**Section 900.125 Vendor Payment Program**

The requirements set forth in this Section establish the criteria for participation by participating vendors and qualified purchasers in a vendor payment program. Information regarding the program may be found at http://www.payments.illinois.gov.

a) Authority. The State Comptroller and the Department are authorized to establish and implement the program pursuant to Section 3-3 of the Prompt Payment Act.

b) Applicability. This Section applies to all qualified accounts receivable not otherwise excluded from receiving prompt payment interest pursuant to Section 900.120. Section 900.125 shall not apply to the purchase of any accounts receivable related to payments made under a medical assistance program, including Medicaid payments, or any other purchase of accounts receivable that is otherwise prohibited by law.

c) Definitions

"Applicant" is any entity seeking to be designated as a qualified purchaser.

"Application Period" is the time period when the program is accepting applications as determined by the Department.

"Assigned Penalties" are penalties payable by the State in accordance with the Prompt Payment Act and this Part that are assigned to the qualified purchaser of an assigned receivable.

"Assigned Receivable" is the base invoice amount of a qualified account receivable and any associated assigned penalties due, currently and in the future, in accordance with the Prompt Payment Act.

"Assignment Agreement" is an agreement executed and delivered by a participating vendor and a qualified purchaser pursuant to which the participating vendor will assign one or more qualified accounts receivable to the qualified purchaser and make certain representations and warranties in respect thereof.

"Base Invoice Amount" is the unpaid principal amount of the invoice associated with an assigned receivable.

"Department" is the Department of Central Management Services.

"Medical Assistance Program" is any program which provides medical assistance pursuant to Article V of the Illinois Public Aid Code [305 ILCS 5/5], including Medicaid.

"Participating Vendor" is a vendor whose application for the sale of a qualified account receivable is accepted for purchase by a qualified purchaser pursuant to the program terms.

"Program" is a vendor payment program.

"Prompt Payment Act" is the State Prompt Payment Act [30 ILCS 540].

"Prompt Payment Penalties" are penalties payable by the State in accordance with the Prompt Payment Act and this Part.

"Purchase Price" is 100% of the base invoice amount associated with an assigned receivable minus:

• any deductions against the assigned receivable arising from State offsets; and

• if and to the extent exercised by a qualified purchaser, other deductions for amounts owed by the participating vendor to the qualified purchaser for State offsets applied against other accounts receivable assigned by the participating vendor to the qualified purchaser pursuant to the program.

"Qualified Account Receivable" is an account receivable due and payable by the State that is outstanding for 90 days or more, is eligible to accrue prompt payment penalties under the Prompt Payment Act and is verified by the relevant State agency. A qualified account receivable shall not include any account receivable related to medical assistance program (including Medicaid) payments or any other accounts receivable, the transfer or assignment of which is prohibited by, or otherwise prevented by, applicable law.

"Qualified Purchaser" is any entity that, during any application period, is approved by the Department to participate in the program on the basis of certain qualifying criteria as determined by the Department.

"State" is the State of Illinois.

"State Comptroller" is the Illinois Office of the Comptroller.

"State Offsets" is any amount deducted from payments made by the State in respect of any qualified account receivable due to the State's exercise of any offset or other contractual rights against a participating vendor. For the purpose of this Section, State offsets include statutorily required administrative fees imposed pursuant to the State Comptroller Act [15 ILCS 405].

"Sub-Participant" is any individual or entity that intends to purchase assigned receivables, directly or indirectly, by or through an applicant or qualified purchaser for the purposes of the program.

"Sub-Participant Certification" is an instrument executed and delivered to the Department by a sub-participant pursuant to which the sub-participant certifies its agreement, among others, to be bound by the terms and conditions of the program as a condition to its participation in the program as a sub-participant.

d) Criteria for a vendor payment program.

1) Under the program, qualified purchasers may purchase from participating vendors certain qualified accounts receivable owed by the State to the participating vendors. A participating vendor shall not simultaneously apply to sell the same qualified account receivable to more than one qualified purchaser.

