



# Procurement Compliance Monitors (PCMs)

30 ILCS 500/10-15

# Today's Presentation

- ▶ **Background/Overview**
- ▶ PCM Role/Activities
- ▶ Examples
- ▶ Call for help

# Background / Overview

- ▶ Created by SB51 (PA 96–795), effective 7/1/2010
- ▶ Stemmed from ethics reform
  - Independence
  - Transparency
- ▶ Real-Time Auditors
  - Assess processes, culture, internal controls
  - Highlight issues before they become issues
  - Work with stakeholders to address issues

# Illinois Procurement Code (30 ILCS 500/10-15)

- a) Purpose and general provisions
- b) Procurement monitoring duties/authority
- c) Misconduct, waste, or inefficiency reporting

# 10-15(a) Purpose

- ▶ Oversee and review the procurement processes
- ▶ PCM Mission Statement (General Services only): “Serve the public and business community by promoting integrity in the State’s procurement environment through independent oversight and guidance.”

# 10-15(a) General Provisions

- ▶ Appointed by EEC for 5-year term
- ▶ Report to CPO
- ▶ Assigned to and located in agencies served
- ▶ Direct communications with agency head
- ▶ CPO or agency head may file complaint with EEC
- ▶ May be removed only for cause after EEC hearing
- ▶ Salary established by EEC and may not diminish during term

# 10-15(b) Procurement Monitoring Duties

- ▶ PCM shall:
  - Conduct any review directed by EEC or CPO
  - Report findings of review to EEC, CPO, agency
  
- ▶ PCM may:
  - Review procurement documents prior to contract
  - Attend any procurement meetings
  - Access any records or files related to procurement
  - Report procurement issues to CPO if not corrected
  - Ensure agencies maintaining appropriate records
  - Ensure transparency of procurement process

# 10-15(c) Misconduct, Waste, Inefficiency Reporting

- ▶ If aware, PCM has obligation to report
- ▶ Shall advise agency in writing
- ▶ If uncorrected by agency, shall report in writing to CPO and OEIG

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# What is the PCM's role?

- ▶ Depends. Broad access, but few explicit duties
- ▶ PCM may oversee up to 10 different agencies
- ▶ PCM may serve one role in Agency A, different role in Agency B
- ▶ Focus on risk

# Where's the Risk?

- ▶ Procurement requirements
- ▶ Agency culture, personnel, processes
- ▶ Agency mission; nature and scale of procurements
- ▶ Internal controls
- ▶ Test controls by reviewing procurements

# What does the PCM do?

- ▶ Review procurement processes
- ▶ Review active procurements
- ▶ Attend agency procurement meetings
- ▶ Assist in training/educating staff; promote best practices
- ▶ Review procurement files
- ▶ Provide information; highlight issues

# How does PCM communicate?

Depends on circumstances:

- ▶ Format (e.g. in-person, phone, email, etc.)
- ▶ Audience (e.g. SPO, APO, end user, director, CPO, etc.)
- ▶ Tone (e.g. accusatory, helpful, informational)

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# Examples

- ▶ State Use Program
- ▶ Real Estate Professional Services
- ▶ Program Monitoring Services
- ▶ Semi-Annual Review
  - Small Purchases
  - P&A Post-Performance Review
  - Multi-Year Contract Certifications
  - Change Orders

# Today's Presentation

- ▶ Background/Overview
- ▶ PCM Role/Activities
- ▶ Examples
- ▶ **Call for help**

# Call for Help

- ▶ PCMs encouraged to work with Internal Audit
- ▶ Similar goals
  - Efficient and effective processes and controls
  - Compliance with laws, rules, policies
  - Consistent application of processes
  - Appropriate documentation
  - Identify and resolve issues before they become problems

# Call for Help – Files

- ▶ Section 20–155(b): “A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain..... The procurement file shall be open to public inspection within 7 business days following award of the contract.”
- ▶ CPO–GS Checklists:  
<http://www2.illinois.gov/cpo/general/Pages/ProcurementFileChecklists.aspx>

# Call for Help – Approvals

Three requirements must be met after award **BEFORE** agency executes contract (including renewal, amendment, etc.):\*

- ▶ Protest period expired and all protests resolved (§20–75)
- ▶ PPB waiver or inaction (§5–30)
- ▶ SPO approval of contract (§10–10a)

\*Some exceptions based primarily on procurement method and award amount.



