named individual.

c) "Distributive Income" means income of a company after payment of all expenses, including employee salaries and bonuses and retained earnings, which is distributed to those entitled to receive a share of that income. In the case of a for-profit corporation, distributive income means "dividends". When calculating entitlement to distributive income, the entitlement shall be determined at the end of the company's most recent fiscal year.

d) "Personal Services" shall be any contract for services subject to the Code, including, by way of example, professional and artistic services, repair services, cleaning and guard services, but excludes contracts with employees who are exempt from the Code under Section 1-10(b)(4) of the Code.

e) "Subject to Federal 10K Reporting" means subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

f) "10K Disclosure" means a report required under section 13 or 15(d) of the Securities Exchange Act of 1934.

g) New disclosures are not required for contract amendments. New disclosures are required *if a contractor or subcontractor is unable to truthfully certify that it* *continues to meet all requirements.* [30 ILCS 500/50-2]~~on contract renewals. New disclosures are not required for contract amendments.~~

h) 10K Disclosures

1) Any vendor subject to federal 10K reporting requirements may submit its 10K to the university in satisfaction of the disclosure requirement of Section 50-35(b) of the Code. The vendor may be required to identify the specific sections or parts in the 10K disclosure containing information, if any, pertaining to those who have an ownership interest or an interest in the distributive income of the vendor or its parent, or other information that the vendor knows or reasonably should know identifies a potential conflict of interest with the State. If the financial interest or conflict of interest information requested by the university is not in the 10K, or in a document that may be submitted to the SEC in conjunction with or in lieu of the 10K, then that additional documentation shall be provided as well.

2) 10K disclosures are available for public review. Any potential conflict of interest identified by the public and brought to the attention of the CPO-HE or SPO shall be investigated.

3) In circumstances in which a vendor may submit a 10K disclosure in lieu of the specific disclosure requirements of the Code, the SPO or designee may consider information identified by the vendor in the 10K disclosure and any information disclosed pursuant to public review of the 10K disclosure in determining whether a potential conflict of interest exists.

i) Form of Disclosure
The form of disclosures shall be prescribed by the CPO-HE and shall include at least the names, addresses and dollar or proportionate share of ownership of each person identified in this Section, their instrument of ownership or beneficial relationship, and notice of any potential conflict of interest.

j) Intent of Disclosure
The disclosure required in subsection (i) is not intended to prohibit or prevent any contract. The disclosure is meant to fully and publicly disclose any potential conflict to the CPO-HE, SPOs, their designees, and executive officers so they may adequately discharge their duty to protect the State. [30 ILCS 500/50-35(c)]

1) Determination by Procurement Officer
A potential for a conflict of interest exists if a reasonable person would naturally and probably expect a conflict to come into existence even though one does not now exist. Improbable or strained connections will

not constitute a potential for a conflict. The mere disclosure of one or more of the 10 relationships described in Section 50-35(b) of the Code is not sufficient, without a determination by the CPO-HE or SPO, to conclude a potential for a conflict exists. When a potential conflict of interest is identified, discovered or reasonably suspected, it shall be reviewed by the CPO-HE or SPO, who will send the contract to PPB and CEI. PPB and CEI shall recommend in writing to the CPO-HE whether to allow or void the contract, bid or offer or subcontract weighing the best interest of the State of Illinois.

2) If the CPO-HE disagrees with the PPB or CEI~~PPB's~~ recommendation to void a contract, bid or offer, the Executive Ethics Commission will hold a hearing. No contract with a potential conflict of interest shall be awarded before a hearing if the PPB or CEI recommends a contract, bid or offer be voided. The written determination shall become a publicly available part of the contract, bid or proposal file. Recommendations are *for procurements having a cumulative value under $5,000 valid and enforceable, for one calendar year after the initial recommendation was made, for all subsequent conflicts for that vendor with regard to the same university.* [30 ILCS 500/50-35(d)]

