



2022
STATE OF ILLINOIS
**VENDOR
SUMMIT**

Legislation & Vendor Communication

Radhika Lakhani & Julie Langrehr, Central Management Services
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Section 1: Legislative Summary

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Section Overview

**LEGISLATION RELATED TO
THE PURCHASE OF
NONCONSTRUCTION
SUPPLIES AND GENERAL
SERVICES BY STATE
AGENCIES UNDER THE
GOVERNOR'S
AUTHORITY**

- P.A. 102-783
- P.A. 102-1081
- P.A. 102-721
- P.A. 102-0268
- P.A. 101-0657 & P.A. 102-0671

P.A. 102-783 (HB 4739)

Effective May 13, 2022

- Amends Section 20-80(d) of the Illinois Procurement Code (30 ILCS 500)
- Prior law: CPO could *request* an exception by submitting a written statement to the Comptroller and Treasurer
- New law: provides that a CPO *may approve* an exception by submitting a written statement to the Comptroller
- Removes both the Comptroller and Treasurer from the approval process
- Treasurer no longer receives any documentation related to late execution waivers

P.A. 102-1081 (SB 1915)

Effective January 1, 2023

- Adds a new section 45-23 to the Illinois Procurement Code
- After 1/1/23:
 - The State may not procure plastic disposable foodware for use at State parks or natural areas.
 - Only compostable or recyclable foodware may be used.

P.A. 102-1081 (SB 1915)

Effective January 1, 2023

- After 1/1/24 or at the renewal of a contract (whichever is later):
 - Vendors at State parks or natural areas may only offer compostable or recyclable disposable foodware
 - Exception for supplies for the Illinois State Fair

P.A. 102-1081 (SB 1915) Continued

Effective January 1, 2023

- Creates preference for vendors who will fulfill the contract through compostable or recyclable foodware:
 - Bid cannot be more than 5% greater than the cost of the single-use plastic products.
 - The contract must include an option for single-use plastic straws.

P.A. 102-721 (HB 2770)

Effective May 6, 2022

- Establishes State Procurement Task Force
 - Purpose: To survey the procurement process and make recommendations to change process structure to make the system more equitable, efficient, modern, and less costly.
- Once appointments are filled, Task Force must hold at least 7 meetings
- Task Force's final report to Governor and General Assembly due on or before 1/1/2024.

P.A. 102-721 (HB 2770)

Effective January 1, 2023

- Changes Section 1-10 of the Illinois Procurement Code
- For certain exempt procurements under 1-10(b), the purchasing Agency is required to publish information about the purchase.
- Currently this posting is required regardless of dollar value.
- After January 1, it will be required only for those contracts with an annual value of more than \$100k.

P.A. 102-721 (HB 2770) Continued

Effective January 1, 2023

- Changes definition of Subcontract (1-15.107) and Subcontractor (1-15.108) and Sec. 20-120.
- Currently an agreement is a “subcontract” if the total value of the agreement between the vendor and subcontractor is \$50k or more.
- After January 1, the dollar threshold will be when the total value exceeds the small purchase threshold.

P.A. 102-721 (HB 2770) Continued

Effective January 1, 2023

- Disclosures will now be required for contracts with an annual value exceeding the small purchase threshold rather than \$50,000.
- Permits a bidder or offeror to submit an affidavit of no change in lieu of resubmitting financial disclosures when the following conditions are met:
 - The bid or offer is valued annually at over \$100,000
 - The person submitting the bid or offer has an active contract with the agency, AND
 - The person submitting the bid or offer has submitted disclosures within the last 12 months.

P.A. 102-721 (HB 2770) Continued

Effective January 1, 2023

- Adds new section to the Illinois Procurement Code (30 ILCS 500/50-90)
- Provides that any Code-covered contract with an annual value of \$50,000 or more (including small purchases) will be accompanied by Standard Illinois Certifications in a form prescribed by the Chief Procurement Officer.
- Form will likely include many certifications already required by law on all State contracts.

P.A. 102-721 (HB 2770) Continued

Effective January 1, 2023

- Currently, when a contract renewal or extension exceeds \$249,999, the Procurement Policy Board and the Commission on Equity and Inclusion have a 30-day review period.
- The new law will shorten this review period to 14 days.
- Clarifies that when an Agency determines that a vendor made good faith efforts toward meeting the contract goal and issues a waiver, that the CPO's concurrence may not be unreasonably withheld or impair a State Agency's determination to renew a contract.
 - After January 1, the CPO must post a copy of the waiver to their website within 5 business days after receipt from the Agency.

P.A. 102-721 (HB 2770) Continued

Effective January 1, 2023

- The current law requires the CPO to establish procedures to resolve protests via administrative rule.
- Effective January 1, at a minimum, the procedures have to include a requirement that the CPO resolve the protest within 30 days of receiving all relevant requested information.
- If a vendor has filed a lawsuit or initiated an administrative proceeding, the 30-day period would generally not apply.

P.A. 102-721 (HB 2770) Continued

Effective January 1, 2023

- Current law provides if a vendor has a debt delinquency, then the vendor has to have entered into a deferred payment plan to pay off the debt in order to submit bids/offers or enter into contracts.
- The new law provides that the vendor must cure the debt delinquency within 7 calendar days by paying the debt in full or enter into a deferred payment plan or be actively disputing or seeking a resolution of the debt.

