



ILLINOIS CHAMBER  
OF COMMERCE

May 4, 2011

**Follow-up Comments to Senate Procurement Committee Co-Chairs Senator Don Harmon and Senator Pam Althoff:**

On behalf of the bidder/vendor community, the Illinois Chamber of Commerce thanks you for the opportunity to provide follow-up comments to those we submitted to the Senate Procurement Committee on April 27.

In anticipation of forthcoming committee recommendations for legislative action before the close of the spring legislative session, we would like to reiterate our priority issues that we hope to have addressed in legislation this spring. We also would like to underscore some of the comments submitted by other organizations and agencies regarding issues the Illinois Chamber would support being addressed in procurement clean-up legislation.

**Key Issues:**

- **Procurement Communications:** Addressing this issue is critical, as indicated by many of the comments submitted to the committee. The current communication provisions in the Illinois Procurement Code have had a chilling effect on communications between the state and bidder/vendor community on two fronts: 1) procurement communications reporting requirements are still very difficult to decipher on the behalf of both the state employee and the bidder/vendor and have been implemented very differently across different agencies, and 2) informal conversations regarding innovative products and/or technologies that may eventually become the subject of an RFP have been hindered.

**RECOMMENDATION:** The Chamber recommends that the Procurement Code's reporting requirements only apply to those state employees that by the nature of their duties have the authority to participate personally and substantially in the decision to award a state contract. The Chamber also believes the state should provide more extensive training to state employees subject to these requirements to encourage a standardized approach to the implementation of these requirements.

The Chamber also recommends codifying portions of the rules promulgated by the EEC regarding ex parte communications (effective April 21) to provide greater assurances to the bidder/vendor community, as well as state employees that informal communications regarding products or services that are not the subject of a state procurement matter are not applicable to the procurement reporting requirements and furthermore, will *not* result in disqualification by that bidder from participating in any future procurement matter that may involve that specific product or service.

- **Subcontractor disclosures:** The Illinois Chamber maintains that current requirements under the Procurement Code make it very difficult for state vendors to comply and further makes it difficult for contractors to negotiate competitive subcontracts that are in the state's best interest.

**RECOMMENDATION:** The Chamber recommends eliminating the requirement that copies of subcontracts be submitted to the PPB and instead grant the CPO the authority to request a copy of a subcontract, allowing for contractor/subcontractor redaction of any information that may be deemed proprietary or confidential. The current law already requires the contract to include the names and addresses of all known subcontractors with subcontracts totaling more than \$25,000 annually. The law, however, also requires these contracts to disclose the expected amount of money each subcontractor will receive under the contract. The Chamber recommends that the contract only disclose the general type of work to be performed under the subcontract in order to protect the ability of the contractor to competitively negotiate these subcontracts.

- **Due Process:** The current law goes a long way to protecting the state from unscrupulous bidders and vendors, but those particular bidders and vendors are few and far between. Given the complexities of this law, those bidders and vendors that are well-intended, but fall out of compliance with the law, should be given an opportunity to respond to any allegations of wrong doing appropriately.

**RECOMMENDATION:** The Chamber recommends that when a CPO or SPO, or any other person or entity, notifies the PPB of any alleged conflict of interest or violation of the Code, the PPB be required to notify the contractor or subcontractor of the allegation, allowing the contractor or subcontractor up to 30 days to provide a written response. The Chamber recommends that the contractor and/or subcontractor also be allowed to request a hearing before the Board to respond to any allegation of wrongdoing. The law should also be amended to allow contractors the ability to void a subcontract when a subcontractor is found to have made a false certification, rather than automatically voiding the full contract when any wrongdoing is limited to the subcontractor.

- **Privately-Held Entity Disclosure Requirements:** As indicated in our previous memo, we urge the committee to amend current financial disclosure provisions to ease compliance for smaller privately-held entities with state contracts. In the written comments submitted to the committee on April 27, Mesirow Financial indicated their reasons for seeking this change, not least of which is the time it took staff to comply with the requirements.

**RECOMMENDATION:** The Chamber recommends inclusion of the legislative changes proposed in HB 1444 (Mautino/Wilhelmi) that would allow privately-held entities with more than 200 shareholders (rather than 400) that are otherwise exempt from federal 10K reporting laws to submit information that Federal 10K reporting companies are required to report under federal regulations in order to fulfill the financial disclosure requirements outlined in Section 50-35 of the Procurement Code. Mesirow Financial

indicated in their written comments that they would be open to reducing that threshold even further and the Chamber would second that consideration to include privately-held entities with more than 100 shareholders to accommodate the needs of other privately-held entities that do business with the state.

**Other Recommendations:**

- **Eliminate Automatic Sole Source Hearings:** While we did not discuss this in our April 27 memo, we support the recommendations made by a number of organizations, including the Executive Ethics Commission and the Governor's office that suggest eliminating the automatic public hearing requirement for all sole source procurements and instead only require a hearing upon request.
- **Allow for Electronic Verification of Board of Elections BEREPC Certificate:** The Illinois Chamber supports the recommendations of both the EEC and the Governor's office to eliminate the requirement that bidders properly registered with the State Board of Elections include a paper certificate of this registration with each bid submitted to the state. As noted by the Governor's office, despite extensive education regarding this requirement, nearly 200 bidders were eliminated from contention simply due to the fact that they failed to submit this document. SBEL's Business Entity Registration system is fully accessible through their website and agency staff should be able to verify a bidder's registration very easily.