3) Requirements for Reasonable Care and Diligence
These thresholds for disclosure do not relieve the CPO-HE, SPO or their designees from reasonable care and diligence for any contract, bid, offer or submission to a vendor portal. The CPO-HE, SPOs or their designees shall be responsible for using any reasonably known and publicly available information to discover any undisclosed potential conflict of interest and act to protect the best interest of the State of Illinois. [30 ILCS 500/50-35(e)]

4) Inadvertent or Accidental Failure to Fully Disclose
Inadvertent or accidental failure to fully disclose shall render the contract, bid, offer, proposal, subcontract, or relationship voidable by the CPO-HE if he or she deems it in the best interest of the State of Illinois and, at his or her discretion, may be cause for barring from future contracts, bids, offers, proposals, subcontracts, or relationships with the State for a period of up to 2 years. [30 ILCS 500/50-35(f)]

5) Intentional, Willful or Material Failure to Disclose
Intentional, willful or material failure to disclose shall render the contract, bid, offer, proposal, subcontract, or relationship voidable by the CPO-HE if he or she deems it in the best interest of the State of Illinois and shall result in debarment from future contracts, bids, offers,

proposals, subcontracts, or relationships with the State for a period of not less than 2 years and not more than 10 years. Reinstatement after 2 years and before 10 years must be reviewed and commented upon by the Governor, or by an executive ethics board he or she may designate. The comment shall be returned to the CPO-HE, who must rule in writing whether and when to reinstate. [30 ILCS 500/50-35(g)]

6) Other Procurements
In addition, all disclosures shall note any other current or pending contracts, bids, offers, proposals, subcontracts, leases or other ongoing procurement relationships the bidder, offeror, potential contractor, contractor, or subcontractor has with any other unit of State government and shall clearly identify the unit and the contract, offer, proposal, lease or other relationship. [30 ILCS 500/50-35(h)]

7) Continuing Obligation
The bidder, offeror, potential contractor, or contractor has a continuing obligation to supplement the disclosure required by this Section throughout the bidding process, during the term of any contract, and during the vendor portal registration process. [30 ILCS 500/50-35(i)]

k) Subcontractors
Procurements under 30 ILCS 500/30-15, shall include a provision to require each bidder or offeror to identify, in its bid or within 20 days after award notice is published to the Bulletin, the identity of known subcontractors that will be used in the performance of the contract, as well as the amounts expected to be paid to each subcontractor. Subcontractors shall submit disclosures within 20 days after the award notice is published to the Bulletin. The vendor may be requested to provide copies of subcontracts for those subcontracts valued over the small purchase threshold established under Section 20-20 of the Code and Standard Illinois Certification, in such form as is approved by the CPO office.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.5037 Vendor Registration, Certification and Prohibition on Political Contributions

a) Introduction
Illinois statute [10 ILCS 5/9-35 and 30 ILCS 500/20-160 and 50-37] restricts political contributions by vendors and affiliated entities, requires registration with the State Board of Elections (SBEL), and requires solicitation and contract certifications relative to the requirements of the statutes. This Section supplements requirements found in the statutes and does not excuse compliance

with any of those requirements.

b) General Registration Requirements

1) These requirements apply to contracts, bids and offers that are subject to the Code:

A) Bids/offers referenced in this Section are those submitted in response to a competitive solicitation that is posted to the Bulletin, regardless of the value assigned to the procurement.

B) Bids and offers include pending bids and offers.

C) These requirements generally apply to a vendor whose existing State contracts have an aggregate total value in excess of $50,000, or whose aggregate pending total value of bids/offers for State contracts exceeds $50,000, or whose aggregate total value of State contracts and bids/offers exceeds $50,000.

D) This value is calculated on an aggregate~~a calendar-year~~ basis.

2) Each~~On a calendar-year basis, each~~ vendor or potential vendor must keep track of aggregate total~~the~~ value of contracts and bids/offers. Vendors must register with SBEL when the vendor determines that the value of the contracts and bids/offers meets the threshold for registration.

