

Chairman: David Vaught
Members: Ed Bedore, Ricardo Morales, Larry Ivory, Bill Black

MEMORANDUM

TO: Procurement Policy Board Members
PPB Legal Counsel

FROM: Aaron Carter
Executive Director

DATE: January 10, 2013

RE: Vendor Refusal/Slow State Payment

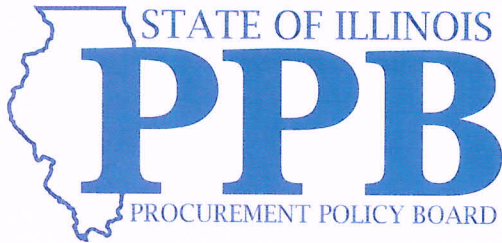
At the December Procurement Policy Board (PPB) meeting, the Board expressed interest in the effects that the State's slow payment cycle is having on procurement in general. A survey containing six questions was sent to 16 State agencies seeking their responses. The following is a summary of the results of the survey.

Most State agencies that responded to the survey indicated that, as a result of the State's slow payment cycle, they have seen a decline in the number of vendors submitting bids. This is especially true if the General Revenue Fund (GRF) is the funding source for the procurement. It was noted that some vendors now ask up front what the specific funding source will be for a particular procurement. It was also noted that some vendors are electing to not even bother to submit bids to the State even though the funding source for a particular procurement may come from another source other than GRF.

A direct result of the decrease in vendors submitting bids is less competition. In fact, the overwhelming consensus of the respondents agreed that competition has definitely decreased as a result of the State's inability to pay in a timely manner. Respondents said that vendors are simply reluctant to do business with the State due to the slow payment scenario.

The PPB asked if any agencies had encountered situations where vendors had refused goods or services as a result of slow payments from the State. The majority of agencies that responded indicated that they have not experienced any situations where vendors had refused to perform. However, there were three respondents who indicated that they had in fact, encountered situations where vendors were inclined to not fulfill the terms of their contracts. In these instances, the agencies worked with the vendors to seek resolutions by prioritizing payments or making changes to shipment schedules from semi-annual to quarterly, for example.

The agencies that responded did not indicate that they had any written policies in place for situations in which a vendor refused to fulfill terms of their contract. There was a wide variety of responses that agencies indicated they could employ in the event of a vendor refusal to perform, such as turning over the matter to legal staff or attempting to find another appropriate funding source, but again, no written policies are currently in place.



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The survey asked the agencies if they were aware of the Vendor Payment Program offered through CMS. There was a split in the respondents on this question. It was nearly a 50/50 split on whether the agency was aware of the program and whether they had been given instructions on supplying information about the program to vendors.

And finally, the survey asked for input on any other issues agencies had encountered as a result of the State's slow payment cycle. Contract terms related to payments to vendors is becoming more prevalent according to some respondents. Some of those payment terms relate to penalties for late payments, pre-payments or credit card payment demands. In general, the thought is that vendors are increasing their bids to cover the slow payments scenario that comes with doing business with the State of Illinois.

PPB staff recommends that CMS perform outreach and/or workshops with Agency procurement personnel to ensure that the Vendor Payment Program is more aggressively presented to vendors who may be inclined to take advantage of the program.

What impact, if any, has the State's slow payment cycle had on your agency in regards to procurement?

Agency Response: On almost every bid we issue we get a request from a vendor asking what the funding source is for the procurement. We fortunately have very little GRF funding so that helps us out some. We are though, overall seeing fewer bid responses on both small procurements and procurements issued on the IPB.

Agency Response: IDES is primarily federally funded so we typically are able to pay vendors within a normal payment cycle. So, the State's generally slow payment cycle is not impacting the IDES procurement function.

Agency Response: Many of our vendors have chosen to stop providing services; either on a permanent basis or intermittently, based upon when they receive a payment. Numerous CMS Master contract vendors continually refuse to provide goods and services to our Agency.

Agency Response: Since the department operates on the Road Fund, our payments are normally not delayed as is the case with GRF funded procurements. However, I would say that we feel there are vendors who elect not to submit bids/proposals due to the delayed payments in Illinois, not realizing that department's payments are different than GRF payments.

Agency Response: We have had a few problems on the payment side; however, it hasn't really affected procurement.

Agency Response: We have found that Vendors are very hesitate whether to conduct business with the State of IL. DNR encourages open communication with regards to the funding source of the procurement and if GR funds are being used, we communicate with the vendor the very lengthy delays in payment.

