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What all State vendors need to know about new ethics requirements

On August 26, 2008, Executive Order Number 3 (2008) was issued 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.

<http://www.purchase.state.il.us>

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 in a calendar year 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 in a calendar year, exceed \$50,000.

The annual total of your company's State contracts already awarded in a calendar year 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. State agencies include executive agencies not under the jurisdiction of the Governor but which are covered by Public Act 095-0971.

State agencies include but are not limited to:

- Capital Development Board
- Deaf and Hard of Hearing Commission
- Department on Aging
- Department of Agriculture
- Department of Central Management Services
- Department of Children and Family Services
- Department of Commerce and Economic Opportunity
- Department of Corrections
- Department of Employment Security
- Department of Financial and Professional Regulation
- Department of Healthcare and Family Services
- Department of Human Rights
- Department of Human Services
- Department of Juvenile Justice
- Department of Labor
- Department of Military Affairs
- Department of Natural Resources
- Department of Public Health
- Department of Revenue
- Department of Transportation
- Department of Veterans' Affairs
- Environmental Protection Agency
- Governor's Office of Management and Budget
- Guardianship and Advocacy Commission
- Historic Preservation Agency
- Human Rights Commission
- Illinois Arts Council
- Illinois Commerce Commission
- Illinois Council on Developmental Disabilities
- Illinois Criminal Justice Information Authority
- Illinois Educational Labor Relations Board
- Illinois Emergency Management Agency
- Illinois Finance Authority

Illinois Housing Development Authority
Illinois Investment and Development Authority
Illinois Labor Relations Board
Illinois Law Enforcement Training & Standards Board
Illinois Liquor Control Commission
Illinois Power Agency
Illinois Racing Board
Illinois State Police
Illinois Racing Board
Illinois State Toll Highway Authority
Illinois Workers Compensation Commission
Office of State Fire Marshal
Prisoner Review Board
Property Tax Appeal Board

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.

Example 4: Blue Company entered a contract worth \$51,000 in 2008 to provide paper to the State. The paper is to be delivered throughout 2009. Blue Company must register by February 2, 2009.

Example 5: Purple Company entered a contract worth \$30,000 in 2008, with renewal option, to provide painting services to the State. On January 2, 2009 the State renews the contract for an additional \$30,000. Purple must register before February 2, 2009 and must make the certifications required by law.

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. The Vendor will be required to register once the value of the orders placed pursuant to the indefinite value contract plus all other contracts and bids/proposals exceeds \$50,000.

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, 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).

What is an Executive Employee? The President, Chairman of the Board, Chief Executive Officer and/or other individuals that fulfill equivalent duties as the President, Chairman of the Board or Chief Executive Officer; and/or 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 purposes of this subsection, "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 or the contract.

When must a business entity register? If you are an existing Vendor who falls within one or more of the registration categories then you must register before February 2, 2009.

If you have an existing master contract with the State, you must register and submit a registration certificate with the master contract. You do not have to submit copies of the registration certificate with individual orders placed against master contracts.

If you have an existing contract with the State and you are granted an extension or renewal, you must submit a copy of the registration certificate with the extension or renewal only if you were not previously required to register and the extension or renewal now makes you eligible for certification.

If you have pending bids/proposals that are due between January 1, 2009 and February 2, 2009 then you must register and submit a registration certificate by the earlier of February 2, 2009 or the contract execution date.

If you have pending bids/proposals that are due February 3, 2009 through August 1, 2009 then you must register and submit a registration certificate with the bid/proposal or within 5 working days of the bid/proposal opening.

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. 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. You may email or fax a copy of the registration certificate to the appropriate agency. Email is the preferred delivery method when available. The agency contact information is listed below:

- Capital Development Board: cdb.cpo@illinois.gov; 217-782-4938 (fax)
- Illinois Department of Transportation: idot.cpo@illinois.gov; 217-524-0198 (fax)
- Public Institution of Higher Education: 217-239-6788 (fax)
- Illinois Power Agency: ipa.cpo@illinois.gov
- Central Management Services: cms.cpo@illinois.gov; 217-558-1759 (fax)

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.

The certification requirement only applies to contracts that must be filed with the State Comptroller pursuant to Section 20-80 of the Illinois Procurement Code.

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 ("Executive Agencies"), then Executive Order No. 3 applies to your company's bids or contracts involving these Executive 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 "Executive Agencies"? 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. If you are unsure whether the State entity with which you are doing business is an Executive agency, please contact the agency, board or commission directly. The list of Executive agencies which are subject to the Public Act and Executive Order are listed below:

Capital Development Board
Deaf and Hard of Hearing Commission
Department on Aging

Department of Agriculture
Department of Central Management Services
Department of Children and Family Services
Department of Commerce and Economic Opportunity
Department of Corrections
Department of Employment Security
Department of Financial and Professional Regulation
Department of Healthcare and Family Services
Department of Human Rights
Department of Human Services
Department of Juvenile Justice
Department of Labor
Department of Military Affairs
Department of Natural Resources
Department of Public Health
Department of Revenue
Department of Transportation
Department of Veterans' Affairs
Environmental Protection Agency
Governor's Office of Management and Budget
Guardianship and Advocacy Commission
Historic Preservation Agency
Human Rights Commission
Illinois Arts Council
Illinois Council on Developmental Disabilities
Illinois Criminal Justice Information Authority
Illinois Educational Labor Relations Board
Illinois Emergency Management Agency
Illinois Labor Relations Board
Illinois Law Enforcement Training & Standards Board
Illinois Liquor Control Commission
Illinois Power Agency
Illinois Racing Board
Illinois State Police
Illinois Racing Board
Office of State Fire Marshal
Prisoner Review Board
Property Tax Appeal Board

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.

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