

## What all state vendors need to know about new ethics requirements

On August 26, 2008, Governor Blagojevich issued Executive Order Number 3 (2008), establishing new restrictions on campaign contributions and solicitations by State contractors and bidders. The Executive Order is aimed at enhancing transparency in the State procurement process and ensuring that the award of State contracts is based solely upon price, quality, service and other merit-based factors.

On September 25, 2008, the Illinois legislature passed Public Act 095-0971 (the "Act"), which contains new registration and reporting requirements for certain State vendors and bidders, as well as additional limitations on campaign contributions by these entities and their affiliated entities.

This Fact Sheet will explain the basics regarding these new requirements. The full text of the Executive Order and the Act may be found on the Illinois Procurement Bulletin. {attach link to Act and EO}

Both Executive Order Number 3 (2008) and Public Act 095-0971 take effect on January 1, 2009.

The main elements to the new requirements are:

- Registration
- Certification
- Political Contribution Restrictions

### Registration

***Who must register with the Illinois State Board of Elections?*** If your company falls within any of the 3 following categories, it is required to register with the Illinois State Board of Elections:

- The annual total of your company's bids and proposals on State contracts for 2009 exceed \$50,000.
- The annual total of your company's bids and proposals on State contracts, combined with the annual total value of State contracts you have already been awarded for 2009, exceed \$50,000.
- The annual total of your company's State contracts already awarded for 2009 exceed \$50,000.

***What is a State contract for purposes of determining applicability of the new requirements?*** A State contract is any type of agreement between a State agency and a business entity that is governed by the Illinois Procurement Code, including contracts for the procurement, use or disposal of supplies, services, professional or artistic services. A State contract also includes construction contracts, leases of real property, or capital improvements contracts, including master contracts, contracts for financing through use of installment or lease-purchase arrangements, renegotiated contracts and change orders. State contracts governed by the new ethics requirements do not include cost reimbursement contracts; purchase of care contracts as defined by Section 1-15.68 of the Illinois Procurement Code; grants, including but not limited to grants for job training or transportation; and grants, loans or tax credit agreements for economic development purposes.

***What is a State agency?*** A State agency includes all boards, commissions, agencies, institutions, authorities, and other State bodies of the executive branch of State government, and includes all colleges, universities, public employee retirement systems and institutions under the jurisdiction of the governing boards of the University of Illinois, Southern, Eastern, Northern, Western, Chicago State, Governors State, Illinois State, Northeastern Illinois and the Illinois Board of Higher Education.

### ***How do I determine the annual total value of my State bids and contracts?***

You must add together by calendar year the total obligation of the State to you under all the contracts you have been awarded by all State agencies. You must add to that amount, again by calendar year, the total of all potential contracts you may receive from the State under bids and proposals that you have submitted even if such bids and proposals have not yet been awarded.

Example 1: ABC Company has a contract to provide widgets to the State. The contract calls for payments of \$40,000 for calendar year 2009 and \$60,000 for calendar year 2010. ABC is required to register because it will have more than \$50,000 in business in a calendar year (2010).

Example 2: XYZ Company has a contract to provide \$15,000 in canned peas to State Agency A in 2009 and a contract to provide \$40,000 in canned beans to State Agency B in 2009. XYZ is required to register because its total amount of contracts in 2009 exceeds \$50,000.

Example 3: Acme Company has a contract to provide \$25,000 worth of consulting services to the State in 2009. It is planning to submit a bid to another State agency for an additional \$35,000 in consulting services for 2009. Acme is not required to register at the time of its existing consulting contract for \$25,000, but it must register prior to submitting a bid for the contract to perform the additional \$35,000 in consulting services because the combination of the existing contract plus the bid pushes Acme over the \$50,000 threshold required for registration.

***What if my company's State Contract is for an indefinite or estimated amount? How do I determine the value of the contract?*** On some occasions, particularly with Master Contracts, the State may award a contract but will not commit any specific volume or value to it. If an estimated value is established in the contract, that is the value you should use. If no estimated value is established, you should use the high end of the estimate that was provided to bidders during the bidding process to determine the value of the contract.