# Procurement Law Changes

98<sup>th</sup> General Assembly Legislative Update

# New Laws Affecting Procurement

- ▶ SB 2320/P.A. 98-0095 [Amends Section 2(A)(8) of the BEP Act (30 ILCS 575)]
- ▶ HB 2408/P.A. 98-0307 [Amends Section 45-57(e) of the Illinois Procurement Code Allows a SDVOSB or VOSB to also select and certify whether the business will be certified as female-owned, minority-owned or business owned by a person with a disability.]
- ▶ SB 2183/P.A. 98-0348 [Creates the Transportation Sustainability Procurement Program Act]
- ▶ HB 2695/P.A. 98-0442 [Amends Section 25-75 of the Code, 25% of vehicles purchased with State funds shall be vehicles fueled by electricity, compressed natural gas, liquid petroleum gas, or liquid natural gas. Exemption for IDOC and ISP patrol vehicles. SB 2803/P.A. 98-0759 added exemption for certain Secretary of State vehicles]
- ▶ HB 4769/P.A. 98-1018 [Amends the Public Construction Bond Act]
- ▶ SB 226/P.A. 1031 [Amends the CMS Administrative Law. Creates the Support Your Neighbor Commission]

# HB 4205 / P.A. 98-1038

- ▶ Amends the Procurement Code to strike the word “responsive” from Section 15-25(b-5).
- ▶ Effect is that the number of unsuccessful bidders are posted to the Bulletin.
- ▶ Effective date 8/25/14.

# HB 5491 / P.A. 98-1076

- ▶ Effective Date January 1, 2015
- ▶ Omnibus bill makes numerous changes to Illinois Procurement Code.
- ▶ Change everything to calendar days in Code. This does not change substance of time requirements under any section.

# HB 5491 / P.A. 98-1076 (con.)

- ▶ Various Sections of 1-15 Definitions. Bid, bidder, change order, chief procurement office, contractor, offer, offeror, responsive offeror, and supplier added to definitions.
- ▶ Definitions of contract, negotiation, responsible bidder, subcontract, subcontractor, and supplies amended.

# HB 5491 / P.A. 98-1076(con.)

- ▶ Sec. 1-15.12. Change order. "Change order" means a change in a contract term, other than as specifically provided for in the contract, which authorizes or necessitates any increase or decrease in the cost of the contract or the time for completion for procurements subject to the jurisdiction of the chief procurement officers appointed pursuant to Section 10-20.

# HB 5491 / P.A. 98-1076(con.)

- ▶ Section 1-15.108 Subcontract. For purposes of this Code, a “subcontract” does not include purchases of goods or supplies that are incidental to the performance of a contract by a person who has a contract subject to this Code.

# HB 5491 / P.A. 98-1076(con.)

- ▶ Sec. 1-15.111. Supplier. "Supplier" means any person or entity providing supplies, including, but not limited to, equipment, materials, printing, and insurance, and the financing of those supplies that can be procured regularly or are available on the commercial market.
- ▶ Distinction between a supplier and a subcontractor.
- ▶ Section 1-15.108. Subcontractor. The following was added to definition: For purposes of this Code, a person or entity is not a "subcontractor" if that person only provides goods or supplies that are incidental to the performance of a contract by a person who has a contract subject to this Code.

# HB 5491 / P.A. 98-1076(con.)

- ▶ Section 15-25(b) Contracts let. For purposes of this subsection, “contracts let” means a construction agency’s act of advertising an invitation for bids for one or more construction projects.
- ▶ Strikes the requirement that the apparent low bidder’s award and all other bids be posted to the agency’s website the next business day.
- ▶ “Contract award” means the determination that a bidder or offeror has been selected from among other bidders or offerors to receive a contract, subject to the successful completion of final negotiations. Contract award is evidenced by the posting of a Notice of Award or Intent to Award to the Bulletin.

# HB 5491 / P.A. 98-1076(con.)

- ▶ Section 20-43 Authorized to Do Business. Language modified to provide a person may qualify as a bidder or offeror if the person is a legal entity authorized to transact business or conduct affairs in Illinois prior to submitting bid, offer or proposal.
- ▶ Section 50-36 Disclosure of business in Iran. Allows for cure if entity fails to disclose.