2) In consideration of the payment of the purchase price, a participating vendor shall assign to the qualified purchaser all of its rights to payment of the qualified account receivable, including all current and future prompt payment penalties due relating to that qualified account receivable in accordance with the Prompt Payment Act.

e) Criteria for vendor participation. A vendor may apply to participate in the program if:

1) the vendor is owed an account receivable by the State for which prompt payment penalties have commenced accruing;

2) the vendor's account receivable is eligible to accrue prompt payment penalty interest under the Prompt Payment Act;

3) the vendor's account receivable is not for payments under a medical assistance program; and

4) the vendor's account receivable is not prohibited by, or otherwise prevented by, applicable law from being transferred or assigned pursuant to this Section.

f) Criteria for qualified purchasers. Factors to be considered by the Department in determining qualification to be a qualified purchaser shall include but are not limited to:

1) the qualified purchaser's agreement to commit a minimum purchase amount as established from time to time by the Department based upon the current needs of the program and the qualified purchaser's demonstrated ability to fund its commitment;

2) the demonstrated ability of a qualified purchaser's sub-participants to fund their portions of a qualified purchaser's minimum purchase commitment;

3) the ability of a qualified purchaser and its sub-participants to meet standards of responsibility substantially in accordance with the requirements of the Standards of Responsibility found in 44 Ill. Adm. Code 1.2046(b) (Government Contracts, Procurement, and Property Management);

4) the agreement of each qualified purchaser, at its sole cost and expense, to administer and facilitate the operation of the program with respect to that qualified purchaser, including without limitation, assisting potential participating vendors with the application and assignment process;

5) the agreement of each qualified purchaser, at its sole cost and expense, to establish a website that is determined by the Department to be sufficient to administer the program in accordance with the terms and conditions of the program;

6) the agreement of each qualified purchaser, at its sole cost and expense, to market the program to potential participating vendors;

7) the agreement of each qualified purchaser, at its sole cost and expense, to educate participating vendors about the benefits and risks associated with participation in the program;

8) the agreement of each qualified purchaser, at its sole cost and expense, to deposit funds into, release funds from, and otherwise maintain all required accounts in accordance with the terms and conditions of the program. Subject to the program terms, all required accounts shall be maintained and controlled by the qualified purchaser at the qualified purchaser's sole cost and at no cost, whether in the form of fees or otherwise, to the participating vendors;

9) the agreement of each qualified purchaser, at its sole cost and expense, to submit a monthly written report, in both hard copy and Excel format, to the State Comptroller or its designee and the Department or its designee, within 10 days after the end of each month, which, unless otherwise specified by the Department, at a minimum, shall contain:

A) a listing of each assigned receivable purchased by that qualified purchaser during the month, specifying the base invoice amount and invoice date of that assigned receivable and the name of the participating vendor, State contract number, voucher number and State agency associated with that assigned receivable;

B) a listing of each assigned receivable with respect to which the qualified purchaser has received payment of the base invoice amount from the State during that month, including the amount of and date on which that payment was made and the name of the participating vendor, State contract number, voucher number, and State agency associated with the assigned receivable, and identifying the relevant application period for each assigned receivable;

C) a listing of any payments of assigned penalties received from the State during the month, including the amount of and date on which the payment was made, the name of the participating vendor, the voucher number for the assigned penalty receivable, and the associated assigned receivable, including the State contract number, voucher number and State agency associated with the assigned receivable and identifying the relevant application period for each assigned receivable;

D) the aggregate number and dollar value of assigned receivables purchased by the qualified purchaser from the date on which such qualified purchaser commenced participating in the program through the last day of the month;

E) the aggregate number and dollar value of assigned receivables purchased by the qualified purchaser for which no payment by the State of the base invoice amount has yet been received, from the date on which the qualified purchaser commenced participating in the program through the last day of the month; and

F) such other data as the State Comptroller and the Department may reasonably request from time to time.

