

Changes in Illinois Purchasing Procedures – There’s a New Sheriff in Town – Wyatt Earp or Barney Fife?

by Richard Reichstein and James Rohlfling

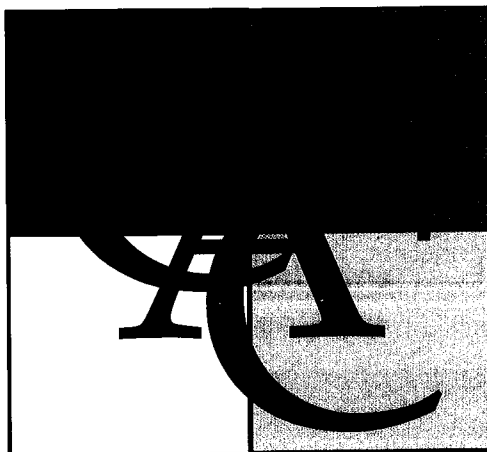
Though it seems certain that selling to the State of Illinois and all of its departments will change drastically beginning July 1, 2010 because of Public Act 96-0795, no one is certain what form the changes will take. Before regulations are adopted by the pertinent state agencies and until newly appointed procurement officers have experience with the new law and regulations, the impact will be uncertain. Meanwhile, a brief review of the major points in the new legislation will have to serve as a guide for changes to come. Future issues will address the mechanics of the new law once they are known.

The new law is intended to bring independent oversight and transparency to the forefront of Illinois procurement practices. To start, the new legislation brings chief administrative positions under the umbrella of the Executive Ethics Commission (EEC). Chief Procurement Officers (CPOs) will oversee procurement for the Capital Development Board, the Illinois Department of Transportation and higher education, working under the EEC. The rest of the State Purchasing Officers (SPOs) will be converted to independent SPOs working under the EEC. The EEC will also appoint Procurement Compliance Monitors (PCMs) to oversee and review the process, including attending meetings and reviewing files. All of these officers will enjoy a five-year term and may

be dismissed only for cause. Though they will all be independent of the agencies they serve, they will be housed in and work with those agencies. How they will interact with existing procurement officers in the state agencies and how responsibility for contract administration will be divided has yet to be determined.

The Procurement Policy Board (PPB) has been strengthened so it has the option to review contracts or bidder information and make recommendations to the chief procurement officers regarding conflicts of interest. Sole source procurements cannot proceed without a public hearing while emergency procurements are time-limited to 90 days, with extensions of the same duration available only after a public hearing. Persons or businesses that assist in developing the request for proposal used to solicit bids are prohibited from bidding the work. It is unclear whether this prohibition would extend to persons who indirectly offer assistance or whether direct and paid involvement in the preparation of the bid would be needed before disqualification would occur. Obviously, disqualifying even those who assist by answering a question about their goods or services would cripple the state’s ability to seek assistance from suppliers of unique materials or services.

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Contractors will be required to supply names, addresses, and contract amount information for all subcontractors. Subcontracts, subcontractors’ certificates and financial disclosures must be submitted to the procurement agency within 20 days of entering into the State contract or subcontract. The financial disclosure requirements have been strengthened and must be incorporated into the contracts to ensure that no conflicts of interest exist. Multi-year contracts will require annual certifications. Any additions or changes in subcontractor status must be promptly reported in writing to the responsible CPO or SPO.

The procurement files are to be well-documented with bids, the basis for the award, all evaluation material, and other supporting documents that must be open to the public within 7 days of the contract being awarded. State employees must report monthly to the PPB any oral or written communication that conveys or requests material information or makes a material argument regarding potential action concerning a procurement matter. There is no guidance currently as to what constitutes “material information” or a “material argument.”

The measure restricts the commencement of vendor payments to goods and services received or rendered

after the contract was reduced to writing and signed by all necessary parties. The bill includes strict lobbying restrictions that include prohibitions on successful bidders from taking any form of compensation or remuneration from the State. It also bars contingency fees for procuring a contract and sets a hefty \$10,000 penalty for violations.

Contractors will have to document their bids and contracts as well as their compliance practices to meet these new State requirements. To what extent they all must be in place by July 1st, and whether the State will allow a grace period remains to be seen. The Capitol Development Board is working with other state agencies to develop efficient and consistent regulations and practices to implement the new law and they expect to have these in place by July 1, 2010.

The text of the bill can be found at <http://www.ilga.gov/legislation/publicacts/96/096-0795.htm>.

If you have questions or comments about this article, feel free to contact James Rohlfing (jrohlfig@rolaw.net) or Richard Reichstein (r.reichstein@legaleagle.com).



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is more than meeting with your financial professional once of year. It’s planning to send your kids to college, it’s planning for your dream home and it’s planning for a comfortable and enjoyable retirement. Armed with a plan and preparation, you will be well-equipped in good times and in the bad times.

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