3) An "executive employee" means:

A) the President, Chairman of the Board, Chief Executive Officer and/or other individuals who fulfill equivalent duties as the President, Chairman of the Board or Chief Executive Officer; and/or

B) any employee whose compensation is determined directly, in whole or in part, by the award or payment of contracts by a State agency to the entity employing the employee, irrespective of the employee's title or status in the business entity. For the purposes of this subsection (b)(3)(B), compensation determined directly by award or payment of contracts means a payment over and above regular salary that would not be made if it were not for the award of the contract.

4) Businesses required to register have a continuing duty to ensure that the

registration is accurate in accordance with Sections 20-160 and 50-37 of the Code.

c) Bids and Proposals

1) In order to be considered for award, a vendor who meets the requirements for registration must be registered with SBEL as of the date the bid or offer is due and shall be able to produce a copy of the Registration Certificate on that date.

2) If a vendor who meets the requirements for registration is not registered by the date the bid or offer is due, the CPO-HE shall review the bid or offer to determine whether the bidder or offeror made a good faith effort to comply with the registration requirements prior to the bid or offer being due.

A) Good faith effort may consist of, but is not limited to, an attempt to register either as a parent or subsidiary, registration under a prior name, acts of God that made registration impossible, or other demonstrated effort to register in advance of the bid or offer being due.

B) If the CPO-HE finds good faith efforts were made to register, the CPO-HE shall notify the bidder or offeror it has 5 business days to achieve compliance with the registration requirements.

3) Prior to award or execution of a contract, the SPO, or a designee of the SPO, shall verify that the vendor who meets the requirements for registration has registered with SBEL and shall document vendor compliance.

4) Annual certification through the vendor portal in accordance with Section 4.1535 satisfies the requirements of this Section.

5) A bid or offer that fails to meet the requirements for registration with SBEL shall be rejected as non-responsive.

d) Contracts

Documentation of vendor compliance must be in the procurement file in relation to any contract for which a vendor is required to register as set forth in this subsection (d), unless the vendor certifies it is not required to register.

1) For contract renewals and extensions, if the value of the renewal or

extension by itself, or in combination with the contract being renewed/extended and other contracts and pending bids/proposals exceeds $50,000, the vendor must provide documentation of vendor compliance upon request and make the appropriate contract certification, if it has not already done so. The Registration Certificate or other evidence of vendor compliance may be provided by reference to and incorporation of the vendor's prequalification by the CPO-HE.

2) A university shall identify in the solicitation whether the contract is estimated to exceed $50,000 ~~annually~~. Vendors submitting bids or offers for master contracts estimated to exceed $50,000 ~~annually~~ regardless of consumption are required to register with SBEL.

3) For indefinite quantity/estimated value contracts that are not estimated to exceed $50,000 ~~annually~~, a vendor who is otherwise not required to register shall register with SBEL when the value of orders placed pursuant to an indefinite/estimated value contract plus all other contracts and pending bids/proposals exceeds $50,000.

4) For change orders, if the value of the change order, by itself or in combination with the contract being renewed plus other contracts and pending bids/proposals exceeds $50,000 ~~annually~~, the vendor must provide the Registration Certificate or other evidence of vendor compliance upon request and make the appropriate contract certification, if it has not already done so.

5) Any contracts mistakenly executed in violation of this Section must be amended to include the contract certifications, and the vendor must supply the Registration Certificate or other evidence of vendor compliance upon request. If any violation by the vendor is not cured within 5 business days after receipt of notification of the violation, the contract is voidable by the State without penalty.

