**Section 2000.5039 Procurement Communication Reporting Requirement**

a) Unless otherwise specified in this Section, any written or oral communication received by a Secretary of State *employee who, by the nature of his or her duties, has the authority to participate personally or substantially in the decision to award a State contract and that imparts or requests material information or makes a material argument regarding potential action concerning an active procurement matter, including, but not limited to, an application, a contract or a project, shall be reported to the* SOS *Procurement Policy Board.* [30 ILCS 500/50-39(a)]

1) As soon as practicable, but in no event more than 30 days after receipt of the communication or the first in a series of related communications described in subsection (b), the Secretary of State employee shall report the communication to the SOS Procurement Policy Board.

2) *No trade secrets or other proprietary or confidential information shall be included in any communication reported to the* SOS *Procurement Policy Board.* [30 ILCS 500/50-39(b)]

b) A communication must be reported if it is material, regarding a potential action, relating to an active 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 a response to a communication initiated by an* SOS *employee for the purpose of providing information to evaluate new products, trends, services, or technologies*. [30 ILCS 500/50‑39(g)]

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

i) whether the information conveyed is new or already known to the SOS (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) "*Active procurement matter*" *means a procurement process beginning with the requisition or determination of need by an agency 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* SOS *Procurement Policy Board review period, if applicable*. The Chief Procurement Officer may designate a document for an agency to use in documenting a determination of need. "*Active procurement matter*" *also includes communications relating to change orders, renewals or extensions*. [30 ILCS 500/50-39(g)] "Procurement processes" includes the processes of procuring specific goods, supplies, services, professional or artistic services, construction, leases of real property (whether the State is the lessor or lessee), or capital improvements, and includes master contracts, contracts for financing through use of installment or lease-purchase arrangements, renegotiated contracts, amendments to contracts, and change orders. Active 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 Invitations for Bid, Requests for Information, Requests for Proposals, sole source procurement justifications, emergency procurement justifications or selection information;

C) evaluating bids, responses and offers, and other communications among 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 conflict or subcontract pursuant to Section 50-60 of the Code; and

I) determining, drafting, preparing, executing, denying or approving change orders or the renewal or extension of an existing contract.

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

1) *Statements by a person publicly made in a public forum*. However, communications made in a public forum, if made again privately, must be reported;

2) *Statements 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, except communications regarding change orders or the renewal or extension of an existing contract;*

4) *Statements made by* an SOS *employee to*:

A) *the* employee's department *head*;

B) other SOS employees;

C) *employees of the Executive Ethics Commission;*

D) the Office of the Executive Inspector General for the Secretary of State; or

E) *an employee of another 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 agency or the appropriate State 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, before those products or services become involved in a procurement matter;*

6) *Communications received in response to procurement solicitations pursuant to the Illinois Procurement Code, including, but not limited to, vendor responses to a Request for Information, Request for Proposal, Request for Qualifications, Invitation for Bid or a small purchase, sole source or emergency solicitation, or questions and answers posted to the Bulletin to supplement the procurement action, provided that 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 a formal procurement process as set out by statute, rule or the solicitation, guidance or procedures, including, but not limited to, the posting of procurement opportunities, the processes 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 processes*. [30 ILCS 500/50-39(a)]

d) Notwithstanding any exemption provided in subsection (c), an SOS employee must report any communication that imparts or requests material information or makes a material argument regarding a potential action concerning an active 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 SOS employee must report any communication that imparts or requests material information or makes a material argument regarding a potential action concerning an active 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 nonmonetary, to any person or entity.

f) This Section does not apply to communications concerning procurements that are exempt from the Illinois Procurement Code.

g) For purposes of this Section, "Secretary of State employee" or "SOS employee" means:

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

2) any appointed or elected commissioner, trustee, director or board member of a board of the SOS; or

3) any other person appointed to a position in or with the SOS, 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], but also includes 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, such as educational seminars and conferences.

(Source: Amended at 43 Ill. Reg. 6185, effective May 9, 2019)