

Background:

In response to P.A. 96-975, the Executive Ethics Commission appointed four independent Chief Procurement Officers, who have appointed State Purchasing Officers. The Commission has appointed Procurement Compliance Monitors. More appointments are needed to fully cover each agency and university. Commission staff has increased from two to sixty-three employees in the past year. More staff is needed to carry out its statutory responsibilities, which include annual procurements in excess of \$9 billion.

Aspects of the procurement process that are going well:

The CPOs offer:

- Independence from Office of the Governor, agency directors and vendors;
- Professionalism—CPOs are fiduciaries of the State. CPOs and SPOs must be professionally accredited; they offer full-time dedication to procurement matters;
- Transparency—dedication to procurement communications reporting, opening procurement files to vendors and public;
- A halt to improper agency and university procurements, and, where possible, redirection to appropriate procurement methods; and
- Cooperation with other stakeholders, including the Procurement Policy Board.

Aspects of the procurement process that need improvement:

- Lack of cooperation by certain State agencies and universities;
- Clarification of responsibilities;
- Delay in rule transfer—efforts to recodify rules and place them under the authority of the new CPOs have been frustratingly slow; and
- Budget—the Commission needs resources to fulfill its responsibilities under the Procurement Code.

Suggested improvements:

- Allow implementation of P.A. 96-795 reform to continue without significant statutory revision at this time. Statutory reforms, if any, should be limited to incorporating efficiencies that do not detract from the core values of ethical procurement practices.
- Fold all four procurement bulletins into one, standardized bulletin and fund the CPOs to run it.
- Allow vendors to prequalify for procurement matters electronically, increasing efficiency and reducing paper.
- Knowledge Management--create and maintain a central site for agencies and the public to the latest information
- Standardize solicitation and contract forms across State agencies and universities and place these on a central site for the all to see.

SR 118 Procurement Committee
Executive Ethics Commission Memorandum
April 27, 2011

Background:

In January 2009, our current Governor, then Lieutenant Governor, Pat Quinn established the Illinois Reform Commission to recommend meaningful ethics reform for the State of Illinois. Governor Quinn charged the Illinois Reform Commission with recommending meaningful ethics reform within 100 days. At the end of one hundred days, on April 28, 2009, the Illinois Reform Commission released its report, which came to be known as the Collins Report.

The Collins Report's first recommendation for procurement was to move state procurement officials into an insulated, central, independent procurement office. Other recommendations for procurement reform included cutting loopholes and exemptions in the Procurement Code, establishing independent monitors, mandating greater disclosures for Contractors, lobbyists and others, and enhancing transparency in the procurement process.

The General Assembly appointed its own reform committee and enacted its recommendations for an insulated, central, independent procurement office. The General Assembly designated the Executive Ethics Commission as the "home" for the new, independent procurement structure. Procurement reform has caused the Commission to expand from its original two employees that dealt solely with Ethics Act issues to more than sixty additional procurement and support staff.

Procurement reform charged the Executive Ethics Commission with appointing three of the four independent Chief Procurement Officers (CPOs) and approving the selection of the fourth CPO by the Secretary of IDOT. Matt Brown was appointed CPO for general services, Fred Hahn CPO for CDB, Ben Bagby as CPO for the universities and Bill Grunloh as CPO for IDOT. The Senate has confirmed each of the CPOs for a five-year term. In true independent fashion, the Chief Procurement Officers do not serve at the pleasure of the Governor and are subject to removal for cause after a public hearing. Like all Executive Ethics Commission employees, the CPOs are prohibited from participating in political activity. The new CPOs owe a fiduciary duty to the State. 30 ILCS 500/10-20(b).

Effective September 1, 2010, responsibility for procurement activities was transferred to the new, independent Chief Procurement Officers. P.A. 96-795 (SB 51). The new CPOs' authority over procurement activity, however, was limited to procurements for which contractors were first solicited on or after July 1, 2010. 30 ILCS 500/1-11.

As required by the recent amendments, the new CPOs began appointing State Purchasing Officers (SPOs) and the Commission began appointing Procurement Compliance Monitors (PCMs) for each State agency and university. In less than one year, the Commission's staff rose from two to sixty-three employees. In order to cover each agency's and university's procurements, some SPOs and PCMs are assigned to three or four agencies or universities. Throughout the fiscal year, the Commission and the CPOs have continued to hire staff as quickly as possible to meet the statutory mandate. Although not fully staffed, the Commission and CPOs have temporarily suspended additional hiring due to uncertainty about future appropriations.