# HB 5491 / P.A. 98-1076(con.)

- ▶ Section 20-155 (a) Solicitation and contract documents. CPO has the sole authority to develop and distribute uniform documents for the solicitation, review, and acceptance of all bids, offers, and responses and the award of contracts. If the CPO exercises this authority, then the State agency is required to use the uniform documents.

# HB 5491 / P.A. 98-1076(con.)

- ▶ Section 20-160 Registration with Board of Elections. Recognizes registration in vendor portal as satisfying requirements of section.
- ▶ Still requires entity to be registered with BOE as of date the bid or offer is due, but if BOE certificate is not included with the submission of bid or offer, the CPO can verify the entity is registered.

# HB 5491 / P.A. 98-1076(con.)

- ▶ REMOVE

# HB 5491 / P.A. 98-1076(con.)

- ▶ Section 45-45 Small businesses. Small businesses redefined to allow annual sales of \$13 million for wholesale businesses (up from \$10 million), \$8 million for retail/service businesses (up from \$6 million), and \$14 million for construction businesses (up from \$10 million).

# HB 5491 / P.A. 98-1076(con.)

- ▶ Section 50-35 Financial disclosures and potential conflicts of interest. Increases disclosures of prime vendors to \$50,000 (up from \$25,000) so now it matches dollar threshold for subcontractors.
- ▶ Throughout Article 50, recognizes certification in vendor portal as equivalent to submitting paper certifications.

# HB 5491 / P.A. 98-1076(con.)

- ▶ REMOVE

▶ REMOVE

# Other Miscellaneous Acts

- ▶ Small Business Contracts Act revised to allow CPO to make rules for the Act.
- ▶ Governmental Joint Purchasing Act clarified that it follows the same procedures used for competitive solicitations made pursuant to the Procurement Code. Small purchases follow same procedures for small purchases pursuant to the Procurement Code.

# Other Miscellaneous Acts

- ▶ SB 2380/P.A. 98-588 Grant Funds Recovery Act. Prohibition of use of grant funds for prohibited political activities. Effective date 1/1/14.
- ▶ SB 2381/P.A. 98-0589 Grant Information Collection Act. Agencies work with CIO to provide publication of certain grant data. Effective date 1/1/14.
- ▶ HB 2747/P.A. 98-706 Grant Accountability and Transparency Act. Coordinated oversight for the selection and monitoring of grant recipients. Effective date 7/16/14.

# Other Miscellaneous Acts

- ▶ HB 3831 /P.A. 98-0797 Amends State Comptroller Act. Exempts statewide master contracts from the Minority Contractor Opportunity Initiative. Effective date 7/31/14.
- ▶ HB 3125 /P.A. 98-0107 Amends the Department of Employment Security Law. Requires any individual or entity that is a party to a state contract with an executive branch agency to post its' employment vacancies to IDES' IllinoisJobLink.com or provide an online link to its employment vacancies so the link is accessible through the IllinoisJobLink.com system. Effective date 7/23/13.



# Procurement Administrative Rule Changes

Administrative Rules Update – Pending

# 44 Ill. Admin Code 1

- ▶ Administrative Rules for the Chief Procurement Office for General Services.
- ▶ Currently pending with JCAR but will be finalized and in the Illinois Register soon.
- ▶ New rules reflect law and policy changes that have occurred since Spring 2012.

# 44 III. Admin Code 1.2067

## Contract Amendments and Change Orders

- ▶ New Section of the Administrative Rules
- ▶ Contract amendments memorialize actions authorized by specific language in the contract (e.g. exercise option, price increase/decrease based on CPI) or memorialize non-material changes (change in names of notice contacts, number of status meetings).

# 44 III. Admin Code 1.2067

## Contract Amendments and Change Orders

- ▶ Definition in Section 1.15: A change order is a change in a contract term, other than as specifically provided for in the contract, that authorizes or necessitates any increase or decrease in the cost of the contract or the time for completion. This also includes increases or decreases to estimated contracts, even if the change does not require modification to the contract.
- ▶ Change orders do not include renewals, change of a vendor's name, or orders against master contracts.