**If your company falls into any of the 3 categories above,** it is required to register with the Illinois State Board of Elections. (See below).

**If your company does not fall into any of the 3 categories above,** only the Certification requirements will apply to you. (See Certification, below). Additionally, if you currently do not fall within one of the categories, but at any time submit a bid or other proposal or otherwise receive a State contract that would put you into one of the registration categories, then the requirements will apply to you and you must register prior to submitting such bid or proposal.

***How do I register?*** Registrations are issued by the Illinois State Board of Elections. Please check their website, [www.elections.il.gov](http://www.elections.il.gov), for the most up-to-date information as to how and when to register.

***What is an Affiliated Entity?*** An Affiliated Entity is (i) any subsidiary of your company, (ii) any member of the same unitary business group, (iii) any entity recognized as a non-profit organization by the Internal Revenue Service established by your company or an Affiliated Entity or Affiliated Person of your company, or (iv) any political committee sponsored by your company (or by any non-profit organization described in item (iii) related to your company).

***What is an Affiliated Person?*** An Affiliated Person is (i) any person with an ownership interest or distributive share of your company or an Affiliated Entity in excess of 7.5%, (ii) an executive employee of your company or an Affiliated Entity, or (iii) the spouse or minor child of anyone covered by (i) or (ii).

***When must a business entity register?*** All business entities that fit within one or more of the registration categories as of January 1, 2009 must register with the State Board of Elections by January 31, 2009. Thereafter, any business entity that submits a bid or proposal that will cause it to fall within one of the registration categories must register with the State Board of Elections prior to submitting its bid or proposal. If, without submitting a bid or proposal, a business entity is about to enter into a contract with a State agency that will cause it to fall within a registration category, the business entity must register prior to signing the contract.

***What do I need to do after I receive my registration?*** Within 10 days of registration with the State Board of Elections you must provide a copy of your registration certificate to all of your company's affiliated entities and/or persons. No later than March 31, 2009, you must provide a copy of your registration certificate to all applicable Chief Procurement Officers of the State. A certificate of registration must accompany all bids and proposals submitted on or after January 1, 2009. In addition, your company (or any Affiliated Entity or Affiliated Person of your company) must notify any political committee to which it makes a contribution that the company is registered with the State Board of Elections. This notification must occur at the time the contribution is made. Your company also has a continuing duty to ensure that the registration is accurate, and must report any change in information to the State Board of Elections within the time periods set forth in Public Act 95-0971. (This report, depending on the circumstances, is due either 2 or 10 business days following such change in information.)

***Who are the applicable Chief Procurement Officers?*** There are 5 Chief Procurement Officers for the State.

- For contracts for vertical construction or vertical construction-related services, the Chief Procurement Officer is the Executive Director of the Capital Development Board.
- For contracts for highway construction or highway construction-related services, the Chief Procurement Officer is the Secretary of the Illinois Department of Transportation.
- For contracts for procurements made by a public institution of higher education, the Chief Procurement Officer is designated by each public institution of higher education.
- For contracts for procurements made by the Illinois Power Agency, the Chief Procurement Officer is the Director of the Illinois Power Agency.
- For all other procurements, the Chief Procurement Officer is the Director of the Department of Central Management Services.

If you have contracts with more than one Chief Procurement Officer, you must provide a copy of your registration certificate to each one. A list of the addresses for each of the Chief Procurement Officers is attached.

### **Certification**

All companies who submit bids or proposals to the State will be required to include certain certifications with their bids or other proposals regardless of whether they fall into any of the 3 registration categories. Additionally, companies who are awarded contracts will be required to include certain certifications in their contracts with the State.

*To what do I need to certify?* If you are not required to register with the State Board of Elections because you do not fall into any of the 3 categories above, you will be required to certify that you are not required to register.