Aspects of the Procurement system that are going well:

Under the new procurement laws, the CPOs are responsible for over \$9 billion in annual procurements. With an annual budget of less than \$10 million, CPO oversight constitutes approximately 0.1% of the value of the procurements. The CPOs, SPOs and PCMs are adding value to the procurement process in several ways.

First, the CPOs, SPOs and PCMs offer real independence to the procurement process. They are able to demand compliance with procurement laws and suggest alternate courses of action without consideration of any possible influence being exerted by agency directors, the Office of the Governor, other officials, their staffs or lobbyists. Because they are not conducting the day-to-day activities of procurements (that is left to the procurement staff of the agencies and universities) they are not in a position to get too close or comfortable with vendors. Free from outside influence, they are unbiased arbiters in the procurement process, who make the right decisions for the right reasons. Also, unlike the prior system where the same agency that rejected a vendor judged that vendor's protest, EEC staff can now provide an independent review of protests.

Second, the CPOs, SPOs and PCMs set the stage for bringing increased professionalism to the procurement process. CPOs and SPOs must be certified as Certified Professional Public Buyers or Certified Public Purchasing Officers by the Universal Public Purchasing Certification Council within 18 months of their appointment. Currently, all four CPOs are certified and many of the SPOs are scheduled to take the certification exam in May 2011. All EEC procurement staff receive continuing education in procurement issues. Furthermore, while many agency employees had duties other than procurement, EEC staff are full-time procurement specialists. We have noticed that some agency employees tasked with procurement responsibilities are certified, but many are not adequately trained in handling procurement matters. We encourage the agencies and universities to continue to train their staff and encourage pursuit of certification for all procurement staff.

Third, Commission and EEC staff are dedicated to increasing transparency throughout the procurement process. The Commission is very supportive of the procurement communications reporting requirements and the staff has dedicated a great deal of time to drafting rules and educating employees to report communications that are inappropriate or might give one vendor an unfair advantage. The Commission has further demanded that upon making an award the entire procurement file (less confidential and proprietary information) be made available to anyone. It had been an unfortunate practice by many procuring agencies to refuse to release the contents of the procurement file until after a contract had been signed. As a consequence, losing vendors could not file a meaningful protest because the information they needed was hidden away in the agency's procurement file. The Commission believes that this transparency will increase prospective vendor's confidence in the procurement system and increase competition for the State's procurements.

In another triumph for transparency, the CPO reviewed an agency decision to procure an emergency communication network and radios on a sole source basis. After a hearing at which competing vendors and representatives of local law enforcement raised objections, it was decided that the contract will be split so that only part will be awarded on a sole source basis, and competition will be allowed with respect to the other component.

Fourth, the presence and oversight of CPOs, SPOs and PCMs have stopped a number of unlawful or poorly-advised agency procurements. Poor procurements tend to be caused by one or more factors, including ignorance of the Procurement Code, rules and available resources, agency inaction, refusal to cooperate with EEC staff and, occasionally, fraud.

Where the problem is one of insufficient knowledge, SPOs and PCMs are a helpful resource to agency purchasing staff. For example, at the Department of Labor, the new SPO discovered that the agency was not correctly using the State's master contracts for copier paper and envelopes, reflecting overspending of thousands of dollars each year by this small agency. The SPO has since remedied this situation. We are moving toward greater acceptance--procurement staff do call and ask for advice, and while it may not be universal, we have even seen an agency disclose a problem that would have been almost impossible to find without their cooperation. Over time the oversight function will become part of the agencies' and universities' daily routine.

We have faced some situations that are due to what can only be described as agency inaction. For example, some significant contracts with renewal options were not brought to the attention of the SPO and allowed to expire before the renewal option could be even considered. Also, some master contracts have been used for purposes beyond what was contemplated in their terms because agency staff did not want to take the time to rebid them to reflect their proper purpose. Remedying these situations have been very time-consuming for EEC staff.

Some agency purchasing staff have procured goods and services without considering what the agency already has. These situations are typified by the procurement of photocopiers, scanners and fax machines, also known as "imaging devices." These devices have become prolific in State government. It has simply been easier historically for agencies to "buy" their way into what the State's next imaging need is without regard to:

- managing the assets (the machines themselves);
- managing the consumables (paper, toner, ink, maintenance);
- the footprint (how much does it cost to deploy and support the device, occupy space consume energy, store the consumables, etc.); and
- warehouses full of machines not appropriately reused or disposed of.

