**Section 930.380 Substantial Compliance with the Illinois Procurement Code**

This Section provides additional requirements for the substantial compliance with the Sections of the Illinois Procurement Code listed in Section 930.130. This Section supplements the requirements found in the Code and does not excuse substantial compliance with any of the Code requirements.

a) Substantial Compliance with Code Section 20-160 (Business Entities; Certification; Registration with the State Board of Elections) and Section 50-37 (Prohibition of Political Contributions)

1) These requirements generally apply to a vendor whose existing State contracts have an aggregate value in excess of $50,000, whose aggregate value of bids/proposals for State contracts exceeds $50,000, or whose aggregate value of State contracts and bids/proposals exceeds $50,000, calculated on a calendar-year basis.

2) On a calendar-year basis, each vendor or potential vendor must keep track of the value of contracts and bids/proposals. Vendors must register with the State Board of Elections when the vendor determines that the value of the contracts and bids/proposals meets the threshold for registration.

3) Documentation of vendor compliance must be in the procurement file in relation to any contract for which a vendor is required to register as set forth in subsection (a)(2), unless the vendor certifies it is not required to register.

A) For contract renewals and extensions, if the value of the renewal or extension by itself, or in combination with the contract being renewed/extended and other contracts and bids/proposals, exceeds $50,000, the vendor must provide documentation of vendor compliance upon request and make the appropriate contract certification, if it has not already done so. The Registration Certificate issued by the State Board of Elections, or other evidence of vendor compliance, may be provided by reference to and incorporation of the vendor's prequalification by the CPO.

B) CDB shall identify in the solicitation whether the contract is estimated to exceed $50,000 annually. Vendors submitting bids or offers for master contracts estimated to exceed $50,000 annually, regardless of actual vendor consumption, are required to register with State Board of Elections.

C) For indefinite quantity/estimated value contracts that are not estimated to exceed $50,000 annually, a vendor who is otherwise not required to register shall register with the State Board of Elections when the maximum value of orders that may be placed pursuant to an indefinite/estimated value contract, plus all other contracts and bids/proposals, exceeds $50,000 annually. The vendor shall register with the State Board of Elections within 10 business days after orders exceed $50,000.

D) For contract amendments, if the value of the amendment, by itself or in combination with the contract being renewed plus other contracts and bids/proposals exceeds $50,000 annually, the vendor must provide the Registration Certificate or other evidence of compliance upon request and make the appropriate contract certification, if it has not already done so.

E) Any contracts mistakenly executed in violation of this Section must be amended to include the contract certifications, and the vendor must supply the Registration Certificate or other evidence of compliance upon request. If any violation by the vendor is not cured within 5 business days after receipt of notification of the violation, the contract is voidable by the State without penalty.

F) Certification of the requirement to register with the State Board of Elections (see 30 ILCS 20-160(a)) shall be included in or added to each contract that must be filed with the State Comptroller pursuant to Section 20-80 of the Code and those written two-party contracts that need not be filed with the Comptroller. CDB may require written confirmation of the certification at any time.

b) Substantial Compliance with Code Section 50-13 (Conflicts of Interest)

1) These conflicts apply to the direct interests of specified State employees or officeholders.

2) Office or Employment. *It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person, to have or acquire any contract, or any direct pecuniary interest in the contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority.* [30 ILCS 500/50-13(a)].

3) Financial Interests. *It is unlawful for any firm, partnership, association, or corporation, in which any person* as described *in subsection* (b)(2) *is entitled to receive more than 7½% of the total distributable income or an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.* [30 ILCS 500/50-13(b)].

4) Combined Financial Interests. *It is unlawful for any firm, partnership, association or corporation, in which any person listed in subsection* (b)(2) *together with his or her spouse or minor children is entitled to receive more than 15%, in the aggregate, of the total distributable income or an amount in excess of 2 times the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.* [30 ILCS 500/50-13(c)].

5) For the purpose of this Part, an individual has a direct pecuniary interest in a contract when the individual is owed a payment or otherwise received a direct financial benefit in conjunction with performance of a contract, including finder's fees and commission payments.

6) For the purpose of this Part, "distributable income" means the income of a company after payment of all expenses, including employee salary and bonuses, and retained earnings, which is distributed to those entitled to receive a share of the income. In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income, the entitlement shall be determined at the end of the company's most recent fiscal year.

7) This Section applies to those elected or appointed to an office of Illinois State government. This Section does not apply to those elected to local government offices, including school districts, nor does it apply to those elected to federal offices in this State.

c) Substantial Compliance with Code Section 50-15 (Negotiations)

1) *It is unlawful for any person employed in or on a continual contractual relationship with any of the offices or agencies of State government to participate in contract negotiations on behalf of that office or agency with any vendor, partnership, association or corporation with whom that person has a contract for future employment or is negotiating concerning possible future employment.*  [30 ILCS 500/50-15(a)]

2) An individual who performs services pursuant to a contract and who meets the requirements of an "employee" as opposed to an "independent contractor" is in a "continual contractual relationship" from the effective date of the contract until such time as the contract is terminated.