6) Contract certification required by Section 20-160 of the Code shall be included in or added to each contract that must be filed with the State Comptroller in accordance with Section 20-80 of the Code and those written two-party contracts that need not be filed with the Comptroller. Universities may require written confirmation of the rule-imposed certification at any time.

e) Each solicitation issued and contract executed by the State shall be deemed to contain a statement that the contract is voidable under Section 50-60 of the Code if the bidder, offeror or contractor fails to comply with Section 20-160 of the Code.

f) Prohibited Political Contributions

1) Upon discovery of a political contribution that is potentially prohibited by Section 50-37 of the Code, the CPO-HE, within 5 business days, shall send a letter requesting response from the business entity that made the potential prohibited contribution acknowledging or denying that the contribution was prohibited.

2) If the CPO-HE determines that a political contribution was prohibited, all contracts held by the contributing business entity are voidable, and the CPO-HE shall determine if the circumstances surrounding the prohibited political contribution warrant the voiding of these contracts.

3) If a business entity violates Section 50-37(b) of the Code three or more times within a 36 month period, the CPO-HE shall void all contracts with the business entity and the business entity shall be prohibited from responding to any solicitation issued by any State agency or entering into a contract with any university for three years from the date of the last violation.

4) If the CPO-HE determines that a prohibited political contribution is grounds to suspend a business entity pursuant to Section 4.5560(b), the business entity shall have the right to a hearing in accordance with Section 4.5560(h), to be conducted in accordance with Subpart V.

g) Notice

1) Notice of each violation of Section 50-37 and any penalty imposed for each violation shall be published in the Illinois Register and the Bulletin.

2) The CPO-HE shall directly notify a political committee in receipt of a prohibited political contribution that payment equal to the amount of the contribution is due the State of Illinois within 30 days after publication of the violation in the Illinois Register.

3) If an amount owed by a political committee as a result of a prohibited political contribution is not paid and is deemed uncollectible for any reason, notice of the political committee's nonpayment shall be published in the Illinois Register and the Bulletin.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.5039 Procurement Communication Reporting Requirement

a) Reporting Requirement

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 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, shall be reported to the PPB~~*Procurement Policy Board*~~ in accordance with rules of the Executive Ethics Commission (2 Ill. Adm. Code 1620). [30 ILCS 500/50-39(a)]

b) Excepted Communications

1) Reportable communications *do not include the following:*

A) *statements made by a person publicly in a public forum.* However, communications made in a public forum, if privately, must be reported;

B) *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;*

C) *statements made by a State employee to:*

i) *the State employee's agency head;*

ii) *other employees of that agency;*

iii) *employees of the Executive Ethics Commission*, including the CPO-HE, SPOs, PCMs and other CPO-HE staff*; or*

iv) *an employee of another State agency who, through the communication, is either:*

- *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 SPO; or*

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

D) *Communications~~Unsolicited communications~~ providing general information about a firm's products or~~,~~ services, or industry best practices provided~~before~~ those products or services are not directly related to an open procurement matter~~become involved in a procurement matter;~~*

E) *Communications received in response to procurement solicitations, including, but not limited to, vendor responses to:*

i) *an IFB, RFI, RFP, Request for Qualifications, small purchase, sole source or emergency procurement; or*

ii) *questions or answers posted to the Bulletin to supplement the procurement action, provided that the communications are made in accordance with instructions contained in the procurement solicitation, procedures, or guidelines;*

F) *Communications that are privileged, protected or confidential under law;~~ and~~*

G) *Communications that are part of a formal procurement process as set out by statute, rule, or solicitation, guidelines, or procedures, including but not limited to:*

i) *the posting of procurement opportunities;*

ii) *the process for approving a procurement business case or its equivalent;*

iii) *fiscal approval;*

iv) *submission of bids or offers;*

v) *the finalization of contract terms and conditions with an awardee or apparent awardee; and*

vi) *any other similar formal procurement process; and~~.~~*

H) *communications about proposal deficiencies as provided under 30 ILCS 535/35.*

2) *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.* [30 ILCS 500/50-39(a)]

3) The reporting requirement does not apply to communications asking for clarification on a published solicitation provided:

A) the response did not provide a competitive advantage to the person or business who asked for clarification; and

B) the question and answer were published to the Bulletin as an addendum to the solicitation.