Active management of these devices is prudent and solid justification by the agency is necessary before any more devices are purchased. Requiring attrition has already saved hundreds of thousands of dollars in only a few agencies to date. In the future, all agencies will be required to go forward with attrition before procuring again. With fully compliant agencies, estimated savings are in the millions of dollars.

In other cases, the involvement of EEC staff has led to reduced expenditures for redundant construction management services. One such contract that would have cost the State \$250,000 was replaced with a \$15,000 change to the existing contract. In another case, the CPO declined to approve a \$716,000 modification to an existing architect contract that would have apparently required the contractor to do little or nothing more than what the existing contract already required.

There are other more serious situations where Commission employees have discovered what they believe to be vendors exercising inappropriate influence over procurements or inappropriate relationships between vendors and agency employees. When necessary, the EEC staff have made referrals to the Office of the Executive Inspector General.

Under the new procurement system, the Commission and its staff have worked hard to add value to the procurement process. Increasing independence, professionalism, transparency and oversight will increase the public's confidence in fairness of the procurement process and should lead to increased competition and better outcomes for the State.

Fifth, and last, as mentioned above, the EEC has worked closely with the Office of the Governor, the Procurement Policy Board, State agencies and other interested parties to promulgate rules that implement the procurement communications reporting system created in 30 ILCS 500/50-39. These new rules became effective on April 21, 2011. It has been a difficult task to draw a line separating necessary and appropriate procurement communications from those that, intentionally or unintentionally, may improperly influence a procurement decision.

Aspects of the procurement system that need improvement:

The Commission recognizes that the new procurement system is a work in progress and that some resistance to the changes or uncertainty as to the appropriate direction is inevitable. Some issues will be resolved informally by discussions with the relevant stakeholders. Other issues will be resolved by changes in the rules once the CPOs gain control of the rules. Still others may require statutory changes. Whatever changes may come, however, the Commission is dedicated to carrying out the General Assembly's intention to improve the procurement process.

First, agencies and universities simply need to accept the new organizational structure and move forward. While many agencies and universities have embraced the new procurement system (see attachments #1 and #2), others have been less cooperative. For example, at one State agency, the arrival of the SPO prompted the agency to reassign personnel away from its business unit in an effort to subordinate the SPO to agency control. By attempting to assign agency duties to the SPO, the agency proposed that the SPO was there only to ratify the agency's decisions.

In another unfortunate example, a university official informed a newly installed monitor that her relationship with the university was to be adversarial and that the monitor's work space would not be located in an area near the university procurement staff where the monitor could overhear what was being said and use it against the university. The same official later made clear his belief that the reforms are wasteful and his intention to support a legislative effort to pull universities out from under the legislated reforms. Another agency disinvited a PCM from

attending management meetings involving procurement because the monitor took issue with the agency's position that a category of purchases was exempt from the Code. Other agencies have been less than forthcoming about giving prior notice of meetings to EEC staff. Acceptance and natural cooperation is not yet universal, but over time the oversight function should become part of the daily routine.

Leadership in other agencies has been more proactive in encouraging staff to cooperate with the new procurement system. At the Capitol Development Board, the new Executive Director sent a memorandum to CDB staff reminding them that they can communicate with the Commission's procurement staff. See attachment #3. It may seem strange that such a memorandum would be necessary, but the Commission appreciates this support and commends it to other agencies' leadership.

A second area requiring improvement relates to agencies understanding their responsibilities so that the CPOs can provide to them a good procurement service. The CPOs do not play a role in agency administration. In P.A. 96-795, the General Assembly established independent procurement authority, but did not create a separate procurement agency, such as the federal government's General Services Administration, empowered with all procurement responsibilities concerning procurements. Instead, the agencies retained certain procurement duties. For example, in most cases, agencies determine their own procurement needs, obligate their own funds and decide whether they have sufficient appropriations to procure a good or service.