# 44 III. Admin Code 1.2067

## Contract Amendments and Change Orders

- ▶ Change orders that increase or decrease the cost of a contract or an estimated contract by a total of \$10,000 or more, or the time for completion by a total of 30 days or more must be accompanied by a written determination which includes a statement that: 1) the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed; or 2) the change is germane to the original contract as signed; or 3) the change order is in the best interest of the State.

# 44 III. Admin Code 1.2067

## Contract Amendments and Change Orders

- ▶ A change order shall be executed by the State agency and vendor evidencing the change.
- ▶ All changes that require a written determination shall be approved by the SPO.
- ▶ Change orders that increase the cost by \$10,000 or more or add 30 days to complete shall be published to the Bulletin in advance of execution of the change order.

# 44 III. Admin Code 1.2067

## Contract Amendments and Change Orders

- ▶ A change order to a Professional & Artistic Contract may not result in an increase in the amount paid under the contract by more than 5% of the initial award.
- ▶ It also may not extend the contract term beyond the time reasonably needed for a competitive procurement, not to exceed 2 months.

# 44 III. Admin Code 1.2067

## Contract Amendments and Change Orders

- ▶ The total contract term, including the initial term, renewals, extensions and change order shall not exceed 10 years. Any change order that would extend the total term by more than 10 years is void.
- ▶ Prior to executing a change order with a cost estimated to exceed \$249,999 must submit the proposed change order to PPB, which will have 30 days to review and comment. The SPO assigned to the State agency may request a waiver of the review for reasons set forth in 20-60(c) of the Code.

# 44 Ill. Admin Code 1.2005

## Bid/Offer Security & Confidentiality

- ▶ 1.2005(a) All bids/offers shall be date and time stamped, recoded in a log and stored in a secure manner by the person responsible for receiving the bids/offers.
- ▶ SPO shall maintain the confidentiality of the bid/offer submittals. No information within bids/offers shall be disclosed to anyone prior to opening. State personnel may confirm receipt of the bid/offer to the entity submitting.
- ▶ If open for identification purposes or in error, procurement file include a signed statement explaining, including name of every person involved. Reseal until time set for opening solicitation.

# 44 Ill. Admin Code 1.2015

## Bid/Offer Security & Confidentiality

- ▶ Other than what is read at opening and made publicly available, the State agency shall not disclose any information contained in the offer outside of contracting officers, identified State agency personnel or by others specifically authorized by the CPO-GS or SPO until after award of the proposed contract has been posted to the Illinois Procurement Bulletin.
- ▶ This does not restrict the disclosure of information to, or its receipt by, State agency personnel identified by the State agency head or the chief executive officer of a board or commission to receive the information.
- ▶ The SPO may require confidentiality and conflict of interest statements from those persons identified by the agency head or the chief executive officer to receive the information.

# 44 III. Admin Code 1.2015

## Competitive Sealed Proposals

- ▶ Evaluation Committee members shall be determined by the State agency, tailored to the particular solicitation, and include as appropriate technical or other personnel with expertise to ensure a comprehensive evaluation of offers.
- ▶ Evaluation Committee members must not have any conflicts of interest or apparent conflicts of interest and must commit to the time to complete all evaluations and attend any necessary evaluation meetings.
- ▶ The Evaluation Committee members may be removed by the SPO for good cause, such as failure to comply with instructions or directions of the SPO or to ensure the integrity of the procurement. The SPO shall state in writing his or her reasons for removing a committee member.

# 44 III. Admin Code 1.2015

## Communication with Offerors

- ▶ Proposal discussions with individual offerors may be conducted by the State agency, in consultation with the SPO, with vendors reasonably susceptible of being awarded a contract based on qualification and price.
- ▶ Add to best and final offers that the primary objective is to maximize the State's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

# 44 Ill. Admin Code 1.15 Emergency Procurements

- ▶ "Emergency Contract Award" – For purposes of an emergency contract, an emergency contract is awarded on the earlier of the date a State agency communicates to a vendor to start work, publication on the Illinois Procurement Bulletin identifying the vendor of the required supplies or services, or the date the contract is signed by both parties.

# 44 III. Admin Code 1.2030

## Emergency Procurements

- ▶ Documentation of efforts to obtain competition for emergency purchases shall be made part of the procurement file.
- ▶ Identifies when an emergency contract is “awarded”. Earliest of
  - When state agency communicates to a vendor to start work;
  - Publication on IPB identifying the selected vendor;
  - When contract is signed.
- ▶ Documentation of the award date shall be part of procurement file.