4) *No trade secret or other proprietary or confidential information shall be included in any communication reported to the* PPB~~*Procurement Policy Board*~~. [30 ILCS 500/50-39(b)]

c) *When an oral communication made by a person required to register under the Lobbyist Registration Act* [25 ILCS 170] *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, but is not limited to, the items listed in Section 50-39 of the Code.* [30 ILCS 500/50-39(c)]

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

Section 4.5057 Curability

A university head, with concurrence of the SPO, may request that a violation or deficiency of the Code, administrative rules, policies, or practices promulgated by the CPO-HE during an active procurement be cured.

a) Request, Determination and Record of Cure

1) Request. During the active procurement, the university in concurrence with the SPO shall make a written request stating the violation or deficiency of the Code, or of the administrative rules, policies, or practices promulgated by the CPO-HE.

A) The request shall include a clear description of the violation or deficiency and reasons as to why it is in the best interest of the State to cure the violation or deficiency.

B) The request shall include justification that a cure will maintain the integrity, transparency, and efficiency of the procurement.

2) Determination. The CPO-HE *shall consider the harm to stakeholders and the value to the State in permitting the cure and the seriousness of the violation or deficiency.* [30 ILCS 500/50-57]

A) A written determination by the CPO-HE shall include the basis for permitting or denying the request.

B) A written determination by the CPO-HE to cure shall include a clear description of the action to cure the violation or deficiency. *Permitting a cure does not absolve any person, as defined in Section 1-15.55* of the Code, *from any penalties in law.*

3) Record. The determination shall be posted on the CPO-HE website within 14 days after completion of the procurement. The CPO-HE shall provide, annually, a summary of such determinations for the previous fiscal year to the Governor and General Assembly by November 1.

(Source: Added at 50 Ill. Reg. ______, effective ____________)

Section 4.5090 Certifications

All contracts under this Code with an annual value that exceeds $50,000 annually shall be accompanied by Standard Illinois Certifications in a form prescribed by each chief procurement officer. [30 ILCS 500/50-90]

(Source: Added at 50 Ill. Reg. ______, effective ____________)

SUBPART P: CONCESSIONS

Section 4.5325 Concessions

a) *Each public institution of higher education*, as defined in Section 4.15, *may enter into concessions*, including the right to engage in activity on the lessors property (e.g., a refreshment or parking concession), and *including the assignment, license, sale, or transfer of interests in or rights to discoveries, inventions, patents, or* *copyrightable works, for property, whether tangible or intangible, over which it has jurisdiction. Concessions shall be reduced to writing and shall be awarded at the discretion of the institution with jurisdiction over the property. Notice of the award of a concession shall be published in the Bulletin*.

b) *The duration and terms of concessions and leases for personal property shall be at the discretion of the institution with jurisdiction over the property.*

c) *Notwithstanding any other provision of law, if the Illinois Finance Authority issues bonds for the financing of buildings, structures, or facilities that are determined by the governing board of a public institution of higher education to be either required by or necessary for the use or benefit of that public institution of higher education, then the duration of any lease for real property entered into by that public institution of higher education, as lessee or lessor, in connection with the issuance of those bonds shall be at the discretion of that public institution of higher education.* [30 ILCS 500/53-25]

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART Q: JOINT AND COOPERATIVE PURCHASING

Section 4.5420 Governmental Joint Purchasing

a) The CPO-HE or designee may authorize any university to purchase personal property, supplies or services jointly with one of more governmental units. This applies when the university and another governmental entity or consortium of governmental entities agree to jointly pursue a procurement opportunity. Procurements and contracts conducted by the Illinois Public Higher Education Cooperative on behalf of two or more universities are authorized by the provisions of this Section.

b) A university may be a lead procuring entity in a governmental joint purchasing activity and lead other public universities or agencies of other states (including Washington DC and U.S. territories) or by a consortium of these entities.