Agency Response: The slow payment cycle has hindered the state's ability to get the best vendors at the lowest price. The slow payment cycle has decreased smaller business ability to bid on contracts and caused longer business to just not be interested in doing business with the state. Small businesses either don't bid at all or increase the prices for items to account for the time lag. Small businesses just can't wait as long as a larger vendor to get paid. Additionally, it has increased costs because even those vendors who do bid build in a cushion knowing it takes extra time for the Comptroller to cut them a check.

Agency Response: Several small business vendors will not accept an award if the General Revenue fund is being utilized for payment. Existing vendors have not delivered products until payments due were made current.

Agency Response: I believe it has decreased competition; especially on Small Business Set-Aside Program (SBSP) procurements. Too many companies cannot carry the State for an extended period of time.

Do you feel that competition has decreased? If yes, please describe.

Agency Response: Yes. I have been told by a couple of vendors that due to the cost of getting registered to bid on procurements in Illinois and for as long as it takes to get payments from Illinois they no longer bid or issue quotes to Illinois. Since many items we purchase are specialized (relating to Nuclear Power Plant monitoring) there may only be two or three vendors that produce the item we need and when one of them won't bid, it really effects our ability to get the best price or product needed.

Agency Response: Yes, I believe that competition has decreased. Many prospective vendors assume that IDES is affected by the slow payment cycle, so they are less likely to submit bids.

Agency Response: Though we have no hard numbers, we are definitely seeing a decrease in the number of vendors for our bids. Some of our Business Administrators have been told verbally by vendors that they are refusing to bid due to the State's slow payment issues.

Agency Response: As noted above, while we cannot say with certainty that competition has decreased, we do feel the vendor pool is at times reluctant to contract with the state due to delayed payments. We often have procurements where we receive

only one or two bids/proposals when we expect to receive twice that many. We have attributed that in some cases to the fear of vendors thinking their payments will be delayed.

Agency Response: No, we only had one vendor ask if the contract resulting from a published solicitation would be paid out of General Revenue.

Agency Response: We believe, competition has decreased. We push the SBSA Program and it's difficult to get vendors to complete the proper paperwork which in turn also decreases the competition at times, cumbersome paperwork with numerous material items and of course the concerns with regards to timely payment.

Agency Response: Yes – Again, the slow payment process discourages vendors from bidding. Smaller business simply can't float that big of a debt, so often this leaves only the bigger companies who can afford to bid. Several businesses both small and large have started the standard practice of asking if the bids relate to GRF payment. If the answer is yes they decline to bid.

Agency Response: Competition has decreased. There have not been as many bidders on both small and large solicitations.

Agency Response: Yes. Although I do not have the data to prove it, it seems that fewer companies are bidding on State procurements. In an economic downturn, you would normally see more companies bidding on State procurements.

Has your agency experienced any issues with vendors not fulfilling orders or providing contracted services due to the State's slow payment cycle? If so, please describe.

Agency Response: Since I have been APO at IEMA (since 12/11) I have not experienced a vendor refusing to fulfill an order. Vendors have threatened to shut off service and sent letters, but we have been successful in walking payments thru the Comptroller's Office in those instances or gotten the vendor to back down.

Agency Response: No.

Agency Response: Yes, Western CC has a current problem with Johnson Controls refusing to honor their contract and provide services due to payment issues. Johnson Controls also refused to bid on an IFB for Hill CC, even though they were the proprietary vendor of the Building Control Systems at Hill. As I mentioned in #1, we continue to have numerous issues with Master Contract vendors not honoring the terms of those contracts.

Agency Response: The department has not experienced situations where vendors fail to provide supplies or services based on delayed payments for procurements handled by the department.

Agency Response: We have had a few vendors indicate that they will cut off service (e.g. – refuse collection, price differential master contracts for fuel) and our CFO has had to make arrangements to prioritize those payments.

Agency Response: We have only encountered non-fulfillment of orders when the method of purchasing is from a master contract (uniforms, paper products, soap, paint, stain for example). In most cases, DNR was not paying with GR Funds, however other agencies were, causing the vendor to stop fulfillment.

