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SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER VI: EXECUTIVE ETHICS COMMISSIONPART 1620
ORGANIZATION, INFORMATION, RULEMAKING AND HEARINGS

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AUTHORITY: Implementing Sections 20-50 and 20-55 of the State Officials and Employees Ethics Act [5 ILCS 430/20-50 and 20-55] and Section 50-39 of the Illinois Procurement Code [30 ILCS 500/50-39] and authorized by Section 20-15 of the State Officials and Employees Ethics Act [5 ILCS 430/20-15] and [30 ILCS 500/50-39].

SOURCE: Adopted by emergency rulemaking at 29 Ill. Reg. 3340, effective February 23, 2005, for a maximum of 150 days; adopted at 29 Ill. Reg. 9619, effective July 1, 2005; amended at 32 Ill. Reg. 7099, effective July 1, 2008; amended at 34 Ill. Reg. 13108, effective August 27, 2010; amended at 34 Ill. Reg. 19507, effective December 6, 2010; emergency rulemaking at 35 Ill. Reg. 563, effective January 1, 2011, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 35 Ill. Reg. 3797, effective February 17, 2011, for the remainder of the 150 days; amended at 35 Ill. Reg. _____, effective _____.

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Section 1620.825 Communications Related to Procurement

- a) *Any written or oral communication received by a State employee that imparts or requests material information or makes a material argument regarding potential action concerning a procurement matter, including but not limited to an application, a contract or a project, shall report the communication to the Procurement Policy Board. [30 ILCS 500/50-39(a)]*
- b) A communication must be reported if it is material, regarding a potential action, relating to a procurement matter and not otherwise excluded from reporting.
 - 1) Materiality
 - A) "Material information" is information that a reasonable person would deem important in determining his or her course of action. It is information pertaining to significant issues, including, but not limited to, price, quantity and terms of payment or performance.
 - B) A "material argument" is a communication that a reasonable person would believe was made for the purpose of influencing a decision relating to a procurement matter. It does not include general information about products, services or industry best practices, or a response to a communication initiated by an employee of the State for the purpose of providing information to evaluate new products, trends, services or technologies.
 - C) In determining whether a communication is material, the State employee must consider:
 - i) whether the information conveyed is new or already known to the State agency (or repeated or restated privately) and other participants in the communication; and
 - ii) the likelihood that the information would influence a pending procurement matter.
 - 2) A "potential action" is one that a reasonable person would believe could affect the initiation, development or outcome of a procurement matter.
 - 3) "Procurement matters", unless otherwise excluded, are the processes of procuring specific goods, supplies, services, professional or artistic services, construction, leases of real property (whether the State is the

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lessor or lessee), or capital improvements, and include master contracts, contracts for financing through use of installment or lease-purchase arrangements, renegotiated contracts, amendments to contracts, and change orders. Procurement matters are activities that occur during the time period beginning with the time an agency has identified a need for procurement as documented by the initiation of a procurement business case or equivalent document, as designated by the Chief Procurement Officer, and continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or Procurement Policy Board review period, if applicable. Procurement matters include:

- A) drafting, reviewing or preparing specifications, plans or requirements, including determining the method of source selection;
- B) drafting, reviewing or preparing any Invitations for Bid, Requests for Information, Requests for Proposals, sole source procurement justifications, emergency procurement justifications or selection information;
- C) evaluating bids, responses and offers, other communications among an evaluation team and any technical advisors to the team relating to the evaluation of a procurement not yet awarded;
- D) letting or awarding a contract;
- E) resolving protests;
- F) determining inclusion on prequalification lists or prequalification in general;
- G) identifying potential conflicts of interest or voiding or allowing a contract, bid, offer or subcontract for a conflict of interest;
- H) allowing a conflict or subcontract pursuant to Section 50-60 of the Illinois Procurement Code [30 ILCS 500]; and
- I) approving change orders or the renewal or extension of an existing contract.

- c) This Section does not apply to the following communications:

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- 1) *Communications made by a person publicly made in a public forum (however, communications made in a public forum, if made again privately, must be reported);*
- 2) *Communications regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter;*
- 3) *Communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of an existing contract. [30 ILCS 500/150-39(a)]*
- 4) Communications between a State employee and:
 - A) the State employee's agency head;
 - B) other State employees of that agency;
 - C) employees of the Executive Ethics Commission; or
 - D) an employee of another State agency who, through the communication, is either
 - i) exercising his or her experience or expertise in the subject matter of the particular procurement in the normal course of business, for official purposes, and at the initiation of the purchasing agency or the appropriate State Purchasing Officer; or
 - ii) exercising oversight, supervisory or management authority over the procurement in the normal course of business and as part of official responsibilities.
- 5) Unsolicited communications providing general information about products, services or industry best practices, prior to those products or services becoming involved in a procurement matter.
- 6) Communications received in response to procurement solicitations pursuant to the Illinois Procurement Code, including, but not limited to, vendor responses to a Request for Information, Request for Proposal, Request for Qualifications, Invitation for Bid or a small purchase, sole source or emergency solicitation, questions and answers posted to the Procurement Bulletins to supplement the procurement action, provided

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that the communications are made in accordance with the instructions contained in the procurement solicitation, procedures or guidelines.

- 7) Communications that are privileged, protected or confidential under law.
 - 8) Communications that are part of a formal procurement process as set out by statute, rule or the solicitation, guidance or procedures, such as the posting of procurement opportunities, the process for approving a procurement business case or its equivalent, fiscal approval, submission of bids, the finalizing of contract terms and conditions with an awardee or apparent awardee, and similar formal procurement process.
- d) Notwithstanding any exemption provided in subsection (c), a State employee must report any communication that imparts or requests material information or makes a material argument regarding a potential action concerning a procurement matter if that communication attempts to influence through duress, coercion or the direct or indirect offer or promise of anything of value to any person or entity in consideration for any benefit or preference in the procurement process.
- e) Notwithstanding any exemption provided in subsection (c), a State employee must report any communication that imparts or requests material information or makes a material argument regarding a potential action concerning a procurement matter if the employee reasonably believes the communication was made for any improper purpose, including, but not limited to, providing an improper benefit, monetary or non-monetary, to any person or entity.
- f) As soon as practicable, but in no event more than 30 days after receipt of the communication or the first in a series of related communications described in subsection (b), the State employee shall report the communication to the Procurement Policy Board in accordance with the Board's rules.
- e) For purposes of this Section, "State employee" means:
- 1) any person employed full-time, part-time or pursuant to a personal services contract and whose employment duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed;
 - 2) any appointed or elected commissioner, trustee, director or board member of a board of a State agency; or
 - 3) any other person appointed to a position in or with a State agency, regardless of whether the position is compensated.

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- h) For purposes of this Section, "public forum" includes any meeting that satisfies the notice requirements contained in Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02], but also includes other public events that are advertised and generally open to the public. A meeting may be a public forum even if a reasonable fee is required, such as educational seminars and conferences.
- i) For purposes of this Section, "procurement business case" means a formal request for approval to procure using either an electronic system or document designated for this purpose by the Chief Procurement Officer.

(Source: Added at 35 Ill. Reg. _____, effective _____)