1) When a university is the lead procuring entity, all joint purchases shall be competitively conducted in accordance with the Code and this Part.

2) The CPO-HE or designee may authorize a multiple award.

c) A university may be a participant procuring entity in a governmental joint purchasing activity led by a public university or agency of another state (including Washington DC and U.S. territories) or by a consortium of these entities.

1) When a university is a participant procuring entity, all joint procurements shall be competitively conducted in accordance with the procurement laws of the lead procuring entity.

2) To be considered a participant procuring entity, a university must actively contribute to the procurement, by such means as assisting in the development of specifications, being a member of the evaluation committee or a required approver of the proposed award, or engaging in other similar activity that assists with the procurement.

3) When a university is a participant procuring entity, all contracts resulting from a joint purchase shall contain all provisions required by Illinois law and this Part, including certifications and disclosures required under Article 50 of the Code.

d) All procurements conducted as a governmental joint purchase shall be conducted as a competitive procurement except:

1) for small purchases that follow the small purchase process outlined in Section 20-20 of the Code; or

2) when the CPO-HE or designee determines competition is impractical. When impractical, the CPO-HE or designee may authorize purchases following the sole source process outlined in Section 20-25 of the Code, ~~or~~ the emergency purchase process outlined in Section 20-30 of the Code, or the State Use process outlined in Section 45-35 of the Code.

e) The CPO-HE or designee shall publish a notice of award to the Bulletin for a minimum of 14 days prior to execution of the contract. The notice shall contain all information required in Section 4.1525(d).

f) All proposed governmental joint purchase contracts must be submitted to the CPO-HE or designee for review and approval prior to execution.

g) The CPO-HE may designate contracts made through a governmental joint purchase as available to other governmental units in Illinois.

h) The CPO may authorize any governmental unit of the State to purchase or lease supplies under a contract procured under the Code subject to the CPO. Prior to making the contract available to the governmental unit, the CPO shall consult with the university that is party to the contract. The governmental unit that uses a contract pursuant to the Section shall report each year to the CPO: the contractor used, supplies purchased, and total value of the purchases for each contract.

i) The CPO shall submit, by November 1 of each year, a report of the procurements made under this Section.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART R: DISPUTES AND PROTESTS

Section 4.5550 Protests

a) Procurement-Related Protests Allowed

1) Any person may submit a protest related to the notice of the procurement, the solicitation document, any pre-bid/proposal meeting and any decision to reject a late bid or proposal.

2) Any person who has submitted a bid or proposal may protest a decision to reject the person's bid or proposal or to award to another person.

b) Protest Review Officer
The CPO-HE may appoint one or more Protest Review Officers (PRO) to consider the procurement-related protests and make a recommendation to the CPO-HE for resolution of the protest. The CPO-HE may adopt the recommendation or take other action.

c) Submission of Protest

1) A protesting party must submit a protest in writing to the PRO identified in the solicitation document. E-mail qualifies~~Fax and e-mail qualify~~ as writing, but the PRO does not guarantee receipt using those means.

2) The protest must be physically received by the PRO at the location specified. A postmark or other carrier mark prior to the due date and time is not sufficient to show physical receipt.

A) In regard to the solicitation notice or solicitation document including specifications, a protest must be received within 7~~14~~ days after the date the solicitation was posted to the Bulletin and must be received by the PRO at the designated address before the date for opening bids or proposals.

B) In regard to rejection of individual bids or proposals or awards, the protest must be received by close of business no later than 7~~14~~ days after the protesting party knows or should have known of the facts giving rise to the protest to ensure consideration, and, in any event, must be received before execution of the applicable contract.

C) The PRO, for good cause shown, or when it determines that a protest raises issues significant to the procurement system, may consider an untimely protest. Good cause may include, but is not limited to, instances in which the procurement file is not available in a timely manner to interested parties or when a Freedom of Information Act request has not been responded to by a university in full or in part.