P.A. 102-721 (HB 2770) Continued

Effective January 1, 2023

- **Domestic Products 30 ILCS 517/3:**
- Currently: products manufactured in the US must be procured unless the price exceeds the price of products manufactured outside the US “by an unreasonable amount”.
- The new law makes the following changes:
 - “12% or more” rather than the “unreasonable amount” language.
 - Exemptions for emergencies and sole sources.
 - Tie breaker between vendors who will provide products manufactured in the US; if a vendor can manufacture in Illinois, then that vendor will be awarded.

P.A. 102-0268

Effective January 1, 2022

- Requires all flags purchased by the State must be manufactured in the US
- Previously applied to American flags
- Now also applies to Illinois State flags

P.A. 101-0657 & P.A. 102-0671

Effective July 1, 2021

- Requires commitment to diversity to be one of three components to an RFP
 - Previously only evaluated technical proposal and price proposal
- The diversity component must be worth 20% of the points assigned for technical component.
- If compliance with this requirement will jeopardize federal aid funds, grants or loans, then the contract is exempt.

P.A. 101-0657 & P.A. 102-0671

Effective January 1, 2022

- Created the new Commission on Equity and Inclusion
- Gives the Commission significant oversight over procurements
- The scope of the Commission's review is focused on diversity, equity, and inclusion

P.A. 101-0657 & P.A. 102-0671

Effective July 1, 2021

- A vendor is not eligible for a contract renewal if it has failed to meet the goals agreed to in the U-Plan unless:
 - The Agency determines the vendor made good faith efforts and
 - The CPO concurs with the decision

P.A. 101-0657 & P.A. 102-0671

Effective January 1, 2021

- Adds criteria to be considered when reviewing a request for waiver of a BEP goal
- Adds language regarding potential remedies if the BEP commitment is not met and no good faith efforts

Section 2: Vendor Communication

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Applicable Law

- Illinois Procurement Code (30 ILCS 500/50-39)
- CPO-GS Standard Procurement Rules (44 Ill. Adm. Code 1.5039)
- Executive Ethics Commission Rules (2 Ill. Adm. Code 1620.825)

What is Reportable?

- ALL FIVE of the following characteristics must be met to trigger the reporting requirement:
 - (1) It is a Communication that is
 - (2) Material,
 - (3) Regarding a Potential Action,
 - (4) Relating to an Active Procurement Matter, and
 - (5) Not Otherwise Excluded from Reporting.

What is a Communication?

- Oral communication (e.g. phone call, in-person conversation, meeting)
- Written communication (e.g. snail mail and other written material)
- Electronic communication (e.g. facsimile, e-mail)

What makes a communication material?

- Would a reasonable person think this information is important to making a procurement decision?
- Does it raise a significant issue? (i.e. Is it material information?)
 - Price
 - Quantity
 - Terms of payment or performance
- Would a reasonable person think that the communication was made to influence the procurement? (i.e. Is it a material argument that is more than general information?)

What makes a communication material?

- Other things to consider:
 - Is the information new to the State Agency?
 - Is the information private or public?
 - What is the likelihood the information would influence a pending procurement matter?

When is a communication regarding a potential action?

- Would a reasonable person believe the communication could affect the procurement matter at any stage?
- Examples of issues that could affect a procurement matter:
 - Determination of need,
 - Development of specifications,
 - Outcome/award

What is an active procurement matter?

- A procurement matter becomes active when an Agency has made a determination of need, and
- Remains active until a final procurement action has been completed.
 - Posting of award,
 - Resolution of protests, and
 - Expiration of PPB Review Period

What is an active procurement matter?

- Other types of active procurement matters include:
 - Communications related to change orders,
 - Communications related to renewals, and
 - Communications related to extensions.

What is excluded from reporting?

- Trade Secrets or other proprietary or confidential information,
- Statements made publicly in a public forum
- Statements made regarding procedure and practice, such as:
 - Do we submit the electronic copy of our proposal in PDF or Word format?
 - How many copies of the pricing proposal are needed?
 - Is the bid opening still scheduled for 9:00 AM this Friday?

What is excluded from reporting?

- Communications about administering an existing contract, such as
 - Contract performance issues,
 - Billing/Invoicing issues,
 - NOT including change orders, renewals, or extensions.
- Communications between State employees within their own Agency or procurement staff/officials from other State Agencies.

What is excluded from reporting?

- Unsolicited general information about products, services, or industry best practices, before those products or services become involved in a procurement matter.
- Communications that are privileged, protected, or confidential under law.

What is excluded from reporting?

- Communications that are part of the formal procurement process. Examples include:
 - Posting solicitations
 - Approval of PBCs/requisitions
 - Fiscal approvals
 - Contract negotiation/finalization of terms
- Communications asking for clarification of a solicitation term as long as the question and answer are publicly posted as an addendum.

When can a communication lead to disqualification?

- Communication with a State employee could provide an unfair advantage
- Vendors are prohibited from contracting (and subcontracting) on a procurement if that vendor assisted the State in reviewing, drafting, directing, or preparing, any part of the solicitation.

When can a communication lead to disqualification?

- Not all communications result in disqualification:
 - Communicating with a State employee to provide general information about products, services, or industry best practices;
 - Responding to a communication initiated by a State employee for the purposes of providing information to evaluate new products, trends, services, or technologies;
 - Asking for a clarification regarding an existing solicitation; or
 - Demonstrating industry trends and innovation not specifically designed to meet the State's needs.



Questions?