Agency Response: Yes – We have had vendors refuse to continue to deliver under a contract until they get paid. Examples include:

- Revenue has issued expedited payment request in several cases to continue required services where vendor's have refused to proceed without payment. 1099G Postcard (two different vendors holding multi-year contracts over the past five years have required this process).
- Aspect (sole source vendor for the agencies call center) required this process before they would sign a new contract to provide the next critical UIP upgrade.
- Meyercord (the sole bid and provider of Cigarette Tax Stamps for the past 16 years) require us to change our contract from semi-annual shipments to quarterly shipments to reduce the amount of their outstanding payments. Then they

moved to requiring an expedited payment each quarter and the receipt of that payment before they would proceed with the next shipment.

- We have also experienced issues with CMS Master Contract vendors placing orders on hold due their total outstanding payments related to various agencies.

Agency Response: Yes, vendors have not delivered products until payments were made.

Agency Response: The facilities, in their response, may have had more situations like this. I have not personally had a company call me and say they will no longer provide the services in their contract.

What is the agency's policy when a vendor refuses to fulfill their contractual obligations due to the State's slow payment cycle?

Agency Response: If a vendor were to refuse to fulfill their contractual obligation I would turn the matter over to our legal staff.

Agency Response: This has not been an issue so we have not formulated a policy.

Agency Response: For IDOC contracts, we send a Complaint to Vendor form to the vendor and try to negotiate with them so they honor the terms of their contract, but if those negotiations fail, we are forced to terminate the contract. This leads to many emergency procurements to ensure the prisons receive needed services and commodities. For Master Contracts, we file a complaint to Vendor form and provide a copy to CMS. If the order is refused, we place a bid for the goods or services needed. If the amounts needed exceed the Small Purchase threshold for commodities, we are forced to declare an emergency to obtain the necessary commodities.

Agency Response: We have not had this situation and do not anticipate it being an issue because we are Road Fund funded.

Agency Response: These are dealt with on a case by case basis by the Chief Fiscal Officer and the respective Bureau.

Agency Response: If we can, the agency attempts to find another appropriate funding source that may be substituted, but this is typically addressed prior to procurement.

Agency Response: We advise them they are obligated to fulfill the contract and that their remedy is to file a claim and collect interest under the Prompt Payment Act.

Agency Response: There is no official policy. If a vendor fails to fulfill the terms of a contract, for this or any other reason, the Agency cancels the contract.

Agency Response: I do not know.

Are you aware of the Vendor Payment Program offered through CMS (<http://www2.illinois.gov/payments/Pages/default.aspx>)? Have you, or your agency's procurement staff, been instructed on supplying information to vendors regarding the program?

Agency Response: No, I was not aware of it. No

Agency Response: Yes. No.

Agency Response: Yes, we are aware of the vendor payment program and we do have limited participation in this program. Some vendors have been reluctant or uneasy to participate.

Agency Response: We are aware of the program and have received instructions through SPO meetings about the program.

Agency Response: We are aware of it and have directed a few vendors to it.

Agency Response: Yes. Yes - DNR has very little procurements utilizing GR Funds, however we are aware of the Vendor Payment Program and Offices refer Vendors when appropriate.

Agency Response: As stated in the aforesaid response, we are familiar with the Prompt Payment Act, but not necessarily how it relates to the Vendor Payment Program.

Agency Response: No , Revenue has not been instructed on supplying information to vendors regarding the Vendor Payment Program.

Agency Response: No

Agency Response: I am not aware of it and I have not been instructed on passing anything about it along to the vendors.

Please describe any other procurement-related issues related to the State's slow payment cycle that you would like to share.

Agency Response: It is getting more difficult to negotiate contract terms. Many vendors are wanting to insert payment terms and/or penalties that conflict with the Illinois Prompt Payment Act. This results in additional delays in getting a signed contract as attorney's banter back and forth to come up with acceptable terms and conditions. I have also noticed an increase in the number of vendors who want pre-payment or a credit card payment. There are also more and more on-line vendors who may offer better pricing but because they won't accept a PO we are forced to go to another vendor at a higher price. It would be nice if the State had a "P-Card" that could be used in these instances.

Agency Response: When you combine a lengthy/cumbersome procurement process with slow payments, the result is less competition and higher prices. Not only is the competition reduced but sometimes the quality of vendors is just not available.

Agency Response: Another aspect that I believe I have been seeing is an increase in the cost of our procurements more than you would normally see. Although again, I can't quantify it, I think vendors are increasing their bids to cover the late payments. DHS has quite a few procurements where we receive few bids. I think vendors are adding to their bid not only the costs of carrying the State, but an aggravation increase for having to do so.