3) An individual who performs services pursuant to a contract and who meets the requirements of an "independent contractor", as opposed to an "employee", is in a "continual contractual relationship" if the contract term is indefinite, is automatically renewed, is renewable at the individual's option, is renewable unless the State must act to terminate, or has a definite term of at least three months.

d) Substantial Compliance with Code Section 50-20 (Exemptions). If an individual finds a conflict of interest under Section 50-13 of the Code with the vendor selected for award or contract negotiations, he or she shall forward to the CPO the name of the vendor and a description of the proposed contract and of the potential conflict, and shall state why an exemption should be granted. The CPO shall decide whether to disapprove the contract or request an exemption from the Executive Ethics Commission in accordance with Section 50-20 of the Code.

e) Substantial Compliance with Code Section 50-35 (Financial Disclosure and Potential Conflicts of Interest)

1) In circumstances in which the vendor refuses or is unable to provide disclosures, the CPO may authorize CDB to move forward with the transaction. In granting that authorization, CDB must provide documentation of efforts to obtain compliance.

2) New disclosures are required on contract renewals. New disclosures are not required for contract amendments.

3) For purposes of:

A) Section 50-35(b) of the Code, "parent entity" means an entity that owns 100% of the bidding or offering entity.

B) Section 50-35(b) of the Code, "distributive income" means the income of a company after payment of all expenses, including employee salaries and bonuses, and retained earnings that are distributed to those entitled to receive a share of that income. In the case of a for-profit corporation, distributable income means dividends. When calculating entitlement to distributable income, the entitlement shall be calculated at the end of the company's most recent fiscal year or when distributed.

C) Section 50-35(b) of the Code, "subject to federal 10K reporting" means subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 USC 78a et seq.). "10K disclosure" means a report required under those statutes.

D) Section 50-35(b)(1) of the Code, "contractual employment of services" means any contract to provide services to the State, whether as independent contractor or employee, that is by and between the State and the named individual.

4) 10K Disclosures

A) Any vendor subject to federal 10K reporting requirements may submit its 10K to CDB in satisfaction of the disclosure requirement of Section 50-35(b) of the Code. The vendor may be required to identify the specific sections or parts in the 10K disclosure containing information, if any, pertaining to those who have an ownership interest or an interest in the distributive income of the vendor or its parent, or other information that the vendor knows or reasonably should know identifies a potential conflict of interest with the State. If the financial interest or conflict of interest information requested by the State is not in the 10K, or in a document that may be submitted to the SEC in conjunction with, or in lieu of, the 10K, then that additional documentation shall be provided.

B) 10K disclosures are available for public review. Any potential conflict of interest identified by the public and brought to the attention of CDB, or the CPO, shall be investigated.

C) In circumstances in which a vendor may submit a 10K disclosure in lieu of the specific disclosure requirements of the Code, the CPO may consider information identified by the vendor in the 10K disclosure and any information disclosed pursuant to public review of the 10K disclosure in determining whether a potential conflict of interest exists.

5) When an alleged conflict of interest or violation of the Code is identified, it shall be reviewed by the CPO, who must determine whether the contract, subcontract, bid, offer or proposal should be awarded. Prior to making a final determination, the potential conflict shall be submitted to PPB for review in accordance with Section 50-35(d) of the Code. If PPB recommends to allow the contract or subcontract, the CPO may award the contract. If the PPB recommends the contract, bid or offer be voided, then the CPO may determine to award the contract, considering whether the best interest of the State of Illinois will be served. Upon that determination, the EEC shall hold a public hearing. After the public hearing, the CPO may award the contract. The CPO may, at any juncture, determine to void the contract or award if to do so is determined to be in the best interest of the State. All written determinations and any documents relied upon or made part of any public hearing shall become a publicly available part of the procurement file.

f) Substantial Compliance with Code Section 50-36 (Disclosure of Business in Iran).

A period not to exceed 5 business days may be granted by the CPO to cure a failure to provide the disclosures required by this subsection.

g) Voidable Contracts

1) If any contract or amendment to the contract is entered into, or purchase or expenditure of funds is made, at any time in violation of this Part or any law, the contract or amendment may be declared void by the CPO or may be ratified and affirmed, provided the CPO determines that ratification is in the best interests of the State. If the contract is ratified and affirmed, it shall be without prejudice to the State's rights to any appropriate damages.

2) If, during the term of a contract, the CPO determines that the contractor is in violation of Section 50-10.5 of the Code, the CPO shall declare the contract void.

3) If, during the term of a contract, CDB determines that the contractor no longer qualifies to enter into State contracts by reason of Section 50-5, 50-10, 50-12, or 50-37 of the Code, the CPO may declare the contract void if it determines that voiding the contract is in the best interests of the State.

4) If, during the term of a contract, the CPO determines that a subcontractor no longer qualifies to enter into State contract by reason of Section 50-5, 50-10, 50-10.5, or 50-12 of the Code, the CPO may declare the related contract void if it determines that voiding the contract is in the best interests of the State. However, the related contract shall not be declared void unless the contractor refuses to terminate the subcontract, upon CDB's request, after a finding that the subcontractor no longer qualifies to enter into State contracts by reason of Section 50-5, 50-10, 50-10.5 or 50-12 of the Code.