# 44 III. Admin Code 1.1525

## State Agency Website Content

- ▶ 1.1525(e) On IFBs, state agencies shall post notice of apparent low bidders award and all other bids from bidders (bid tab) responding to the solicitation to its website no later than the next business day after the award is posted to the Bulletin.
- ▶ For RFPs, state agencies shall post notice of each contract that is awarded on its website no later than the next business day after the award is posted to the Bulletin.
- ▶ Alternatively, may include a link to the Bulletin for the detailed information.
- ▶ This will go away January 1, 2015 when P.A. 98-1076 takes effect.

# 44 III. Admin Code 1.2060

## Renewals

- ▶ 1.2060(e) Renewals. A renewal may only be entered into if authorized by the original contract.
- ▶ Renewals must be fully executed on or before the expiration of the current contract term. If the renewal is not exercised prior to the expiration of the current contract term, must re-procure in accord with the Code.

# 44 III. Admin Code 1.2055

## Time & Materials Contracts

- ▶ 1.2005(f) Time and Materials Contracts: Used when it is not possible at the time of posting the solicitation to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of certainty.
- ▶ Appropriate contract administration by the State agency is required to assure efficient methods and effective cost controls are being used.
- ▶ The contracts shall contain a stated ceiling or estimate that shall not be exceeded without prior SPO approval.
- ▶ If the state ceiling or estimate is exceeded, a change order shall be executed to memorialize the transaction if required by law.

# 44 Ill. Admin Code 1.2005

## Vendor Confidential Information

- ▶ 1.2005(v) A vendor must clearly identify confidential data, including information the vendor claims is a trade secret or other competitively sensitive, confidential or proprietary information belonging to the vendor. Must identify the basis for the claim of confidentiality.
- ▶ State agency in receipt of a FOIA shall attempt to provide notice and opportunity to a vendor claiming an exemption under FOIA or a claim of confidentiality to object prior to disclosure of any material.
- ▶ May disclose information claimed confidential if determined by PAC for the Attorney General that the claim of confidentiality does not meet requirements for withholding under FOIA.

# 44 III. Admin Code 1.1040

## Central Procurement Authority

- ▶ CPO may establish, or may delegate to a State agency the right to establish, master, scheduled or open-ended contracts, and those contracts shall be utilized by State agencies in accordance with the terms of the contract.
- ▶ Any delegation shall be in writing and agreed to in writing by the State agency head.

# 44 III. Admin Code 1.12

## Exemptions for Artistic and Musical Services

- ▶ Exempts certain expenditures necessary to provide artistic or musical services or theatrical productions held at a venue operated or leased by a State agency. Requires monthly reporting to the CPO.

# 44 Ill. Admin Code 1.2005 Technology

- ▶ 1.2005(e) Allows for acceptance of electronic signatures on bids/offers in accordance with security standards set by CMS law (5 ILCS 175/25-101(c)) and rules (14 Ill. Admin. Code 105.300).
- ▶ Comptroller does not accept electronic signature on the final contract.

# 44 Ill. Admin Code 1.1535 Technology

- ▶ CPO may operate a vendor portal: Illinois Procurement Gateway
- ▶ Portal shall allow prospective vendors to provide certifications, disclosures, registrations and other documentation needed to do business with the State in advance of a particular procurement.
- ▶ Allows for a vendor to submit registration number, with confirmation that information correct, as part of a vendor's response to a solicitation.

# 44 III. Admin Code Article 50 Technology

- ▶ 1.5002 Annual certification through the Illinois Procurement Gateway satisfies disclosure requirements for multi-year contracts.
- ▶ Throughout Article 50 rules, adds provisions that if false certifications are made by subcontractors, the contractor has the ability to cure before a contract can be declared void.

# QUESTIONS?

# Contact Information

Brett M. Cox

Senior Procurement Compliance Monitor

Chief Procurement Office for General Services

217-558-3855

[brett.m.cox@illinois.gov](mailto:brett.m.cox@illinois.gov)

Joanna Belle Gunderson

Deputy General Counsel

Executive Ethics Commission

[Joanna.Gunderson@illinois.gov](mailto:Joanna.Gunderson@illinois.gov)