**Section 1300.5039 Communications Related to Procurement**

a) Any OAG employee who receives a written or oral communication that imparts or requests material information or makes a material argument regarding potential action concerning a procurement matter, including but not limited to an application, a contract or a project, shall [30 ILCS 500/50-39] report the communication to the OAG PPCMB. The OAG PPCMB shall make each report submitted pursuant to this Section available for review within 7 days after its receipt of the report.

b) A communication must be reported if it is material, regarding potential action, relating to a procurement matter and not otherwise excluded from reporting.

1) Materiality

A) "Material information" is information that a reasonable person would deem important in determining his or her course of action. It is information pertaining to significant issues, including, but not limited to, price, quantity and terms of payment or performance.

B) A "material argument" is a communication that a reasonable person would believe was made for the purpose of influencing a decision relating to a procurement matter. It does not include general information about products, services or industry best practices, or response to a communication initiated by an OAG employee for the purpose of providing information to evaluate new products, trends, services or technologies.

C) In determining whether a communication is material, the OAG employee must consider:

i) whether the information conveyed is new or already known to the OAG (or repeated or restated privately) and other participants in the communication; and

ii) the likelihood that the information would influence a pending procurement matter.

2) A "potential action" is one that a reasonable person would believe could affect the initiation, development or outcome of a procurement matter.

3) "Procurement matters", unless otherwise excluded, are the processes of procuring specific goods, supplies, services, professional or artistic services, construction, leases of real property in which the OAG is the lessor or lessee, or capital improvements, and include master contracts, contracts for financing through use of installment or lease-purchase arrangements, renegotiated contracts, amendments to contracts, and change orders. Procurement matters are activities that occur during the time period beginning with the time the OAG has identified a need for procurement as determined and documented by the CPO or Purchasing Officer, and continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or OAG PPCMB review period, if applicable. Procurement matters include:

A) drafting, reviewing or preparing specifications, plans or requirements, including determining the method of source selection;

B) drafting, reviewing or preparing any IFB, RFI, RFP, sole source procurement justifications, emergency procurement justifications or selection information;

C) evaluating bids, responses and offers, other communications among members of an evaluation team and any technical advisors to the team relating to the evaluation of a procurement not yet awarded;

D) letting or awarding a contract;

E) resolving protests;

F) determining inclusion on prequalification lists or prequalification in general;

G) identifying potential conflicts of interest or voiding or allowing a contract, bid, offer or subcontract for a conflict of interest;

H) allowing a contract or subcontract voidable under Section 50-60 of the Code; and

I) approving change orders or the renewal or extension of an existing contract.

c) This Section does not apply to the following communications:

1) Communication made publicly in a public forum;

2) Communications regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter;

3) Communications regarding the administration and implementation of an existing contract;

4) Communication between an OAG employee and:

A) the Attorney General;

B) other employees of the OAG;

C) the OAG PPCMB;

D) the Office of the Executive Inspector General for the Attorney General;

E) employees of the Executive Ethics Commission [30 ILCS 500/50-39(a)]; or

F) an employee of a State agency who, through the communication, is either:

i) exercising his or her experience or expertise in the subject matter of the particular procurement in the normal course of business, for official purposes, and at the initiation of the Purchasing Officer; or

ii) exercising oversight, supervisory or management authority over the procurement in the normal course of business and as part of official responsibilities;

5) Unsolicited communications providing general information about products, services or industry best practices, prior to those products or services becoming involved in a procurement matter;

6) Communications received in response to procurement solicitations pursuant to the Code, including, but not limited to, vendor responses to an RFI, RFP, Request for Qualifications or IFB or a small purchase, sole source or emergency solicitation, questions and answers posted to the Bulletin to supplement the procurement action. This exemption is not applicable unless the communications are made in accordance with the instructions contained in the procurement solicitation, procedures or guidelines;

7) Communications that are privileged, protected or confidential under law;

8) Communications that are part of the formal procurement process as set out by statute, rule or the solicitation, guidance or procedures, such as the posting of procurement opportunities, the process for approving a Procurement Business Case or its equivalent, fiscal approval, submission of bids, the finalizing of contract terms and conditions with an awardee or apparent awardee, and similar formal procurement process;

9) Communications that ask for clarification regarding a contract solicitation, so long as there is no competitive advantage to the person or business, and the question and answer, if material, are posted to the Bulletin as an addendum to the contract solicitation.

d) Notwithstanding any exemption provided in subsection (c), an OAG employee must report any communication that imparts or requests material information or makes a material argument regarding a potential action concerning a procurement matter if that communication attempts to influence through duress, coercion, or the direct or indirect offer or promise of anything of value to any person or entity in consideration for any benefit or preference in the procurement process.

e) Notwithstanding any exemption provided in subsection (c), an OAG employee must report any communication that imparts or requests material information or makes a material argument regarding a potential action concerning a procurement matter if the employee reasonably believes the communication was made for any improper purpose, including, but not limited to, providing an improper benefit, monetary or non-monetary, to any person or entity.

f) As soon as practicable, but in no event more than 30 days after receipt of the communication or the first of a series of related communications described in subsection (b), the OAG employee shall report the communication to the OAG PPCMB.

g) For purposes of this Section, "OAG employee" means:

1) any person employed full-time, part-time, or pursuant to a personal services contract with the OAG and whose employment duties are subject to the direction and control of the OAG with regard to the material details of how the work is to be performed;

2) any appointed board member of a board of the OAG; or

3) any other person appointed to a position in or with the OAG, regardless of whether the position is compensated.

h) For purposes of this Section, "public forum" includes any meeting that satisfies the notice requirements contained in Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02], but also other public events that are advertised and generally open to the public. A meeting may be a public forum even if a reasonable fee is required. Examples include educational seminars and conferences.

(Source: Amended at 48 Ill. Reg. 2790, effective February 7, 2024)