10) the agreement of each qualified purchaser to use its reasonable best efforts, and for any sub-participant to cause a qualified purchaser to use its reasonable best efforts, to diligently pursue receipt of assigned penalties associated with the assigned receivables, including, without limitation, by promptly notifying the relevant State agency that an assigned penalty is due and, if necessary, seeking payment of assigned penalties through the Illinois Court of Claims; and

11) the agreement of each qualified purchaser and any sub-participant to use their reasonable best efforts to implement the program terms and to perform their obligations under the program in a timely fashion.

g) Right to review performance of qualified purchaser's obligations.

Each qualified purchaser's performance and implementation of its obligations under subsection (f) shall be subject to review by the Department and the State Comptroller at any time to confirm that the qualified purchaser is undertaking such obligations in a manner consistent with the terms and conditions of the program. A qualified purchaser's failure to so perform its obligations including, without limitation, its obligations to diligently pursue receipt of assigned penalties associated with assigned receivables, shall be grounds for the Department and the State Comptroller to terminate the qualified purchaser's participation in the program in accordance with subsection (i) of this Section. Any such termination shall be without prejudice to any rights a participating vendor may have against that qualified purchaser, in law or in equity, including without limitation, the right to enforce the terms of the assignment agreement and of the program against the qualified purchaser.

h) Right to Review Sub-Participants.

1) In determining whether any applicant shall be designated as a qualified purchaser, the Department shall have the right to review or approve sub-participants that intend to purchase assigned receivables, directly or indirectly, by or through the applicant.

2) The Department reserves the right to reject or terminate the designation of any applicant as a qualified purchaser or require an applicant to exclude a proposed sub-participant in order to become or remain a qualified purchaser on the basis of a review, whether prior to or after the designation.

3) Each applicant and each qualified purchaser has an affirmative obligation to promptly notify the Department of any change or proposed change in the identity of the sub-participants that it disclosed to the Department no later than 3 business days after that change.

4) Each sub-participant shall be required to execute a sub-participant certification that will be attached to the corresponding qualified purchaser designation.

5) Sub-participants shall meet, at a minimum, the requirements of subsections (f)(2), (3), (10), and (11).

i) Term and termination.

1) The program shall commence in March 2011 and shall continue until terminated:

A) by the State Comptroller, after consulting with the Department, by giving 10 days prior written notice to the Department and the qualified purchasers in the program;

B) by the Department, after consulting with the State Comptroller, by giving 10 days prior written notice to the State Comptroller and the qualified purchasers in the program.

2) In the event a qualified purchaser or sub-participant breaches or fails to meet any of the terms or conditions of the program, that qualified purchaser or sub-participant may be terminated from the program:

A) by the State Comptroller, after consulting with the Department. The termination shall be effective immediately upon the State Comptroller giving written notice to the Department and the qualified purchaser or sub-participant; or

B) by the Department, after consulting with the State Comptroller. The termination shall be effective immediately upon the Department giving written notice to the State Comptroller and the qualified purchaser or sub-participant.

3) A qualified purchaser or sub-participant may terminate its participation in the program, solely with respect to its own participation in the program, in the event of any change to the Prompt Payment Act or this Part from the form that existed on the date that the qualified purchaser or the sub-participant, as applicable, submitted the necessary documentation for admission into the program if the change materially and adversely affects the qualified purchaser's or the sub-participant's ability to purchase and receive payment on receivables on the terms described in this Section.

4) If the program, a qualified purchaser, or a sub-participant is terminated under subsection (i)(1) or (2), the program, qualified purchaser, or sub-participant may be reinstated only by written agreement of the State Comptroller and the Department.

5) No termination under subsections (i)(1), (2), or (3) shall alter or affect the qualified purchaser's or sub-participant's obligations with respect to assigned receivables purchased by or through the qualified purchaser prior to the termination.

(Source: Amended at 40 Ill. Reg. 13831, effective September 26, 2016)