3) Any notice posted to the Bulletin establishes the "known or should have known" date for the subject matter of the notice.

4) Protests must be clearly marked on the delivery container~~, the fax cover sheet~~ or the e-mail subject line.

5) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise and logically arranged and should clearly state sufficient grounds of protest. The written protest shall include as a minimum the following:

A) the name and address of the protesting party;

B) identification of the procurement and, if a contract has been awarded, its number or other identifier;

C) a statement of reasons for the protest specifically identifying any alleged violation of a procurement statute, a procurement rule or the solicitation itself, including the evaluation and award (conclusions with supporting facts and arguments may not be sufficient);

D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.~~ If submitting the protest by fax, supporting documentation over 20 pages in length may not be included without authorization.~~ If the protest is by ~~fax or~~ e-mail, the protesting party may be required to submit documentation by mail or carrier within 2 days after the request; and

E) specific relief sought.

6) The protesting party shall clearly identify any information in the protest that is confidential, proprietary or a trade secret.

d) Requested Information

1) The university must supply a response and any additional information requested by the PRO within the time periods set in the request. If a university fails to comply with this request, the PRO may consider the protest on the basis of available information or may recommend to the CPO-HE that the relief requested in the protest be granted.

2) The protesting party must supply any additional information requested by the PRO within the time periods set in the request. If the protesting party fails to comply with this request, the PRO shall consider the protest on the basis of available information or may recommend to the CPO-HE that the relief requested in the protest be denied.

3) The PRO may request an interested party supply additional information within the time period set in the request. For purposes of a protest, an "interested party" means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

e) Stay of Procurements During Protest
Unless the CPO-HE determines the needs of the State require an immediate execution of a contract, the following apply:

1) When a protest has been timely filed and before an award has been made, no award of the contract shall be made until the protest has been resolved.

2) If timely received but after award, the award shall be stayed without penalty to the State.

f) Resolution
After considering the evidence presented, the PRO shall submit a proposed written resolution of the protest to the CPO-HE. The CPO-HE will resolve the protest by means of a written determination within 30 days after~~, as expeditiously as possible after~~ receiving all relevant requested information, unless an action

concerning the protest has commenced in a court or administrative body. In determining the appropriate recommendation, the PRO shall consider the seriousness of the procurement deficiency, the degree of prejudice to other parties or to the integrity of the competitive procurement system, the good faith of the parties, the urgency of the procurement, and the impact of the recommendation on the university's mission. The recommendation may include, but is not limited to:

1) affirming the university's initial decision, in whole or in part;

2) directing the university to issue a new solicitation;

3) directing the university to award a contract consistent with statute and rule; or

4) directing such other action as is necessary to promote compliance with statute or rule.

g) Effect of Judicial Proceedings
If an action concerning the protest has commenced in a court or administrative body, the CPO-HE may defer resolution of the protest pending the judicial or administrative determination.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)

SUBPART U: HEARING PROCEDURES

Section 4.5740 Written Comments and Oral Testimony

Any person wishing to comment for or against the determination may do so in writing, may testify in person and may submit written comments reflecting the oral testimony.

a) Written Comments

1) Submission of Written Comments
Written comments are requested by the hearing registration deadline, shown in the Bulletin notice. All written comments received by the hearing date will be considered.

2) Incorporation of Written Comments
If the Hearing Officer has received any written comment, the name and affiliation of the person submitting the comment shall be stated for the record and the written comments shall be incorporated into the record. In

addition, the Hearing Officer may read excerpts from or summarize the basic points of the written comments for the record.

b) Oral Testimony

1) Advance Registration
Any person who wishes to testify is requested to register with the Hearing Contact. The registration period begins on the date the notice is posted to the Bulletin. Any registration deadline shall be shown in the Bulletin notice and shall be no sooner than 7 days after publication of the notice. Advance registration is requested to allow for efficient scheduling and to ensure the hearing room has sufficient capacity for those who wish to testify. Those who register in advance will be heard first on the matter for which they registered. The Hearing Officer has discretion to limit testimony for the efficiency of the hearing.