If you are required to register you will certify that you are registered and that you understand you have a continuing duty to keep your certification updated. You will also certify that you understand any contract awarded is voidable by the State if you fail to keep your registration updated. You must also submit a copy of your registration with any bid or proposal you submit to the State.

*How do I certify?* The bid forms and contract you receive from the State will contain the appropriate language for your use.

### **Political Contribution Restrictions**

The new requirements contain restrictions on political contributions by State bidders and contractors required to register with the State Board of Elections. These restrictions identify certain persons and entities to which political contributions may not be made and the periods of time during which such contributions are prohibited.

#### *What political contributions are prohibited and for what period of time?*

1. The Act prohibits any business entity whose annual contracts with State agencies total more than \$50,000 and the business entity's Affiliated Entities and Persons from making any contributions to any political committees established to promote the candidacy of (i) the officeholder responsible for awarding the contracts or (ii) any other declared candidate for that office. This prohibition also applies to political contributions by the business entity's Affiliated Entities and Persons. It is effective for the duration of the term of office of the incumbent officeholder awarding the contracts, or for a period of two years following the expiration of the contracts, whichever is longer.

2. The Act also prohibits any business entity whose aggregate pending bids and proposals on State contracts total more than \$50,000, or whose aggregate pending bids and proposals on State contracts combined with the company's aggregate annual total value of State contracts exceed \$50,000, from making any contributions to any political committee established to promote the candidacy of the officer holder responsible for awarding the contract on which the company has submitted a bid or proposal. This prohibition also applies to political contributions by the business entity's Affiliated Entities or Affiliated Persons. It is effective during the period beginning on the date the invitation for bids or request for proposals is issued and ending on the day after the date the contract is awarded.

*Who is the officeholder responsible for the awarding of my contract(s)?* The Lieutenant Governor, Attorney General, Secretary of State, Comptroller and Treasurer are the responsible officeholders for the contracts let by their agencies. For all other contracts let by executive branch state agencies, the Governor is considered the responsible officeholder.

**Additional requirements relating to contracts with an executive branch agency under the jurisdiction of the Governor bid on or entered into on or after January 1, 2009, pursuant to Executive Order No. 3 (2008):**

**Do the additional requirements of the Executive Order apply to my company?** If your company (i) is required to register under the Act, and (ii) is submitting a bid to, or entering into a contract with, one or more executive branch agencies under the jurisdiction of the Governor ("Covered Agencies"), then Executive Order No. 3 applies to your company's bids or contracts involving these Covered Agencies and the following additional requirements apply.

**Additional political contribution restrictions:** Your company cannot solicit a political contribution on behalf of, or make a political contribution to, any State Officer, any Declared Candidate for a State office, or any Covered Political Organization. The restrictions on these contributions begin at the time an invitation for bid or request for proposal to which you are responding is issued, and ends two years after the termination of any contract awarded to your company. The prohibition on political contributions and solicitations also applies to your company's Affiliated Persons and Affiliated Entities.

**Important Note:** The definition of Affiliated Entities under the Executive Order includes all categories of entities described in the Act as well as any parent of your company, any entity owned or controlled by an Affiliated Person of your company, and any political committee controlled or established by your company or any Affiliated Person of your company.

**Who is a State Officer?** The Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller, Treasurer or member of the Illinois General Assembly (Illinois State House of Representatives or Illinois State Senate).

**Who is a Declared Candidate?** A person who has filed a statement of candidacy and petition for nomination or election with the State Board of Elections.

**What is a Covered Political Organization?** Any political committee of a state central committee of a political party that is represented by a State Officer or a declared candidate for State Office.

**What are the "Covered Agencies" under the jurisdiction of the Governor?** Any agency under the jurisdiction of the Governor as well as the State retirement systems, including but not limited to, the State Employees' Retirement System of Illinois, the State Universities Retirement System and the Teachers' Retirement System of the State of Illinois.

**Additional certification requirements:** You will be required to certify that you have not made any political contributions in violation of the political contribution restrictions contained in the Executive Order.