The Office of the Governor did not appoint an Executive Procurement Officer as provided in 30 ILCS 500/10-25. While staff attorneys with the Office of the Governor have been very accommodating, an officer representing the Governor and dedicated full-time to resolving difficulties in implementing procurement changes and who could take a comprehensive view toward procurement might have been a helpful liaison to the new CPOs. Leaders of the Governor's Office of Management and Budget and of Central Management Services did distribute a memorandum to their staff that attempted to draw lines of authority and create a new position of Agency Procurement Officer. See attachment # 4. The CPOs were not consulted in advance of the distribution of this memorandum and were not on its distribution list. Early cooperation would help ensure the smoothest transition.

A third area requiring improvement, and one that, if improved, could solve many other issues is rulemaking. The authority to promulgate rules to carry out procurement authority is with the new CPOs per 5 ILCS 500/5-25 and the Commission and CPOs have actively sought to implement that authority since September 2010. Despite many communications with the Index Division of the Secretary of State, the transfer of rules to the new CPOs has not, to date, been effected.

Once transferred, the CPOs intend to make revisions to the existing procurement rules with the goal of improving efficiencies and competitive procurements for the State of Illinois. Until rulemaking revisions are accomplished, the CPOs remain limited in implementing widespread changes to direct how the new systems are to work. Without rules, even the agencies that are fully cooperative lack the benefit of a comprehensive direction of how procurements should run.

Finally, the procurement system should be improved by giving the Commission the appropriation it needs to carry out the General Assembly's direction. As mentioned above, the total cost for the EEC staff's oversight and control amounts to about 0.1% of the value of the procurements. Even in tough budgetary times, the State must exercise good stewardship over the \$9 billion in public funds procured annually.

Suggested improvements to the system:

Statutory improvements: Commission staff have made a great effort to comply with the P.A.96-795. At this juncture it may be most prudent to allow implementation of procurement reform to continue without significant statutory revision. A few issues may warrant review at this time. In many instances compliance requires that we disqualify vendors and pay more, sometimes substantially more or rebid, sometimes more than once, to get a vendor who will do business with us. Following is a list of suggestions that affect agencies and universities to a greater or lesser extent.

- Board of Elections certificate. (30 ILCS 500/20-160) Vendors should not be disqualified if they forget to submit their certificate with their bid. So long as the certificate is already on file with the Board, the bid should be accepted.
- Sole source and emergency extension hearings. (30 ILCS 500/20-25, 20-30) It takes considerable staff time to prepare the hearing material, keep minutes, make a recommendation and publish the results, and conduct a hearing at which no one shows. The statute should provide that a hearing should be afforded to anyone who requests one.
- Establishing authority to do business in Illinois. (30 ILCS 500/20-43) While a vendor should be a legal entity prior to submitting a bid, it is not necessary to require a vendor to register with the Secretary of State (and pay a fee to conduct) if they are simply bidding. Other forms of establishing legal identity should be recognized.

System and process improvements:

- Procurement Bulletin. Each CPO publishes a procurement bulletin each with the same basic purpose of providing information, primarily about bid opportunities, to the public. Each bulletin looks and feels different and each has different capabilities in terms of ability to search and extract data, and in the degree of transparency each provides. In the interests of transparency, economy and efficiency the CPOs should develop a single bulletin that meets everyone's needs—vendors and the public for notices, and the State for management information and workflow. Also, although the CPOs are considered the bulletins' publishers, each one is, hosted by, modified by and administered by the relevant agencies or universities. Some have been more cooperative than others in making the changes the CPOs direct. Changing the funding of the bulletins from the

agencies to the CPOs will ensure that the bulletins are properly administered and maintained.

- Vendor Prequalification. The CPOs are developing a system where vendors centrally prequalify for procurement matters. Vendors could then reference that prequalification when bidding rather than having to submit all of that information with each and every bid. Prequalification could be done manually (with sufficient staffing), but would be better if eventually there was on-line registration. Prequalification will require additional resources and funding. This will create a great efficiency to the State and vendors, and reduce the amount of paper filings.
- Knowledge Management system. Notices, forms, procedures and other information shall be maintained by the CPOs electronically on a central site so that the various agencies and the public can have access to the latest information. This will also require additional resources and funding.
- Standardization of forms. Agency and university solicitation and contract-related forms are different. Vendors should not have to learn to use many different sets of forms. Having identical forms also helps reviewers, as they can concentrate on the terms of the specific transaction rather than having to hunt all over a document to find required terms. In order for standardization to work well, there needs to be a central site (Knowledge Management System) maintained by the CPOs where forms are kept up to date with the latest modifications. This site needs to be electronic so the latest changes can be distributed immediately and consistently.