2) Written Copy of Testimony Requested
Written comments reflecting proposed oral testimony are requested by the hearing registration deadline shown in the Bulletin notice to allow the Hearing Officer time to prepare for the hearing. A person testifying may submit written comments along with the testimony. The Hearing Officer may request a written copy of the oral testimony.

3) Witness Slip Required
Each person providing oral testimony must complete a witness slip and provide it to the Hearing Officer as instructed.

4) Duration of Testimony
Each person shall have a reasonable period of time to present his or her position based on the complexity of the issue and the press of other business.

c) Sole Source ~~and Emergency Contract Extensions~~ – Supplemental Provisions

1) The notice, including attachments, as shown in the Bulletin represents the position of the university and the initial position of the CPO-HE. The Hearing Officer shall have the notice placed into the record. A copy of the notice will be posted in the hearing room.

2) The SPO and a representative of the agency shall attend the hearing if any person registers in advance to testify in opposition to the sole source ~~or emergency contract extension~~ determination. Attendance may be by video or audio. The SPO and agency representative shall respond to questions

of the Hearing Officer and shall be available for consultation after adjournment of the hearing.

3) The Hearing Officer may ask questions or request further written information in response to written comments or testimony or at the Hearing Officer's initiative. The Hearing Officer may allow parties to engage in dialogue and allow follow-up questions and answers as needed to ensure full understanding of the matter. The Hearing Officer is not required to respond to substantive questions at the hearing nor make commitments regarding the content of his or her recommendation.

d) Suspension and Debarment − Supplemental Provisions

A party who receives notice of suspension or debarment may request a hearing to protest the suspension or debarment action. The hearing will be conducted in accordance with this Section and the following additional provisions shall apply.

1) The Hearing Officer may ask questions or request further written information in response to written comments or testimony or at the Hearing Officer's initiative. The Hearing Officer is not required to respond to substantive questions at the hearing or make commitments regarding the content of his or her recommendation.

2) Both the affected university and the vendor affected by a suspension or debarment may, at the discretion of the Hearing Officer, bring in witnesses to present testimony regarding the facts or circumstances that led to the determination to suspend or debar.

3) In addition to responding to questions of the Hearing Officer, the witnesses shall respond to questions by the affected vendor if, at the discretion of the Hearing Officer, the questions are allowed.

A) The Hearing Officer may allow questions when the subject matter of the question is relevant and the questioning will not unnecessarily delay the proceedings.

B) The Hearing Officer may deny questions when the subject matter seeks only to unnecessarily embarrass the witness or delay the proceedings.

e) Recommendation

After conclusion of the hearing, the Hearing Officer shall review the university's position, any information obtained from public comment (written or oral), the applicable Sections of the Code, other laws and associated rules and written policies and other information deemed relevant. The Hearing Officer shall make a written recommendation to the CPO-HE.

f) Decision of the CPO-HE

1) The CPO-HE shall, after considering the Hearing Officer's recommendation, make a decision in writing (which may be electronic) to uphold or overturn, in whole or in part, the university's decision.

2) The CPO-HE may request additional information from the Hearing Officer or any other party, including supplemental comments or testimony from the interested parties, prior to making a decision.

3) The CPO-HE may adopt the recommendation, in whole or in part, or reject the recommendation, or may write a separate decision.

g) Notice of Decision

1) The decision of the CPO-HE shall be posted to the Bulletin along with all documentation presented at the hearing by the university and by any interested party.

2) Upon posting notice of a decision upholding the determination, the university may take action to have the contract executed.

h) Maintenance of Records
A copy of the public notices, any documents presented, any written comments, any meeting minutes, the recommendation of the Hearing Officer, and any decision of the CPO-HE shall be maintained in the procurement file.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)