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What all State vendors need to know about new ethics requirements

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 explains the basics regarding these new requirements. The full text of the Act may be found on the Illinois Procurement Bulletin: <http://www.purchase.state.il.us>

The Public Act 095-0971 took 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 for State contracts in a calendar year exceed \$50,000.

The annual total of your company's bids and proposals for 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, and 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 and Northeastern Illinois Universities; Chicago State; Governors State; Illinois State Universities; and the Illinois Board of Higher Education. State agencies include agencies, authorities, boards and commissions created as bodies politic and corporate under the executive branch of State government, 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
- 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 State Police
- Department of Transportation
- Department of Veterans' Affairs
- Environmental Protection Agency
- Governor's Office of Management and Budget
- Guardianship and Advocacy Commission
- Historic Preservation Agency (now a Division of the Department of Natural Resources)
- Human Rights Commission
- Illinois Arts Council
- Illinois Council on Developmental Disabilities
- Illinois Criminal Justice Information Authority
- Illinois Emergency Management Agency
- Illinois Finance Authority
- Illinois Housing Development Authority
- Illinois Investment and Development Authority
- Illinois Power Agency
- State Fire Marshal
- Office of the Executive Inspector General
- Department of Insurance
- Illinois Lottery (a Division within the Department of Revenue)
- Illinois Medical District Commission
- Prisoner Review Board
- Property Tax Appeal Board
- Illinois Gaming Board
- Illinois Racing Board

Drycleaner Environmental Response Trust Fund Council
East St. Louis Financial Advisory Authority
Illinois Sports Facilities Authority Advisory Board
Illinois Violence Prevention Authority
Southwestern Illinois Development Authority
State Universities Civil Service System
Upper Illinois River Valley Development Authority
Metropolitan Pier and Exposition Authority
Deaf and Hard of Hearing Commission
Illinois Educational Labor Relations Board
Illinois Labor Relations Board
Illinois Law Enforcement Training & Standards Board
Civil Service Commission
Illinois Commerce Commission
Illinois Workers' Compensation Commission
State Employees Retirement System
State Universities Retirement System
Teachers Retirement System
Illinois State Board of Education
State Board of Elections
Board of Higher Education
Illinois Conservation Foundation
Executive Ethics Commission
State Board of Investments
Illinois Toll Highway Authority
Quad Cities Regional Economic Development Authority
Sex Offender Management Board
Southeastern Illinois Economic Development Authority
Will-Kankakee Regional Development Authority
Office of the Governor
Office of the Lieutenant Governor
Office of the Comptroller
Secretary of State
Office of the Attorney General
Office of the Treasurer

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 have registered before February 2, 2009. If you have not yet registered you must do so immediately and submit your registration as explained further below.

If you have an existing master contract with the State, you must register and submit a registration certificate when the value of the orders placed pursuant to the master contracts plus all other contracts and bids and proposals exceeds \$50,000. Once you have submitted a registration certificate you do not have to submit copies of the registration certificate with subsequent orders.

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.

Effective for bids / proposals due June 28, 2009, and after, you must submit with your bid/ proposal a copy of the registration certificate stamped by the Illinois State Board of Elections. This stamped registration certificate must be included in the sealed bid / proposal package. If not included, your bid / proposal will be **rejected**.

The emergency rule allowing a five day grace period to submit the stamped registration certificate expires on June 27, 2009. Any later date referred to in the emergency rule applicable to the five day grace period is not applicable. Permanent rules to be adopted on June 28, 2009, will not contain a five day grace period.

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 have provided a copy of your registration certificate to all applicable Chief Procurement Officers of the State. If you have not yet done so, you must do so immediately. 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 acknowledgement 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.

What is the effect of the rescission of Executive Order 3 (2008)? On April 3, 2009, Governor Quinn issued Executive Order 9 (2009), which rescinded Executive Order 3 (2008), dealing with certain political contributions to officeholders other than the officeholder responsible for the contract and certain registration requirements. As a result of this rescission, all language contained in future solicitation documents, contracts and notifications which was added to give effect to Executive Order 3 (2008) will be deleted.

PUBLIC ACT 095-0971, ALSO ADDRESSING CAMPAIGN CONTRIBUTIONS AND REGISTRATION, IS STILL IN EFFECT. Vendors must continue to comply with that Act; including, without limitation, the requirements to:

- **register with the State Board of Elections,**
- **include a copy of the stamped Board of Elections' registration with each and every bid or proposal submitted,**
- **send an additional copy of the stamped Board of Elections' registration to the Chief Procurement Officer,**
- **update the registration as required by the Act, and**

- **limit campaign contributions in accordance with the Act.**

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